

Quickscribe Reporter

Vol: XVI – Issue: X – October 2017

QUICKSCRIBE NEWS:

Attention Lawyers:

QS 2.0 Webinar - Free CPD Credit Opportunity

Do you know any lawyers who are in need of a free CPD credit?

Quickscribe owner Mike Pasta, in cooperation with Courthouse Libraries BC, will be presenting a free lunch and learn webinar on the latest version of Quickscribe 2.0 on **November 16th** from 12:30 PM to 1:30 PM PST. The session will include an overview of latest QS features, including the new Hansard component. Please feel free to pass along this opportunity to colleagues who may not be familiar with the latest version of this service. Lawyers can claim a free CPD credit for attending. For registration information [click here](#).

Early Consolidation – Local Elections Campaign Financing Act

For your convenience, Quickscribe has published an early consolidation ([red text version](#)) of the *Local Elections Campaign Financing Act*, incorporating changes proposed by [2017 Bill 15](#), the *Local Elections Campaign Financing Amendment Act, 2017*. Once this bill receives Royal Assent, these changes will be retroactive to October 31, 2017, the day after its first reading in the legislature. The new legislation will limit the influence of big money on local elections by banning corporate and union donations, putting limits on individual contributions and banning out-of-province donations at the local level.

New Bills Introduced

The government bills tabled in the month of October include:

- [Bill 5](#), Constitution Amendment Act, 2017
- [Bill 6](#), Electoral Reform Referendum 2018 Act
- [Bill 8](#), Lobbyists Registration Amendment Act, 2017
- [Bill 9](#), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2017
- [Bill 10](#), Health Professions Amendment Act, 2017
- [Bill 11](#), Provincial Court Amendment Act, 2017
- [Bill 12](#), Public Safety Statutes Amendment Act, 2017
- [Bill 13](#), Pooled Registered Pension Plans Amendment Act, 2017
- [Bill 14](#), Sheriff Amendment Act, 2017
- [Bill 15](#), Local Elections Campaign Financing Amendment Act, 2017
- [Bill 16](#), Tenancy Statutes Amendment Act, 2017

A number of non-government Bills were introduced in October:

- [M202](#), Property Law and Land Title Amendment Act, 2017
- [M203](#), Rideshare Enabling and Increased Taxi Occupancy Act, 2017
- [M204](#), University Amendment Act, 2017
- [M205](#), Heritage Conservation(First Nations Protection) Amendment Act, 2017

A reminder that if you would like to track the progress of these bills, or to track changes to any laws that bills amend, please feel free to make use of our [BC Legislative Digest](#) tracking tool, and have us monitor and alert you to changes for laws of your choosing.

Latest Annotations

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

[Robin Longe](#), Norton Rose Fulbright LLP – [Mines Act](#), [Mineral Tenure Act](#), [Reviewable Projects Regulation](#), 370/2002


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.

New "Follow All Colleagues" Feature

For some time now, users have had the opportunity to publish Organizational Annotations (OA) throughout the Quickscribe legislation database. These OA (notes) are only visible to those within your account and serve to facilitate discussion on relevant legislation, cases and policies. OA can be shared and responded to by colleagues. Until now, the only option to receive notice whenever a colleague posts new OA was to either select the "Follow Annotations to This Law" feature (top tool bar for each law) or via the "Follow User" link, adjacent to the names of those colleagues who have already published at least one Organizational Annotation. The new "Follow All Colleagues" feature now allows you to receive an email notification when anyone in your organization publishes Organizational Annotations – even if they have not yet published any OA to date. This new feature will help you to stay informed and will further facilitate collaboration and communication with your colleagues. To access this and other annotation alert features, go to the My Alerts tab, (top menu bar), then select far right "Follow Users" icon/tab.

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

View [PDF](#) of this Reporter.

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

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CATEGORIES

[COMPANY & FINANCE](#) [LOCAL GOVERNMENT](#)
[ENERGY & MINES](#) [MISCELLANEOUS](#)
[FAMILY & CHILDREN](#) [MOTOR VEHICLE & TRAFFIC](#)
[FOREST & ENVIRONMENT](#) [PROPERTY & REAL ESTATE](#)
[HEALTH](#) [WILLS & ESTATES](#)
[LABOUR & EMPLOYMENT](#)

COMPANY & FINANCE

Company and Finance News:

BC Joins Other Jurisdictions in Proposing Changes to the Report of Exempt Distribution

The British Columbia Securities Commission (the BCSC) has published [proposed amendments](#) to [Form 45-106F1 Report of Exempt Distribution](#) (the Report). Announced on October 4, 2017, the B.C. amendments are identical to those proposed by the Canadian Securities Administrators on [June 8](#) on behalf of all regulators except the BCSC. As we reported in [our post on the original CSA announcement](#), the proposed changes focus on the Report's certification and information requirements.

Conflicts for Arbitrators and Mediators

How far must an arbitrator go in disclosing a potential conflict of interest?

The B.C. Supreme Court answered this question in *Atlantic Industries Limited v. SNC-Lavalin Constructors (Pacific) Inc.*, [2017 BCSC 1263](#). In the Atlantic case, an arbitrator advised the parties who had retained him that one of the lawyers in his firm had been engaged to act for SNC-Lavalin ("SNC") "a few months ago". The arbitrator himself had not been involved in the SNC work and the work itself was not connected to the dispute under arbitration. Both parties confirmed they were content to have the arbitrator continue with the arbitration.

The following year, the arbitrator rendered a decision in favor of SNC. He then received a letter from Atlantic Industries Limited ("Atlantic") asking for clarification in respect of the conflict. The arbitrator provided additional

details confirming that his firm had acted directly for SNC on one matter and in a joint venture which included SNC. The legal fees for these matters were sizeable. Ultimately, Atlantic challenged the arbitrator's ability to render a decision on the basis that it had not been properly informed of all of the circumstances of the conflict. Read the [full article](#) by William Holder of Clark Wilson LLP.

Wilson v Alharayeri: Personal Liability of Directors for Oppression

On July 13, 2017, the Supreme Court of Canada released *Wilson v Alharayeri*, [2017 SCC 39](#) [*Wilson*], in which it unanimously reaffirmed that a corporation's directors, as opposed to the corporation, may be personally liable in an oppressive action. This provided much-needed clarity on the scope of potential personal liability of directors and officers under the oppression remedy.

In this article, I will provide an overview of oppression remedy in the [Canada Business Corporations Act](#) ("CBCA") and Ontario's *Business Corporations Act* ("OBCA"). Most provinces have similarly-worded oppression remedy provisions in their corporate legislation, making this decision nationally applicable. I will then summarize the factual background of *Wilson* and detail the Court's decision, focusing on the two-pronged test for personal liability in oppressive actions. Finally, I will explain why I believe that the Court's decision in *Wilson* is practical and well-reasoned, and does not impose an unreasonable burden on directors and officers of corporations. Read the [full article](#) by Ankita Gupta on *The Court* website.

BC Securities – Policies & Instruments

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

- [BCN2017/03](#) – Notice and Request for Comment - Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* relating to Reports of Exempt Distribution
- [BCN2017/04](#) – Notice and Request for Comment - Proposed Amendments to National Instrument 81-102 *Investment Funds* relating to T+2 Settlement Cycle for Conventional Mutual Funds
- [94-101](#) – CSA Notice and Request for Comment - Proposed Amendments to National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*
- [51-352](#) – CSA Staff Notice 51-352 Issuers with U.S. Marijuana-Related Activities
- [33-321](#) – CSA Staff Notice 33-321 Cyber Security and Social Media
- [52-404](#) – CSA Consultation Paper 52-404 Approach to Director and Audit Committee Member Independence

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

FICOM News

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

- [Consumer Alert](#) – Mr. Karim Rajani, Oxbridge Ventures Inc., Oxbridge Capital Group of Companies and Oxbridge Specialty Finance Group are not registered to conduct mortgage broker activity in B.C.
- [Letter to Credit Unions in Asset Groups 1 and 2](#) – Credit Union Financial & Statistical Return – 2017 Revision Implementation Date Deferral
- [Letter to Credit Unions in Asset Groups 3 to 6](#) – Invitation to Discuss Recent Changes to Federal Residential Mortgage Underwriting Standards
- [Letter to Credit Unions](#) – Invitation to Discuss Recent Changes to Federal Residential Mortgage Underwriting Standards
- [Report Published](#) – Risk-Based Assessment Methodology Working Group

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

Act or Regulation Affected	Effective Date	Amendment Information
Designated Accommodation Area Tax Regulation (93/2013)	Nov. 1/17	by Reg 181/2017
Prescribed Classes of Property Regulation (438/81)	Oct. 23/17	by Reg 191/2017

Ski Hill Property Valuation Regulation
(291/2007)

Oct. 23/17

by [Reg190/2017](#)**ENERGY & MINES****Energy and Mines News:****Contaminated Sites Regulation Changes
Published on Quickscribe**

The consolidation of the "Stage 10 Omnibus Amendments" made by B.C. Regs. [253/2016](#) and [196/2017](#) to the [Contaminated Sites Regulation](#) is now available on Quickscribe. Effective November 1, 2017, these changes represent the most significant update to the regulation since its enactment in April 1997. Using contemporary science on chemical toxicity, transport and land use, over 8,500 environmental quality standards are updated and many new ones added for emerging contaminants that were not regulated in the past. Also added are new standards addressing wildlands and high density land uses. To ensure regular assessment and updating, a mandatory provision was included to establish an ongoing five-year fixed cycle of review of the standards. Consequential amendments were also made to the [Hazardous Waste Regulation](#) and the [Organic Matter Recycling Regulation](#) to maintain consistency with the new standards.

**BC Court of Appeal Rules that Contaminated Property
Must Be Assessed Using Highest and Best Use**

In a highly anticipated decision for the valuation of contaminated property in British Columbia, the BC Court of Appeal overturned a decision of the BC Supreme Court and set out how contaminated property should be assessed for tax purposes.

The case involved a Brownfield – a contaminated commercial property with potential for economic redevelopment. The property in question had been operated as a retail gas station, automobile dealership, and repair shop. The soil on the property was contaminated, and the contamination had spread to neighbouring properties. The owner of the property was in considerable financial distress. In addition to tax arrears, legal bills, and accounting bills, she was defending a claim from the owner of a neighbouring property. She therefore arranged to sell the property to this owner through a share purchase agreement for \$42,363.24, which was sufficient to cover her debts. She also obtained a full indemnity from any legal liabilities she might have in the future regarding the contamination. The existing structure on the property was renovated and converted into income-producing multi-tenant commercial retail units.

In 2013, the property was assessed for taxation purposes. The assessor had valued the land and improvements at \$975,000. The property owner, Victory Motors (Abbotsford) Ltd. ("Victory Motors"), appealed, and the Property Assessment Review Panel reduced that assessment to \$500,000. Victory Motors appealed to the Property Assessment Appeal Board ("Board"), claiming the property had no value. The Board reinstated the original assessment. The owner appealed again, to the Supreme Court of British Columbia. That court found that the Board had erred in law, and remitted the matter to the Board for reconsideration. The Assessor appealed that decision. Read the [full article](#) by Luke Dineley of Borden Ladner Gervais LLP.

**Alternative Energy Sources as Good or
Better than Site C Dam, Report Finds**

Alternative energy sources such as wind and geothermal could be as good or better for BC ratepayers than the Site C project, according to a report prepared by the independent BC Utilities Commission (BCUC).

The independent body, which is responsible for making sure British Columbians pay fair rates for energy and ICBC costs, also found BC Hydro's projected energy needs are "excessively optimistic" and construction of the dam is likely behind schedule and over budget. Other key findings include:

- Cancelling the project would cost \$1.8 billion.
- Suspending the project and restarting it at a later date would cost around \$3.6 billion on top of existing construction costs.
- Completing the project could cost over \$10 billion.

The BCUC also notes that both completing and continuing the project come with their own unique risks, and ultimately did not take a position on whether termination or completion of the project would provide a better outcome for ratepayers. Read the full *CBC News* [article](#) by Andrew Kurjata.

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

FAMILY & CHILDREN

Family and Children News:

BC Supreme Court Sets Aside "Predatory" Marriage:

Is the common law finally catching up with today's societal norms and legislative platform?

In a recent decision, the British Columbia Supreme Court set aside a marriage for lack of the requisite capacity to marry. The court declared the marriage void *ab initio*, in a claim brought by a family member after the death of the incapacitated victim. The Court also set aside two Wills based on the testator's lack of testamentary capacity. This lengthy decision (74 pages) is the first case since the 2014 case of [Ross-Scott v. Potvin](#) to provide further ammunition on remedying the now out of date common law treatment of decisional capacity to marry.

Ms. Walker was an older adult, who had been previously married and divorced, but she had no children; instead, she thought of her sister's children as her own. She was a strong independent woman until her diagnosis of Alzheimer's disease in 2005. According to those close to her, Ms. Walker's condition progressively deteriorated in the years following her diagnosis, to the point where she forgot how to use utensils and a phone, could no longer cook, forgot who people were, and could not clean or care for herself. Ms. Walker, however, refused to acknowledge her declining health and steadfastly insisted on remaining independent. Read the [full article](#) by Kimberly Whaley and Albert Oosterhoff.

BC Family Law: Shared Custody Helps Young Children

One of the most important things for children whose parents are going through a divorce is letting them know everything will be all right. Family law in British Columbia always takes into consideration the best interests of any children involved in the proceedings. Some young children don't do well with change, and a change in their family dynamic may cause them undue stress and anxiety.

A recent study out of Sweden shows that the situation that is the best for the mental health of children of divorce is having both their parents share in custodial duties. The paper showed that preschool kids who spend equal time with both parents in their respective homes experienced fewer psychological issues than the kids where one parent had custody. In fact, the study showed that those children whose parents had divorced, but who shared custody, were on equal footing with those whose parents were still together. Read the [full article](#) on the Peterson Stark Scott family law blog.

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FOREST & ENVIRONMENT

Forest and Environment News:

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'Unfair, Unwarranted and Deeply Troubling': U.S. Sets Final Import Duties on Canadian Softwood Lumber

The U.S. Commerce Department on Thursday [November 2nd] announced it will impose finalized softwood lumber import duties on several Canadian firms.

The U.S. government said Canadian producers were selling into the U.S. market at less than fair value, and said Canada was providing "unfair subsidies" to domestic producers.

"While I am disappointed that a negotiated agreement could not be made between domestic and Canadian softwood producers, the United States is committed to free, fair and reciprocal trade with Canada," said Commerce Secretary Wilbur Ross in a statement.

"This decision is based on a full and unbiased review of the facts in an open and transparent process that defends American workers and businesses from unfair trade practices," Ross said. Read the [CBC article](#).

Did I Forget the "Dam" Licence? A Primer on BC's Regulatory Power Over Water Storage Facilities

Should waves of concern wash over British Columbia after the Canadian Centre for Policy Alternatives sent a letter to the BC Environmental Assessment Office claiming nearly 60 unlicensed dams were built in northeast BC to store fresh water for natural gas fracking operations? The letter claims many of these dams lack proper regulatory authorization, show signs of failing and were built without meaningful consultation with First Nations, boosting interest in, and media attention to, regulation of water storage facilities in BC. This bulletin provides an overview of the regulatory framework for dams in BC, which was recently updated by the BC [Water Sustainability Act](#) (WSA) and its associated regulations. The WSA replaced the former BC *Water Act* regime and came into force in February 2016. For more information, see our March 2016 [Blakes Bulletin: B.C. Enters New Era of Water Regulation as Water Sustainability Act Is Brought into Force](#).

Under the updated WSA, dams need to have a water licence and, if they are over a certain size, must also meet the requirements in the [Dam Safety Regulation](#) (DSR). Further, larger dams are subject to an environmental assessment and approval under the [Environmental Assessment Act](#) (EAA). Read the [full article](#) by Sandy Carpenter and Valerie Simion (Student-at-Law) of Blake, Cassels & Graydon LLP.

New Spill Response Regulations to Take Effect October 30, 2017

British Columbia has a greater ability to prepare for, respond to, and recover from environmental emergencies with the introduction of the first phase of regulations strengthening the [Environmental Management Act](#). The regulations bring [Division 2.1 Spill Preparedness, Response and Recovery](#) of the *Environmental Management Act* into force as of October 30, 2017. The three new regulations are: (1) [Spill Preparedness, Response and Recovery Regulation](#); (2) [Spill Reporting Regulation](#); and, (3) [Spill Contingency Planning Regulation](#). Division 2.1 and the regulations set a foundation for strengthening spill response in B.C. By early 2018, the Ministry of Environment and Climate Change Strategy will also begin engaging with interested parties regarding the development of further enhancements to spill regulations.

What's New as of October 30, 2017

The enhancements to the *Environmental Management Act* and the regulations include new preparedness, response and recovery requirements.

- **Preparedness:** Regulated persons have been identified as transporters of liquid petroleum products. The owner of all pipelines transporting liquid petroleum products are regulated persons, as are the owners of rail and highway transporters in possession of 10,000 liters or more. To demonstrate preparedness, regulated persons are required to develop and test provincial spill contingency plans.
- **Response and recovery:** A responsible person is someone who has possession, charge or control of a substance or thing when a spill of the substance or thing occurs or is at imminent risk of occurring. Responsible persons will be required to meet enhanced spill reporting requirements, carry out all the response actions specified in the Act as well as any additional steps required by a director, and, if directed to do so, develop and implement a recovery plan that addresses any damage done to the environment.

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

Recovery of Government Costs under the Wildfire Act

By mid-August the BC Wildfire Service had declared BC's 2017 wildfire season the "worse ever" in terms of hectares burned. Aside from the human tragedy of wildfire, and the loss of resources, there are also enormous

costs that government incurs in relation to wildfire. One report from early September had already pegged the bill for BC's 2017 wildfire season at nearly half a billion dollars – also a record, and many times over budget.

Under the [Wildfire Act](#) (the "Act"), government has the authority to recover wildfire-related costs (including the costs of fire control; the value of lost or damaged Crown timber, other resources, and property; and silviculture costs) administratively from third parties. This allows government to pursue recovery of wildfire-related costs without the bother of a law suit. Government simply has to determine its losses in accordance with procedures outlined in the [Wildfire Regulation](#) (the "Regulation"), and send the bill to a third party deemed liable under the Act. Read the [full article](#) by [Jeff Waatainen](#), LLB, in this issue of *BC Forest Professional*.

Environmental Appeal Board Decisions

There were two Environmental Appeal Board decisions in the month of October.

[Water Act](#)

- [Stk'emlúpsenc te Secwepemc Nation v. Assistant Water Manager, Water Stewardship, Thompson Rivers Natural Resource District](#) [Application to Postpone Hearing – Denied]

[Environmental Management Act](#)

- [Gibsons Alliance of Business and Community Society; Marcia Timbres v. Director, Environmental Management Act](#) [Preliminary Issue of Jurisdiction – Denied]

Visit the Environmental Appeal Board website for more information.

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Penalties Regulation (Environmental Management Act) (133/2014)	Oct. 30/17	by Reg 185/2017
Contaminated Sites Regulation (375/96)	Nov. 1/17	by Reg 253/2016 , as amended by Reg 196/2017
Drinking Water Protection Act	Oct. 30/17	by 2016 Bill 21, c. 20, section 10 only (in force by Reg 185/2017), Environmental Management Amendment Act, 2016
Environmental Management Act	Oct. 30/17	by 2016 Bill 21, c. 20, sections 1 to 9 only (in force by Reg 185/2017), Environmental Management Amendment Act, 2016
Hazardous Waste Regulation (63/88)	Nov. 1/17	by Reg 243/2016 , as amended by Reg 195/2017
Limited Entry Hunting Regulation (134/93)	Oct. 6/17	by Reg 184/2017
Motor Vehicle Prohibition Regulation (196/99)	Oct. 30/17	by Reg 194/2017
Organic Matter Recycling Regulation (18/2002)	Nov. 1/17	by Reg 243/2016 , as amended by Regs 12/2017 and 195/2017
Spill Contingency Planning Regulation (186/2017)	NEW Oct. 30/17	see Reg 186/2017
	REPEALED	

Spill Cost Recovery Regulation (250/98)	Oct. 30/17	by Reg 185/2017
Spill Preparedness, Response and Recovery Regulation (185/2017)	NEW Oct. 30/17	see Reg 185/2017
Spill Reporting Regulation (187/2017)	NEW Oct. 30/17	see Reg 187/2017
Spill Reporting Regulation (263/90)	REPEALED Oct. 30/17	by Reg 187/2017

HEALTH

Health News:

Legislation Strengthens Nursing Oversight, Patient Safety

BC's three nursing colleges will be able to form one organization, providing a single set of bylaws for consistent structures, processes and an improved patient experience, as a result of [amendments](#) introduced today [October 24th] by Health Minister Adrian Dix.

Amendments to the [Health Professions Act](#) set the stage for the provincial nursing colleges to amalgamate, providing greater consistency for the profession and one point of contact for patients and partners.

The amendments allow for any of BC's health profession colleges to amalgamate. This was prompted by a request from the nursing colleges to help streamline regulation.

In recent years, the College of Registered Psychiatric Nurses of BC (CRPNBC), College of Licensed Practical Nurses of BC (CLPNBC) and College of Registered Nurses of BC (CRNBC) have been working together on nursing regulations and standards, and have become more aligned in their efforts. This legislation lets them take the next step and amalgamate. Read the full government [news release](#).

BC Health Ministry Assumes Responsibility for Inmate Care

Effective October 1, 2017, [amendments](#) to the [Correction Act Regulation](#) reflect the transfer of responsibility for inmate care to the Ministry of Health from the Ministry of Public Safety. These changes aim to enhance the quality of health care, and mental health and substance use supports for inmates, as well as improve continuity of care on their release from custody.

Act or Regulation Affected	Effective Date	Amendment Information
Correction Act Regulation (58/2005)	Oct. 1/17	by Reg 178/2017

LABOUR & EMPLOYMENT

Labour and Employment News:

Pooled Registered Pension Plans Amendment Act, 2017

[Amendments](#) to the [Pooled Registered Pension Plans Act](#), S.B.C. 2014, c. 17, are intended to reduce the burden on employers and make pensions more accessible to people who work for small businesses. The Bill received royal assent on November 2, 2017, and provisions currently in force:

- remove references to the Canada Gazette and the British Columbia Gazette that are unnecessary as a result of modifications to the application of section 6 (4) of the [Pooled Registered Pension Plans Act](#) (Canada) made by section 3 of this Bill; and
- eliminate the requirement to publish multilateral agreements and amendments to those agreements in the

Gazette, while leaving those agreements and amendments accessible to the public on the Internet or by other means that the minister considers appropriate under section 6 (5) of the *Pooled Registered Pension Plans Act* (Canada), which is incorporated into the *Pooled Registered Pension Plans Act* (British Columbia).

One section remains to come into force at a later date by regulation, which makes the definitions of "designated province" and "Minister" in the *Pooled Registered Pension Plans Act* (Canada) inapplicable to the *Pooled Registered Pension Plans Act* (British Columbia).

Can a Franchisor be Liable for Discrimination Against a Franchisee's Employee?

In this recent human rights tribunal decision out of BC, a former employee of a franchisee launched a human rights complaint against the franchisee, and also named the franchisor as a respondent. The franchisor applied to be removed from the complaint on the basis that it was not the employer, and therefore not a proper party to the proceeding.

The tribunal dismissed the franchisor's application, finding that discrimination can be found in the absence of an employment relationship if the party has the ability to interfere with or influence the employment relationship. However, the tribunal implied that the franchisor could have improved its chances of a successful dismissal had it provided more evidence of independence during the proceeding. Read the [full article](#) by [Dominic Mochrie](#), [Paul Kotschorek](#) with Osler, Hoskin & Harcourt LLP.

"Asking for Trouble": BC Human Rights Tribunal Considers Whether Interview Questions Crossed the Line

The interview process can be a legal minefield for employers. One false step, one inappropriate question can give rise to a human rights complaint alleging that the employer has discriminated against the prospective employee. In a recent decision, *Jahromi v. Link2 Manufacturing and another*, [2017 BCHRT 161](#) ("Jahromi"), the BC Human Rights Tribunal (the "Tribunal") considered whether one employer's interview questions crossed the line between permissible inquiry and outright discrimination.

Facts

Shawn Jahromi filed a complaint with the Tribunal alleging that Link2 Manufacturing and the Link2 employee who interviewed him discriminated against him on the basis of his family status, ancestry, place of origin, and race. Mr. Jahromi's complaint arose out of a series of events occurring during his Link2 job interview. According to Mr. Jahromi, the interviewer asked where he was from, where his parents were from, and if he lived with his family (the "Questions"). He said these Questions made him feel "uncomfortable" and he felt pressured to respond.

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

Reviews and Reforms: the Future of BC's Employment Act

It's a different workplace now, says employment lawyer

Forget traditional nine-to-five jobs – the workplace has shifted radically in the past generation, prompting a group of British Columbian lawyers and researchers to examine if employment legislation has kept up with the recent boom in precarious work.

The BC Law Institute is at the tail-end of a three year review of the BC [Employment Standards Act](#) and is compiling a list of reform recommendations, a draft of which will be available for public input by early next year.

Tom Beasley, an employment lawyer and chair of the reform project committee, emphasized how long it has been since any changes were made to the province's 1973 *Employment Standards Act*.

The act itself was largely based on labour statutes going back to the 1900s, he told CBC host of The Early Edition Rick Cluff.

"All they did was take the statutes and plunk them together and that became the different parts of the act," Beasley said. "So really, it's not just 40 years that we haven't done anything in terms of change, it's going back much longer than that."

The *Employment Standards Act* is the core of every employment relationship in the province, affecting workers with provisions from overtime pay to vacations to statutory holidays, he said. Read the full *CBC News* [article](#) by Clare Hennig.

Effective

Act or Regulation Affected	Date	Amendment Information
Employment and Assistance Regulation (263/2002)	Oct. 1/17	by Regs 153/2017 and 169/2017
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Oct. 1/17	by Regs 153/2017 and 169/2017

LOCAL GOVERNMENT

Local Government News:

Local Elections Campaign Finance Amendments – ([Early Consolidation on Quickscribe](#))

Minister of Municipal Affairs and Housing Selina Robinson has introduced [legislative amendments](#) to the [Local Elections Campaign Financing Act](#). The legislation would ban corporate and union donations, put limits on individual contributions and ban out-of-province donations at the local level.

UBCM has advocated for changes to campaign finance rules based on resolutions from the 2009, 2013, 2015 and 2017 Conventions. In a statement, UBCM President Wendy Booth expressed appreciation for Minister Robinson's leadership on these longstanding requests and said the proposed change will support fairness during campaigns.

The Ministry of Municipal Affairs and Housing consulted UBCM on the proposed legislative changes. The amendments will apply to all local elections starting with the 2018 general local elections and any by-elections thereafter, including campaigns for councillors, mayors, electoral area directors and school trustees.

Contributions for the election campaign of a candidate or elector organization will be limited to \$1,200 per donor per year. One donor's total contributions to the election campaign for an elector organization and all of its endorsed candidates cannot exceed this amount. These changes follow the approach of the proposed provincial [Election Amendment Act](#). Read the [full new release](#) on the Union of BC Municipalities website.

BC Municipalities Scurry to Have Say on Marijuana Legalization

The looming deadline for legalized marijuana has local governments in British Columbia crafting wish lists for provincial legislation, from where pot should be grown to how it should be sold.

Ottawa has said regulations must be in place by July 1 and the BC government announced last month that it wants public input on shaping the rules.

While some municipal politicians worry the timeline for regulations is too short, Vancouver Councillor Kerry Jang thinks legalization can't come soon enough.

Vancouver brought in a bylaw for medical marijuana dispensaries in April, 2016, becoming the first municipality in Canada to regulate the outlets. Read the [full article](#) on the *Globe and Mail* website.

Panel Undertakes Railway Safety Act Review

A three-person panel has been mandated by federal Transport Minister Marc Garneau to conduct a comprehensive and independent [review](#) of the [Railway Safety Act's](#) authorities, governance and operation. Panel members are presently conducting round table sessions across Canada to obtain feedback.

Rail safety is top of mind for BC communities. As more and more goods are moved by rail at the same time that growth and development intensifies along rail corridors, the combination of these two variables has caused increasing concerns about rail safety. The Panel will consider what can be done to reduce rail related accidents, deaths and serious injuries. Read the UBCM [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
British Columbia Teachers' Council	Oct. 19/17	by Reg 188/2017

Regulation (2/2012)		
Gas Safety Regulation (203/2004)	Nov. 1/17	by Reg 209/2016
Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation (104/2004)	Oct. 2/17	by Reg 45/2017

MISCELLANEOUS

Miscellaneous News:

NDP Offers Opposition Help in Crafting Bills, But No Promise to Pass Them

The NDP government wants to help opposition MLAs draft their own bills in BC's minority legislature, but isn't promising to pass any of that work into law – including a proposal by the Greens to approve ride-hailing promptly.

Premier John Horgan said Wednesday [October 18th] he hopes that giving the Liberals and Greens free assistance from government legislative drafters will encourage them to collaborate on topics and work together to amend and improve legislation.

"The whole objective of forming a new government this summer and working with the Green caucus and, I'm hopeful once the Liberals find their feet and figure themselves out, working (with) the thoughtful members of that caucus, we can bring forward legislation that makes BC better," Horgan told reporters. "That's my intention."

The party with the majority of seats in the legislature has historically pushed through its own laws over the objection of the opposition. But the NDP's minority government, which is propped up by the three Green MLAs, barely has the votes to stay in power. And Horgan has long professed a desire to be more collaborative. Read *The Vancouver Sun* [article](#).

Supreme Court Ruling Removes Barrier for Developing Year-round Ski Resort on Sacred First Nation Land

Proposed project in BC pits Indigenous religious rights against public interest in Crown land

Building a massive ski resort on BC land considered sacred to a First Nation does not breach religious rights, the Supreme Court of Canada says in a decision released Thursday [November 2nd].

The landmark 7-2 decision paves the way for development of the Jumbo Glacier resort in the Kootenays region of British Columbia, despite strong objections from the Ktunaxa Nation.

The Ktunaxa believe the project will drive Grizzly Bear Spirit from Qat'mak, the traditional name for the spiritual territory, and permanently impair their religious beliefs and spiritual practices.

Interpreting the scope of religious protections under the [Charter of Rights and Freedoms](#), the Supreme Court said those protections include freedom to hold such beliefs and manifest those beliefs, but do not extend to the protection of sacred sites.

"We arrive at these conclusions cognizant of the importance of protecting Indigenous religious beliefs and practices, and the place of such protection in achieving reconciliation between Indigenous peoples and non-Indigenous communities," reads the judgment written by Chief Justice Beverley McLachlin and Justice Malcolm Rowe.

Two other justices, Michael Moldaver and Suzanne Côté, took a broader view of the Charter religious protections, but still agreed with the majority in rejecting the Ktunaxa appeal on grounds of public interest. Read the full *CBC News* [article](#) by Kathleen Harris.

Constitution Act Amended

On November 2, 2017, the [Constitution Amendment Act, 2017](#) received royal assent, bringing into force provisions that amend the [Constitution Act](#) by:

- reducing the number of seats required for official political party status from four to two;
- changing the fixed date for elections to the third Saturday in October from the second Tuesday in May, which will allow for a budget to be passed before an election is held; and
- expanding the list of circumstances in which acting ministers are appointed to act in the place of another minister.

Draft Rule Changes on Interviewing and Communicating with Witnesses

The Ethics Committee is seeking feedback on draft changes to *BC Code* rules 5.3 and 5.4 on interviewing and communicating with witnesses. In crafting these draft rules, the Ethics Committee has attempted to preserve the best guidance of the existing *BC Code* rules, while adopting the basic format and approach of the Federation of Law Societies' Model Code provisions. View the [post](#) and read the [consultation materials](#) on the Law Society of British Columbia website.

Act or Regulation Affected	Effective Date	Amendment Information
Acting Information and Privacy Commission Continuation Act	NEW Oct. 5/17	c. 9 [2017], Bill 4 , whole Act in force by Royal Assent
Correction Act Regulation (58/2005)	Oct. 1/17	by Reg 178/2017
Regulations Regulation (394/83)	Nov. 1/17	by Reg 189/2017

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

BCCA Denies Claim where Teenaged Plaintiff "Ought to Have Known" that Vehicle was Driven without Consent

The phrase "knew or ought to have known" under [s. 91](#) of the [Insurance \(Vehicle\) Act](#), R.S.B.C. 1996, c. 231, imports a purely objective standard. A reasonable person in the position of the 17-year-old plaintiff ought to have known that a vehicle driven by a 15-year-old was being driven without consent of the owner at the time of a motor vehicle accident, even if the plaintiff's age and experience were considered.

Schoenhalz v. Insurance Corp. of British Columbia, [2017] B.C.J. No. 1512, [2017 BCCA 289](#), British Columbia Court of Appeal, August 1, 2017, M.V. Newbury, M.E. Saunders and D.F. Tysoe JJ.A.

The 17-year-old plaintiff passenger sustained significant personal injuries as a result of a motor vehicle accident. The registered owner of the vehicle was the mother of the plaintiff's friend. The owner's son allowed another friend to drive the vehicle to a campground. After arrival, the owner's son left with another friend to collect firewood and the keys were handed to the plaintiff to take the vehicle to the store. The plaintiff, who had a driver's licence, allowed a 15-year-old to drive the vehicle because she did not know how to operate a standard transmission. The 15-year-old driver lost control of the vehicle, causing the accident. Read the [full article](#) by [Michael J. Robinson](#) and edited by [Steven W. Abramson](#) of Harper Grey LLP.

Motor Vehicle e-Ticket Legislation

On November 2nd, Bill 12, [Public Safety Statutes Amendment Act, 2017](#), received royal assent. The Bill includes amendments to the [Offence Act](#), authorizing new processes that are intended to quickly flag dangerous drivers for additional, safety-related sanctions, up to and including licence suspension. These changes include a shift from paper to electronic tickets printed at the roadside, which will eliminate data entry errors and improve the speed of ticket processing. In the spring of 2018, a number of law enforcement agencies will begin testing electronic ticketing devices and processes on a pilot basis. A related amendment to the [Motor Vehicle Act](#) serves to simply clarify language related to immediate roadside prohibitions for alcohol-affected drivers. These changes will not affect police enforcement or penalties imposed under this law.

CVSE Bulletins & Notices

The following notices have been posted in October by CVSE:

- [CVSE1014](#) – LCV Operating Conditions & Routes
- [Circular 05-17](#) – Axle Spacings for Weigh Slips and Supervised Bridge Crossing Conditions
- [CVSE1052](#) – District Authorizations & Notifications for Very Large Loads
- [CVSE1013](#) – Restricted Routes for Wide Bunks Hauling Beetle Killed Wood
- [CVSE1003](#) – Conditions for Structures up to 6.1 m OAW in the Peace Region
- [CVSE1002](#) – Conditions up to 6.0 m OAW in the Peace Region
- [CVSE1001](#) – Routes Pre-Approved for 5.0 m OAW
- [CVSE1000](#) – General Permit Conditions to 4.4 m OAW
- [CVSE1070](#) – NEW MV4000 - Permit Scope and Limitations
- [CVSE1060](#) – Weight Check
- [CVSE1049](#) – Extraordinary Load Approval Request
- [CVSE1022](#) – Oversize Overweight Authorization (for Indian War Canoes, Parade Floats, etc)
- [CVSE1021](#) – Rig Move Worksheet
- [CVSE1000L](#) – Supplement for Logs

For more information on these and other items, visit the [CVSE website](#).

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

PROPERTY & REAL ESTATE

Property and Real Estate News:

British Columbia Aims to Reduce Use of Vacate Clauses in Residential Tenancy Agreements

On October 26, 2017, Bill 16, the [Tenancy Statutes Amendment Act, 2017](#) ("Bill-16"), passed first reading, which will be of particular interest to residential landlords and developers. Among other things, Bill-16 enacts amendments to the [Residential Tenancy Act](#) (British Columbia) (the "Act") that reduce or prevent landlords from including "vacate clauses" in fixed term residential tenancy agreements that require tenants to vacate rental units at the end of the term. As a result of these amendments, most fixed term residential tenancies will automatically become month-to-month at the end of their term.

These changes will significantly impact residential landlords because the Act's regulations presently limit rent increases for month-to-month tenancies. Landlords may only increase rent once in any 12 month period by a maximum percentage equal to BC's Consumer Price Index + 2% (i.e. the maximum allowable rent increase is currently 3.7%). For developers, these changes will make it more difficult to obtain vacant possession of a development site where residential tenants are involved. Read the [full article](#) by [Andrew Mildenhall](#) and [Nicholas Shon](#) with Lawson Lundell LLP.

Airbnb Says It Would Support BC Law for Hotel Tax on Its Rentals

Airbnb Inc. says it's willing to collect hotel taxes from people in British Columbia using its service to rent out their homes, which the company says could raise more than \$4-million a year.

The U.S.-based company outlines the offer in a letter to the provincial government, obtained by *The Globe and Mail*, that says Airbnb would support a change in the law to impose the hotel tax on short-term rentals. Airbnb has made such an offer with increasing frequency to cities and states in North America as it scrambles to demonstrate it is being a good corporate citizen.

Provincial and municipal governments across the country have been looking for ways to regulate Airbnb and similar services, particularly in regions where tight real estate markets have led to concerns that short-term rentals are eating up much-needed housing stock. However, only Quebec has reached an agreement with the company by which it collects and turns over a provincial tax. Read the [full article](#) by Frances Bula on the *Globe and Mail* website.

BCSC Declines to Confirm Strata Wind-Up Resolution for the First Time

In July 2016, the [Strata Property Act](#) (British Columbia) (the "Act") was amended in order to make it easier for strata corporations to voluntarily wind themselves up using a liquidator. Previously, a resolution initiating the wind-up process and appointing a liquidator required unanimous approval from the owners. Unanimous approval was, not surprisingly, rarely achieved. To address this issue, the Act was amended to provide that a resolution receiving 80% approval would suffice, provided a court subsequently confirms the resolution. In *The Owners, Strata Plan VR 1966*, [2017 BCSC 1661](#), the B.C. Supreme Court declined, for the first time, to confirm a wind-up resolution. As the decision illustrates, court confirmation in this context will not be forthcoming in the face of certain defects in the resolution. Indeed, even where a strata corporation actually wants to "wind up in court", it may not succeed in doing so where its wind-up resolution was flawed in fundamental respects. Read the [full article](#) by Connor Bildfell on McCarthy Tétrault LLP.

BC Court of Appeal: Strata Corporation Entitled to Recover Actual Legal Costs for Registering and Enforcing Lien

In *The Owners, Strata Plan KAS 2428 v Baettig*, [2017 BCCA 377](#), a decision released as October came to a close, the Court of Appeal for British Columbia clarified the reach of a strata corporation's lien on a delinquent owner's strata lot. Overturning a chambers judge's decision, and rejecting an earlier BC Supreme Court case, the court found that the reference to "reasonable legal costs" in [section 118](#) of the [Strata Property Act](#) entitled a strata corporation to recover its actual legal fees for registering and enforcing the lien, not just its "party-and-party" costs recoverable under the [Supreme Court Civil Rules](#). This decision will have implications whenever the strata corporation is entitled to register a lien against a strata lot, that is when "the owner fails to pay the strata corporation any of the following with respect to that strata lot":

- strata fees;
- a special levy;
- a reimbursement of the cost of work referred to in [section 85](#);
- the strata lot's share of a judgment against the strata corporation.

The decision also adds force to the court's view that the lien is one way in which "the SPA ensures that every strata owner 'pulls their own weight.'" Read the [full article](#) by Kevin Zakreski of the BC Law Institute.

The Additional Difficulties for Conveyancers in Second and Private Mortgages

– from *CLEBC website – Practice Points*

In this paper, Timothy J. Lack of Lunny Atmore LLP discusses priority issues, helpful practice points, and when to advise clients to seek independent legal advice when dealing with second and private mortgages. Click [here](#) to view a pdf version of the paper.

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

WILLS & ESTATES

Wills and Estates News:

BC Supreme Court Rules Committee Inviting Comments on Proposed Changes to Probate Rules

– by *Stan Rule*

The Attorney General's BC Supreme Court Rules Committee is requesting comments on proposed changes to the probate rules. A couple of the proposed changes caught my eye. One proposed changes to broaden the class of persons who may file a notice of dispute to oppose an estate grant. As I previously wrote the current [Rule 25-10 \(1\)](#) is too restrictive. Only those to whom notice of the application for an estate grant must be given are entitled to file a notice of dispute. In the case of an application to probate a will, the applicant must give notice to all of those who are named beneficiaries in the will, and anyone else who would be entitled to share in the estate on an intestacy. However, someone who does not fall within one of those categories, but who is a beneficiary under a previous will, does not appear to have the right to file a notice of dispute. The proposed change would allow anyone with an interest under a prior or later will to file a notice of dispute. Read the [full article](#) by [Stan Rule](#) on the *Sabely Rule Blog*.

Special Costs in s. 58 WESA Application

Re: *Hadley Estate*, [2017 BCCA 311](#), the BC Appeal court upheld the principle of costs in estate litigation where the litigation is necessary due to the conduct of the deceased, then each party will normally be entitled to have their legal fees paid for from the estate as special costs. In *Hadley* the document in question was found not to be a will but it was reasonable for the parties to ask the court for a determination as to whether or not the document was a will. Read the [full article](#) by [Trevor Todd](#) with *disinherited – Estate Disputes and Contested Wills*.

Corporate Mistake: BC Supreme Court Declines to Permit Retroactive Tax Planning

The B.C. Supreme Court recently concluded that failing to complete a transaction in the most tax efficient manner is not a "corporate mistake" that can be remedied under the [Business Corporations Act](#) (the "Act").

In *Greither Estate v. Canada (Attorney General)*, [2017 BCSC 994](#), Justice Mayer dismissed a petition seeking to remedy an alleged corporate mistake where the form of a share sale transaction had unanticipated adverse tax consequences.

Otto and Karoline Greither were residents of Germany who jointly owned a BC company. They sought tax advice with respect to their Canadian holdings, and were advised in February 2013 to sell their shares to a related company for preferred shares in that related company.

However, Karoline died in May 2013. On her death, she was deemed to have disposed of her share of the company, which had a fair market value of \$1,951,458 and was taxable Canadian property. Capital gains taxes of about \$500,000 were paid and her estate inherited the share.

In February 2015, the Greithers' tax lawyer proposed that Karoline's estate sell the share to the related company for its fair market value less \$1, plus one preferred share, believing the estate would not be required to pay tax on the sale as it would not have a gain. Read the [full article](#) by Aubrie Girou of Alexander Holburn Beaudin + Lang LLP.

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There were no amendments this month.

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