Quickscribe Reporter

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QUICKSCRIBE NEWS:

Quickscribe Launches New Hansard Feature
We are pleased to introduce you to a new feature that we believe will make you more informed about the original statutory intent or purpose of the laws you refer to.

The new Quickscribe feature incorporates select Hansard (debates) directly adjacent to the sections and laws being discussed. Hansard are official verbatim transcripts of what is said in the Legislative Assembly and in committees when new legislation is brought forward. Hansard is often used by those seeking clarification on how a new law or amendment came to be. By making these debate references readily accessible at the section level, it will be easy for you to gain some insight on the original government intent behind the legislation and lessen the ambiguity for how a law is to be applied.

While not all laws on Quickscribe have Hansard included at this time, you can expect to see dozens more added over the course of the next few months.

To search and view an updated list of the laws we have added Hansard to thus far, refer to the new "Hansard (Debates)" link on the left navigation. These Hansard references are also fully searchable via the main Quickscribe keyword search feature. Simply go to one of the Acts with Hansard and click on the red "H" icon adjacent to a section. Feel free to let us know what you think!

New Bills Introduced
The government bills tabled at the time of the release of this Reporter include:

- Bill 1, An Act to Ensure the Supremacy of Parliament
- Bill 2, Budget Measures Implementation Act, 2017
- Bill 3, Election Amendment Act, 2017
- Bill 4, Acting Information and Privacy Commissioner Continuation Act
- Bill 5, Constitution Amendment Act, 2017
- Bill 6, Electoral Reform Referendum 2018 Act
- Bill 7, Supply Act (No. 2), 2017
- Bill 8, Lobbyists Registration Amendment Act, 2017

One non-government Bill was introduced in the month of September:

- M201, Election 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.

Early Consolidation *Election Act*
For your convenience, we have published an early consolidation (red text version) of the *Election Act* as it will read when 2017 Bill 3, *Election Amendment Act, 2017*, comes into force by Royal Assent. The changes reflect the NDP's promise to ban large corporate and union donations to political parties and proposes an annual limit of $1,200 on contributions from eligible individuals to any one political party and its candidates. The new legislation will also ban out-of-province donations and set new fines and penalties for contraventions of election financing and advertising laws. The amending bill has several transitional provisions, including restrictions on the use of contributions received before the new legislation comes into effect. Taxpayers are expected to fund an allowance over the next five years

as a transition from the expected loss of union and corporate donations. The Bill is currently at 2nd reading at the time of this news release but expected to come into force this fall.

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

- Eileen Vanderburgh, Alexander Holburn + Lang LLP – *Freedom of Information and Protection of Privacy Act*
- Bill Bullholzer, Young Anderson, Barristers and Solicitors – *Local Government 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...

View PDF of this Reporter.

FEDERAL LEGISLATION – For notification of federal amendments, we recommend you use our Section Tracking tool.

[Previous Reporters]

CATEGORIES

COMPANY & FINANCE

Company and Finance News:

A New BC Advantage: Member-funded Societies under the *Societies Act*
Earlier this year, a British Columbia society made headlines when it was sued by *The New York Times*. The newspaper sought to obtain access to the financial statements of AdvantageBC International Business Centre ("AdvantageBC"). Under the new BC *Societies Act*, all regular societies must provide their financial statements to the public. AdvantageBC opposed disclosure of its financial statements claiming that it was a "member-funded society", and therefore exempt. In this bulletin, we will discuss member-funded societies, their nature, benefits, and requirements. For this, the story of AdvantageBC serves as a useful illustration.

> ***What Happened to AdvantageBC?***
> The impetus for the court action was an investigation by *The New York Times* into a "secretive tax-incentive program" administered by the BC Ministry of Finance. AdvantageBC's role is to raise awareness and promote the Province's International Business Activity program in order to attract investment to Vancouver as an international financial centre. AdvantageBC funds its marketing activities with membership fees from rebate recipients, who must become members of the society in order to be registered in the program. AdvantageBC does not receive any public or government funding.

Read the full article by Dierk Ullrich, Darrell J. Wickstrom and Clara Rozee of Fasken Martineau DuMoulin LLP.

Appearances Can Be Deceiving: A Re-Characterization of a Secured Creditor's Debt Claim as an Equity Contribution
In a recent decision, the British Columbia Supreme Court (the "Court") determined that purported secured loans made by a shareholder were properly characterized as equity contributions to the subject company and therefore

subordinate to the claims of the company's creditors.

In November 2013, Tudor Sales Ltd. ("Tudor") assigned itself into bankruptcy. Tudor's most recent financial statements at the time of its bankruptcy recorded loans owed to Tavi Eggertson, a shareholder of Tudor and its sole officer and director. The liability for the shareholder loans resulted from two advances to Tudor by Mr. Eggertson in 2005 and 2006. Mr. Eggertson submitted a claim as a secured creditor for the repayment of shareholder loans, relying on a general security agreement (the "GSA") executed by Tudor in Mr. Eggertson's favour some years prior to the bankruptcy. The largest unsecured creditor of Tudor, Cascade Steel Rolling Mills Inc. ("Cascade") challenged the validity of Mr. Eggertson's claim and sought to have the shareholder loans subordinated to the claims of all Tudor's other unsecured creditors. Read the full article by C. Warren Beil of Gowling WLG.

The Smart Contract Trend
Capital Perspectives
Like many high-tech innovations, the concept of a smart contract is often misunderstood. The term itself is largely to blame for this confusion. First and foremost, a smart contract is not a contract in the legal sense, although it may assist in the performance and enforcement of a legal contract. Furthermore, a smart contract is not "smart" either. While a smart contract may result in a range of different outcomes, it merely follows pre-programmed instructions and does not think independently.

A smart contract is computer code that may allow a legal contract to self-perform in one way or another upon the fulfillment of certain conditions. Smart contract code may also verify and enforce performance of the legal contract in question. In theory, this offers two main advantages over purely text-based legal contracts:

1. it limits debate with respect to the meaning of the agreement, since code is precise and free from fallible human interpretation; and
2. it reduces transaction costs, as the contract is performed automatically once the requisite conditions materialize.

However, code often has its own flaws and deficiencies, and the realized efficiencies will depend on whether the transaction in question benefits from being hosted on a distributed platform. Read the full article by Julia Kennedy of Fasken Martineau DuMoulin LLP.

Access to Capital Increases for BC Crowdfunding Issuers
Amendments to British Columbia's crowdfunding rules intended to provide BC-based issuers with greater access to capital via crowdfunding campaigns came into force July 13, 2017 as announced by the British Columbia Securities Commission on September 21, 2017.

The Amendments allow BC issuers to access investors in Alberta and permit investors who have obtained suitability advice from a registered dealer to invest up to $5,000 rather than the otherwise applicable maximum of $1,500. The Amendments are the result of the BCSC's 2017 Tech Survey, following which the BCSC's Tech Team recommended amendments to BC Instrument 45-535 *Start-up Crowdfunding Registration and Prospectus Exemptions*. Respondents to the Tech Survey had noted cross-jurisdictional harmonization as a big concern for crowdfunding and recommended increasing the permitted investment amounts under BCI 45-535. Read the full blog post on Stikeman Elliott.

BC Securities – Policies & Instruments
The following policies and instruments were published on the BCSC website in the month of September:

- 24-101 – Adoption of Amendments to National Instrument 24-101 *Institutional Trade Matching and Settlement* and its related Companion Policy
- 45-535 – *BC Instrument 45-535 Start-up Crowdfunding Registration and Prospectus Exemptions*
- BCN2017/02 – Binary Options – This notice described the law in British Columbia for trading binary options. In particular, the notice confirms that it is illegal to sell binary options to retail investors in British Columbia.

For more information visit the BC Securities website.

FICOM News
The Financial Institutions Commission of BC published the following announcements and bulletins in September:

- Pensions – Notice: Request for Qualifications No. FICOM RFQ-FIN-2017-09
- Letter to Insurance Companies – Adoption of OSFI's 2017 changes to the Memorandum to the Appointed

Actuary's Report on Life Insurance Companies
- Letter to Insurance Companies – Adoption of OSFI's 2017 changes to the Memorandum to the Appointed Actuary's Report on Property and Casualty Insurance Business
- News Release – Joint Investigation by Watchdogs Takes Aim at Insurance & Payday Lending Practices
- Enforcement – *Mortgage Brokers Act* – Decision: Rego, Dennis Percival; Shankar, Arvind; and Shank Capital Systems Inc.
- Pensions Guideline – Records Retention Guideline

Visit the FICOM website for more information.

Act or Regulation Affected	Effective Date	Amendment Information
Capital Requirements Regulation (315/90)	Sept. 21/17	by Reg 173/2017
Exemption Regulation (27/2002)	Sept. 11/17	by Reg 168/2017
National Instrument 24-101 *Institutional Trade Matching and Settlement* (64/2007)	Sept. 5/17	by Reg 167/2017
National Instrument 41-101 *General Prospectus Requirements* (59/2008)	Sept. 1/17	by Reg 85/2017
National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (1/2000)	Sept. 1/17	by Reg 85/2017
National Instrument 81-102 *Investment Funds*	Sept. 1/17	by Reg 85/2017
Retention of Fees for Liquor Training Programs Regulation (174/2017)	**NEW** Sept. 22/17	see Reg 174/2017
Retention of Fees for Training Program Regulation (167/2015)	**REPEALED** Sept. 22/17	by Reg 174/2017

ENERGY & MINES

Energy and Mines News:

Mining Association of BC Comments on Budget 2017
The Mining Association of BC (MABC) commends government's commitment to reduce the PST on electricity by 50% in Fall 2017 and fully eliminate by April 2019, as confirmed in today's 2017/18 Budget Update. Electricity represents a significant input cost for the operation of mines in BC, and at most sites, it is the second largest expense.

"Reducing the PST on electricity by 50% in Fall 2017 and committing to the full elimination of the tax by April 2019 is a positive first step toward improving BC's global competitiveness, which in turn attracts investment and sustains and creates jobs in communities across BC," said Bryan Cox, President and CEO of MABC. "We look forward to working with government to continue efforts to improve industry competitiveness to build strong

communities across the province." Read the full article by Bryan Cox on the Mining Association of British Columbia website.

Feds "Never Did the Work" to Understand Indigenous Concerns on Pipeline: Lawyer

Canada's decision to approve an expansion for the Trans Mountain pipeline was a "one-way street" that ignored the economic and title rights of Indigenous people, a lawyer said Monday [October 2nd] in the Federal Court of Appeal.

Elin Sigurdson outlined arguments against the $7.4-billion project approved last November but now challenged by First Nations, two environmental groups and the cities of Vancouver and Burnaby.

Indigenous groups were required to go to tremendous lengths to ensure all the necessary information about their rights was before the National Energy Board process, Sigurdson said.

"Yet in return, despite their assurances of genuine engagement on Indigenous rights concerns on the post NEB phase of the review, Canada never performed the work that would assist them to understand the rights at issue or the impact on (First Nations), nor did the Crown provide responsive feedback," said Sigurdson, who represents the Upper Nicola Band.

Trans Mountain, a subsidiary of Kinder Morgan Canada, aims to double an existing Edmonton-to-Burnaby, B.C., pipeline with an additional 987 kilometres of pipeline in new and existing corridors, build a pump station, new docks and a storage facility. Read the *Vancouver Sun* article.

BCUC's Preliminary Report About Site C Reaches Few Conclusions

On September 20, 2017, the British Columbia Utilities Commission (BCUC) issued its Preliminary Report about BC Hydro's "Site C" hydroelectric project. This is the final step in the "fact gathering" phase of the Government-ordered "Site C Inquiry Process." That process requires the BCUC to determine the implications of completing, suspending or terminating the Site C project. In the Preliminary Report, the BCUC indicates that the project is currently on schedule, but that it requires further information to determine whether the project is on budget and about the costs of suspending or cancelling and replacing the project. BC Hydro is required to provide this information by October 5 to ensure that the BCUC can issue its Final Report by November 1.

> ***Background***
> As explained in the Preliminary Report, Site C is a dam and hydroelectric generating station being built by BC Hydro in the province's northeastern Peace River Regional District. The project includes a new reservoir that will run 83 km along the Peace River and will submerge approximately 5,000 hectares of land. Site C is planned to provide a peak capacity of about 1,145 megawatts (MW) which, according to BC Hydro, will power the equivalent of 450,000 homes per year. The budget for the project is around $8.3 billion.

Read the full article by David Stevens with Aird & Berlis LLP.

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

FAMILY & CHILDREN

Family and Children News:

Case Brief: *J.P. v. British Columbia (Children and Family Development)*, 2017 BCCA 308

In a unanimous decision released on August 31, 2017, the British Columbia Court of Appeal ordered a new trial for B.G., a father accused of sexually abusing his four children. Miller Thomson lawyers Morgan Camley and Robin Dean successfully argued that the trial judge's reliance on flawed expert opinion evidence led to a fundamentally unfair trial and caused a miscarriage of justice. This case stands as an important example of the vital "gatekeeper" role that a trial judge must play when admitting the evidence of experts.

The Trial Proceedings

The Court of Appeal's judgment covers two interrelated appeals involving three proceedings dating back to 2011: (1) a family proceeding commenced in 2011 by the mother, J.P., against B.G. for a divorce and a division of property; (2) a child protection proceeding commenced in the BC Provincial Court by the Director of Child, Family and Community Services (the "Director") after the children were removed from J.P.'s care during the family proceeding due to concerns about her mental health; and (3) a civil proceeding commenced by J.P. against the Director and the Province alleging misfeasance of public office, breach of fiduciary duty and negligence related to the response of the Ministry and its social workers to the allegations of sexual abuse. The civil proceedings also included a claim that B.G., who was added as a third party by the Province, had sexually abused his youngest child.

The proceedings were interrelated due to the allegations of sexual abuse common to the claims as well as two uncommon procedural steps taken by the trial judge, who presided over all three. First, the trial judge joined the family and removal proceedings (the "joint proceedings"), notionally sitting as a Supreme Court judge in the family trial and a Provincial Court judge in the removal proceeding. Second, on J.P.'s application, and without the participation of B.G., the trial judge imported all of the evidence and rulings from the family trial into the civil trial, including credibility findings adverse to the father. B.G. objected to the trial judge presiding over the civil trial, arguing that to do so would raise a reasonable apprehension of bias given the trial judge's findings against him in the joint proceedings. The trial judge disagreed and declined to recuse himself.

B.G., facing the very serious allegations against him and unable to hire a lawyer, represented himself throughout the 91-day trial in the joint proceedings and the 146-day civil trial.

Read the Miller Thomson article.

"Extreme" Family Law Litigation Decried by the Court

Despite family law Rules of Court that call for the "just, speedy, and inexpensive determination of a family law case on its merits", there always seem to be those cases that take on the qualities of "scorched earth" litigation. *Oliverio v. Oliverio*, 2017 BCSC 1704, appears to be one of those cases.

The application heard by Master Muir sought orders imputing income, determining the quantum of child and spousal support, and the sale of the family home. Other orders sought in the Notice of Application had been resolved or adjourned by the parties. Nonetheless, the application took more than a day-and-a-half of court time over three separate dates.

What was equally remarkable was the two boxes of materials presented to the court containing 160 affidavits, with 26 affidavits filed by the respondent wife and 15 filed by the claimant husband in respect of the orders sought. Master Muir described this mountain of material as evidence of "an unhealthy and abusive litigation climate". The preparation of 160 affidavits is almost too much to contemplate and the cost enormous. Read the full article by Georgialee Lang at *Lawdiva's Blog*.

Do You Need to Prove "Ouster" in Order to Make a Claim for Occupational Rent in BC?

The Oxford Dictionary defines ouster as: ejection from a property, especially wrongful ejection. In the context of family law, it means that one person has been tossed out of the family home forcing them to live elsewhere. In these situations, the person having been tossed, often wants to collect money from the "tosser", and this is called occupational rent. The case law has been relatively consistent about what is required in order to make a claim for occupational rent, and we would typically tell our clients that they had to prove they had been "forcibly ejected" in order to support a claim for occupational rent.

In *McFarlen v. McFarlen*, 2017 BCSC 1737, a recent decision of Mr. Justice Jenkins released September 28, 2017 the finding of the court was that it was not necessary to prove that a party had been ousted in order to succeed with a claim for occupational rent. The McFarlens were married for only two years but had lived together for 15 years prior to their apparently ill-fated nuptials. They were both 53 at separation and did not have children together. The central issue in the case was the claim by Mrs. McFarlen that her husband should pay occupational rent, because he had lived in the former family home since the date of separation, up to and including the eventual sale. The issue was, had she been ousted, and more particularly, if she had, did she have to prove it in order to make her claim? Read the full article by Karen Redmond on the *JP Boyd on Family Law* blog.

	Effective	

Act or Regulation Affected	Date	Amendment Information
Adoption Regulation (291/96)	Sept. 25/17	by Reg 175/2017

FOREST & ENVIRONMENT

Forest and Environment News:

Professional Reliance Model under Review
When drinking water from the Hullcar aquifer near Armstrong became too polluted to drink, and a nearby dairy farmer was required to pay for a soil test to determine if the pollution was coming from manure, local residents were astounded when the government refused to release the findings of that study.

The BC government claimed releasing the information would be a violation of copyright law, since the dairy farmer who paid for the study owned the information.

The Hullcar aquifer controversy wasn't just one of the more egregious examples BC's weak freedom of information laws, it was also an example of what is wrong with the professional reliance model that BC uses for things like permitting.

The collapse of the Mount Polley tailings pond in 2014 also highlighted concerns with the professional reliance model, which requires private companies to hire and pay biologists, archaeologists, engineers, geoscientists and environmental scientists to conduct environmental, engineering and harvesting studies.

That model is now under review. The outcome could have wide-ranging implications for resource extraction industries, including mining, oil and gas and forestry. Read the full *BIV* article.

Plan Approvals Submitted under Environmental Permits are Appealable Decisions in BC
In the recent decision in *Unifor Local 2301 v. Rio Tinto Alcan Inc.*, the British Columbia Court of Appeal (Court) confirmed that approval of a monitoring plan submitted under an environmental permit falls within the definition of a "decision" under the appeal provisions of the *Environmental Management Act* (*EMA*). The case is a useful reminder to industry proponents that plans and similar documents that are required to be submitted under permits for approval may be appealed by third parties.

Rio Tinto Alcan Inc. (Rio Tinto) operates an aluminum smelter in Kitimat, BC. As part of its operations, it holds a permit under the *EMA* enabling it to emit sulphur dioxide. Rio Tinto applied to amend the permit in 2013 to increase the allowable discharge amounts. In approving the amendment, the Ministry of Environment (Ministry) required Rio Tinto to file an Environmental Effects Monitoring Plan (Plan) for approval. The Plan was subsequently approved by the Ministry on October 7, 2014. Unifor Local 2301 (Unifor), a union representing workers at the smelter, appealed the Plan approval on the basis that it was inadequate and did not comply with the permit requirements. The Environmental Appeal Board (Board) rejected the appeal on the basis that the Plan approval did not constitute a "decision" under the appeal provisions of the EMA. The Supreme Court of British Columbia overturned the Board's decision, finding that the Plan was an appealable "decision." Read the full article by Rochelle Collette and Paulina Adamson (Student-at-Law) on *Blakes Business Class.*

Investigation of Forestry Roads on Steep Slopes Released
An investigation of forestry roads constructed on steep terrain has found mixed results. While most of the road sections examined met the legal requirements, and some were very well done, others did not adhere to professional practice guidelines and several road sections were structurally unsafe, according to a report released today.

The board looked at the design, construction and deactivation of 26 segments of road, built on steep terrain between 2012 and 2016, in five natural resource districts throughout the province. The roads were examined for compliance with the *Forest and Range Practices Act* and adherence to professional practice guidelines issued jointly by the professional foresters' and the professional engineers' regulatory bodies.

"We saw some examples of excellent road construction practices and these are highlighted in our report," said board vice-chair, Bill McGill. "We also saw some roads that were not well built and six road segments were not

considered safe for road users due to construction deficiencies. Steep roads present the greatest risks to the environment and to user safety and it is critical that they be constructed carefully and with the involvement of qualified terrain specialists." Read the full news release on the BC Forest Practices Board website.

Canada Open to Adding Softwood Lumber Deal to NAFTA

Canada is prepared to pursue a permanent settlement in softwood lumber within the North American Free Trade Agreement if the U.S. lumber industry keeps blocking a deal, Canada's ambassador to the U.S. suggested Thursday [September 14th].

David MacNaughton expressed frustration at the industry using what is effectively its veto power to block any deal between the national governments and he raised the possibility of working around it to achieve a long-term solution. Read the *Global News* article.

Latest Quarterly Environmental Enforcement Summaries Posted

British Columbia's Quarterly Environmental Enforcement Summaries for the second, third and fourth quarters of 2016 have been publicly posted, outlining the significant enforcement actions taken by the Province, along with associated fines. For the final three quarters of 2016, enforcement actions included:

- 33 orders
- 247 administrative sanctions
- 1,922 tickets
- 8 administrative penalties
- 39 court convictions

These enforcement actions resulted in a total of over $630,000 in penalties. This brings the total (since 2006) to over $13 million in penalties against companies and individuals for environmental non-compliance. Examples of violations in the quarterly summaries include hunting and fishing without a licence, open burning out of season and introducing waste into the environment. Key highlights include:

- BC Hydro was issued five orders under the *Environmental Assessment Act* for failure to meet requirements of its Environmental Assessment Certificate and accompanying plans with respect to the Site C project.

Read the full government news release.

Government to Consult on Grizzly Bear Ban

British Columbians are being given the opportunity to provide input on new proposed grizzly bear regulations. On Aug. 14, 2017, the BC government announced that effective Nov. 30, 2017 it will end trophy hunting of grizzly bears and stop all hunting of grizzly bears in the Great Bear Rainforest. Until Nov. 2, the public can provide input into two policy documents outlining the proposed regulation changes required to implement the ban. As part of the consultation, input is being sought on:

- Changes to manage the ban in hunting areas that overlap the Great Bear Rainforest;
- Changes that will prohibit the possession of "trophy" grizzly bear parts;
- Changes that will manage prohibited grizzly bear parts;
- Changes to prohibit the trafficking of grizzly bear parts, and
- New reporting requirements for taxidermists.

Read the full government news release.

Environmental Appeal Board Decisions

There were three Environmental Appeal Board decisions in the month of September.

Water Act

- *Thomas Hobby and SC Ventures Inc. v. Assistant Regional Water Manager, et al.* [Consent Order – Costs Settlement]

Environmental Management Act

- *Revolution Organics, Limited Partnership v. Director, Environmental Management Act* [Preliminary Issue of Jurisdiction – Denied; Stay Application – Denied]

Wildlife Act

- *John Parker v. Deputy Regional Manager (Kootenay-Boundary Region)* [Final Decision – Appeal Dismissed]

Visit the Environmental Appeal Board website for more information.

Act or Regulation Affected	Effective Date	Amendment Information
Hunting Licensing Regulation (8/99)	Sept. 1/17	by Reg 127/2017
Motor Vehicle Prohibition Regulation (196/99)	Sept. 29/17	by Reg 177/2017
Wildlife Act Commercial Activities Regulation (338/82)	Sept. 1/17	by Reg 127/2017
Wildlife Act General Regulation (340/82)	Sept. 1/17	by Reg 127/2017

HEALTH

Health News:

Panel Makes Recommendations on Medical Assistance in Dying

As identified in the *Coroners Act*, the purpose of a death review panel is to review and analyze the facts and circumstances of deaths, and to provide the chief coroner with advice on medical, legal, social welfare, and other matters concerning public health and safety. Specifically, this 2016 death review panel on medically assisted deaths was composed of a variety of professionals, and their recommendations (as outlined in the publically available report) have been forwarded to specified ministries and regulatory colleges. This death review panel aimed to provide a better understanding of medically assisted deaths, and to identify quality assurance and quality improvement processes. Read the full government news release.

Under Mental Health Laws, Michael Nehass Will Remain in Care against His Will

A Yukon man diagnosed with mental illness will not walk free despite having his charges stayed. Michael Nehass will instead be transferred to the Hillside Centre psychiatric hospital, a 44-bed facility on the Royal Inland Hospital campus in Kamloops, B.C. The decision was announced in Yukon Supreme Court Tuesday [September 12th]. Nehass, who appeared by videoconference from a mental health facility in Ontario, seemed surprised by the news and became agitated. "Wait – are you trying to send me to another hospital?" he said interrupting proceedings. He demanded to be released immediately. "I am an innocent person since my charges were stayed," he said loudly into a microphone. "I would like to come home now. Not be committed. I need to go back to Whitehorse," he said. Read the *CBC* article.

Act or Regulation Affected	Effective Date	Amendment Information
Hospital Act	Sept. 18/17	by Reg 171/2017
Hospital Insurance Regulation (25/61)	Sept. 18/17	by Reg 171/2017
Medical and Health Services	Sept.	

Regulation (426/97)	30/17	by Reg 180/2017

LABOUR & EMPLOYMENT

Labour and Employment News:

Pre-Employment Comments Result in over $83,000 in Liability for Employer | The HR Space

The recent decision of the British Columbia Court of Appeal in *Feldstein v. 364 Northern Development Corporation* is a stark reminder that employers who provide inaccurate or misleading information to prospective employees during the hiring process can be held liable for negligent misrepresentation.

> ***The Facts***
> Mr. Feldstein applied for a software engineer position with 364 Northern Development Corporation ("364"). Before accepting the position, Mr. Feldstein asked 364's Chief Information Officer ("CIO") about the eligibility requirements for 364's long-term disability ("LTD") plan. This was very important to Mr. Feldstein as he suffered from cystic fibrosis. He thought he would require substantial LTD benefits at some point in the future. The CIO provided Mr. Feldstein with a summary brochure of 364's LTD benefits. It contained a "proof of good health" clause. When asked what this clause meant, the CIO explained that Mr. Feldstein would qualify for LTD benefits after working for 364 for three months. Based on this information, Mr. Feldstein accepted the position and signed an employment contract.

Read the full article by Nicole Singh of Fasken Martineau DuMoulin LLP.

BCCA Eyes Enforceability of Restrictive Covenant in IRIS Appeal

Restrictive covenants are often a key component of employment agreements and commercial transactions. Enforceability, however, can be challenging, especially in the employment context. The B.C. Court of Appeal's recent decision in *IRIS The Visual Group Western Canada Inc. v. Park*, 2017 BCCA 301, is a good reminder and provides valuable insight into several related legal principles. The implications of the decision will be of interest to many BC employers who rely on restrictive covenants or who are contemplating doing so.

> ***Background***
> IRIS The Visual Group Western Canada Inc. ("IRIS"), an eye care services provider and eyewear products vendor, operated its business by entering into Optometric Services Agreements ("OSAs") with individual optometrists to deliver its services and products to customers. IRIS concluded such an agreement with a certain Dr. Park. In the agreement, Dr. Park agreed and acknowledged she would provide services as an independent contractor. The agreement also included a non-competition clause that prohibited Dr. Park from competing with IRIS, whether directly or "in partnership or in conjunction with" any person or company "carrying on, engaged in, interested in or concerned with a business that competes with" IRIS within 5 km of the IRIS location in Vernon where Dr. Park provided services. The clause also prohibited Dr. Park from being "engaged" or "employed" by any competing persons or companies, subject to the same temporal and geographic constraints.

Read the full article by Christopher McHardy of McCarthy Tétrault LLP.

Employee Dismissed while on Medical Leave Did Not Face Discrimination, BC Human Rights Tribunal Rules

About 14 months into her employment, Ms. Whitmore, a medical office assistant, suffered a medical problem that required corrective surgery. She was hospitalized and was absent from work on medical leave. It appears undisputed that at this time Ms. Whitmore's employer assured her that her employment was secure.

Ms. Whitmore attempted to return to work twice from medical leave but was not well enough to do so. Her employer proceeded to hire a temporary medical office assistant. Ms. Whitmore and her employer subsequently agreed on a one-day "trial work period" in the office to determine whether Ms. Whitmore was fit to return to work. Three days after the trial, Ms. Whitmore was dismissed from her employment.

Ms. Whitmore filed a complaint for discrimination contrary to section 13 of the British Columbia *Human Rights Code*. She claimed that her employer discriminated against her on grounds of physical disability by terminating

her employment while she was on medical leave due to a disability. In response, the employer claimed that Ms. Whitmore was accommodated with medical leave and was dismissed solely based on performance. Read the full article by Dana Schindelka and Giorilyn Bruno (Student-at-Law) of DLA Piper.

Supports Increased for People on Income Assistance
Effective October 1, 2017, changes made to the Employment and Assistance Regulation and the Employment and Assistance for Persons with Disabilities Regulation grant an increase of $100 in monthly support allowances to individuals and families on income assistance. People on income assistance will see further benefit from increased earnings exemptions, allowing them to earn an additional $200 a month without any effect on their payment. For those on disability assistance, the annual earnings exemption is increased by $2,400 a year. This change applies to the current year, and those who reached the former maximum for the year will be reassessed under the new exemption amount.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Regulation (263/2002)	Sept. 1/17	by Reg 161/2017
	Sept. 5/17	by Reg 166/2017
	Sept. 30/17	by Reg 179/2017
	Oct. 1/17	by Regs 153/2017 and 169/2017
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Sept. 1/17	by Reg 161/2017
	Sept. 5/17	by Reg 166/2017
	Sept. 30/17	by Reg 179/2017
	Oct. 1/17	by Regs 153/2017 and 169/2017
Employment Standards Regulation (396/95)	Sept. 15/17	by Reg 158/2017

LOCAL GOVERNMENT

Local Government News:

UBCM Conference Issue – Young Anderson Newsletter
Vancouver law firm Young Anderson Barristers & Solicitors recently published a special 2017 UBCM Conference summary newsletter. Topics covered in the newsletter include:

- Do not disturb: Striking a balance between welcoming public spaces and freedom of expression – *Stefanie Ratjen*
- With a New Government Comes a New Structure – *Rosie Jacobs*
- Six Talking Points about the Supreme Court of Canada's Internet Decisions - You Won't Believe Number Four! – *Michael Moll*
- Private Docks on Crown Foreshore Now "Generally Permitted" by Province – *Bill Buholzer*
- Human Rights Complaint Filed by Resident Opposing Development Dismissed – *Carolyn MacEachern*
- How to be a Commissioner for Taking Affidavits in British Columbia – *Christina Reed*
- Careful review of agreements necessary to secure parties' intentions – *Joe Scafe*
- City Balks at Castles in the Air – *Bill Buholzer*

Click here to download PDF: Newsletter Volume 28, Number 3 – UBCM Conference Issue.

FCM Board of Directors Map out Nation-building Priorities for the Year Ahead
Municipal leaders from across the country gathered this week in the Regional Municipality of Wood Buffalo to discuss how imminent decisions on the federal government's national infrastructure plan and National Housing Strategy can transform cities and communities across Canada.

The federal government's new $81 billion Phase 2 infrastructure plan recognizes that investing in infrastructure unlocks productive potential for workers, businesses and community members. Designed and delivered right, this commitment can build a better Canada – funding public transit expansions, roads to water systems, reducing greenhouse gas emissions, building more climate-resilient communities, and supporting the growth priorities of rural, remote and northern communities. Read the FMC article.

Legal Cannabis Tops Packed Agenda at Annual Meeting of BC's Municipal Leaders
Municipalities in British Columbia are clamouring to have a say in the marijuana policies they believe will fall largely on their shoulders to enforce when pot becomes legal next summer.

Vancouver Coun. Kerry Jang, who is also the city's point person on marijuana, said municipalities have largely been ignored by the federal government, which has so far taken a "father-knows-best approach."

"I think it's a bit of snobbery or haughtiness on the part of the federal government," Jang said. "The rubber hits the road with us. We'll be the ones having to regulate, enforce whatever the federal laws are through our police, through our zoning, through our business licence processing."

Local government representatives are gathering in Vancouver this week for their annual Union of B.C. Municipalities convention, and at the top of the agenda is a push to get municipalities at the table in developing the regulatory framework around legalized cannabis. Read more of the *CBC News* article.

Act or Regulation Affected	Effective Date	Amendment Information
Independent School Regulation (262/89)	Sept. 2/17	by Reg 262/89, s. 17 (4)
Liquor Control and Licensing Regulation (241/2016)	Sept. 18/17	by Reg 172/2017

MISCELLANEOUS

Miscellaneous News:

BC Government to Limit Former Officials from Lobbying
The BC government has introduced a simple two-year ban on lobbying by former public officials, while pushing off many of the details by at least a year while it conducts a new round of "public consultation" on the file.

Attorney General David Eby said proposed legislation introduced Monday [October 2nd] will address long-standing concerns that former cabinet ministers and political staff could take valuable inside information from government to lobbying firms and enrich their clients with their knowledge of government practices and priorities.

"The issue of people leaving government and going to lobbying firms … has a corrosive impact on people's confidence in government," Eby told reporters at the legislature.

"It's a sense this happens all the time, and this is how government and lobbying firms operate and the decisions aren't being made in the best interests of British Columbians. That's why I think this legislation is important because it addresses that concern quite directly, in quite an aggressive way, and in quite a sweeping way. It will be a significant reform for British Columbia." Read *The Vancouver Sun* article.

Privacy Commissioner Aims to Start More Investigations Rather than Wait for Complaints
For years, Canada's privacy commissioners have warned the country's decades-old privacy legislation is in urgent need of an overhaul, and that the commissioner's office requires new tools to properly do its job.

But change hasn't come quickly – and Daniel Therrien, the current commissioner, says his office is no longer content with waiting for the government to act. So it's trying a new approach with the powers it currently has.

In his annual report, presented to Parliament on Tuesday [September 21st], Therrien said his office will soon issue new guidance on how companies should ask Canadians for consent to collect, use, and disclose their personal information. It's one of a wide range of emerging privacy issues on which his office will begin to issue new or updated guidance on in the coming years. Read the *CBC* article.

Uncertainty in Dealing with Private Property Rights and Aboriginal Title
***The Council of the Haida Nation v. British Columbia* (BCSC)**
and *Cowichan Tribes v. Canada (A.G.)* (BCSC)
The Supreme Court of British Columbia released two decisions in September 2017, *Haida Nation v. British Columbia1 and Cowichan Tribes v. Canada (A.G.)*, which dismissed applications for the provision of notice to private landowners potentially impacted by claims of Aboriginal title.

In both decisions, the Court focused on the judiciability of potentially joining hundreds of private landowners with disparate interests as defendants to claims for Aboriginal title. The Court recognized that the result of a finding of Aboriginal title on lands issued in fee simple were uncertain, but suggested that private landowners would not be immediately impacted by a declaration of Aboriginal title. Since both the Cowichan and Haida Nation had not sought explicitly to invalidate fee simple interests, the Courts surprisingly suggested that the fee simple would remain following a declaration of Aboriginal title and that landowners could defend their interests from future specific claims.

Aboriginal title, as currently set out by the Supreme Court of Canada (SCC), is inherently at odds with fee simple interests. Recent claims for Aboriginal title risk putting growing numbers of Canadians into conflict, and could impede reconciliation. Rather than identify the challenges with the law as currently described by the SCC, the Court in both decisions appears to have re-construed the nature of Aboriginal title. Unless this approach is clarified by an appellate court, or affirmed by the SCC, *Haida Nation and Cowichan Tribes* are likely to cause further confusion and impede efforts for reconciliation. Read the full article by Thomas Isaac, Arend J.A. Hoekstra of Cassels Brock & Blackwell LLP.

Mandatory Minimums & Drug Offences:
An Interpretation of *R v Lloyd*
Before the Supreme Court's decision in *R v Lloyd*, 2016 SCC 13 to strike down a one-year mandatory minimum sentence for violating section 12 of the Charter (which prohibits cruel and unusual treatment), the court had only nullified two other mandatory minimums for breaching section 12. Typically, the Supreme Court has set a very high bar for establishing whether a mandatory minimum could inflict cruel and unusual punishment. The court has preferred to defer to Parliament to craft mandatory minimums except when it might reasonably result not merely in an excessive sentence, but in a "grossly disproportionate" sentence that would "outrage standards of decency" (para 24). Read the full post by Irina Samborwski on *The Court* website.

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

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

Creating Uncertainty: Part 2 of Bill C-46 as Flawed as its Predecessor
If there's something the law doesn't like, it's uncertainty. The legal system spends years building precedents, forging predictability. Creating an "if-A-then-B" system that's not quite mathematical, but is logical and on which

we can all rely.

The problem with Bill C-46, according to the CBA's Criminal Justice Section, is that it will do away with decades of established precedent and leave uncertainty in its place. And in a time of overworked, under-staffed courts, court delays and the Jordan ruling, uncertainty is even less attractive than usual.

Canada's impaired driving law is the most heavily litigated part of the *Criminal Code*. The decisions resulting from decades of challenges mean that it is predictable. Bill C-46 would, in a stroke of the pen, turn miles of solid legal ground into possible quicksand.

Bill C-46 is presented in two parts: Part 1 of the bill deals with the need to add those driving under the influence of drugs to the existing impaired driving provisions in the *Criminal Code* – a need that becomes more pressing with the proposed legalization of marijuana. The CBA has issues with certain sections of Part 1, but supports its intent.

Part 2 would eventually "repeal and replace all existing driving provisions in the Code, including the amendments proposed in Part 1." Moreover, it would replace those provisions with others that are largely in line with provisions in the former Bill C-226, a private member's bill which a Parliamentary Committee noted could violate the Charter and contained measures that were "unquestionably unconstitutional." Bill C-226 was eventually voted down. Read the full article by Kim Covert on the CBA website.

Why Can't Canadians Show Police Proof of Insurance on Their Phone?

Even in eco-friendly British Columbia, you still need to keep plenty of paper in your glove compartment. "You must legally carry the original or unaltered photocopy of the owner's certificate of insurance and vehicle licence in the vehicle while it's operated," said Lindsay Olsen, spokeswoman for the Insurance Corporation of British Columbia (ICBC). You need the paperwork even though, in B.C., your licence plate decals show that you're insured for the year. And, no, there's no app for that. Olsen said there are "no immediate plans" to allow drivers to carry proof of insurance on their phones. Right now, no province allows electronic proof of insurance if you're pulled over – but 46 U.S. states do. "It's all about convenience," said Alex Hageli with the Property Casualty Insurers Association of America (PCI), an industry group that promoted the laws. "I've heard millions of stories about how people got pulled over and they realize, 'Oh, this is expired' or 'I've got three cards, and they're all older than three months, so I'll get a ticket.'" Read the full article published in *The Globe And Mail.*

BC Supreme Court – Suggesting Driver at Fault for Collision Based on Past Convictions is "Frivolous"

Reasons for judgement were published [recently] by the BC Supreme Court, Vancouver Registry, describing the suggestion of deciding fault for a collision based in part on a motorist's past driving convictions as "frivolous".

In this case (*Rezai v. Uddin*) the Plaintiff was a pedestrian involved in a collision with the Defendant. Fault was disputed. Prior to trial the Plaintiff sought to amend her pleadings to allege "*The Defendant Driver had on several previous occasions driven in a manner that put pedestrians and motorists at risk of injury*" based on

a. on Nov. 27, 2008, the defendant was charged with speeding, for which he plead guilty;
b. on Dec. 4, 2008, the defendant was charged with failing to yield to a pedestrian on a green light, for which he plead guilty;
c. on December 5, 2008, the defendant was charged with entering an intersection when the light was red for which he plead guilty;
d. on March 11, 2009, the defendant was charged with speeding, for which he plead guilty;
e. on January 17, [2015], the defendant was charged with using an electronic device while driving. He failed to appear at the hearing and was deemed not to dispute the charge.

The court rejected this request noting that past convictions likely do not constitute similar fact evidence. In dismissing the application Master Wilson provided the following reasons: Read the full article by Erik Magraken on the *BC Injury Law and ICBC Claims Blog*.

CVSE Bulletins & Notices

The following notices have been posted in September by CVSE:

- CVSE1014 – LCV Operating Conditions & Routes
- Circular 04-17 – Long Combination Vehicles (LCV) Program Cargo Restrictions in BC

For more information on these and other items, visit the CVSE website.

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

PROPERTY & REAL ESTATE

Property and Real Estate News:

Incomplete Interest Schedule Foils Strata's Bid for Termination

Re The Owners, Strata Plan VR 1966, 2017 BCSC 1661, was, as the court noted, the first contested case to consider the recently amended procedure to cancel a strata plan and wind up a strata corporation. The case illustrates the importance of strict compliance with the *Strata Property Act*'s requirements for employing this procedure.

The case involved a strata corporation consisting of "a three-story, wood-frame building containing 36 strata lots and associated common property," located in the city of Vancouver. The strata was built in 1974 and "[l]ike many wood-frame buildings of its vintage, it is showing its age." The strata had completed expensive repairs in 2015 and "[s]ome members of the strata council anticipate that more repairs are going to be required soon, perhaps as early as the next two years, at an estimated cost of approximately $711,880."

"Prompted by their concerns about the work on the building that appeared to be needed and the capacity of the owners to continue to pay for it, as well as the recent changes to the Act," the court noted, "a number of the council members embarked upon a process to consider the alternative of a winding-up and sale." Read the full article by Kevin Zakreski with the BC Law Institute.

Anthem Properties Closes Deal to Buy Coquitlam Project

Anthem Properties has closed a deal to buy the Coquitlam housing complex Brandywine for $32 million.

B.C. Supreme Court approved the sale of the 58-unit condominium project at 585 Austin Avenue earlier this year.

This is one of the first strata developments to sell to a developer using a new method for winding up strata corporations since the B.C. government implemented Bill 40 last year.

The new law allows strata corporation members to vote to wind up the corporation and sell assets to developers with a minimum of 80% of the members voting in favour. The catch is that the sale has to be approved by B.C. Supreme Court – something that is not the case if selling assets is unanimous. At Brandywine, 84.5% of owners voted to wind up the strata corporation.

"The process was long but it was fair, and even though we had to increase the price to match the growing market over that time, we are happy with the outcome," said Anthem's vice-president of acquisitions and development, Steve Forrest in a release. Read the *Business in Vancouver* article by Glen Korstrom.

Parking Disputes

In an interesting dispute, an owner sued her strata in the CRT for changing which stall was the designated handicapped parking space: *Ehrne v The Owners, Strata Plan VR 2601*, 2017 CRTBC 2.

On the strata plan the strata originally had a common property stall designated as a handicapped stall, the other stalls were designated as limited common property by special resolution and had been that way since 1990. In 2014, the strata painted over the common property handicapped parking sign and it was assigned to a new owner. The City of North Vancouver demanded that the strata reinstate a disability parking stall as required by the City bylaws. In response, the strata placed a sign above Ehrne's LCP parking stall designating it as a handicapped stall. Ehrne disputed the strata's decision and requested that the original CP handicapped stall be reinstated, the strata refused. Read the full article by Taeya Fitzpatrick with Sabey Rule LLP.

Sanctity of Contracts Trumps Court's Sympathy for Delay in Bringing Claim: *Thom v. Laird Custom Homes Ltd.*

In the recent decision of *Thom v. Laird Custom Homes Ltd.*, 2017 BCSC 1577, the BC Supreme Court upheld the dismissal of an application by the Plaintiffs, Graham and Michel Thom, to add Hearth Architectural Inc. as a

defendant to an action in which the Plaintiffs sought damages for defects with the building envelope of their home. In dismissing the claim, Justice Williams highlighted the importance of certainty of contract and found that the architectural firm could rely on a limitation period clause in its contract which prevented the Plaintiffs from commencing an action more than 2 years after the completion of its work.

The contract between the Plaintiffs and Hearth Architectural Inc. was entered in October 2006. The Plaintiffs hired Laird Custom Homes Ltd. to construct the home. The project was completed in June 2008. In 2012, the Plaintiffs became aware of leaking and water damage. Additional problems were discovered in the coming years. In October 2014, the Plaintiffs put Hearth on notice of a potential claim, but at that time they refrained from commencing a claim, as they did not believe Hearth was the responsible party. In November 2015, the Plaintiffs commenced an action against the builder, Laird, and the roofing company, Mack Kirk Roofing and Sheet Metal Ltd.

After the action was commenced, the Plaintiffs undertook further investigation, which they said for the first time, revealed that Hearth had negligently performed its duties under the architectural service contract. Hearth took the position that both the statutory limitation period under the *Limitation Act* and the contractual limitation period had expired. Read the full article by Scott Harcus of Alexander Holburn.

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

WILLS & ESTATES

Wills and Estates News:

Undue Influence by Inducing False Beliefs: *Re: Patterson Estate*

Undue influence usually implies coercion. Someone may challenge a will or a benefit in a will on the basis that another procured the will or benefit by applying pressure to the will maker. The pressure may be overt threats of violence, or perhaps subtler forms of pressure such as an implied threat by the will maker's caregiver to withdraw care.

A recent decision of the Nova Scotia Supreme Court, *Re: Patterson Estate*, 2017 NSSC 221, identifies as undue influence a child procuring a will by inducing her mother to believe that her other children did not care about her.

Joan Patterson had four children, Reed Patterson, Randall Patterson, Darlene Marriott, and Marlene Patterson. She died on June 13, 2016, the age of 70, and her husband had died four months before. Marlene Patterson had been estranged from both of her parents for about 20 years, but reconciled in 2012. On March 4, 2016, Joan Patterson moved from her home into Marlene Patterson's home. On May 13, 2016, she made a new will, leaving her estate to Marlene Patterson, disinheriting her other three children. Read the full article by Stan Rule on his blog *Rule of Law*.

Section 58-59 WESA Rectification Application Referred to Trial

Estate of Palmer, 2017 BCSC 1430, dealt with an application by affidavits pursuant to Sections 58 and 59, *WESA* to cure deficiencies in a will left by a deceased who hand wrote certain changes to a typed and properly witnessed prior will. The Judge referred the matter to the trial list under a rule 22-1-(7) (d) finding that there was a triable issue, particularly concerning her competence.

> ***WESA and the Determination of Testamentary Intentions***
> [27] The recent case of *Estate of Young*, 2015 BCSC 182, describes the legal framework applicable to s. 58 of *WESA* and the curing of "deficiencies" related to the making or alteration of a will. The history and intent of the legislation, including the case law in other jurisdictions addressing similar provisions, is set out in paras. 16–33 of that decision and will not be repeated here. The law is summarized in paras. 34–37 of the decision and can be paraphrased as follows:
>
> - the courts' curative power with respect to non-compliant testamentary documents is inevitably and intensely fact-sensitive;

the first threshold issue is whether the document in question is authentic;
- the second, and core, issue is whether the non-compliant document represents the deceased's testamentary intentions;
- a testamentary intention means much more than the expression of how a person would like his or her property to be disposed of after death. Rather, the document must record a deliberate or fixed and final expression of intention as to the disposal of the deceased's property on death;
- the burden of proof that a non-compliant document embodies the deceased's testamentary intentions is the balance of probabilities;

Read the full article by Trevor Todd with *Disinherited – Estate Disputes and Contested Wills*.

The Curative Powers of the Court: Will-Makers Take Note (or Perhaps, Just Don't)

What happens if some years after executing a Will, a Will-maker notes her intention to change her estate distribution but passes away before taking steps to formally execute a new Will? The Court of Appeal recently examined this question in the case of *Hadley Estate (Re)*, 2017 BCCA 311 ("*Hadley*"), regarding whether the late Ms. Hadley's journal entry represented a deliberate and final expression of her testamentary intentions.

Prior to the *Wills, Estates and Succession Act*, S.B.C. 2009, c. 13 ("*WESA*") coming into force on March 31, 2014, British Columbia was a "strict compliance" jurisdiction. This meant that in order for a Will to be valid, it had to comply with all the formal, legal requirements – for example, the requirement that the Will-maker sign the Will in front of two adult witnesses. Now, section 58 of *WESA*, as discussed in *Hadley*, gives to the Court the power to consider and potentially cure any "record or document" that does not meet the formal requirements; in other words, if the Court finds that such record or document was, in fact, the Will-maker's testamentary intentions, then it could nonetheless be treated as a valid Will. Read the full article by Jessica Lo and Jacob Lewin with Lindsay Kenney LLP.

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There were no amendments this month.		