

# Quickscribe Reporter

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Vol: XVI – Issue: VI – June 2017

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## QUICKSCRIBE NEWS:

### Latest Annotations

New annotations have recently been added to the Quickscribe site. These annotations include contributions from:

- [Jeff Young](#), Altman & Company – [Infants Act](#)
- [Bill Bulholzer](#), Young Anderson, Barristers and Solicitors – [Local Government Act](#)
- [Margaret Mason](#), Norton Rose Fulbright LLP – [Societies Act](#)
- [Mark Oulton](#), Hunter Litigation Chambers – [Forest Act](#)
- [Stan Rule](#), Sabey Rule – [Wills, Estates and Succession Act](#)

Watch this 20-minute [YouTube video](#) to learn more about annotations and how to receive alerts when new annotations are published to the laws that matter most to you.

**Tip: Log in to Quickscribe Online prior to clicking Reporter links...**

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**FEDERAL LEGISLATION** – For notification of federal amendments, we recommend you use our [Section Tracking](#)  tool.

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## COMPANY & FINANCE

### Company and Finance News:

#### **A Matter of Interest: The New Conflict Rules under the Societies Act**

British Columbia's new [Societies Act](#) came into force in November 2016. In addition to requiring that approximately 27,000 BC societies transition in the next two years, the legislation has brought changes that affect their governance and operations. In this bulletin, we will focus on the conflict of interest rules for directors and senior managers under the Act.

#### ***Conflicts of Interest***

Directors and senior managers owe a fiduciary duty of loyalty to their societies. This means that they must place the interests of the society above their personal self-interest in all dealings with and for the society. In particular, they must avoid situations in which their duty to the society conflicts with their personal, work, or business interests or their roles as directors, senior managers, or officers in other companies or not-for-profit organizations. Conflicts of interest arise when a director (or even a director's family or friends) might benefit financially from the actions of the organization.

#### **Changes to the Conflict of Interest Rules**

Conflict of interest rules have applied to society boards for a long time. Many societies have also adopted additional conflict of interest bylaws or policies in line with recommended best practices. The new Act, however, has brought some significant changes that directors and senior managers need to know about.

Read the [full article](#) by [Dierk Ullrich](#), [Darrell J. Wickstrom](#) and [Clara Rozee](#) with Fasken Martineau DuMoulin LLP.

#### **Proposed Canadian Prospectus Exemption Allows Restricted Foreign Securities to be Resold on Foreign Exchanges**

On June 29, 2017, the Canadian Securities Administrators (CSA) published for comment [proposed amendments](#) to [National Instrument 45-102 Resale of Securities](#) (NI 45-102) that would introduce a new prospectus exemption for the resale of securities of a foreign issuer.

"The proposed amendments would facilitate access to global markets," said Louis Morisset, CSA Chair and President and CEO of the Autorité des marchés financiers. "Canadian investors are increasingly investing abroad, and we understand that some aspects of the current resale regime may pose challenges to participation in prospectus-exempt offerings by foreign issuers."

If adopted, the proposed exemption would allow Canadian investors to resell, outside of Canada, securities of a foreign issuer acquired under a prospectus exemption where the issuer is not a reporting issuer in any jurisdiction of Canada. The proposed amendments suggest a different approach for determining minimal connection to Canada by introducing a definition of foreign issuer to replace the current 10 per cent Canadian ownership test. Read the [full article](#) by [Bernard Pinsky](#), Q.C. of Clark Wilson LLP.

#### **Global Internet Takedown Orders Come to Canada: Supreme Court Upholds International Removal of Google Search Results**

The Supreme Court of Canada released its much-anticipated [Google v. Equustek](#) decision today, upholding the validity of an injunction requiring Google to remove search results on an international basis. The 7-2 decision (Justices Côté and Rowe dissented, finding that there were alternatives available, the order is ineffective, and expressing concern that the "temporary" injunction was effectively permanent) is not a surprise – last week's [Facebook's decision](#) suggested a willingness to side with the weaker Canadian litigant against Internet giants – but the decision will ultimately grant Google more power, not less. Read the [full article](#) by Dr. Michael Geist on his website.

#### **BC Securities – Policies & Instruments**

The following policies and instruments were published on the BCSC website in the month of March:

- [81-328](#) – CSA Multilateral Staff Notice 81-328 *Report by the Auditor in the Form Contained Respectively in Appendix B-1, B-2 or B-3 of National Instrument 81-102 Investment Funds*  
This Notice announces that the participating jurisdictions expect a report by an auditor dated on or after June 30, 2017 to comply with the Canadian GAAS instead of the form contained respectively in Appendix B-1, B-2 or B-3 of National Instrument 81-102 *Investment Funds*.
- [81-518](#) – BC Instrument 81-518 *Exemption from Prescribed Form of Mutual Fund Audit Reports in National Instrument 81-102 Investment Funds*
- [51-350](#) – BC Instrument 81-518 *Exemption from Prescribed Form of Mutual Fund Audit Reports in National Instrument 81-102 Investment Funds*  
BC Instrument 81-518 exempts certain mutual funds and their dealers from using the prescribed form of audit report required by National Instrument 81-102 *Investment Funds*, provided they file an assurance report in accordance with the requirements in the Handbook.
- [93-301](#) – CSA Staff Notice 93-301 - *Derivatives Business Conduct Rule - No Overlap with Derivatives Registration Rule Comment Period*
- [45-102](#) – CSA Notice and Request for Comment - Proposed Amendments to National Instrument 45-102 *Resale of Securities*, Proposed Changes to Companion Policy 45-102CP to National Instrument 45-102 *Resale of Securities*, Proposed Consequential Amendments to National Instrument 31-103 *Registration*

*Requirements, Exemptions and Ongoing Registrant Obligations* and Proposed Consequential Changes to National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications*  
 This notice is publishing for comment proposed amendments related to section 2.14 of National Instrument 45-102 *Resale of Securities*, the resale provisions for non-reporting issuers. The comment period expires September 27, 2017.

For more information visit the BC Securities [website](#).

### FICOM News

The Financial Institutions Commission of BC published the following recent announcements and bulletins:

- [Letter to Administrators of BC Registered Pension Plans](#) – Records Retention Guidelines for Consultation – Extension
- [Letter to All CEOs/General Managers of British Columbia Credit Unions](#) – B.C. Liquidity Coverage Ratio (LCR) Reporting Guide and Template Finalized
- [Pensions Bulletin](#) – Termination Expense Assumption
- [Credit Union Bulletin](#) – Access to Statutory Adequate Liquid Assets
- [Letter to All CFOs/Finance Managers of British Columbia Authorized Credit Unions](#) – Second IFRS 9 Readiness Self-Assessment
- [Letter to All CEOs/General Managers of British Columbia Credit Unions](#) – Residential Mortgage Loans Report Completion Guide
- [Letter to All B.C. Credit Union CEOs/General Managers](#) – 2017 Asset Groupings

Visit the [FICOM website](#) for more information.

Act or Regulation Affected	Effective Date	Amendment Information
Designated Accommodation Area Tax Regulation (93/2013)	June 1/17	by <a href="#">Regs 275/2016</a> and <a href="#">41/2017</a>
	July 1/17	by <a href="#">Regs 41/2017</a> and <a href="#">89/2017</a>

## ENERGY & MINES

### Energy and Mines News:

#### Bad News for Oil is Proving to be Good News for Gold in a Most Unexpected Way

Gold climbed as oil's slide into a bear market may potentially retard the pace at which the U.S. Federal Reserve raises interest rates amid tumbling expectations for inflation, with the precious metal back on course for a second straight quarterly advance.

Crude's drop "is going to push down inflation expectations," Bob Takai, chief executive officer of Sumitomo Corp. Global Research Co., said by phone. "This means the Fed is going to take time to normalize the financial policy. This is good news for the gold market. That's why gold is edging up."

While gold traditionally benefits from a pickup in inflation with the metal seen as a hedge, crude's slump may help by potentially restraining the pace at which the Fed tightens policy further. The central bank increased borrowing costs for a third time in six months last week, pushing gold to a five-week low. Although the Fed has maintained its outlook for one more hike in 2017, some investors aren't so sure given the growing concern over inflation. Read the *Financial Post* [article](#).

#### Changes to Drilling and Production Regulation, More Fees

A reminder that the [Drilling and Production Regulation](#) was amended June 1 to allow for greater nuance when dealing with the subjects of both groundwater and injections. For instance, groundwater wells have been made exempt from a new section on well control equipment and blowout testing. They may also be exempted from plugging requirements. On the other hand, injection is now controlled in the case of induced seismicity, and injection products must also be measured. Both are covered specifically in the Reservoir Pressure Measurements section. As for restrictions, permit holders are now responsible for ensuring there is no excessive light from their

facilities, in addition to old rules regarding noise limits; and signs must now contain emergency notification information, including a telephone number. Regarding analysis, oil production analysis requirements are now retroactive and must consist of physical property analysis, as well as the routine chemical analysis that is normally performed. Also, costs were added under the [Fee, Levy and Security Regulation](#). A person who submits for a construction or operating permit for a manufacturing plant must pay a fee of \$132 per hour. Similarly, a fee of \$132 per hour is required for any application to amend that permit.

### Three-year Deadline to Lay Charges for Mt. Polley Dam Failure Approaching Fast

A deadline looms for provincial charges to be laid in the failure of the tailings dam at Imperial Metals' Mount Polley mine, but the B.C. Conservation Officer Service says the investigation has not finished.

There is a three-year time limit to lay charges under B.C.'s [Environmental Management Act](#). The deadline is less than two months away, on Aug. 4. The conservation service has been leading a joint investigation with the federal Environment and Fisheries departments.

Chris Doyle, deputy chief of the B.C. Conservation Officer Service, said last week that when the investigation is complete, the findings will be forwarded to Crown counsel for review and to determine what charges will be laid, if any.

Doyle said he could not comment on whether the investigation would be complete before the three-year deadline. Read *The Vancouver Sun* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Drilling and Production Regulation (282/2010)	June 1/17	by <a href="#">Reg 146/2017</a>
Fee, Levy and Security Regulation (8/2014)	June 1/17	by <a href="#">Reg 147/2017</a>

## FAMILY & CHILDREN

### Family and Children News:

#### Children and Families Hit Hard by Court Delays in BC

Underfunding of [BC's legal aid](#) program means families are left to fend for themselves, clogging up the system and lowering the quality of justice, according to some BC lawyers.

"It's like going into a clinic and being your own doctor; it's ludicrous," criminal lawyer Richard Fowler told Michelle Eliot, host of CBC's [B.C. Almanac](#). His comments come on the heels of a [report](#) released Monday [June 12<sup>th</sup>] by the Senate legal and constitutional affairs committee, which made 50 recommendations to reduce backlogs in court systems across the country.

Of those 50 recommendations, the committee identified 13 as priorities, including an increase in federal funding of legal aid to the provinces to reduce delays caused by unrepresented individuals navigating the courts without financial or legal supports.

The report outlines in detail how self-represented individuals slow the system and how judges have to "bend over backwards" to ensure those individuals receive a fair trial. Read the *CBC* [article](#).

#### Can the Date of Separation be Used for Valuation of Family Property in British Columbia?

Most often in separation and divorce, couples manage their finances in an informal way for months and sometimes even years before they venture in to see a lawyer and have a formal separation agreement drawn up. Many times, one party has moved out and the other party has stayed in the family residence, one party pays the mortgage and the other party pays their rent and their own bills and so on. It is not surprising, therefore, that the person who has been in the family home thinks they alone should be able to benefit from their payments, so

when they meet with their lawyer they often expect that the value of the family home will be the date that their spouse moved out. This is not so, says the [Family Law Act](#).

[Section 87](#) of the FLA requires, unless an agreement or order provides otherwise, that the value of family property be based on fair market value at the date of trial. Read the [full post](#) by John-Paul Boyd at *JP Boyd on Family Law: the Blog*.

### Employment & Assistance and Canada Child Benefit

Effective July 1, 2017, changes with respect to the Canada child benefit were made to both the [Employment and Assistance Regulation](#) and [Employment and Assistance for Persons with Disabilities Regulation](#). Eligible family units may now receive supplements when a Canada child benefits cheque has been lost or stolen, or when the child benefit has been delayed, suspended or cancelled, provided the funds are immediately needed for basic needs of food, clothing or shelter. In addition, set rates have been established for the BC child adjustment amounts, which are adjusted every year on July 1, beginning July 1, 2018, by any percentage increase of the consumer price index.

Act or Regulation Affected	Effective Date	Amendment Information
Child Care Subsidy Regulation (74/97)	July 1/17	by <a href="#">Reg 87/2017</a>
Small Claims Rules (261/93)	June 1/17	by <a href="#">Reg 120/2017</a>

## FOREST & ENVIRONMENT

### Forest and Environment News:

#### Softwood Lumber Trade Dispute – Recent Developments

On June 26, 2017 the U.S. Department of Commerce issued its preliminary anti-dumping (AD) duty rate.

**AD Rates:** Canfor 7.72%; Tolko 7.53%; West Fraser 6.76%; Resolute 4.59%; all other companies 6.87%. Duties are in effect once the preliminary AD determination is published, expected June 30, 2017. AD duties are in addition to countervailing duties (CVD) issued on April 24, 2017. Companies will be subject to the preliminary AD duty for a maximum of four months until the final order is issued in October 2017, according to the current timeline. However, if the Department of Commerce extends the final order to January 2018, the AD duties will remain in place for up to six months.

**CVD Rates Issued on April 24:** Canfor 20.26%; Tolko 19.50%; West Fraser 24.12%; Resolute 12.82%; Irving 3.02%; all other companies 19.88%. Duties are in effect starting April 28, 2017 until August 27, 2017.

**Critical Circumstances:** The Department of Commerce made a preliminary finding of critical circumstances for Irving and the "all others" group of companies, but not for Canfor, Resolute, Tolko and West Fraser. As a result, Irving and the "all others" companies will be subject to retroactive CVD duties on import entries made as of January 28, 2017 and retroactive AD duties on entries since about April 1, 2017 (90 days prior to the publication of the AD preliminary determination, which is expected June 30, 2017). The preliminary finding of critical circumstances may or may not be upheld when the Department of Commerce and the International Trade Commission make their respective final determinations on duties and injury.

Read the full government [news release](#).

#### Administrative Penalties and "Employers" under the Workers Compensation Act

A recent decision of our Court of Appeal in *West Fraser Mills Ltd. v. British Columbia (Workers Compensation Appeal Tribunal)* illustrates a curious aspect of the administrative enforcement regime in the [Workers](#)

[Compensation Act](#) (the Act). It also demonstrates the extent that Courts will defer to administrative tribunals such as the Workers Compensation Appeal Tribunal (WCAT) in the interpretation and application of their "home" legislation. This case arose from the circumstances surrounding the tragic death of a faller who was working in the BC Interior. In its decision, WCAT upheld an administrative penalty that the Workers' Compensation Board (now operating as "WorkSafeBC") imposed upon a licensee in its capacity as an "employer" under the Act. The curiosity is that the penalty was imposed on account of a finding of contravention of the Act's [Occupational Health and Safety Regulation](#) (the "Regulation") made against the licensee in its capacity as an "owner" under the Act. Under the Act, WorkSafeBC has the authority to enforce compliance with the Act and the Regulation "administratively" through the imposition of "administrative penalties" under [Section 196\(1\)](#) of the Act. Read the [full article](#) by [Jeff Waatainen](#) of DLA Piper LLP, published in the latest edition of the *BC Professional Forest Magazine*.

### **Federal Government Passes New Environmental Legislation**

Readers of the BLG Environmental News will recall when the Federal government introduced the [Environmental Enforcement Act](#) in 2009. As reported in the BLG Environmental News in 2009, the *Environmental Enforcement Act* introduced stringent new fines and sentencing provisions to various federal environmental legislation, and introduced Administrative Monetary Penalties. The implementation of the *Environmental Enforcement Act* has taken place in stages, and most of the sentencing provisions were brought into force in 2012. This month, the federal government passed a number of environmental regulations and orders as part of the third and final stage of implementing the *Environmental Enforcement Act*. In particular, new fine levels and Administrative Monetary Penalties are now in force.

[Order Fixing July 12, 2017 as the day on which Certain Provisions of the Act Come into Force](#) brings into force a number of sections of the *Environmental Enforcement Act*, which will introduce new fine regimes and sentencing provisions to the [Canada Wildlife Act](#), the [Migratory Birds Convention Act, 1994](#), and the [Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act](#).

The new fine regimes will provide fine ranges applicable to different categories of offenders, such as individuals, corporations, small-revenue corporations, other persons, and vessels. Minimum fines are being introduced, and existing maximum fines are being increased for offences that cause direct harm or the risk of direct harm to the environment or for providing authorities with false or misleading information. The new fine regimes also establish double fines for repeat offences. Read the [full article](#) by [Luke Dineley](#) and [Auke Visser](#) of Borden Ladner Gervais LLP.

### **Updated Combustible Dust Training Resources Available Online**

Combustible Dust has been a standard component of employee training for the Manufacturing Advisory Group (MAG), ensuring that anyone working in or around potential areas with combustible wood dust is able to recognize potentially unsafe conditions, take appropriate actions, and develop and implement effective controls. The Fire Inspection and Prevention Initiative (FIPI) in partnership with MAG developed training materials for use both on- and offline, including the monitoring of wood dust levels. WorkSafeBC's Board of Directors committed to funding FIPI to the end of 2016. At that time, the responsibility for management of workplace combustible wood dust education was assumed by the BC Forest Safety Council (BCFSC) in cooperation with MAG. FIPI developed an online training program with modules for employers, workers, and contractors which was updated by the Manufacturing Safety Alliance of BC and further enhanced by the BCFSC for forestry. This free training is now available on the BCFSC website and is relevant to all participants in the wood manufacturing sector. Read the full *BC Forest Safety* [news article](#).

### **Environmental Appeal Board Decisions**

The following Environmental Appeal Board decisions were released in the month of June:

#### [Environmental Management Act](#)

- [Revolution Organics, Limited Partnership v. Director, Environmental Management Act](#) [Stay Application – Denied]
- [Isabel and Marc Brenzinger v. District Director, Environmental Management Act](#) [Stay Decision – Denied]
- [West Coast Reduction Ltd. v. District Director, R.H. Robb](#) [Consent Order – Appeals Dismissed]
- [George E. Curtis and Kevin F. Curtis v. Delegate of the Director, Environmental Management Act](#) [Final Decision – Appeal Allowed]

#### [Wildlife Act](#)

- [Fraser MacDonald vs. Regional Manager, Recreational Fisheries and Wildlife Program, Omineca Region](#)  
[Final Decision – Appeal Dismissed]

Visit the Environmental Appeal Board [website](#) for more information.

Act or Regulation Affected	Effective Date	Amendment Information
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There were no amendments this month.

## HEALTH

### Health News:

#### Plan W Added to Drug Plans Regulation

Effective July 1st, a new drug plan was introduced to the [Drug Plans Regulation](#): Plan W (First Nations Health Benefits). Persons eligible to enrol in Plan W must already be beneficiaries under medicare and registered as Indians under the [Indian Act](#) (Canada) or a child less than one year of age of such a person. Individuals disqualified from enrolling in this plan are those who are eligible to participate in a comprehensive reimbursement program under a treaty and land claims agreement or a written contribution agreement between a first nations organization and a government of a province or of Canada.

#### Health Canada Testing Banana Boat Sunscreen Products as Complaints Mount

A British Columbia mother says her 12-year-old son suffered burn injuries after using a Banana Boat sunscreen product.

Patrizia Fitch, of Victoria, said Tuesday [July 4<sup>th</sup>] that her son Daniel was left with severe blisters after wearing a Banana Boat sunscreen on a school trip to a beach in the city. She says he applied the sunscreen four times and the blisters kept getting worse.

Fitch says she's reported her son's injuries to Health Canada. A Health Canada spokeswoman says the number of complaints about the company's products has shot up to 139 in the past two months. Read [The Vancouver Sun article](#).

#### Medical Assistance in Dying: Finding a Balance

As we celebrate the 35<sup>th</sup> anniversary of the [Canadian Charter of Rights and Freedoms](#) it seems appropriate to contemplate one of the most significant *Charter* challenges in recent history. It is particularly apropos as the enactment of [Bill C-14, SC 2016, c 3](#) (*An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)* ("MAiD")), approaches its first anniversary.

The conclusion in *Carter v. Canada (Attorney General)*, 2015 SCC 5 ("*Carter*"), without question, touches every Canadian. Bill C-14 created an exception to homicide and assisted suicide to allow for MAiD in some circumstances. The debate continues, now shifting to who should have access to MAiD, but the centre of the debate remains the balance between individual autonomy and protecting the vulnerable. Read the [full article](#) by [Kimberly Jakeman](#) and [Dionne Liu](#) of Harper Grey LLP on *Bar Talk*.

Act or Regulation Affected	Effective Date	Amendment Information
Drug Plans Regulation (73/2015)	July 1/17	by <a href="#">Reg 93/2017</a>

## LABOUR & EMPLOYMENT

### Labour and Employment News:

#### Employers May Be Held Liable for Improperly

### Terminating an Employee for Poor Performance

The recent British Columbia decision of [Cottrill v. Utopia Day Spas and Salons Ltd.](#) is a careful reminder to employers to proceed with caution before terminating employees for cause for poor performance or risk liability if the termination is later found to be wrongful.

In *Cottrill*, the employee was employed as a skincare therapist who provided facials, pedicures and other treatments for clients of the employer. On her first day of employment, she attended an orientation where she was given a written employment contract to sign. Although she was in training that day, she signed the contract before performing any actual work as a skincare therapist.

While working for the employer, the employee received occasional warnings about some aspects of her performance but she was never disciplined or told that that her employment was in jeopardy. After 11 years of employment, the employer took a closer look at the employee's personnel file and noticed that the employee had been falling well below established performance levels. As a result, the employee was given notice that she had 3 months to improve her performance and meet specific standards or her employment would be terminated. Over the following 3 months, the employee significantly increased her sales revenue, retail sales and new client base. Despite this improvement, the employee was terminated for cause at the end of the 3-month period because the employer felt she had a poor attitude and had not allegedly met all of the required performance criteria. The employee sued for wrongful dismissal. Read the [full article](#) by M. Ashley Mitchell of Miller Thompson LLP.

### Fishing for Notice: British Columbia Supreme Court Addresses Inducement and Contingency Factors in Wrongful Dismissal Suits

In a recent BC Supreme Court decision, [Sollows v. Albion Fisheries Ltd.](#), the court clarified what qualifies as inducement in the context of a reasonable notice period assessment. The court also took a novel approach to contingency, which can arise where the hearing takes place before the end of the employee's reasonable notice period.

#### Background

Don Sollows' employment was terminated in July 2016, by Albion Fisheries Ltd. This was Mr. Sollows' second employment stint with Albion – he previously worked for Albion for 19 years, from about 1985 to 2004. In 2004, Mr. Sollows accepted the role of senior manager for Albion's competitor, Sysco Canada, in Calgary. In October, 2013, the President of Albion, Mr. Milobar, offered Mr. Sollows the position of Director of Marketing and Chief Sustainability Officer. In the course of discussions, Mr. Milobar told Mr. Sollows that he would retire soon, that Mr. Sollows would be considered for the position of president, and that "the job hereby offered shall be a secure one."

Mr. Sollows accepted the position and moved from Calgary to Vancouver to work for Albion. In November, 2014, Mr. Milobar retired and Mr. Sollows was promoted to president after a competitive process. However, on July 15, 2016, after about three years' employment, Albion terminated Mr. Sollows' employment without cause. Mr. Sollows was 60 years old. The question of how much reasonable notice of termination Mr. Sollows was entitled to proceeded to summary trial, where the court awarded 10 months' pay in lieu of reasonable notice.

Read the [full article](#) by Monique Ronning of McCarthy Tétrault.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Regulation (263/2002)	July 1/17	by <a href="#">Reg 34/2017</a>
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	July 1/17	by <a href="#">Reg 34/2017</a>

### LOCAL GOVERNMENT



**Local Government News:**

**Federal Abandoned Boats Funding Program**

Applications and project proposals are currently being accepted for the federal government's new \$6.85 million national, five-year [Abandoned Boats Program](#). Funding is available for the assessment and removal of small, high priority abandoned boats; as well as education, awareness and research initiatives.

The first deadline for applications for education, awareness and research initiatives is September 30, 2017. The first deadline for applications for assessment and removal of small, high priority abandoned boats is October 30, 2017. There will be additional opportunities to apply for funding in 2018 and future years. Read the UBCM [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
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*There were no amendments this month.*

**MISCELLANEOUS**

**Miscellaneous News:**

**Criminal Practice Direction – Complex Criminal Cases**

Associate Chief Justice Cullen has issued CPD-3 – Complex Criminal Cases. CPD-3 describes the process by which the Court will manage large or complex criminal cases that show a potential to occupy a very significant amount of court time or to risk delays in reaching and concluding the trial. The new process for complex criminal cases involves case management for each such case from a very early stage, the assignment of a case management judge who will conduct periodic case management conferences. The case management judge will also conduct application screening conferences to determine which, if any, voir dres or pre-trial applications will be heard, the timelines for notice and other procedural steps, the general form of the evidence in the hearings of the voir dres and pre-trial applications, and the schedule for those hearings and for the trial. The practice direction is the result of extensive consultations with the bar. CPD-3 will come into effect on September 1, 2017. Read the full [Criminal Practice Direction](#).

**Saadati v. Moorhead: The Repudiation of a Dubious Perception of Mental Illness**

A unanimous decision of the Supreme Court released on June 2, 2017, filled a void in tort law when the Court stated that proof of a recognized psychiatric injury is no longer a precondition for the award of damages for mental injuries caused by negligence. Previously, it was common for courts to dismiss a claim for compensation for a mental injury caused by negligence when a party was unable to demonstrate the existence of a recognized psychiatric injury. This is no longer a hurdle that parties must face. In *Saadati v. Moorhead*, 2017 SCC 28, the Supreme Court ruled that to establish a mental injury, claimants must show evidence of a serious and prolonged disturbance that rises above ordinary annoyances, anxieties and fears.

**Background**

The case came to the Supreme Court after making its way through the Supreme Court of British Columbia and the British Columbia Court of Appeal. From 2003 to 2009, Mr. Saadati, the appellant, was involved in five motor vehicle accidents, sustaining various injuries. He was declared mentally incompetent in 2010. The matter at hand dealt with the injuries Mr. Saadati sustained after the second accident on July 5, 2005 when his tractor-truck was hit by a Hummer driven by the respondent, Mr. Moorhead. In this case, Mr. Saadati sought non-pecuniary damages and past wage loss. The respondent admitted liability for the accident, but opposed the claim for damages.

Read the [full article](#) by [D. Lynne Watt](#) of Gowling WLG.

**Teal Cedar Products Ltd. v. British Columbia: The Supreme Court of Canada Provides Further Guidance on the Standard of Review for Contractual Interpretation**

In [Teal Cedar Products Ltd. v. British Columbia](#), the Supreme Court of Canada recently confirmed that contractual interpretation typically involves questions of mixed fact and law (at least for non-standard contracts), as it previously held in [Sattva Capital Corp. v. Creston Moly Corp.](#) In a narrow 5-4 judgment, the majority allowed the appeal in part and clarified the standard of review applicable to commercial arbitrations involving

issues of statutory and contractual interpretation.

**Background**

Teal Cedar involved a dispute between Teal Cedar (a forestry company) and the Province of British Columbia regarding compensation issues under [s. 6](#) of the [Revitalization Act](#). After entering into a partial settlement agreement, Teal Cedar and the Province agreed to arbitrate the remaining points of contention. The arbitration required interpreting the provisions of both the [Revitalization Act](#) and the partial settlement agreement, the latter because it addressed the calculation of interest.

The parties' dispute twice reached the British Columbia Court of Appeal. Prior to the Supreme Court's decision in *Sattva*, the Court of Appeal initially overturned the arbitrator's award, holding that the statutory and contractual interpretation issues raised questions of law to which the correctness standard applied. On the latter, the Court of Appeal held that the arbitrator erred in law by allowing the factual matrix to "overwhelm" the unambiguous terms of the contract.

Read the [full article](#) by [Mark Gelowitz](#) with Osler, Hoskin & Harcourt LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Civil Resolution Tribunal Act	June 1/17	by 2015 Bill 19, c. 16, sections 1 (g) (part), 3 (part), 7 (part), 8 (part), 10 (b) (part) and (c) (part), 12 (part), 30 (part) and 38 (part) only (in force by <a href="#">Reg 111/2017</a> ), <a href="#">Civil Resolution Tribunal Amendment Act, 2015</a>
Civil Resolution Tribunal Small Claims Regulation (111/2017)	<b>NEW</b> June 1/17	see <a href="#">Reg 111/2017</a>
Court Rules Act	June 1/17	by 2015 Bill 19, c. 16, section 43 only (in force by <a href="#">Reg 111/2017</a> ), <a href="#">Civil Resolution Tribunal Amendment Act, 2015</a>
Small Claims Act	June 1/17	by 2015 Bill 19, c. 16, section 44 only (in force by <a href="#">Reg 111/2017</a> ), <a href="#">Civil Resolution Tribunal Amendment Act, 2015</a>
Small Claims Rules (261/93)	June 1/17	by <a href="#">Reg 120/2017</a>

**MOTOR VEHICLE & TRAFFIC**

**Motor Vehicle and Traffic News:**

**Motorized Skateboard Rider Plans to Fight BC Law after Netting \$600 Fine**

A Vancouver man who was ticketed for riding a motorized skateboard in the street says he plans to fight back. Daniel Dahlburg is facing a fine of nearly \$600 for riding his board in Kitsilano on Saturday [June 10<sup>th</sup>]. Dahlburg, who had only had the device for a few days, said he came to a stop at Cypress St. and West 3rd Ave. when a nearby police officer told him to "pull over." "And he said it's because I have no insurance," he said. "I told him I had no idea that I needed any. It wasn't explained that I needed to buy any, I'll buy it now, how do I go about that? And he told me that there is no insurance for this board and then he handed me a \$598 ticket." According to ICBC, motorized skateboards cannot be operated on roads or sidewalks in BC except in places where the [Motor Vehicle Act](#) doesn't apply, such as private property. Read the [Global News article](#).

**BC Ride-sharing Companies Slip through Cracks as Uber Faces Pressure from Provincial Regulators**

As the BC government and municipalities struggle with how, or if, to regulate ride-sharing giant Uber, several smaller companies in the Vancouver region primarily catering to the Chinese market are quietly operating under

the radar of regulators. Ride-sharing services such as Uber are currently not permitted under provincial transportation laws and the company and its largest competitors so far heeded warnings from the province and cities to keep away. But several smaller companies – with their own apps, drivers and customers – have escaped the same attention from regulators. Of these smaller players, one of the most well-known is a company called Raccoon Go, which targets customers in the Chinese community. Read *The Globe And Mail* [article](#).

### Motor Vehicle Act Regulations Amendments

Amendments to the [Motor Vehicle Act Regulations](#) in June introduced a new sign regulating the speed of motor vehicles to a maximum of 30 km/h when approaching or passing a neighbourhood golf cart on a designated highway. Currently, only two communities, the Town of Qualicum Beach and the Village of Chase, have been authorized through a pilot project to allow golf carts to operate on certain approved local roads. Other changes to the Regulations include the addition of constructed motor vehicles and their requirements within the definition of "collector motor vehicle".

Act or Regulation Affected	Effective Date	Amendment Information
Motor Vehicle Act Regulations (26/58)	June 5/17	by <a href="#">Reg 113/2017</a>
	June 30/17	by <a href="#">Reg 105/2017</a>

## PROPERTY & REAL ESTATE

### Property and Real Estate News:

#### BC Supreme Court: Short-term Occupancy of Strata Lots under Licenses not Entitled to Protection of *Strata Property Act's* Rental Restriction Grace Period

*HighStreet Accommodations Ltd v The Owners, Strata Plan BCS2478*, [2017 BCSC 1039](#), concerned the application of rental restrictions to a strata-lot that was being used for short-term accommodation. The case came before the court as a pre-trial determination of a point of law. The court was asked to determine whether a tenant that was providing short-term accommodation to corporate clients in a residential strata-lot had the benefit of the grace period provided for in [section 143 \(1\)](#) of the *Strata Property Act*. The court, emphasizing the distinction at law between a lease and a license, held that it did not.

The case involved a strata corporation that governed a 26-floor, primarily residential tower with modern amenities. The plaintiff was described as "a hospitality management and corporate housing company." The court explained the nature of this business as follows:

HighStreet leases property and enters into contracts to provide furnished accommodation to its clients. Those contracts include bi-weekly housekeeping services, access to building amenities, and 24-hour a day on-call services. Currently, HighStreet has about 200 properties in its inventory. The average stay of its clients is between 60 and 80 days. HighStreet shares its profits from these contracts with the owners from whom it leases property. The parties agree that the arrangements between HighStreet and its clients are licenses, not leases.

Read the [full article](#) by Kevin Zakreski with the British Columbia Law Institute.

#### Strata Corporation Bylaws: Recent Issues in Validity and Enforcement

– from [CLEBC website](#) – Practice Points

In this paper, Veronica P. Franco of Clark Wilson LLP provides an overview of the major developments over the last two years relating to the validity of strata corporation bylaws and their enforcement. Click [here](#) to view a pdf version of the paper.

#### CRT Roundup – Limited Common Property, Rental Restrictions, Responsibility to Repair, Unauthorized Expenditures, Chargebacks, and Tribunal Jurisdiction

This post is part of a monthly series summarizing the Civil Resolution Tribunal's strata-property [decisions](#). There have been 11 new decisions since the last [post](#).

[Wong v Section 1 of The Owners, Strata Plan N.W. 2320](#), 2017 BCCRT 25 (PDF), was a wide-ranging decision that canvassed six issues concerning "rental permission and related strata fines and loss of rental income, replacement of balcony doors and adjacent windows, replacement of a second handrail for limited common property balcony stairs, cigarette smoke from a strata lot (SL27) directly below, and expenses and fees associated with this application."

The tribunal described the strata property at issue as follows:

*The strata corporation was created in 1985. There are two sections of the strata created by bylaw amendments under the SPA. SL45 [the applicant owner's strata lot] is part of section 1, which is made up of 54 residential strata lots. Of those 54 lots, 18 of them, strata lots 37 to 54, have limited common property stairs and balconies for the exclusive use of the adjacent strata lot. All strata lots with balconies, including SL45, are located on the third or top floor of the building. The applicant owner bought SL45 in 2005. SL45 is an end unit and shares a common wall with one other strata lot. SL27 is directly below SL45. Otherwise, SL45 does not connect to any other strata lots. The limited common property balcony and attached exterior stairs designated to SL45 are on the west side of the strata lot.*

Read the [full article](#) by Kevin Zakreski with the British Columbia Law Institute.

### **BC Law Institute Calls for Reforms to Strata Sections, Types, and Phases**

In the Report on Complex Stratas, published [June 20<sup>th</sup>], the British Columbia Law Institute's Strata Property Law Project Committee is calling for reforms to the [Strata Property Act](#) and the [Strata Property Regulation](#) to improve sections, types, and phases – the three tools used to manage legal issues arising from complex stratas.

"Stratas have become more complex since the first appearance of sections, types, and phases in the 1970s," explained committee chair Patrick Williams. "More and more stratas are developed in multiple phases, consist of different styles of buildings, or contain mixed uses. Unfortunately, the law hasn't kept pace with these developments. The time is ripe to bring the law up to date."

The report recommends 68 reforms, including:

- 29 recommendations on sections, which propose clarifying the procedures for creating and cancelling sections, spelling out section powers and duties, and strengthening section governance, budgets, and finances;
- 14 recommendations on types, which propose clarifying the procedures for creating and cancelling types and fine-tuning the operation of types; and
- 25 recommendations on phases, which propose enhancing the oversight of the phasing process, simplifying governance in a phased strata corporation, and providing additional protections for the financial interests of owners in a phased strata.

Read the [full article](#) on the VISOA website.

Act or Regulation Affected	Effective Date	Amendment Information
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*There were no amendments this month.*

## **WILLS & ESTATES**

### **Wills and Estates News:**

#### **Is a Child Born out of Wedlock Entitled to Inherit under British Columbia Succession Law?**

Since 1927, legislation in British Columbia had provided that in cases of intestacy, children born out of wedlock would inherit on the same basis as children born in a marriage. The British Columbia Courts have also long adopted the approach that where there is nothing in the language of a Will to signify a different intention, the use of the word "child" or similar terminology will mean that the Will-maker intends to benefit children born out of wedlock as well as children born to married parents.

The sensible approach of the British Columbia Courts is consistent with the contemporary value and expectations of most Canadians because a child born out of wedlock is just as much the child of his or her parents as a child born to married parents.

However, the same approach has not been adopted by the courts across Canada. In a recent Ontario case, *Koziarski Estate v. Sullivan*, 2017 ONSC 2704 [*Koziarski Estate*], the Ontario Superior Court of Justice denied a man, who was born out of wedlock, a share of his grandmother's estate after the Court found the law at the time the grandmother's Will was made excluded children born outside of a marriage. Read the [full article](#) by [Lauren Liang](#) of Clark Wilson LLP.

**Property Partition and Sale Ordered for Joint Tenants**

*Bindley Estate v Quartermaine Holding Ltd.*, [2017 BCSC 672](#), ordered partition and sale of a property 50% owned by two parties where one party wished to sell and the other refused. They were unable to agree on a price for the respondent to buy out the petitioner's interest. The petitioner estate wished to sell in order to wind up the estate of a deceased owner in a residential apartment. The Court ordered a sale of the property pursuant to [section 6](#) of the [Partition of Property Act](#). Read the [full post](#) by Trevor Todd on his blog *Disinherited – Estate Disputes And Contested Wills*.

Act or Regulation Affected	Effective Date	Amendment Information
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*There were no amendments this month.*

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