

Quickscribe Reporter

Toll Free: 1-877-727-6978
Phone: 1-250-727-6978
Fax: 1-250-727-6699

Email:
info@quickscribe.bc.ca

Website:
www.quickscribe.bc.ca

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QUICKSCRIBE NEWS:

New Bills Introduced

The following government Bills have been introduced since the current parliamentary session began February 13th:

- [Bill 1](#), An Act to Ensure the Supremacy of Parliament
- [Bill 2](#), Budget Measures Implementation Act, 2018
- [Bill 3](#), Tla'amin Final Agreement Amendment Act, 2018
- [Bill 4](#), British Columbia Innovation Council Amendment Act, 2018

Two non-government Bills were introduced in February:

- [M201](#), Interpretation Amendment Act, 2018
- [M202](#), Safe Care Act

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.

New Early Consolidations Page

In recent years, Quickscribe has started publishing an increasing number of early consolidations of laws as they will read when they eventually come into force. To make it easier for you to locate these special documents, a dedicated "Special Early Consolidations" page is now accessible via the left navigation. Early consolidations are displayed in red-font text and offer you a convenient way to research and print these laws that are rarely available elsewhere. Feel free to contact us if you would like us to publish an early consolidation of a law for your organization.

Latest Annotations


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

- [Margaret Mason](#), Norton Rose Fulbright LLP – [Societies Act](#)
- [Kimberly Jakeman](#), Harper Grey LLP – [Health Professions 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 LOCAL GOVERNMENT
ENERGY & MINES MISCELLANEOUS
FAMILY & CHILDREN MOTOR VEHICLE & TRAFFIC
FOREST & ENVIRONMENT PROPERTY & REAL ESTATE
HEALTH WILLS & ESTATES
LABOUR & EMPLOYMENT

Company and Finance News:

2018 Federal Budget: Tax Highlights

As anticipated, [the recent] federal budget (Budget 2018) focuses on a few targeted areas, including the taxation of passive investments made by private corporations, and does not contain any measures in response to the enactment of tax reform in the United States or relating to the OECD BEPS initiative. Significantly, Budget 2018 substantially narrows the scope of the Department of Finance's 2017 passive investment proposals. The 2017 proposals were exceedingly complex, and effectively proposed a punitive tax on income generated from investments made using after-tax business earnings of a private corporation. Budget 2018 presents a much simpler set of proposals. The principal tax changes announced in Budget 2018 of interest to the business community are summarized below.

Private Company Passive Investment Income

In 2017 the Department of Finance released a set of controversial and convoluted proposals aimed at addressing its concern that individuals who carry on business through a corporation can obtain a tax deferral advantage by retaining their after-tax business income in the corporation to make passive investments. The 2017 proposals were exceedingly complex, and effectively proposed a punitive tax on income generated from investments made using after-tax business earnings of a Canadian-controlled private corporation (CCPC) in excess of \$50,000 per year. Budget 2018 presents a much simpler set of proposals.

Read the [full article](#) by R. Ian Crosbie, Brian Bloom, Marie-Emmanuelle Vaillancourt, Elie Roth, Raj Juneja, Michael N. Kande, Paul Lamarre, Christopher Anderson, John J. Lennard and Andrew Ellis with Davies Ward Phillips & Vineberg LLP.

Sweet Relief: British Columbia Court of Appeal Upholds Mutual Cancellation and Release Agreement Between Franchisor and Franchisee

Franchisors can be reassured by a recent decision of the British Columbia Court of Appeal (*Dairy Queen Canada, Inc. v. M.Y. Sundae Inc.*) that affirmed the use of Mutual Cancellation and Release Agreements as a means to resolve franchise disputes while protecting franchisors against future claims. In a [May 2017 newsletter](#), we reported on a decision of the British Columbia Supreme Court that endorsed the use of a Mutual Cancellation and Release agreement as a means of terminating a franchise agreement. In that case, Dairy Queen Canada, Inc. (Dairy Queen), the franchisor, presented the Mutual Cancellation and Release Agreement to a franchisee that was in default of various obligations under its franchise agreement. In lieu of immediate termination, the Mutual Cancellation and Release Agreement gave the franchisee the opportunity to continue to operate for six months, during which it could sell its business, provided that the franchisee complied with the franchise agreement during the six month period. Importantly, and as its title would suggest, the Mutual Cancellation and Release Agreement contained a release of the franchisee's claims against the franchisor. Read the [full article](#) by Colin Pendrith with Cassels Brock LLP.

Competition Act and Investment Canada Act Thresholds for 2018

Certain merger notification thresholds under Canada's *Competition Act* and the foreign investment review thresholds under the *Investment Canada Act* are updated on a yearly basis. On February 10, 2018, the Federal Government published the increases for the pre-merger notification "transaction-size" threshold under the *Competition Act*, and the pre-merger review threshold under the *Investment Canada Act* for acquisitions involving Canadian businesses by state-owned enterprises controlled in World Trade Organization ("WTO") member states. The pre-merger notification "transaction-size" threshold for 2018 has increased to C\$92 million, from the 2017 threshold of C\$88 million. A proposed transaction generally requires notification to the Competition Bureau under the *Competition Act* where both of the following thresholds are exceeded:

1. **Party-size threshold:** The parties to the transaction, together with their affiliates, collectively have

assets in Canada, or gross annual revenues from sales from or into Canada, that exceed C\$400 million (this threshold remains unchanged from year to year); and,

2. **Transaction-size threshold:** The size of the specific transaction will exceed C\$92 million. In the case of asset or share transactions, this would mean that either the value of the assets in Canada of the target, or the annual gross revenues from sales in or from Canada generated from those assets, exceed C\$92 million.

Read the [full article](#) by Devin Persaud, Gregory McLean, and Denes A. Rothschild

U.S. Tax Reform to Bring Double Taxation to Some Canadians

Changes will hit those with American property, dual citizens with Canadian earnings and even needy startups hoping for VC funds from U.S. While much of the commentary on U.S. tax reform has focused on the impact on business, some nasty surprises are in store for individual Canadians, particularly those with dual citizenship or who hold a U.S. green card. "The Americans have fundamentally changed the way that foreign income is taxed for U.S. citizens and residents," says Roy Berg, director, U.S. Tax Law at Moodys Gartner Tax Law LLP. "For example, a doctor who is a dual citizen and practising in Canada and has \$2 million of accumulated earnings in a private Canadian corporation, would have a one-time U.S. tax liability of \$300,000 this year." The tax is part of the "participation exemption system" that allows income earned abroad to be repatriated to the U.S. without penalty. "What it means is that foreign income is not taxed again when it comes into the U.S.," Berg says. "That's why Google, Apple and a host of other tech companies are bringing cash back in container loads." But there is a price, now known as the "transition tax." It imposes a one-time levy on U.S. citizens and corporations who own at least 10 per cent of the vote or value of a foreign corporation, including direct, indirect or constructive ownership of such stock. "The transition tax is particularly onerous because it applies not only to cash and cash equivalents held outside the U.S., but also to non-cash assets realized from the investment of business earnings," Berg says. Read the [full article](#) in the *Financial Post* by Julius Melnitzer.

FICOM News

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

- [Information Bulletin](#) – Timelines for Statutory Approval Applications
- [Letter to CEOs/General Managers, BC Authorized Financial Institutions](#) – Information Bulletin FI-18-001: Timelines for Statutory Approval Applications
- [Pensions Information Bulletin](#) – Calculating Commuted Values for multijurisdictional formula based pension plans

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

Act or Regulation Affected	Effective Date	Amendment Information
Designated Accommodation Area Tax Regulation (93/2013)	Mar. 1/18	by Reg 5/2018
Low Income Climate Action Tax Credit Regulation (135/2008)	Feb. 20/18	by Reg 17/2018
International Business Activity Regulation (327/2004)	RETROACTIVE to Sept. 12/17	by Reg 23/2018

Energy and Mines News:

Proposed Changes to Legislation for Major Natural Resource Projects

On February 8, 2018, the federal government introduced [Bill C-69](#) which, if passed, will enact the *Impact Assessment Act* (IAA) and the *Canadian Energy Regulator Act* (CERA). The Bill also proposes amendments to the [Navigation Protection Act](#), retitling the act, broadening its scope, and increasing the number of waterways deemed navigable in Canada. As a result of recommendations from the expert panel report [Building Common Ground: A New Vision for Impact Assessment in Canada](#), the IAA will shift focus from

environmental effects of a federally regulated project to a wider assessment of project impacts on social and health aspects, economic opportunities, and cultural matters. A new Impact Assessment Agency will be established as the authority responsible for conducting impact assessments. Quickscribe has published [an early consolidation of the new IAA](#), which will replace the current *Canadian Environmental Assessment Act, 2012*. CERA, which will replace the *National Energy Board Act*, intends to create a new federal Canadian Energy Regulator to replace the National Energy Board, restructure the approval process for major natural resource projects, and enhance consultation with groups affected by development. Proposed amendments to the *Fisheries Act* were also introduced on February 6, 2018 by [Bill C-68](#). The legislation, among other things, aims to restore protections to all fish and fish habitats, support restoration of degraded habitat, and rebuild depleted fish stocks. In addition, the role of Indigenous peoples will be strengthened during the process of making habitat decisions.

2018 Federal Budget – Tax Support for Clean Energy

Canada's Finance Minister Bill Morneau delivered the government's 2018 federal budget on February 27, 2018. As part of the budget's tax proposals, the government is extending an existing tax incentive measure to encourage investment in clean energy equipment (known as Class 43.2 property) for an additional five years. The capital cost allowance system provides an accelerated capital cost allowance rate for Class 43.1 and 43.2 properties as an incentive to encourage businesses to invest in specified clean energy generation and conservation equipment. Class 43.1, which provides an accelerated capital cost allowance rate of 30% per year on a declining balance basis, is available for a variety of equipment that generates or conserves energy by:

- using a renewable energy source (e.g., wind, solar, or small hydro),
- using a fuel from waste (e.g., landfill gas, wood waste, or manure), or
- making efficient use of fossil fuels (e.g., high efficiency cogeneration systems, which simultaneously produce electricity and useful heat).

Read the [full article](#) by [Christopher Ross](#) with DLA Piper.

Site C: Behind the Decision to Proceed

Site C is a 1100-MW hydro-electric dam on the Peace River in northern British Columbia. It is being developed by BC Hydro, a British Columbia crown corporation, and has been under construction since 2014. It is costly – at the time of BC Hydro's Final Investment Decision, Site C was estimated to cost \$8.34B, with a further \$400M reserve fund held by the Province to cover unanticipated contingencies. Site C has also been controversial, arousing substantial opposition from affected First Nations, environmental groups and local landowners. With the election, in June 2017, of a new NDP government in British Columbia, Site C was referred to the British Columbia Utilities Commission, or BCUC. The BCUC was tasked to conduct an Inquiry into the costs of completing Site C as well as the costs and benefits of cancelling it. Read the [full article](#) by [Jonathan S. Drance](#), [Glenn Cameron](#) and [Rachel V. Hutton](#) with Stikeman Elliott LLP.

BC Environment Minister Unveils Oil Spill Response Paper

Pipeline operators and railways would be required to start assessing and cleaning up an oil spill within two hours if it is near a populated area or four hours anywhere else, under regulations proposed by the BC government Wednesday [February 28th]. Environment Minister George Heyman released his ministry's intention paper on the beefed-up provincial spill response regulations that he and Premier John Horgan promised to "defend BC's interests" amid the prospect of increasing oil shipments across the province. The province is now seeking public input on the measures, which, without mentioning the company, are seen as an additional barrier to Kinder Morgan's \$7.4-billion Trans Mountain Pipeline expansion project. "This is not about Kinder Morgan specifically," Heyman said in a scrum with reporters at the legislature. "This is about anyone who transports oil through the province." Read the [Vancouver Sun article](#).

BC's Bitumen Blockade: Selected Legal Options Available to Producers and Shippers

Recently, the Government of British Columbia released an announcement to consider a series of proposed measures to restrict the shipment of diluted bitumen from Alberta oil sands operations by rail or pipelines, setting the stage for a constitutional dispute. If the proposals are enacted, such regulations will directly engage federally regulated matters of interprovincial commerce as well as interprovincial trade agreements. Proponents of pipeline projects and shippers may be faced with the prospect of launching constitutional challenges to the proposed new regulations if enacted. However, recent case law suggests that other, more immediate, legal remedies may be available to prevent harm to those parties, including injunctive relief. On January 30, 2018, the British Columbia Environment and Climate Change Strategy

Minister George Heyman proposed a series of new regulations that would limit the increase of diluted bitumen transported into the province via rail and pipeline. The Minister claimed that the new regulations would impose restrictions on the increase of diluted bitumen transportation until "there is certainty about our ability to clean up a spill." The move has significant consequences for a large number of Alberta oil producers and shippers, and raises serious legal implications from a constitutional perspective. diluted bitumen, any proposed restrictions will risk conflicting with and breaching the terms and objectives of both the NWPTA and the CFTA. Read the [full article](#) by Peter Hogg, Dalton W. McGrath Q.C., and Michael O'Brien on Blakes Business Class.

Act or Regulation Affected	Effective Date	Amendment Information
Emergency Management Regulation (217/2017)	NEW Mar. 1/18	see Reg 217/2017
Emergency Management Regulation (204/2013)	REPEALED Mar. 1/18	by Reg 217/2017

Family and Children News:

You May Have to Keep Your Promises

Some people are good for their word. Others are not. Depending on the circumstances, a promise you make may not be legally enforceable. However, in the words of the outgoing Chief Justice of the Supreme Court of Canada in the recent judgment in [Cowper-Smith v Morgan](#), 2017 SCC 61, equity enforces promises that the law does not. That case involved a promise made by a sister to her brother in the context of making arrangements for the care of their elderly mother. The Court was asked to consider whether the doctrine of proprietary estoppel bound the sister to her promise after the mother's death. At a very high level, the mother's will gifted her estate equally to her three children. At some point, the mother became unable to live on her own and care for herself. One son, Max, who lived in England at the time, agreed to move back to British Columbia to live with and care for his mother in her house. Read the [full article](#) by [Predrag Tomic](#) with Field LLP.

BC Judge Orders Chinese Millionaire to Show Money to Non-wife

A BC judge has ordered a Chinese multimillionaire to provide documentation of his finances to a Vancouver woman bent on seeking spousal support in the aftermath of their short-lived Vegas wedding. Peipei Li sued Lu Hua Rao for divorce after learning he was still married to his wife in China. But not before the pair partnered on a \$20 million deal to invest in Lower Mainland real estate. One BC Supreme Court justice had already thwarted Rao's plans to have their break-up battle heard by a Chinese arbitration commission, as opposed to a Canadian divorce court. Now, another has ruled that Li both has the right to seek spousal entitlements from their split and that Rao has three weeks to provide a complete picture of his wealth. "This finding only relates to the right of the claimant to make a claim for spousal support and property division," Justice Carla Forth wrote in her decision. Read the full CBC News [article](#) by Jason Proctor.

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

Forest and Environment News:

Canadian ERA Perspectives

On February 8, 2018, the federal government introduced the [Impact Assessment Act](#) ("IAA" or "Act"), federal legislation to replace Canada's current environmental assessment legislation, the [Canadian Environmental Assessment Act, 2012](#) ("CEAA 2012"). The proposed IAA is the result of the federal government's review of the scope and process of Canada's federal environmental assessment legislation,

which began with the establishment of an external Expert Panel in August 2016. As we previously wrote, on April 5, 2017, the Expert Panel released a report that contained various recommendations to fundamentally change the federal approach to project assessment. Such recommendations included the consideration of a broader range of project impacts, the establishment of a single impact assessment agency, increased participation of Indigenous groups, and earlier participation of the public and Indigenous groups in the planning process for assessments. Many of these recommendations have been implemented in the proposed IAA. Read the [full article](#) by Peter Brady, Joanna Rosengarten and Stephanie Axmann with McCarthy Tétrault LLP.

BC MP's Bill on Wood Infrastructure Branches into Committee

After passing second reading in the House of Commons, Richard Cannings' bill suggesting Ottawa seriously consider wood structures when constructing federal buildings is moving to the committee level. Though he has previously had [a bill he tabled](#) be taken on by government as a policy, rather than going through the legislative process, Cannings, member of Parliament for South Okanagan—West Kootenay, said [Bill C-354](#) was only one of two NDP bills to pass second reading in two years. The bill saw support from all MPs outside of the Conservative Party, which voted entirely against the bill. "I knew cabinet would be behind it, but I didn't know how the rest of the caucus would feel, and I had quite a number of Conservatives lined up, but it turned out that they both whipped their vote in different directions," Cannings said. "It's a nice feeling." Cannings said the natural resources committee, on which he sits, still has yet to decide whether they will move ahead with the bill quickly or sit on it, but he said he heard from cabinet that the governing Liberal Party would like to see the bill move forward, albeit watered down. "The Liberal side and the parliamentary secretaries for public works and natural resources both brought up concerns about the strong language it has in there about giving preference and thought this might cause problems with international trade law," Cannings said. "I don't think it does, because of the language around using this test of cost and carbon footprint cost. I think that would mitigate that. In British Columbia we have the [Wood First Act](#), which does basically the same thing and no one's ever complained about it." Read the [full article](#) by Dustin Godfrey at the *Columbia Valley Pioneer* website.

Softwood Lumber Update: WTO Affirms US Methodology in Determining the Benefit Attributable to

Log Export Restrictions in Indonesia Paper as a Countervailable Subsidy

Canada's efforts to defend its controversial restrictions on the export of logs from British Columbia (LERs) took a recent blow, as a World Trade Organization (WTO) panel affirmed the United States Department of Commerce's (DoC) methodology in calculating the countervailing duties (CVDs) on coated paper from Indonesia on account of Indonesia's log export ban. Under US domestic trade policy, DoC has historically and consistently treated export restrictions on inputs as financial contributions that confer a benefit to the end product. In its decision to impose CVDs in Indonesia Paper, the DoC found that (a) through Indonesia's prohibition on log exports, it directed its harvesting companies to provide logs to pulp and paper companies at low or suppressed domestic prices (i.e. a financial contribution), and (b) to measure the benefit conferred by the export ban, it compared the domestic price paid by the paper company for logs to a benchmark price based on world prices. Although the issue of financial contribution was not before the WTO, the WTO panel found no error with the US methodology for calculating the benefit attributable to Indonesia's log export restrictions. There was no appeal. Read the [full article](#) in *The National Law Review* by Brenda C. Swick, Daniel D. Ujcz, and Dylan E. Augruso of Dickinson Wright.

Environmental Appeal Board Decisions

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

Wildlife Act

- [Kevin Newberry v. Deputy Regional Manager, Cariboo Regional Operations Division](#) [Final Decision – Appeal Dismissed]

Environmental Management Act

- [Steve Hallett and Amanda Hallett v. Regional Director](#) [Final Decision – Appeal Dismissed]

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

Act or Regulation Affected	Effective Date	Amendment Information
Logging Tax Remission Regulation (67/2009)	Feb. 20/18	by Reg 16/2018

Health News:

\$105-Million Investment to Make Prescription Medications more Affordable for Families

The British Columbia government is eliminating PharmaCare deductibles for working families with the lowest incomes in the province, helping to make sure they get the prescription medicines they need but currently are struggling to afford, Health Minister Adrian Dix announced [February 9th]. "No parent should have to make the difficult decision between their family's health and putting food on the table," said Dix. "The investment we're announcing today will make life more affordable for British Columbians, while making sure they get the care they need." The \$105 million being invested in Fair PharmaCare over three years will eliminate or reduce the deductibles for 240,000 BC families. All families with household net incomes under \$45,000 will benefit. Dix said the biggest impact will be felt by families with net annual incomes between \$15,000 and \$30,000. They will have no deductible, starting January 1, 2019. Read the full official government [news release](#).

Toxic Metals from Plastic Left on the Beach are Leaching into the Ocean's Ecosystems: BC Study

Simon Fraser University researchers say something as innocuous as a kid's toy left on a beach can play host to toxic metals that end up leaching into the ocean's ecosystems. Professor Leah Bendell and Bertrand Munier said their study shows even tiny plastic particles less than five millimetres in size can ferry traces of metals like zinc, copper and cadmium into the food chain. Munier, an environmental engineering masters student, spent four weeks picking up plastic debris from nine beaches along the Burrard Inlet last summer. He collected more than 150 pieces of plastic, including toys, earbuds, hospital bracelets, and food packaging from intertidal parts of the beach – areas underwater at high tide and dry at low tide. Tests detected traces of the metals in all of them. Read the full CBC News [article](#).

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There were no amendments this month.

Labour and Employment News:

Protection From Discrimination in Employment – to Infinity and Beyond

At the end of last year, the Supreme Court of Canada, in the highly anticipated decision of *British Columbia Human Rights Tribunal v Schrenk*, [2017 SCC 62](#) ("*Schrenk*"), addressed the following important issue: How far does protection from discrimination in the area of employment extend?

The Decision in Schrenk

The background to the *Schrenk* decision is as follows. Mr. Sheikhzadeh-Mashgoul worked for Omega and Associates Engineering Ltd. as a civil engineer on a road improvement project. Mr. Schrenk worked for Clemas Constructions Ltd. as a site foreman and superintendent on the same project.

Read the [full article](#) by [Leanne Monsma](#) with Field LLP.

A (Not So) New Test for Family Status Discrimination in British Columbia

It is often a challenge for employers to determine whether they have a duty to accommodate an employee's "family status" under human rights legislation. Adjudicators across Canada have taken different approaches to assess whether the duty to accommodate family status has been triggered. The recent BC Human Rights Tribunal decision in *Adair v. Forensic Psychiatric Services Commission (No. 2)*, [2017 BCHRT 147](#) ("*Adair*"), demonstrates that some Tribunal members continue to resist the most stringent test for complainants that is binding law in BC.

Background

Darcy Adair lost his commercial driver's license as a result of an epileptic seizure. When he returned to work, his employer, the Forensic Psychiatric Services Commission ("FPSC"), modified his schedule so that he would be assigned shifts where he was not required to have a commercial driver's license, which so happened to be primarily evening shifts.

Read the [full article](#) by [Cory Sully](#) with Norton Rose Fulbright LLP.

BCHRT Considers the Duty to Inquire as to the Presence of a Mental Disability

Generally, before an employer can be required to accommodate an employee's mental disability, the employer must know, or ought reasonably to know, that the employee has such a disability in the first place. It is usually up to the employee to inform the employer of the disability. If, however, the employer has reason to suspect a disability, the employer may have a "duty to inquire" as to whether the employee has a mental disability, before taking steps that would negatively affect the employee. A failure to make such an inquiry may lead to a finding of discrimination. The recent decision of *Hammell v. Corporation of Delta and another*, 2017 BCHRT 246, sheds helpful light on the question of whether and how the duty to inquire arises. Read the [full article](#) by [Laura DeVries](#) of McCarthy Tétrault.

High Bar for Random Drug, Alcohol Testing in British Columbia

A British Columbia arbitrator has struck down a mining company's mandatory random drug and alcohol testing program, ruling that it is an unreasonable exercise of management rights given the necessity to balance the safety and privacy interests of the parties. Following the Supreme Court of Canada's decision in *Irving Pulp & Paper*, arbitrator John Kinzie ruled in *Teck Coal Ltd. (Fording Coal and Elkview Operations) v. the United Steelworkers, Locals 7884 and 9346* that the random testing program was not justified. The decision is a disappointing one for many employers in British Columbia. Teck Coal will no longer be permitted to engage in random drug and alcohol testing of their workers at their British Columbia mining locations, barring a successful appeal of the decision. The decision is the latest development in a lengthy legal history concerning random drug and alcohol testing at Teck Coal's various British Columbia mining locations. In December 2012, Teck Coal instituted a random testing program for drug and alcohol use by its employees. The implementation of the program was opposed by the United Steelworkers who argued the program was ineffective and an unreasonable invasion of employee privacy. Read the [full article](#) by Mark Bout on *Canadian Occupational Safety*.

Act or Regulation Affected	Effective Date	Amendment Information
Workers Compensation Act	Feb. 20/18	by Reg 19/2018
	Mar. 1/18	by Reg 212/2017

Local Government News:

BC Officials Clarify Plans for Rental-only Zoning Law

Some cities in the Vancouver region are getting ready to jump on a new provincial law that will allow them to create rental-only zones. But mayors and planners say the rental-only zones – which were promised in the throne speech – won't take away current developers' rights to build condos where that possibility already exists, such as those in Burnaby's Metrotown or Vancouver's Cambie corridor who have already had their properties zoned for higher-density housing. Instead, they say they're more likely to create new rental-only zones when new area plans are designed for single-family neighbourhoods that are being densified, likely by transit hubs. "We're not doing this to downzone," said Vancouver's chief planner, Gil Kelley. Read the *Globe and Mail* [article](#).

Homes for BC

As part of its February 20 budget, the Provincial Government released a comprehensive [30-point plan for housing affordability](#) that substantially addresses numerous recommendations within [UBCM's housing report](#), *A Home For Everyone: A Housing Strategy for British Columbians*. Overall, the province's plan provides for significant new investments, policy and legislative changes to support affordability in BC. UBCM's report was structured around four policy shifts to increase the supply of affordable rental housing,

address foreign and domestic speculation, tackle homelessness, and promote collaboration amongst all levels of government. Below we examine the Province's 30-point plan within this framework: Read the UBCM [article](#).

OIPC Reviewing Local Government Video Surveillance

The OIPC issued a release on February 7, 2018, regarding its concerns about video surveillance by local governments:

<https://www.oipc.bc.ca/public-comments/2128>

The Acting Information and Privacy Commissioner states that while video surveillance is tempting to local governments to address public safety issues, there is little evidence that surveillance works. The OIPC is working with three municipalities to determine whether their recent video surveillance proposals are lawful. This is a reminder to local governments that video surveillance that collects information that can identify individuals must be compliant with the [Freedom of Information and Protection of Privacy Act](#). Before a local government spends resources to implement a video surveillance system, we recommend that local governments review the [Public Sector Surveillance Guidelines](#) prepared by the OIPC and prepare a privacy impact assessment: Read the [full blog post](#) by Carolyn MacEachern of Young and Anderson.

Local Elections Campaign Financing Guide

The [Guide to Local Elections Campaign Financing in BC for Candidates and their Financial Agents](#) is now available on the [Elections BC website](#). The Guide reflects recent legislative amendments regarding campaign contributions; discusses expenses and expense limits and other campaign finance matters related to the upcoming 2018 General Local Elections. Read the [news release](#) on the Union of BC Municipalities [website](#).

Act or Regulation Affected	Effective Date	Amendment Information
Conseil Scolaire Francophone de la Colombie-Britannique Regulation (213/99)	Feb. 14/18	by Reg 13/2018
Francophone Education Authorities Regulation (212/99)	Feb. 14/18	by Reg 13/2018
School Calendar (314/2012)	Feb. 1/18	by Reg 6/2018

Miscellaneous News:

Judicial Heavyweights Call for BC to Introduce Anti-SLAPP Legislation

A judicial who's who including two retired Supreme Court of Canada justices and a pair of former BC attorneys general are calling on British Columbia to introduce laws to deter strategic lawsuits against public participation — also known as SLAPPs. In an open letter to BC Attorney General David Eby, former NDP premier and attorney general Ujjal Dosanjh, former Liberal attorney general Wally Oppal and former Supreme Court justices Frank Iacobucci and Ian Binnie say anti-SLAPP legislation is needed to keep deep-pocketed plaintiffs from discouraging free speech by threatening critics with costly legal action.

"Defendants of SLAPPs are exposed to onerous financial and emotional costs incurred in a process that attacks their individual right to speak on matters of public interest and chills citizen engagement more broadly," says the letter, which was obtained by the CBC. "British Columbia needs to safeguard the administration of justice by enacting effective anti-SLAPP legislation." Read the CBC [article](#).

Elections BC Updates Forms

As a result of recent amendments to the [Election Act](#) affecting electoral finance rules, Elections BC updated forms in the following regulations as of February 2, 2018:

- [Third Party Sponsor Disclosure Report Regulation](#)
- [Election Financing Regulation](#)
- [Leadership Contestant Financing Regulation](#)

- [Political Party and Constituency Association Financial Reports Regulation](#)

A new regulation, [Political Party Interim Financial Report Regulation](#), was also created, introducing a form for the submission of interim financial reports by parties eligible for allowances under the *Election Act*.

Legal Services Society Publications

Explain Aboriginal Legal Rights

Because of their unique circumstances, in Canada all Aboriginal peoples have legal rights, often called Gladue rights, named from a Supreme Court of Canada [decision](#). These rights come from [section 718.2\(e\)](#) of the *Criminal Code* and the way the Supreme Court of Canada has interpreted it. The Court said the criminal justice system had failed Aboriginal peoples. It said Parliament intended section 718.2(e) to address the fact Aboriginal people are over-represented in jails and to make sure they're treated fairly when they're being sentenced by a court. The LSS booklet [Your Gladue Rights](#) provides a plain language introduction to Aboriginal peoples' Gladue rights, including the history of the Gladue case and what happens in court. Read the [full article](#) on the Provincial Court of BC *eNews*.

Act or Regulation Affected	Effective Date	Amendment Information
Third Party Sponsor Disclosure Report Regulation (431/99) (formerly titled Advertising Sponsor Disclosure Report Regulation)	Feb. 2/18	by Reg 9/2018
Election Financing Regulation (371/95)	Feb. 2/18	by Reg 9/2018
Leadership Contestant Financing Regulation (433/99)	Feb. 2/18	by Reg 9/2018
Political Party and Constituency Association Financial Reports Regulation (434/99)	Feb. 2/18	by Reg 9/2018
Political Party Interim Financial Report Regulation (8/2018)	NEW Feb. 2/18	see Reg 8/2018
Provincial Heritage Register (Chinese Canadian Heritage Properties) Regulation (10/2018)	NEW Feb. 5/18	see Reg 10/2018

Motor Vehicle and Traffic News:

Sweeping Changes Coming to BC's Motor Vehicle Tort System

After months of speculation, BC's Attorney General introduced [changes to the province's motor vehicle tort system](#). The main changes include:

- A \$5,500 cap on minor injuries;
- Doubling of mandatory accident benefits (Part 7); and
- The use of the Civil Resolution Tribunal to resolve some disputes.

The cap is a tool that is already available in other jurisdictions. The increase in Part 7 benefits will require out-of-province insurers that are signatories to the PAU (Power of Attorney and Undertaking for Motor Vehicle Liability Insurance) to match benefits. Read the [full article](#) by [Raman Johal](#) of Clark Wilson LLP.

BC Ride-hailing Report Paves Way for Service Later this Year

Josée Ménard likes riding the HandyDart and is grateful that Vancouver cab companies have accessible vehicles in their fleets. But after ride-hailing services gained unanimous support from an all-party committee in the BC legislature on Thursday [February 15th], Ménard, who has progressive multiple sclerosis and uses a motorized wheelchair, said she hopes transportation network firms like Uber and Lyft

make inroads to the province as soon as possible. The 57-year-old Vancouver resident said she has concerns about safety and accessibility, but would welcome a transportation option for those frequent times when a wheelchair-accessible taxi or HandyDart isn't available. "It fills up a big supply-and-demand (issue), so I think as long as everybody makes it safe, it just becomes another taxi company, basically," she said. Read the *Vancouver Sun* [article](#).

Court Dismisses "Low Velocity Impact" Collision Claims in Part Based on Foreseeability

In *Greenway-Brown v. Kyung*, the Plaintiff was involved in 5 separate collisions and alleged injury. The Court dismissed two of the claims based on liability. Of the remaining 3 the Court found that the Plaintiff did not meet her burden in proving injury. Interestingly, the Court then went even further and noted that as a matter of law it is not foreseeable that someone will suffer injury in a low velocity impact collision in a parking lot. This seems to [contradict the reasoning from the BC Court of Appeal](#) and [numerous other so-called low velocity impact prosecutions](#). In any event, Mr. Justice Macintosh provided the following reasons extending the Mustapha reasoning to low velocity collisions: Read the full article by [Erik Magraken](#) with McIsaac and Company.

Act or Regulation Affected	Effective Date	Amendment Information
Lien on Impounded Motor Vehicles Regulation (25/2015)	Mar. 1/18	by Reg 14/2018
Motor Vehicle Act Regulations (26/58)	Feb. 7/18	by Reg 11/2018
Offence Act	Mar. 1/18	by 2017 Bill 12, c. 17, sections 2 to 12 only (in force by Reg 18/2018), Public Safety Statutes Amendment Act, 2017
Offence Act Forms Regulation (422/90)	Mar. 1/18	by Reg 18/2018
Special Direction IC2 to the British Columbia Utilities Commission (307/2004)	Feb. 2/18	by Reg 7/2018
	Feb. 26/18	by Reg 22/2018
Violation Ticket Administration and Fines Regulation (89/97)	Mar. 1/18	by Reg 18/2018

Property and Real Estate News:

BC Budget 2018 – Real Estate Highlights

On February 20, 2018, the Hon. Carole James, Minister of Finance and Deputy Premier, introduced the 2018 British Columbia Provincial Budget. Included in the Budget was the NDP's [30-point plan for housing affordability in British Columbia](#). Included in this 30-point plan are the following measures:

- 1. New Speculation Tax.** In Fall of 2018, the Province will introduce a new speculation tax on residential property. The tax will target foreign and domestic speculators who pay little or no income tax in British Columbia. Primary residences and long term rentals will generally be exempted. The tax will apply to the Metro Vancouver, Fraser Valley, Nanaimo and Capital Regional Districts, and Kelowna and West Kelowna. The tax rate will be 0.5% of taxable assessed value for the 2018 tax year and 2% thereafter.
- 2. Property Transfer Tax Increase on Residential.** Effective February 21, 2018, Property Transfer Tax on residential properties has been increased from 3% to 5% on the portion of the fair market value greater than \$3,000,000.
- 3. Foreign Buyers' Tax Increase.** Effective February 21, 2018, the foreign buyers' tax (also known as the additional property transfer tax) has been increased from 15% to 20%. This tax has also been

extended outside of the Lower Mainland to include the Capital Regional District, the Fraser Valley, the Central Okanagan and the Nanaimo Regional District (though there will be a short grandfathering period for transactions in these regions).

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

BC Supreme Court Holds that Strata-property Nuisance Dispute is within the Civil Resolution Tribunal's Jurisdiction

In a dispute that the court characterized as "extraordinarily heavy weather . . . made out of a common residential noise complaint," the Supreme Court of British Columbia has dismissed an application under [section 12.3](#) of the *Civil Resolution Tribunal Act* for an order that it wasn't in the interests of justice and fairness that the Civil Resolution Tribunal resolve a strata-property claim.

Background to the Application

The parties in *Yas v Pope*, [2018 BCSC 282](#), were involved in interlocking claims before the tribunal, which the court described as follows:

Read the [full article](#) by Kevin Zakreski with BCLI.

Changes to Property Transfer Tax and APTT (Foreign Buyers Tax) Effective February 21st

Changes to the Province's Property Transfer Tax system have been some of the most highly anticipated aspects to the [2018 BC NDP Budget](#). At first glance based on the Budget and the corresponding [Homes for BC – A 30-Point Plan for Housing Affordability in British Columbia](#), the Province has not taken immediate steps to apply PTT to beneficial transfers of land (i.e. those where a Form A Transfer is not filed with the Land Title Office). However, the Province seems to be setting the stage for potential changes to this landscape in the time ahead.

Tracking Beneficial Ownership

Starting [February 21], the Province will require additional information about beneficial ownership on the Property Transfer Tax Return submitted with every Form A Transfer at the Land Title Office. This is an expansion on the additional information the Province began collecting in 2017 on PTT Returns. A registry setting out beneficial ownership of land in BC will also be established and made publicly available; this registry will be administered by the [BC Land Title Survey Authority](#).

Read the [full article](#) by [Sarah Jones](#) with Clark Wilson LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Property Transfer Tax Regulation (74/88)	Feb. 21/18	by Reg 21/2018

Wills and Estates News:

Finding the Will Maker's (Hidden) Intention

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

In this paper, Andrew S. MacKay of Alexander Holburn Beaudin + Lang LLP discusses the court's discretion to dispense with the statutory requirements of will execution where there has been partial or substantial compliance with the formal requirements. Click [here](#) to view a pdf version of the paper.

Canadian Courts Espouse Different Tests for Recognizing Spouses

Under BC's *Wills Estate and Succession Act*, SBC 2009, c 13 ("WESA"), a spouse has an interest in a deceased's estate if the deceased dies without a will. Furthermore, a spouse has standing to challenge the distribution of assets which pass through a deceased's estate using a wills variation claim. As such, when individuals plan their estates, it is critical to determine whether they are in a spousal relationship. According to [section 2](#) of WESA, an individual is deemed to be a spouse if the individual and the deceased were either married to each other, or lived with each other in a marriage-like relationship for at least two years. Although the statute appears clear on its face, the recent decision of *Re Connor Estate*, [2017 BCSC 978 \[Re Connor\]](#) calls that seeming clarity into question. Read the [full article](#) by [Mark Weintraub, Q.C.](#),

[Michael Wilson](#) of Clark Wilson LLP.

Mental Capacity Is a Legal Test, Not Medical
The test for testamentary mental capacity is a legal test and not a medical test.

It is very common in testamentary capacity cases to have a conflict not only between the evidence of the medical practitioners, but also between the evidence of the medical experts, lay witnesses, and the lawyer who prepared and witnessed the will. The decision of *Laszlo v. Lawton*, 2013 BCSC 305, contains and improves the following statements of law relating to testamentary capacity: Testamentary capacity is not a medical concept or diagnosis, it is a legal construct. Accordingly, scientific or medical evidence, while important and relevant, is neither essential nor conclusive in determining its presence or absence. Indeed the evidence of lay witnesses often figures prominently in the analysis. Where both categories of evidence are adduced, it is open to the court to accord greater weight to the lay evidence than to the medical evidence, or reject the medical evidence altogether. *O'Neill v. the Brown Estate*, 1946 SCR 622. Read the [full article](#) by [Trevor Todd](#) on his blog *disinherited – Estate Disputes and Contested Wills*.

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

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