

Quickscribe Reporter

Vol: XVII – Issue: VIII – August 2018

QUICKSCRIBE NEWS:

New Session Begins October 1st

The 3rd Session of the 41st Parliament (2018) is scheduled to resume on Monday, October 1, 2018.

Recent Platform Enhancements

Over the last few months Quickscribe has been working on several projects and site enhancements. These include:

- More historical legislation. Users will notice that Quickscribe continues to broaden its historical coverage with most statutes now spanning back to 1995/96. Work on expanding the historical regulations will begin this fall.
- New "Print Search Results" feature
- Enhanced "email section" feature
- New "Return to Search Results" feature
- More information on historical legislation drop-down feature
- Fixed PDF bug impacting laws with no parts/divisions
- New [annotators](#) have come on board, including contributions from Public Guardian of BC and CLASBC
- More than 5000 Hansard references have been added to date with more to come

Finally, Quickscribe is also working on a new early consolidation project. Details coming soon!

Latest Annotations


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

- [Erik Magraken](#), MacIsaac & Company – [Supreme Court Civil Rules](#)
- [Greg Gehlen](#), Gehlen Dabbs Lawyers – [Bankruptcy and Insolvency Act](#)
- [Mary Brunton](#), Reed Pope Law Corporation – [Strata Property Act](#)

Watch this 20-minute [YouTube video](#) to learn more about annotations including how to receive alerts when new annotations are published to the laws that matter most to you. To view and follow annotation contributors, select "[Annotations](#)" via the left navigation, then select the "[experienced legal professionals](#)" link under the large star icon, then "Follow User" adjacent to any "expert annotator".

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	LOCAL GOVERNMENT
ENERGY & MINES	MISCELLANEOUS
FAMILY & CHILDREN	MOTOR VEHICLE & TRAFFIC
FOREST & ENVIRONMENT	OCCUPATIONAL HEALTH & SAFETY

COMPANY & FINANCE

Company and Finance News:

New Interpretation of Lobbyists Registration Act Means More Companies and Associations are Subject to British Columbia Lobbyist Registration Requirement

The Office of the British Columbia Registrar of Lobbyists has published a new interpretation that requires counting additional activities when determining whether an employer must register in-house lobbyists under the [Lobbyists Registration Act](#). While the 100-hour threshold remains in place, the inclusion of more activity within the 100 hours will capture more employers and require lobbyist registration by more employers than before.

This new interpretation will be of interest to businesses, associations and other organizations conducting activity in British Columbia that do not currently register, as the threshold determines whether in-house lobbyist registration is required.

Registration of an employer's in-house lobbyists in BC is the legal responsibility of the president or CEO (known as the designated filer). Failure to register accurately, completely and on time may result in investigations, monetary penalties, and reputational damage. Under the BC *Lobbyists Registration Act*, one or more employees of an organization are considered in-house lobbyists if they lobby on behalf of the employer, and lobbying activities across the employer amount to a total of at least 100 hours in a 12-month period. Read the [full bulletin](#) by [Guy W. Giorno](#) and [Matthew Welch](#) with Fasken Martineau DuMoulin LLP.

Examination of Bankrupts

When a debtor becomes bankrupt, there may be suspicion as to whether the bankrupt has made full disclosure of all assets or dealings with the bankrupt's assets prior to the bankruptcy. The bankrupt's conduct prior to discharge may also be in issue. The trustee in bankruptcy has the obligation to make inquiries, but if the bankrupt is uncooperative, or if information is required from someone other than the bankrupt, more aggressive steps may be required.

[Section 163](#) of the [Bankruptcy and Insolvency Act](#) (the "BIA") provides for the examination of the bankrupt and others by the trustee or by a creditor. There are, however, different procedures to be followed depending on whether the examination is by the trustee or by a creditor. Read the [full article](#) published on the Gehlen Dabbs website.

Canada without Poverty Decision Appealed and Federal Government Announces Changes to the Political Activities Rules in the Income Tax Act

Readers will recall seeing our [summary](#) of the recent decision of Justice Morgan in *Canada Without Poverty v. AG Canada* – a Charter decision in which Canada Without Poverty ("CWP") argued that the provisions of the [Income Tax Act](#) (Canada) ("ITA") restricting "political activity" unduly restricted its freedom of expression in a way that limited its ability to achieve its charitable purpose. Justice Morgan agreed and struck down the sections of the ITA that contained that restriction while retaining the prohibition on partisan politics.

Many were surprised at the decision – and most were not surprised yesterday at the announcement that the Federal Government is appealing. The appeal was filed at the same time that the Government announced it would introduce legislation in the Fall session to, in effect, change the ITA to do exactly what Justice Morgan did in the CWP decision. The Government will remove the limits on "political activity" while retaining the prohibition on partisan activity and confirming that to be a charity, an organization needs exclusively charitable purposes and cannot have a political purpose. Read the [full article](#) by [Susan M. Manwaring](#) of Miller Thomson LLP Manwaring.

Crunch Time in the NAFTA Negotiations: What's at Play for Canada on Digital Policy

As the NAFTA negotiations hit a possible home stretch this week, the focal point has been primarily on issues such as dispute resolution, the dairy sector, and the auto industry. However, the digital policy issues will have huge implications for Canada and the outline of the agreement between the U.S. and Mexico suggests that Canada is facing considerable pressure to agree to changes to our copyright, patent, IP enforcement, and digital policy rules, contrary to our [preferred negotiation approach](#).

The U.S. appears to be pushing for a TPP+ approach – the TPP provisions plus some additional changes it did not get as part of those negotiations. This is notable since Canadian authorities [admitted](#) that the TPP went far beyond any previous Canadian free trade agreement. The Canadian starting point is presumably the CPTPP, the revised TPP where Canada [successfully argued](#) for the suspension of some of the U.S.-backed provisions. This post outlines five of the biggest issues that are likely at play, though many others such as de minimis rules for shipments that affect online commerce will be closely watched and could ultimately require future reforms.

1. Copyright term

The outline of the U.S.-Mexico agreement indicates that copyright term was included in the deal, but its scope remains a bit of a mystery. The outline states:

Extend the minimum copyright term to 75 years for works like song performances and ensure that works such as digital music, movies, and books can be protected through current technologies such as technological protection measures and rights management information.

Read the [full article](#) by Michael Geist.

BC Securities – Policies & Instruments

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

- [32-302](#) – Notice of Revocation for Certain Local Orders Providing Registration Exemptions for Trades in Connection with Certain Prospectus-Exempt Distributions and Update on BC Instrument 32-517 *Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities*
- [46-309](#) – CSA Staff Notice 46-309 *Bail-in Debt*
- [81-331](#) – CSA Staff Notice 81-331 *Investment Funds investing in Bail-in Debt*

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

Act or Regulation Affected	Effective Date	Amendment Information
Business Practices and Consumer Protection Act	Sept. 1/18	by 2007 Bill 27, c. 35, sections 4 (part) and 8 (part) only (in force by Reg 127/2018), Business Practices and Consumer Protection (Payday Loans) Amendment Act, 2007
Community Care and Assisted Living Act	Sept. 1/18	by 2018 Bill 5, c. 6, sections 1, 2, 4 and 6 to 9 only (in force by Reg 130/2018), Community Care and Assisted Living Amendment Act, 2018
Cooperative Association Act	Aug. 1/18	by 2018 Bill 7, c. 5, sections 17 to 19 only (in force by Reg 156/2018), Miscellaneous Statutes Amendment Act, 2018
Cooperative Association Regulation (391/2000)	Aug. 1/18	by Reg 156/2018
Excluded Employees (Legal Proceedings) Indemnity Regulation (62/2012)	Aug. 1/18	by Reg 153/2018
Financial Information Regulation (371/93)	Aug. 1/18	by Reg 153/2018
Government Cheque Cashing Fees Regulation (127/2018)	NEW Sept. 1/18	see Reg 127/2018
Guarantees and Indemnities Regulation	REPEALED	

(258/87)	Aug. 1/18	by Reg 153/2018
Indemnities and Guarantees Regulation (153/2018)	NEW Aug. 1/18	see Reg 153/2018
Organic Certification Regulation (304/2016)	Sept. 1/18	by Reg 304/2016
Payday Loans Regulation (57/2009)	Sept. 1/18	by Reg 126/2018
Training Tax Credits Regulation (243/2007)	Aug. 29/18	by Reg 177/2018

ENERGY & MINES

Energy and Mines News:

Court Rules on Trans Mountain Pipeline

The Federal Court of Appeal issued its ruling quashing the approvals for the proposed expansion of the Trans Mountain Pipeline. This bulletin explains the key insights regarding the Indigenous consultation process from the Court's decision, including how the government team must carry out the consultation.

The Court's decision was released August 30, 2018. It focuses on the National Energy Board (NEB) report that recommended that the Governor in Council (Federal Cabinet) approve the expansion of the Trans Mountain Pipeline. The Cabinet approved the expansion project, and shortly thereafter Indigenous groups and environmental groups filed a number of applications for judicial review. These groups alleged that the NEB Report was flawed arguing that:

- The NEB's process was not procedurally fair because, among other things, the NEB failed to hold an oral hearing or provide sufficient reasons;
- The NEB failed to consider issues, including the risks and impacts of the project to the City of Burnaby and alternative means of carrying out the project, before recommending approval of the project;
- The NEB failed to consider alternative locations to the Westridge Marine Terminal site;
- The NEB failed to assess the impact of increased tanker traffic; and
- The NEB failed to consider the effect the project might have on killer whales.

Ultimately, the Court found that most of the alleged flaws asserted with respect to the NEB's process and findings were without merit, but that the NEB made one critical error. Read the [full bulletin](#) posted on the Fasken website.

Trudeau Says He Won't Use "Tricks" to Ram through Pipeline Construction

Prime Minister Justin Trudeau is pouring cold water on Alberta's suggestion that the federal government use legislation or a court appeal to get construction started quickly on the Trans Mountain pipeline expansion.

In an interview on Edmonton radio station CHED, Trudeau says using "tricks" such as a new law or the Constitution's notwithstanding clause would create further legal fights down the road.

"Using a legislative trick might be satisfying in the short term, but it would set up fights and uncertainty for investors over the coming years on any other project, because you can't have a government keep invoking those sorts of things on every given project," he told the radio station. "People want to know that we are doing things the right way for the long term – that jobs that get started will continue and won't get stopped by the courts. That's the change we are focused on making."

The Federal Court of Appeal last week reversed a cabinet decision to allow Trans Mountain construction to go ahead. Read *The Vancouver Sun* [article](#).

Change to Fee, Levy and Security Regulation

A [change](#) to the [Fee, Levy and Security Regulation](#) now defines a billing month for levies on petroleum or

marketable gas as the second calendar month following a production month, and requires collectors to invoice each producer on or about the 23rd of each billing month for production that is the subject of the invoice.

Act or Regulation Affected	Effective Date	Amendment Information
Fee, Levy and Security Regulation (8/2014)	Aug. 27/18	by Reg 175/2018

FAMILY & CHILDREN

Family and Children News:

New Affordable Child Care Benefit

Effective September 1, 2018, [amendments](#) to the [Child Care Subsidy Regulation](#), 74/97, provide for the replacement of the former Child Care Subsidy with the new Affordable Child Care Benefit. This new funding aims to help families with the cost of child care, relying on factors such as family size, household income and type of care needed. The benefit will go directly to child care providers where parents have enrolled their children, to offset part of the fee.

Family Law Catch-up

The federal government's new reforms reinforce how family disputes are already being resolved.

Three decades on from her call to the bar, New Westminster, BC lawyer Carol Hickman knows the family justice system better than most.

And after a career that has seen her represent litigants at every level all the way up to the Supreme Court of Canada, Hickman has seen enough to conclude that most families simply do not belong in a system that she says exacerbates the stress and hurt that inevitably follows separation.

"In my experience, very little positive comes out of the court process for families. In fact, it's destructive for them," says Hickman, also a life bencher at the Law Society of British Columbia. "Court should really be reserved for those maybe five per cent of cases that can't be resolved any other way." Read the [full article](#) by [Michael McKiernan](#), published on *Canadian Lawyer Magazine*.

Domestic Violence and Family Law Disputes

Domestic violence – or *family violence* or *intimate partner violence*, call it what you will – is a serious problem in both intact and separated families. According to a 2013 report from Statistics Canada, there are 252.9 victims of domestic violence per 100,000 population, and domestic violence makes up more 26 per cent of all violent crime in Canada. Although children who are victims of domestic violence make up 243.5 people per 100,000 of the under-18 population, spousal violence is the most common form of domestic violence, and 68 per cent of all victims of domestic violence identify as female.

Domestic violence can be an issue in child welfare proceedings, as the abuse of a spouse is significantly predictive of child abuse and domestic violence has important direct and indirect impacts on children even if they are not abused themselves. It can also be a factor in family law proceedings in a number of ways, including:

- the need to protect a family member from violence;
- the impact of violence on children's optimal parenting arrangements; and,
- the various claims in tort that can potentially be brought against abusers.

Read the [full article](#) by [John-Paul Boyd](#) and published on *LawNow*.

Act or Regulation Affected	Effective Date	Amendment Information
Child Care Subsidy Regulation (74/97)	Sept. 1/18	by Reg 148/2018

FOREST & ENVIRONMENT

Forest and Environment News:

Government Pressing Forward with Plans for Legislation to Regulate Professional Regulators

– from ABCFP

I've heard from members who are deeply concerned about the recommendations contained in the government's recent professional reliance report and what they could mean for professional forestry in BC. I've also heard from members who embrace much of the report and agree with the direction laid out by Mark Haddock, the environmental lawyer who wrote the report. This division is understandable. With 121 recommendations, the report is a public-policy buffet. There are many recommendations all forest professionals would no doubt agree with. At more than 130 pages, a detailed reading of the report is needed to understand the full breadth and implications of the many recommendations. The devil truly is in the details, as the saying goes. Following the release of the report, I emailed a message to all members in which I asserted the following two recommendations will have far-reaching effects and significant cost implications for non-profit professional associations such as the Association of BC Forest Professionals: Read the full article published by Christine Gelowitz, RPF in the [September/October edition](#) of *BC Forest Professional Magazine*.

BC Environmental Appeal Board Refuses Expert Opinion from Consultant Who Acted as Agent

The British Columbia Environment Appeal Board (Board) recently ruled that a consultant who had acted as agent for one of the parties to an environmental appeal could not testify as an expert witness on behalf of that party. Parties seeking assistance from their technical experts in applications for regulatory permits or subsequent appeals should exercise caution before having them assist in a manner that makes them appear as an advocate, as it may limit their ability to rely on the consultant's professional independence.

[Jack and Linda Chisholm v. Assistant Water Manager](#) was an appeal to the Board regarding a water licence amendment. The appellants had retained an independent consultant to assist with water licensing issues, including investigating the history of the water licences on their property and communicating with the respondent water manager regarding the application to amend the licence. When the water manager refused the application, the consultant acted as agent for the appellants in the appeal itself, including preparing submissions and representing them during the hearing. When the appellants attempted to call the consultant to give opinion evidence in the oral hearing, the respondent objected, arguing that the consultant was not sufficiently independent to qualify as an expert witness. The Board reviewed the consultant's role in both the application for the amendment and the appeal, finding he had acted as the appellants' agent, signed correspondence on their behalf and used language that indicated he was advocating for them. The Board held that the consultant could not testify as an expert witness, as he was not sufficiently independent from the appellants to qualify to provide opinion evidence. He was allowed to testify as a lay witness, giving factual evidence only. Read the [full article](#) by [Janice Walton](#) and [Paulina Adamson](#) with Blake, Cassels & Graydon LLP.

Federal Court of Appeal Quashes Order in Council Approving Kinder Morgan Trans Mountain Pipeline Expansion in Tsleil-Waututh Nation v. Canada (Attorney General), 2018 FCA 153

On August 30, 2018, the Federal Court of Appeal released its decision concerning the judicial review of an Order in Council approving the Kinder Morgan Trans Mountain Pipeline Expansion Project (the "Expansion Project"). The Order in Council, dated November 29, 2016, was based on a report and recommendation of the National Energy Board ("NEB"), and directed the NEB to issue a certificate of public convenience and necessity approving the construction and operation of the Expansion Project.

The Application before the Federal Court of Appeal was a consolidation of numerous applications for judicial review of the Order in Council. The Applicants seeking to challenge the Order in Council included multiple First Nations, the cities of Burnaby and Vancouver, and two NGOs.

The Federal Court of Appeal narrowed the issues before it to two questions:

1. Were the Board's process and findings so flawed that the Governor in Council could not reasonably rely on the Board's report?
2. Did Canada failed to fulfil the duty to consult owed to Indigenous peoples?

Read the [full article](#) by [Chantal DeSereville](#) of Siskinds LLP.

Environmental Appeal Board Decisions

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

[Environmental Management Act](#)

- [Patricia Rush; Norman W. Rush; Brookwood Fernridge Community Association; Frank P. Mueggenburg; IronGait Ventures Inc.; Randy Ryzak; and Catholic Independent Schools Vancouver Archdiocese v. District Director, Environmental Management Act](#) [Preliminary Issues of Jurisdiction – Allowed in Part]

[Water Sustainability Act](#)

- [Jack and Linda Chisholm v. Assistant Water Manager](#) [Amendment to Decision – Approved]

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

Act or Regulation Affected	Effective Date	Amendment Information
Limited Entry Hunting Regulation (134/93)	Aug. 27/18	by Reg 176/2018
Motor Vehicle Prohibition Regulation (196/99)	Aug. 27/18	by Reg 176/2018

HEALTH

Health News:

The Law of Safe Injection Drug Sites

Vancouver, British Columbia consistently ranks as one of the most livable cities in the world. However, its Downtown Eastside (DTES) community of approximately 18,000 crammed into a few square blocks of social housing units, derelict buildings and temporary shelters – all in the shadow of an affluent downtown – is a glaring exception to livability.

Some 260 different agencies in the DTES offer programs and services. One such agency is the Portland Hotel Society (PHS) which manages social housing units for the provincial government. PHS also manages Insite, North America's first legal supervised injection site for illegal drugs.

Insite was established in 2003 as an experimental pilot project by health authorities to contain the spread of HIV and Hepatitis C, which had been an epidemic in the DTES throughout the 1990's. Insite became the flagship component of a comprehensive harm reduction strategy to tackle addictions. Read the [full article](#) by [Peter Bowal](#) and [Brent Rein](#) and published on *LawNow*.

Having to Pay for Your Own Shingles Vaccine Isn't Ageism, Tribunal Rules

Thomas Hasek's complaint regarding the 50% effective Zostavax vaccine [was] dismissed by BC human rights body. When Thomas Hasek decided to get immunized against shingles a few years back, he had to pay \$200 for the shot. That struck him as unfair – after all, the childhood chickenpox vaccine addresses the same virus, and it's publicly funded.

And so, Hasek filed a complaint with the B.C. Human Rights Tribunal, alleging that the province's failure to include the Zostavax vaccine in the public program amounted to age discrimination.

"The baseline fact that this treats older people differently from kids or younger people, you can't deny," Hasek told CBC this week. But the tribunal didn't see things that way.

On Friday [August 10th], tribunal member Barbara Korenkiewicz [dismissed Hasek's complaint](#), saying "age was not a factor" when the ministry of health chose to prioritize coverage of other vaccines over Zostavax. Read the [full article](#) by Bethany Lindsay of *CBC News*.

BC Lawsuit Against Drug Makers Will Shift Focus Away from

Opioid Crisis, Advocates Fear

People affected by BC's opioid crisis say the province's legal action against drug manufacturers is a case of putting resources in the wrong area.

Attorney General David Eby announced Wednesday [August 29th] that the BC government is suing more than 40 companies, accusing the makers of prescription opioids of downplaying the harmful effects of their drugs.

"When I heard the news, I was shocked," said Leslie McBain, the founder of the advocacy network Moms Stop The Harm. "At first, I thought 'Good, go get them' ... But it's not going to make any changes in the crisis that we are experiencing. It's sort of a red herring." Read the [CBC article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Voluntary Blood Donations Act	NEW Aug. 1/18	c. 30 [SBC 2018], 2018 Bill 29 , whole Act in force by Reg 158/2018

LABOUR & EMPLOYMENT

Labour and Employment News:

BC Court of Appeal Upholds 5 Months' Notice for 12 Months of Service

A recent decision of the British Columbia Court of Appeal serves as an important reminder to employers that termination obligations, even for very short-term employees, can be significant.

In [Pakozdi v. B & B Heavy Civil Construction Ltd.](#), the BC Court of Appeal considered the following facts.

Mr. Pakozdi was employed as a bid estimator for a civil construction company for a period of 12 months. He was terminated without cause and was provided with severance pay roughly equal to two weeks' notice. Mr. Pakozdi was approximately 55 years of age.

Mr. Pakozdi brought a claim against the company for wrongful dismissal and was initially awarded a notice period of five months by the BC Supreme Court trial judge, based on his experience, age, and length of employment. Read the [full article](#) by N. David McInnes and Hilary D. Henley of McMillan LLP.

Workplace Investigation Alert: The Impact of an Investigator's Notes, in a Recent BC Case

Workplace investigations sometimes take more twists and turns than a Gillian Flynn novel. In the early stages of an investigation, it's often impossible to say what information is going to be critical to the investigator's decision-making process. What seemed at first like an innocuous, offhand comment from a complainant could end up cementing, or tarnishing, his credibility once the respondent and witnesses are interviewed.

So what's an investigator to do, in the absence of a crystal ball? Document, document, document. Detailed notes of everything a party says are the best way to ensure you are prepared for any unexpected twist or turn that an investigation may take.

A recent case from the British Columbia Human Rights Tribunal provides an example of a complaint that took a turn no one saw coming, and one where the notes could have played a critical role.

The Case

In *McIntosh v. City of Vancouver*, Mr. McIntosh complained that he was discriminated against by his employer on the basis of his sex.

On July 11, 2015, Mr. McIntosh was working as the sub-foreman on a job site when a safety incident involving a gas line occurred. An Occupational Health and Safety Superintendent went to the site to investigate the incident. Mr. McIntosh alleged that, while at the site, the Superintendent grabbed his arm between his hand and his elbow and rubbed her hand up and down his arm. Mr. McIntosh said that he brought the touching to the attention of a human resources consultant and an acting manager at a meeting about the July 11th incident. However, his concerns were not investigated, and he was given a one-day suspension for making disrespectful and threatening comments about

his direct supervisor and others on July 11th.

Read the [full article](#) by [Elizabeth Bingham](#) with Rubin Thomlinson LLP.

Cannabis and Employment

While medical scientists are busy deciding the human health impacts of regular recreational cannabis use, and governments are still working out how cannabis will be cultivated, sold and taxed, and law enforcement officials consider how cannabis use will affect driving and how road safety will be maintained, it now falls to every employer in Canada to reckon with how the decriminalization of recreational cannabis will impact the workplace.

A recent Conference Board of Canada [report](#) revealed that more than half (52%) of employers are concerned about this when the rules change on October 17, 2018. Read the [full article](#) by [Peter Bowal](#) and published on *LawNow*.

The New BC Employer Health Tax and Its Intersection with Medical Services Plan Premium

In Budget 2018, the BC NDP announced that it would be replacing the current system of subsidizing the health care system through collecting individual Medical Services Plan (MSP) premiums with a new Employer Health Tax (EHT), effective January 2019. Under the current MSP system, every person or family is responsible for paying MSP premiums, the amount of which depends on income level. Many employers pay MSP premiums for their employees and their families as part of employment benefits, but they are not required to do so.

In contrast, the EHT is an annual payroll tax that will apply to all employers with "BC payroll" (i.e., employers of employees who report to work at a permanent establishment in BC, or of employees who are paid from a permanent establishment in BC) exceeding \$500,000. In effect, the EHT shifts the responsibility for subsidizing the cost of the health care system from individuals to employers.

Employers with an annual BC payroll over \$500,000 will be subject to the EHT, with rates varying on a sliding scale starting at 0.98 per cent to a maximum of 1.95 per cent (for employers with a BC payroll exceeding \$1.5 million). "Payroll" includes all employment income and taxable benefits under the Income Tax Act (Canada), and includes salary and wages, bonuses, signing bonuses, non-compete payments, commissions, vacation payments, gratuities and tips paid through the employer, taxable allowances and benefits, top-up payments, stock option benefits, employer-paid contributions to an employee's RRSP, employer-paid group life insurance premiums, etc. Read the [full article](#) by [Samantha Stepney](#) of Borden Ladner Gervais.

Act or Regulation Affected	Effective Date	Amendment Information
<i>There were no amendments this month.</i>		

LOCAL GOVERNMENT

Local Government News:

Supreme Court of Canada to Revisit Dunsmuir

In a 2016 paper, Justice Stratas of the Federal Court of Appeal bemoaned the state of administrative law in Canada, stating: "Our administrative law is a never-ending construction site where one crew builds structures and then a later crew tears them down to build anew, seemingly without an overall plan."

That construction crew is at it again.

On May 10, 2018, the Supreme Court of Canada announced that it would jointly hear three appeals from the Federal Court of Appeal – *Bell Canada v Canada (Attorney General)*, *National Football League et al. v Attorney General of Canada*, and *Minister of Citizenship and Immigration v Alexander Vavilov*. In a rare move, the Court announced that it would use these appeals as "an opportunity to consider the nature and scope of administrative action, as addressed in *Dunsmuir v New Brunswick* and subsequent cases." To this end, the Court has invited the parties in each of these cases to devote a substantial part of their written and oral submissions on the appeal to the question of standard of review. It will also allow for an increased page-limit of 45 pages per factum. Read the [full article](#) by Nick Falzon with Young Anderson Barristers & Solicitors.

Province Reverses Decision on Fire Safety Act

UBCM has received [correspondence](#) from Public Safety Minister Mike Farnworth advising that the Province has directed the Office of the Fire Commissioner (OFC) to implement a single standard of fire safety for public buildings whether located in municipalities or unincorporated areas. This directive overturns a commitment made by the previous provincial government.

Members will recall UBCM reported in a January 20, 2016 Compass [article](#) that the provincial government had committed to making amendments to the new [Fire Safety Act](#) to remove the requirement for mandatory fire inspections by regional districts. This commitment to amend the Act, before being brought into force, came after extensive advocacy work by UBCM members including endorsement of resolution A3 at the 2015 Convention. Read the UBCM [article](#).

Special Resolution Seeks Cannabis Tax Sharing Agreement

Among the resolutions admitted for debate at this year's Convention is a [Special Resolution](#) (SR1) that seeks to advance a short- and long-term cannabis excise tax revenue sharing strategy. This strategy is intended to guide the negotiation of a provincial-local government cannabis excise tax revenue sharing agreement.

UBCM has analyzed cannabis taxation schemes in number of jurisdictions where non-medical cannabis is currently legal or will soon become legal, including several U.S. states and Canadian provinces. Based on the findings of this research, and combined with UBCM's [approach](#) to cannabis excise tax revenue sharing, UBCM is proposing [two strategies](#) to guide the negotiation of a cannabis excise tax revenue sharing agreement with the Province. Read the UBCM [article](#).

Progress on Housing

Over the past year, the provincial and federal governments have begun to implement policy agendas that address housing needs. Recent months in particular have seen aggressive action by the province on housing, coupled with the introduction of a National Housing Strategy. This article presents an overview of how recent initiatives align with UBCM policy.

Housing continues to be a crisis in communities across British Columbia. As noted in the provincial report *What We Heard About Poverty in B.C.*, "Affordable housing was overwhelmingly the top issue that came up during the consultation. It was named the most pressing issue for people living in poverty by people and organizations throughout British Columbia. Businesses, local governments, Indigenous leaders, and people living in cities big and small all spoke up about how the housing crisis has contributed to poverty." Impacts of the crisis vary from community to community, but include difficulties for employers finding and retaining employees, local government challenges in addressing tent cities, and hardship for renters, seniors and youth. Read the UBCM [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Electrical Safety Regulation (100/2004)	Aug. 31/18	by Reg 170/2018
Gas Safety Regulation (103/2004)	Aug. 31/18	by Reg 170/2018
Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation (104/2004)	Aug. 31/18	by Reg 170/2018
Private Training Regulation (153/2016)	Sept. 1/18	by Reg 153/2016
Safety Standards General Regulation (105/2004)	Aug. 31/18	by Reg 170/2018

MISCELLANEOUS

Miscellaneous News:

Enemy of the State? Why You Should Treat the Defence and Crown as Equals

Many perceive defence counsel as snaky, tricky, tactical used car salesman-like villains in courtrooms all across our countries. It's easy to blame us – we defend *criminals*, right? The Crown Attorney on the other hand, is often championed as justice fighters – putting the bad guys in jail where they belong, virtuous and pure.

The #MeToo and #believethetvictims movements are obviously focused on the rights of complainants in sexual assaults, but the movement also seeks to villainize defence counsel who asks questions in cross-examination and passionately advocate for their client. It is these very moments in the courtroom that are glorified as shining examples of the slimy business of defending accused persons and the myth that defence counsel are pulling a fast one over the eyes of lady justice. Because there's no risk of wrongful convictions, or the Crown acting improper, right? Let's just do away with defence counsel all together since apparently we don't further the goals of justice. Read the [full article](#) by [Melody Izadi](#) and published on *LawNow*.

New AN-16 Sets Requirements for Vexatious Litigants Seeking Leave

Registrar Cameron has today [August 15th] issued a new [Administrative Notice, AN-16](#), which outlines the process that persons who have been declared vexatious litigants must follow to request leave of the Court to initiate new proceedings or file materials within existing proceedings. Read the announcement on the [Court of British Columbia website](#).

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

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

BC Man Acquitted of Distracted Driving after Successfully Arguing He Was Just Holding his Phone

The ruling doesn't give much hope to defendants outside the province because it relied on the specific wording of BC's distracted driving statute.

While the excuse of "I was just holding it" hasn't typically been successful in the courts, a BC judge found last month that Patrick Tannhauser couldn't have been using his phone because an unspecified app locks it while it's in motion. Therefore, he was not distracted, at least as BC's laws are written.

But the ruling doesn't give much hope to defendants: the defence may not work outside the province because it relied on the specific wording of BC's distracted driving statute, and in recent weeks a separate provincial court ruling disputed the justice's reasoning.

What the ruling does do, though, is highlight the limits of a very broad piece of legislation, said University of Calgary law professor Lisa Silver.

"When you draft legislation like this, you're going to get arguments, that's what's going to happen," she said. "For the Crown to take the position that 'well he held it, that's enough,' I agree with the (judicial justice), that's not what this section's about, that's not what it's after, right?" Read *The Vancouver Sun* [article](#).

BC Court of Appeal – Expert "Fact" Witness Entitled to Only \$20 Fee for Trial Attendance

Useful reasons for judgement were published today by the BC Court of Appeal confirming that when a professional is summoned to testify at trial about facts they have knowledge of (as opposed to privately retained expert witnesses to give opinion evidence) they are entitled to no more than the \$20 fee that must accompany a subpoena.

In today's case ([Luis v. Marchiori](#)) the Plaintiff was injured in two vehicle collisions and sued for damages. At trial her family doctor testified but not as an expert opinion witness, but rather as a witness of fact. The Plaintiff paid \$2,651 to the doctor for this service and tried to recover this as a disbursement. In refusing to allow this the BC Court of Appeal noted that when a professional testifies as to facts they are entitled to nothing more than any

other fact witness. Read the [full article](#) by [Eric Magraken](#) on his *BC Injury and ICBC Claims Blog*.

Roadside Tests for Cannabis Will Bring Lots of Litigation, Lawyer Says

On Monday [August 27th], the federal Liberals approved a road side saliva testing device for marijuana impairment, and it's already drawing criticism.

The Drager DrugTest 5000 and the training to use it will now be available as an option for police to test impairment from THC – the main psychoactive ingredient in cannabis – ahead of legalization in October. Kyla Lee, a Vancouver criminal defence lawyer who specializes in impaired driving cases, says that questions around the accuracy and invasiveness of the test will mean many court challenges.

"The biggest impact we're going to see right off the bat, is that it's going to open the door to a lot of constitutional challenges," Lee said. Read the [CBC article](#).

CVSE Bulletins & Notices

The following notices have been posted in August by CVSE:

- [CVSE1011](#) – Highways with Restrictive Load Limits
- [CVSE2050](#) – Carrier Information Update

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

Act or Regulation Affected	Effective Date	Amendment Information
Special Direction IC2 to the BC Utilities Commission (307/2004)	Aug. 9/18	by Regs 171/2018 and 172/2018

OCCUPATIONAL HEALTH AND SAFETY

Occupational Health & Safety News:

Liberals Consider "Right to Disconnect" in Labour Rule Revamp: Report

The federal Liberals are considering whether a reshaping of federal labour standards should include giving workers the right to ignore their job-related emails at home.

The idea of putting into law a "right to disconnect" is one of several policy areas the Liberals identify as meriting further study in a report being made public ahead of the Labour Day long weekend.

Governments in Canada and overseas have taken a closer look at the right-to-disconnect concept after France adopted a law in 2016 giving workers the right to turn off their electronic work devices outside of business hours over worries that employees were doing unpaid overtime, or being driven to burnout.

The results of a year-long consultation on changes to the federal labour code showed a split between employer and labour groups over whether the Liberals should follow suit and set rules for workers in federally-regulated industries. That includes employees in transport, banking and telecommunications, and could also influence provincial labour laws.

"While many concerns were raised during our consultations, one message was clear: Canadians want more work-life balance," Labour Minister Patty Hajdu said in a statement. "It is time for the federal labour standards to be modernized to reflect the realities that Canadians face today, and we're taking the insights gathered from these consultations very seriously." Read the [full article](#) by Jordan Press on the *Canadian Occupational Safety*.

Lack of Emergency Procedures Contributed to Fernie Arena Deaths: WorkSafeBC

A WorkSafeBC investigation into an ammonia leak which killed three workers at a Fernie arena blames an aging refrigeration system and years of unheeded warnings for the tragedy.

The [74-page report](#) cites failures on the parts of both the City of Fernie and CIMCO refrigeration contractor to ensure crucial safety procedures and risk assessment tools were implemented and understood by workers.

The investigation identified violations of the [Workers Compensation Act](#) by both the city and CIMCO, as well as multiple violations of [Occupational Health and Safety Regulations](#) by the city.

"Fernie had not reviewed the emergency procedures or conducted any practice drills for many years prior to the incident," the document says.

"When the upset condition occurred, and Fernie's workers responded to the first alarms, they were unfamiliar with the procedures, and important provisions prescribed by the procedures were overlooked." Read the [full article](#) by Jason Proctor of *CBC News*.

Human Rights Law: Worker Challenges WorkSafeBC's Policy

A 40-year-old marble mason in Vancouver suffered a work-related shoulder injury in 2015 for which WorkSafeBC granted him an award of permanent partial disability. Because his employer had no modified duties for him, he applied for assistance from the WorkSafeBC's vocational rehabilitation services department, which assists in finding alternative employment to accommodate the disabilities of such workers. However, this worker later lodged a complaint with the BC Human Rights Tribunal, claiming the agency violated human rights law by [denying his request to attend a post-secondary program](#) based on his age.

The injured worker had several meetings with a consultant at the rehabilitation program, during which his job experience, physical restrictions, interests and education were discussed. The consultant suggested a short training course that would provide the worker with project and safety management certification to obtain employment in the marble mason industry as a foreman. WorkSafeBC would arrange the five-week training course and then provide another 12 weeks of support in finding suitable work. Read the [full article](#) on the Overholt Law website.

Act or Regulation Affected	Effective Date	Amendment Information
Electrical Safety Regulation (100/2004)	Aug. 31/18	by Reg 170/2018
Elevating Devices Safety Regulation (101/2004)	Aug. 31/18	by Reg 170/2018
Gas Safety Regulation (103/2004)	Aug. 31/18	by Reg 170/2018
Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation (104/2004)	Aug. 31/18	by Reg 170/2018
Safety Standards General Regulation (105/2004)	Aug. 31/18	by Reg 170/2018

PROPERTY & REAL ESTATE

Property and Real Estate News:

The End of Anonymous Land Ownership in British Columbia Updated – Extended Comment Period and New Reporting Requirements

As [we noted last month](#), the government of British Columbia is moving to require disclosure of beneficial owners of real property in the province. There have been two recent developments of note.

First, the comment period in respect of the [proposed legislation](#) has been extended to September 19, 2018. Readers of our previous note will recall that this draft law – known as the *Land Owner Transparency Act* or LOTA – would establish a public register of beneficial ownership of land in the province. Our key contacts in the Real Estate group at Dentons remain able and willing to provide further guidance on this matter and/or discuss submitting comments on the draft law.

Second, a new regulation under the [Property Transfer Tax Act](#) has been enacted, which will require certain corporations and trusts that acquire real estate to identify their beneficial owners in the property transfer tax return. This is separate from the proposed disclosure requirements set out in the LOTA, and will come into effect independent of the extension of the LOTA comment period noted above. Among other distinctions, the information required by the new [Information Collection Regulation](#) (ICR) will generally not be publicly accessible and, unlike the LOTA, the ICR does not apply to transfers of beneficial ownership with no associated legal transfer. Read the [full article](#) by [Bob \(Robert\) G. Nikelski](#) with Dentons LLP.

BC Supreme Court Varies CRT Order in Long-running Dispute over Maintenance for a Strata Duplex

McKnight v Bourque, [2018 BCSC 1342](#), was an appeal from a decision of the Civil Resolution Tribunal in "a strata dispute involving the owners of a waterfront duplex in Sooke." The BC Supreme Court's decision was the latest chapter in a long-running dispute over maintenance involving decisions of the court and the tribunal (see previous summaries [here](#), [here](#), and [here](#)).

This case asked the court to rule on the following issues, which were "appropriately stated as whether the CRT":

- accepted expert opinion evidence contrary to the CRT's rules of procedure;
- applied an erroneous legal test in determining that the [petitioner's] conduct on her strata lot constitutes a "nuisance" within the meaning of the strata's bylaws;
- was without authority to order that a home inspector make binding recommendations for implementation on maintenance and repair issues;
- was *functus officio* at the time the Decision was amended and re-issued; and,
- if so, whether the Decision erroneously sub-delegated a binding dispute resolution power to [the Condominium Home Owners Association].

The court dismissed the petitioner's arguments on four of the five issues. The evidentiary issue more properly concerned acceptable lay opinion, rather than expert opinion. Read more of the BCLI [article](#) by Kevin Zakreski.

A Primer on Cannabis Legalization and Real Estate Issues in British Columbia and Alberta

Bill C-45, the [Cannabis Act](#) has received Royal Assent and is scheduled to come into force on October 17, 2018. Canadians will then be able to legally possess, consume and grow recreational cannabis. Bill C-45 enables provinces to establish additional regulations, some of which affect real estate. Here, we highlight the basics of Bill C-45 as well as the approaches British Columbia and Alberta are taking that impact various real estate matters.

1. What Does Bill C-45 Legalize?

Bill C-45 amends legislation such as the [Criminal Code](#) and the [Controlled Drugs and Substances Act](#) so that once-applicable provisions in these statutes no longer apply to recreational cannabis. Instead, Bill C-45 determines what cannabis-related activities are permitted and prohibited. The Bill permits (i) public possession of up to 30 grams of dried cannabis (or the equivalent in non-dried form); (ii) consumption in locations authorized by local jurisdictions; and (iii) cultivation of up to 4 cannabis plants per residence. It allows provinces and territories to set up their own retail and distribution schemes and set additional requirements for the possession, use and cultivation of recreational cannabis.

Read the [full article](#) by [Peter M. Tolensky](#) with Lawson Lundell LLP.

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

WILLS & ESTATES

Wills and Estates News:

[Sharma v. Sharma](#)

Prem Lata Sharma is suing her sisters Raj Rani Sharma and Simmi Sharma. She is seeking to vary their mother Rama Rani Sharma's will, pursuant to which she was disinherited, and she is also asking the court to declare that

they hold title to their mother's house in trust for the estate. Raj Rani Sharma is both a beneficiary and also the executor of the will. Their mother had gratuitously transferred the house into a joint tenancy with them, and their position is that they received the house by right-of-survivorship. The house is worth about \$1.5 million, and the other assets are worth only about \$100,000. The plaintiff's claim that her sister's hold the house in trust for their mother's estate is important, because if they are entitled to it by right-of-survivorship, it will not be subject to the plaintiff's wills variation claim. Read the [full article](#) by [Stan Rule](#) of Sabey Rule LLP and published on the Sabey Rule Blog.

When an Estate Consists of Firearms

Hailing from the UK originally, dealing with firearms in an Estate is simply something I did not learn at law school or ever come across in practice over there. In Canada it is far more common. Hunting is a big part of life for many people over here, and thus firearms are frequently gifted through Wills and are often part of a deceased's personal effects and household goods when she or he passes away. How does an Executor deal with these?

Unless an Executor is otherwise barred from possessing a firearm for some reason, an Executor can hold the firearms of the deceased for a reasonable period of time. During that period of time (undefined), the Executor must store them appropriately, depending on what type of firearm they are dealing with (non-restricted/restricted/prohibited). Assuming the beneficiary of the firearm is not a minor, the Executor must ensure that the beneficiary has the appropriate firearms licence for the firearm they will be receiving. The Executor should also satisfy themselves that the beneficiary is not banned from possessing a firearm for some reason. It is recommended for an Executor to call the office of the Chief Firearms Officer ("CFO") of British Columbia to ascertain this information.

[Firearms Act](#) excerpt:

Authorization to transfer non-restricted firearms

- 23** A person may transfer a non-restricted firearm if, at the time of the transfer,
- (a) the transferee holds a licence authorizing the transferee to acquire and possess that kind of firearm; and
 - (b) the transferor has no reason to believe that the transferee is not authorized to acquire and possess that kind of firearm.

Read the [full article](#) by Vanessa Dedominicis of Pushor Mitchell LLP.

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

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