

Quickscribe Reporter

Vol: XVII – Issue: I – January 2018

QUICKSCRIBE NEWS:

Parliament Resumes February 13th

The spring session of the Legislative Assembly will resume on Tuesday, February 13th. Quickscribe intends to publish a number of early consolidations again this session, so stay tuned.

A reminder that if you would like to track the progress of new bills this session, or track proposed changes to laws that matter most to you, please feel free to make use of our [BC Legislative Digest](#) tracking tool.

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](#)
- [Eileen Vanderburgh](#), Alexander Holburn + Lang LLP – [Privacy Act](#)
- [Murray Campbell](#), Lawson Lundell LLP – [Pension Benefits Standards Act](#), [Pension Benefits Standards Regulation](#), 71/2015
- [Melanie Harmer](#), McMillan LLP – [Adoption Act](#), [Crime Victim Assistance Act](#)
- [Debby Cumberland](#) – [Business Corporations Act](#)
- [Anita Mathur](#), BC Oil & Gas Commission – [Emergency Management Regulation](#), 217/2017

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 & FINANCE

Company and Finance News:

Litigation Notes on Bitcoin and Other Cryptocurrencies

Cryptocurrency is evolving and with that, a plethora of legal issues are likely to arise. That will undoubtedly create the requirement for courts to apply not only new remedies to address claimed wrongdoings related to cryptocurrency transactions but, in addition, the use and expansion of existing remedies.

What is Bitcoin?

Bitcoin is perhaps the most widely known cryptocurrency. In 2009, Bitcoin was created as an open-source, peer-to-peer digital currency, meaning the control and computer code is open to public view, transactions do not require a third-party intermediary and it's electronic, with no physical manifestation. The Bitcoin system is private, without any central controlling person or entity. The network is completely decentralized, with all parts of transactions performed by system users. While Bitcoin offers users the advantages of lower transaction costs, long-term protection of loss of purchasing power from inflation and increased privacy, it also has a number of disadvantages, including uncertain security from theft and fraud.

Read the [full article](#) by [Dalton W. McGrath](#), Q.C. with Blake, Cassels & Graydon LLP.

Cross-border Deals Surged to a 10-year High in 2017

There was no shortage of mergers and acquisitions in 2017 as the elevated confidence of U.S. private equity firms spurred one of the highest volumes of Canada-U.S. deals in recent memory.

And there was more to the high volume of activity than private capital: Canada's red-hot economy, an improving commodities market and the still-low Canadian dollar led to a surge in deals over the year.

But private equity was still king in 2017, pouncing on attractive transactions – and creating a boon for legal firms in the process.

"You have a lot of capital in the markets chasing a finite number of deals," said Manny Pressman, chair of the corporate department at Osler, Hoskin & Harcourt LLP in Toronto. "So it's become increasingly competitive for the private equity sector to source deals and invest in deals – and that is their raison d'être."

U.S. financial buyers were responsible for US\$11.2 billion in acquisitions of Canadian firms in 2017, the highest level since 2007 when it reached US\$16.5 billion, according to McCarthy Tétrault LLP. In terms of the volume of deals, U.S. buyers completed 134 acquisitions of Canadian companies in 2017, the second-highest in the last 10 years. Read the full *Financial Post* [article](#) by Jesse Snyder.

Securities Regulators Sign MOU with Gibraltar Financial Services Commission

Managers of alternative investment funds involved in cross border operations and activities in the European Union and Canada should take note that a supervisory [Memorandum of Understanding](#) (MOU) has been entered into between the Gibraltar Financial Services Commission and the securities regulators in Ontario, Quebec, Alberta, and British Columbia.

The intent of the MOU is to enable the parties to consult, cooperate and exchange information in connection with the supervision and oversight of entities that operate on a cross border basis through on-going informal and oral consultations supplemented by more in-depth cooperation. Read the [full article](#) by Stikeman Elliot.

Taxation Legislation Updated

Effective January 1, 2018, the [Budget Measures Implementation Act, 2017](#) brought changes to various taxation legislation, implementing some of the tax measures that are part of the Budget 2017 Update. Included are amendments to the [Income Tax Act](#), which increase the general corporate tax rate from 11 percent to 12 percent, and the rate on personal income over \$150,000 to 16.8 percent from 14.7 percent. The [Provincial Sales Tax Act](#) was also amended by reducing the provincial sales tax on electricity to 3.5 percent, the first step towards fully phasing out this tax. The bill also made amendments to the [Motor Fuel Tax Act](#) by exempting natural gas from the motor fuel tax on locomotive fuel, and to the [Tobacco Tax Act](#) by increasing the tax rate on cigarettes and loose tobacco.

BC Securities – Policies & Instruments

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

- [21-322](#) – CSA Staff Notice 21-322 *Applicability of Regulation to the Operation of MTFs or OTFs in Canada*
- [23-321](#) – CSA Staff Notice 23-321 *Order Protection Rule: Market Share Threshold for the period April 1, 2018 to March 31, 2019*

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

FICOM News

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

- [Pensions Information Bulletin](#) – Termination Expense Assumption
- [Letter to CEOs/Finance Managers, BC Credit Unions](#) – Residential Mortgage Loans Report and Completion Guide - Revised

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

Act or Regulation Affected	Effective Date	Amendment Information
Designated Accommodation Area Tax Regulation (93/2013)	Jan. 1/18	by Reg 181/2017
Income Tax Act	Jan. 1/18	by 2017 Bill 2, c. 12, sections 16, 18, 20, 26, 27, 30, 43, 47, and 48 only (in force by Royal Assent), Budget Measures Implementation Act, 2017
Pooled Registered Pension Plans Act	Jan. 29/18	by 2017, Bill 13, c. 14, section 2 only (in force by Reg 4/2018), Pooled Registered Pension Plans Amendment Act, 2017
Pooled Registered Pension Plans Regulation (101/2016)	Jan. 29/18	by Reg 4/2018
Provincial Sales Tax Act	Jan. 1/18	by 2017 Bill 2, c. 12, sections 70 and 72 only (in force by Reg 213/2017), Budget Measures Implementation Act, 2017
Tobacco Tax Act	Jan. 1/18	by 2017 Bill 2, c. 12, section 76 only (in force by Reg 213/2017), Budget Measures Implementation Act, 2017

ENERGY & MINES

Energy and Mines News:

2017 Year in Review: Top 10 Judicial Decisions and Trends of Import to the Canadian Energy Industry

In 2017, Canadian courts released an unusually large number of decisions affecting the energy industry directly.

The Alberta Court of Appeal rendered the much-awaited Redwater decision, confirming the right of a trustee in bankruptcy to disclaim uneconomic assets of a bankrupt debtor. The impact of this decision has been felt throughout the upstream and midstream oil and gas industry, as the Alberta Energy Regulator has required licensees to provide much more information and to be much more financially stable. An appeal to the Supreme Court of Canada was granted, and the industry is on tenterhooks awaiting the result.

Other crucial decisions of 2017 touched upon a wide variety of issues including:

- clarifying the Crown's duty to consult First Nations as part of the project approval process;
- the definition of "Working Interest" under oil and gas contracts;

- the interaction among rights of first refusal, contractual language, and the duty of good faith under a contract;
- the application of intellectual property principles to oil and gas technology;
- ongoing disputes between oil and gas operators and their partners, especially in regards to set-off;
- an energy regulator's liability for damages under the [Canadian Charter of Rights and Freedoms](#);
- liability for matters carried out by affiliates in other jurisdictions;
- personal liability of corporate directors for oppression; and
- the deference owed to arbitration panels, an increasingly important dispute resolution forum for the energy industry.

Read the [full article](#) by [Miles Pittman](#); [Michael A. Marion](#); [Raminder Arora](#); [Alan L. Ross](#); [Karen A. Salmon](#); [Rick Williams](#) with Borden Ladner Gervais LLP.

Mining Company Asks Supreme Court to Hear Its Challenge to Allegations of Human Rights Abuses in Eritrea

Nevsun Resources, a British Columbia mining company, has asked the Supreme Court to hear its appeal from a recent BC ruling that would send the human rights claims of a group of Eritrean plaintiffs towards trial.

The plaintiffs allege that the company was complicit in torture, slavery, forced labour, and other human rights abuses at its Bisha mine in Eritrea. The company strongly denies liability for the claims. This is the latest instance of foreign litigants seizing on a fast-evolving area of law that seeks to hold transnational businesses liable for abuses of human rights committed abroad.

In late November 2017, the BC Court of Appeal issued lengthy reasons that allowed the plaintiffs to proceed toward trial of their claim in the British Columbia courts. The company has just filed an application for permission to appeal to the Supreme Court of Canada. Read the [full article](#) by Milos Barutciski, Andrew D. Little and Josh Scheinert of Bennett Jones LLP.

British Columbia Announces New Regulations that May Stop Trans Mountain Pipeline Expansion

On January 30, 2018, the British Columbia Minister of Environment and Climate Change Strategy [announced](#) that the province would introduce new regulations that will stop pipeline companies from increasing bitumen shipments. The justification for the new regulations is to give the province time to undertake studies and implement appropriate standards for spill response plans.

As highlighted in news reports, a practical effect of any such regulations would be to stop the planned expansion of the Trans Mountain pipeline.

In 2013, Kinder Morgan applied to the National Energy Board (NEB), seeking an expansion of the 1,150-kilometre Trans Mountain pipeline that runs from Edmonton, Alberta to Burnaby, British Columbia. The expansion would nearly triple the pipeline's capacity from 300,000 to 890,000 barrels per day. The NEB undertook a lengthy review process culminating with a May 2016 Report. Subsequently, in November 2016, the federal government issued its approval of the project, setting out 157 conditions to be met.

While the Trans Mountain expansion project approval continues to be subject to numerous legal challenges, the NEB is now proceeding with detailed route hearings for the project. The proposed new regulations from the BC government seek to interrupt the project – this is made clear in statements by BC Environment Minister George Heyman. Read the full [Energy Insider article](#) by David Stevens of Aird and Berlis.

Canada Unveils Framework for National Clean Fuel Standard

The Environment and Climate Change Canada (ECCC) recently released the [regulatory framework](#) outlining the proposed design of Canada's Clean Fuel Standard (Standard), a critical element of Canada's climate strategy that is designed to drive clean growth and reduce greenhouse gas (GHG) emissions.

Overview

The Standard will be implemented by way of a regulation that will be put in place under the [Canadian Environmental Protection Act, 1999](#). Its goal is to help achieve Canada's GHG mitigation target of a 30 per cent emission reduction below 2005 levels by 2030, established as part of Canada's participation in the Paris Agreement and as part of the federal government's commitments under the Pan-Canadian Framework on Clean Growth and Climate Change, published by ECCC in December 2016. By 2030, ECCC expects the Standard will help reduce GHG emissions by 30 million tonnes annually.

Generally, the Standard will require producers, importers and distributors to reduce the carbon intensity (or the "carbon footprint") of fuels. Carbon intensity is the measure of GHG emissions associated with production, processing, distribution and use of a fuel. The Standard will set different pollution-reduction targets for gaseous, liquid and solid fuels and will also establish various compliance mechanisms for parties who must comply with the Standard.

Read the [full article](#) by [Anne-Catherine Boucher](#) and [Grace Smith](#) of Blake, Cassels & Graydon.

20 Months Remain to Lay Charges in Mt. Polley Mine Dam Collapse

The clock is counting down on the time remaining to lay environmental charges in Imperial Metals' Mount Polley mine dam failure, which took place nearly 3½ years ago in the BC Interior.

One of the largest mining-dam failures in the world in the past 50 years, it shook the industry and caused concern among the public, First Nations and environmental groups that aquatic life would be harmed, particularly salmon that use the Quesnel Lake system to spawn.

The three-year deadline to lay charges under BC's environmental laws passed last summer. Under federal law, there is a five-year window to lay environmental charges, leaving 20 months to do so.

The BC Environment Ministry said Friday [January 12th] that a joint investigation of the BC conservation officer service and federal officers continues but could not provide information on when the investigation was expected to be complete.

"BC's conservation officer service will continue to work actively alongside federal agencies on this complex and thorough investigation," environment minister spokesman David Karn said in a written statement. "In general, the length of an investigation is dependent upon the complexity of the occurrence and the amount of information that needs to be gathered and considered. Be assured that both levels of government are committed to a thorough investigation within the timeframe of the federal statute of limitations," said Karn.

Penalties can be far more significant under federal legislation, specifically the *Fisheries Act*, than under provincial legislation, noted Karn. The federal Environment Department did not respond to a request for comment. Read the full *Vancouver Sun* [article](#) by [Gordon Hoekstra](#).

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

FAMILY & CHILDREN

Family and Children News:

Master Keighley's Top 10 List

from CLEBC website – Practice Points

In this paper, Master Peter Keighley of the Supreme Court of British Columbia discusses his top 10 tips for lawyers and legal support staff preparing documents for family law chambers applications. Click [here](#) to view a pdf version of the paper.

Targets Set for Minister of State for Child Care

The [Minister of State for Child Care Expected Results for the 2018/2019 Fiscal Year Regulation](#) came into force on January 18, 2018. The regulation sets out the performance targets specified by the Treasury Board, which the Minister of State for Child Care must achieve in order to be paid the 10 percent holdback on salary as required under the [Balanced Budget and Ministerial Accountability Act](#). The expected results include implementation of a plan for universal child care, and putting into effect BC's actions under the Multilateral Entry Learning and Child Care Framework agreement with the federal government.

Finding the Best Ways Forward: Report on the Symposium on Children's Participation in Justice Processes

In mid-September 2017, the [Canadian Research Institute for Law and the Family](#) and the Alberta [Office of the](#)

[Child and Youth Advocate](#) ("OCYA") hosted an innovative two-day national symposium on children's participation in justice processes in Calgary, Alberta. The symposium brought together leading stakeholders from across Canada, including judges and lawyers, mental health professionals, and government justice employees to talk about how children and youth are heard, how their interests are protected and how their evidence is received in justice processes. The symposium was intended to generate innovative proposals for policy reform, best practices, and recommendations for future research about children's participation in justice processes. As would be expected, the older the child was, the more likely respondents were to report that their preferences should be weighed heavily.

The symposium included important plenary presentations by keynote speakers Sheldon Kennedy, the lead director of the [Sheldon Kennedy Child Advocacy Centre](#), and Dr. Nicole Sherren, the scientific director and senior program officers of the [Palix Foundation](#), as well as Del Graff, the Alberta Child and Youth Advocate, the OCYA's youth panel and the Honourable Kathleen Ganley, Alberta Minister of Justice and Solicitor General. Read the full *LawNow* [article](#) by [John-Paul Boyd](#).

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

FOREST & ENVIRONMENT

Forest and Environment News:

Truck Driver Shortages Hitting Canada's Forest Products Sector

A shortage of truck drivers is hampering the country's forest sector as shipments have been delayed and at least one producer was forced to slow production because of a lack of wood chips. Weyerhaeuser Co. chief executive Doyle Simons said Friday [February 2nd] that availability of transportation services has been a challenge, especially in the past quarter.

"We, like other companies, are, in fact, seeing that type of tightness," he said during a conference call about the company's results. Simons said the company faced truck and rail disruptions, mainly in December, and took a US\$10 million to US\$15 million hit in the fourth quarter. Read the *Financial Post* [article](#).

Will 2018 be the Year British Columbia Enacts Species-at-Risk Legislation?

Despite being Canada's most biologically diverse province and the home of some of Canada's most vocal environmental advocates, BC does not have any provincial species-at-risk legislation. In 2017 opposition MLAs introduced three private member bills regarding species-at-risk (SAR) legislation in the Legislative Assembly, but none were advanced under the Liberal government.

Under the previous Liberal government Andrew Weaver of the BC Green Party tabled a private member's bill introducing the [Endangered Species Act, 2017](#) (ESA #1) for first reading on February 27. On February 28, George Heyman (now minister of environment and climate change strategy) of BC's New Democratic Party tabled a private member's bill introducing the [Species at Risk Protection Act, 2017](#) (SRPA). Neither of these bills progressed beyond first reading prior to the dissolution of BC's Liberal government on April 11, 2017. On November 6, under BC's new NDP government, Andrew Weaver again tabled a private member's bill to introduce the [Endangered Species Act, 2017](#) (ESA #2).

Weaver's ESA #2, which received minor amendments prior to being re-introduced in November, purports to be based on Ontario's *Endangered Species Act*, the American federal *Endangered Species Act*, and [SAR legislation](#) that was tabled by the BC NDP in 2011. Read the [full article](#) by [Max Collett](#) of Norton Rose Fulbright.

Embracing Continuous Improvement through Effectiveness Monitoring

When the [Forest and Range Practices Act](#) (FRPA) was enacted in 2004, it was a new type of resource legislation that provided freedom for professionals to manage within the bounds of objectives established by government for 11 forest values. However, there were strings attached to this new freedom to manage. Effectiveness monitoring would evaluate how well government's objectives for the 11 values are being achieved and

professionals would embrace the ongoing "Plan, Do, Check, Act" cycle of continuous improvement to adjust and improve practices. The Forest Practices Board just published its report on government's program for monitoring the effectiveness of forest and range practices – the *Forest and Range Evaluation Program* (FREP). The Board's evaluation looked at how well the program has been implemented, using a standard outcome-based evaluation approach. Read the [full article](#) by Doug Wahl and Darlene Oman of the Forest Practices Board, published in the January-February edition of the *BC Forest Professional Magazine*.

Act or Regulation Affected	Effective Date	Amendment Information
Park Act	Jan. 30/18	by 2012 Bill 25, c. 9, section 16 only (in force by Reg 233/2017), Miscellaneous Statutes Amendment Act, 2012
Park, Conservancy and Recreation Area Regulation (180/90)	Jan. 30/18	by Reg 233/2017

HEALTH

Health News:

Statement on Generics 2.0: Reduced Generic Drug Pricing

Health Minister Adrian Dix has issued the following statement regarding Generics 2.0: Reduced generic drug pricing:

"British Columbia is a proud member of the pan-Canadian Pharmaceutical Alliance and held a leading role in negotiating reduced national drug pricing that led to the latest Generics 2.0 announcement. It's a new, jointly developed five-year initiative that will result in nearly \$3 billion of savings across the country. This is expected to save BC approximately \$110 million over the span of the initiative.

"The national reduction in drug pricing means people throughout the province and country will benefit from more affordable access to generic prescription medications. "Coming into effect on April 1, 2018, these savings will help drug plans like PharmaCare expand coverage for the people who need them the most." Read the full government [news release](#).

New Report Finds Flaws with Mental Health Act

New research on the BC [Mental Health Act](#) detention system funded by the Law Foundation of British Columbia has been published by the Community Legal Assistance Society. The report, [Operating in Darkness: BC's Mental Health Act Detention System](#), documents significant issues with the administrative system for mental health detention in BC and makes recommendations for reform to law, policy, and practice to address inefficiencies, unfairness, and Charter rights deprivations for individuals in BC with mental disabilities. In [a statement of support issued by the Canadian Bar Association – BC Branch](#), President Bill Veenstra stated: "If these changes are implemented, it will help ensure that our most marginalized populations will have transparent and adequate access to legal representation. We look forward to our provincial government making the necessary changes to the system so that it serves all our citizens." Sources: [CBABC](#), [CLASBC](#)

MSP Premium Rate Cut

Effective January 1, 2018, [B.C. Reg. 208/2017](#) amended the [Medical and Health Care Services Regulation](#) to reduce British Columbians' MSP premiums by 50%. In addition, the income threshold for full exemption from premiums under the premium assistance program was raised by \$2,000. These changes represent the first step towards the elimination of MSP premiums in BC.

Act or Regulation Affected	Effective Date	Amendment Information
Medical and Health Care Services Regulation (426/97)	Jan. 1/18	by Reg 208/2017

LABOUR & EMPLOYMENT

Labour and Employment News:

BC Supreme Court Awards Aggravated Damages in the Absence of Medical Evidence

In the wrongful dismissal case, *Ensign v. Price's Alarm Systems*, [2017 BCSC 2137](#), the British Columbia Supreme Court made an aggravated damages award in the absence of any medical evidence of psychological distress arising from the termination of the Plaintiff's employment. This is a departure from the approach the BC Courts have generally taken in the past.

Background

The Plaintiff, Mr. Ensign, was a 63-year-old salesman. He worked for Price's Alarm Systems (the "Employer") for 12.5 years, having never signed an employment agreement. The Employer terminated Mr. Ensign's employment by providing him with two months' working notice. After providing notice of termination of employment, the Employer made three offers to re-employ Mr. Ensign in different positions and under different terms. He refused all of the offers, and sued the Employer for wrongful dismissal.

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

B.C. Court of Appeal Confirms Income from a Second Job can be Mitigation Income

In *Pakozdi v. B & B Heavy Civil Construction Ltd.*, [2018 BCCA 23](#), the B.C. Court of Appeal has provided guidance on the law of mitigation in relation to income earned by dismissed employees from a side or second job following termination by the other employer.

The plaintiff in *Pakozdi* was a bid estimator in the construction industry. He had his own business as a private consultant. He began contracting with the defendant B&B Heavy Civil Construction Ltd. ("B&B") as a bid estimator and, a short time later, joined B&B as an employee. With B&B's knowledge, the plaintiff continued to provide consulting services to other companies. After a year's employment, the plaintiff was terminated and given two weeks notice. He commenced an action for wrongful dismissal. Read the [full article](#) by [Rodney Sieg](#) with Harris & Company LLP.

How to Protect Trade Secrets Following the Departure of a Key Employee

Workforce mobility is constantly on the rise and it reminds employers that, in many cases, their employees' know-how figure among their company's most significant assets. This realization is accompanied by an important consideration, namely that employers must constantly remember that their company could suffer should an employee choose to leave them and work for a competitor.

Indeed, the times when employees refrained from joining the ranks of a competitor by virtue of their unflinching loyalty toward their employer are long gone. Workforce mobility has now gone from the exception to the norm, and employers must consequently manage and protect their trade secrets.

Courts have recognized the fundamental value of the corporate assets that are trade secrets, as well as the corollary obligation of employees to respect their confidential nature.

Labour laws will generally define trade secrets as a form of confidential information to which an employee may have access within the scope of their duties. However, not all confidential information constitutes a trade secret. For example, a trade secret is a secret manufacturing formula or process that is unique to the employer and that was revealed in secrecy to the employee for the sole purpose of having the latter manufacture whatever it is that can be made with this secret. Read the [full article](#) by [Josée Gervais](#), partner with Gowling WLG.

Technical Safety BC Following up with Ammonia Facilities

Technical Safety BC has been working with the refrigeration industry to help prevent ammonia exposure.

The self-funded organization, formerly known as BC Safety Authority, has been regularly reaching out to ammonia facilities to raise awareness about the dangers and prevention of accidental ammonia release incidents to focus on incident prevention and the reduction of safety risks.

Currently, Technical Safety BC is in the process of following up with facilities that have not yet complied with the

new coolant testing and reporting requirements. Enforcement actions are one of the tools used when working with industry to reduce safety risks.

The [Safety Standards Act](#) empowers Technical Safety BC to take several enforcement actions if they discover safety issues, regulatory non-compliances or find that any technical systems or equipment might pose a risk to workers or the public. Read the *Canadian Occupational Safety* [article](#).

Appeal of the Lower Court Decision to Dismiss a Judicial Review Petition Due to Failure to File on Time is Dismissed

Denton v. British Columbia (Workers' Compensation Appeal Tribunal), [2017] B.C.J. No. 2348, [2017 BCCA 403](#), British Columbia Court of Appeal, November 23, 2017, E.A. Bennett, D.C. Harris, J.E.D. Savage JJ.A.

Ms. Denton, the appellant, had left work due to depression and anxiety. She claimed for compensation from the Worker's Compensation Board. The Board denied her claim by finding that her mental stress was related to employer decisions concerning reorganization, workload and working conditions, which forms an exception to the compensation for mental disability claims. Ms. Denton appealed to the Board's Review Division. The Review Division dismissed, as there was not traumatic event or significant stressor as required by the [Act](#) and concomitant Policy. Read the [full article](#) by [Kelsey A. Rose](#) of Harper Grey LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Jan. 1/18	by Reg 193/2017
Occupational Health and Safety Regulation (143/2017)	Jan. 1/18	by Reg 143/2017

LOCAL GOVERNMENT

Local Government News:

Housing Strategy Report

A new [housing strategy](#) from the Union of BC Municipalities (UBCM) is calling upon all levels of government to take action to address the issue of housing affordability. The strategy supports the provincial goal of constructing 114,000 new units over ten years; actions to mitigate the impact of foreign and domestic speculation; and policies aimed at preventing homelessness.

A special committee drawn from local government, the academic community, not-for-profit sector and the housing industry developed the report, *A Home for Everyone: A Housing Strategy for British Columbians*. The strategy characterizes the current housing situation in British Columbia as a "crisis", and states that all levels of government have failed to fully gauge the magnitude of the issue. Read the UBCM [article](#).

Province Changes Liquor Event Policy

The provincial government has amended its policy regarding Special Event Permits (SEP). General Managers may exempt SEP holders from donating profits to a charitable purpose if events are deemed to be of municipal, provincial, national or international significance. Local governments will be responsible for determining whether a proposed event is municipally significant.

Previously, if a SEP holder charged over the liquor cost recovery price list, all profits had to be transferred to a charitable purpose. Under the new policy, the General Manager may exempt SEP holders from donating event profits to a charitable purpose if events are deemed to be of municipal, provincial, national or international significance. While the Province will consider exemption requests for events that are provincially, nationally or internationally significant, local governments will be responsible for determining whether a proposed event is municipally significant. Read the UBCM [article](#).

BC Unveils Pot Plans: Marijuana to be Sold in Standalone Government Stores, Separate from Liquor

The BC government has begun filling in the details surrounding its plans for regulating and selling non-medical marijuana, but is cautioning it will take some time for a clearer picture to form.

"There are many key policy areas where decisions still have to be made," said Solicitor General Mike Farnworth, in announcing the proposed rules. "July 2018 is only the beginning. All governments will have to assess and refine cannabis policy in the months and years to come."

Most notably, liquor stores will not be allowed to sell cannabis, with the BC Liquor Distribution Branch (LDB) creating and operating a new standalone network of public retail stores. The legal age of possession will be 19, with adults allowed to possess up to 30 grams of non-medical cannabis. Read the [full article](#) on *CBC News*.

Act or Regulation Affected	Effective Date	Amendment Information
Liquor Control and Licensing Regulation (241/2016)	Jan. 23/18	by Reg 241/2016, section 212 (2)

MISCELLANEOUS

Miscellaneous News:

British Columbia Supreme Court Rejects "File, Smile and Certify" Approach to Class Actions

The British Columbia Supreme Court (Court) recently dismissed the plaintiff's application for class certification in [Ewert v. Nippon Yusen Kabushiki Kaisha \(Ewert\)](#), holding that certification is not simply a "file, smile and certify" exercise in which defendants can be forced into onerous and complex class action litigation on a "wing and a prayer", without meeting the low threshold required. The plaintiff in *Ewert* alleged that the defendant shipping companies engaged in anti-competitive pricing practices that harmed the purchasers of vehicles and heavy equipment. Justice Myers refused to grant certification, finding that the plaintiff had failed to establish that harm could be shown on a class-wide basis in accordance with the requirements of [section 4\(1\)\(c\)](#) of the [Class Proceedings Act](#).

Background

The plaintiff alleged that the defendants overcharged vehicle and heavy equipment manufacturers to ship their vehicles to Canadian distributors on the defendants' "roll-on/roll-off" maritime vessels. These distributors sold the vehicles to dealers and large fleet owners such as car rental companies. In turn, the dealers sold the vehicles to consumers. The plaintiff asserted that the defendants' overcharges had been passed down the distribution chain to consumers and asserted claims based on alleged breaches of the [Competition Act](#), civil conspiracy, and unjust enrichment. He proposed a class consisting of the dealers and the ultimate purchasers of the vehicles.

Read the [full article](#) by [Robin Reinertson](#) and [Joshua Hutchinson](#) with Blake, Cassels & Graydon LLP.

BC Attorney General says Liquor Distribution Rules Could be Reformed

BC's attorney general says changes could be on the way to the province's liquor distribution laws.

David Eby's comments came Friday [January 26th] [after whiskey bars in several BC cities were raided](#) by government agents last week.

The raids followed complaints the bars were serving liquor bought outside B.C.'s Liquor Distribution Branch – which is against provincial law. Read the *CBC* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Organic Certification Regulation (304/2016)	Jan. 1/18	by Reg 304/2016, section 10 (2)
Minister of State for Child Care Expected Results for the 2018/2019 Fiscal Year	NEW Jan.	see Reg 2/2018

Regulation (2/2018)	18/18	
Minister of State for Trade Expected Results for the 2018/2019 Fiscal Year Regulation (3/2018)	NEW Jan. 18/18	see Reg 3/2018

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

BC Fining Drivers Working for Illegal Ride-hailing Apps

The province says it is taking action against illegal ride-hailing companies operating in BC by serving drivers with fines and cease-and-desist orders.

The BC Ministry of Transportation and Infrastructure said in a statement Monday [January 29th] that it has issued over 20 cease-and-desist orders and 23 fines of \$1,150.

"New 'ride hail' services and passenger transportation options cannot operate at the expense of passenger and driver safety," the statement read. Read the [CTV article](#).

Motor Dealer Legislation Amended

Effective January 1, 2018, [B.C. Reg. 200/2017](#) brought into force several provisions of the [Motor Dealer Amendment Act, 2016](#), amending the [Motor Dealer Act](#) to increase protections for motor vehicle buyers and establish a code of conduct for motor dealers. The legislation expands the list of administrative enforcement options available and creates a new Consumer Advancement Fund to receive payments from administrative penalties under the Act, which will then be used to educate consumers and suppliers. Further, some provisions of the Act were clarified to enhance fairness and transparency with regard to service notices and orders, reconsiderations of enforcement actions, and the publication of enforcement decisions. B.C. Reg. 200/2017 also updated the [Motor Dealer Act Regulation](#), [Motor Dealer Consignment Sales Regulation](#) and [Motor Dealer Customer Compensation Fund Regulation](#) as a result of changes to the Act.

Vaughn Palmer: Eby Suggests Major Reforms to Clean Inherited ICBC Mess

OPINION:

The New Democrats are eyeing a mix of controversial options for cleaning up the mess at the Insurance Corp. of BC, judging from what minister in charge David Eby told reporters Monday [January 29th].

Eby rejected out of hand several of the more dramatic possibilities for managing the BC Liberal-authored financial debacle at the government-owned automobile insurance corporation.

The BC Liberals siphoned more than \$1 billion out of ICBC's capital reserves to make their own budgets look better. Why not just put the money back with a one-time injection of cash, booked to the last (2017-18) financial year under the Liberals?

The one-time transfer could close the estimated \$1.3 billion funding gap at ICBC for a year. But the gap would be back next year and the year after and Eby said the province doesn't have that kind of money to prop up ICBC finances year after year.

What about privatization?

As a senior cabinet minister with the party that established public auto insurance in BC more than 40 years ago, Attorney General Eby brushed aside the notion that operating efficiencies and cheaper rates might emerge from competition with private insurers. Read [The Vancouver Sun article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Motor Dealer Act	Jan. 1/18	by 2016 Bill 9, c. 6, sections 1, 5, 8, 14, 23, 24 and 29 only (in force by Reg 200/2017), Motor Dealer

		Amendment Act, 2016
Motor Dealer Act Regulation (447/78)	Jan. 1/18	by Reg 200/2017
Motor Dealer Consignment Sales Regulation (101/95)	Jan. 1/18	by Reg 200/2017
Motor Dealer Customer Compensation Fund Regulation (102/95)	Jan. 1/18	by Reg 200/2017
Motor Fuel Tax Act	Jan. 1/18	by 2017 Bill 2, c. 12, section 68 only (in force by Reg 213/2017), Budget Measures Implementation Act, 2017

PROPERTY & REAL ESTATE

Property and Real Estate News:

BC Real Estate Regulator Pushes Back against Provincial Superintendent's Challenge

British Columbia's real estate regulator says its complaint process is robust enough to protect the public and that its boss, the provincial superintendent, has no legal right to second-guess its decision to drop an investigation into alleged realtor misconduct.

Those assurances made by Robert Holmes, chair of the Real Estate Council of BC, are a result of a very public spat between the council and the superintendent of real estate. Michael Noseworthy took on the superintendent's job in 2016 after the provincial government concluded the public no longer had confidence that realtors could regulate their own industry.

But the new responsibilities of each office are now the subject of a court challenge.

Earlier this month, Mr. Noseworthy filed a petition in provincial Supreme Court asking a judge to force the Real Estate Council of BC, which he oversees under provincial legislation, to begin disciplinary proceedings over the alleged misconduct of a realtor in McBride, a village in the Kootenays on the boundary with Alberta. Read *The Globe and Mail* [article](#).

Court Confirmation of Strata Wind-Up Resolutions – The Experience So Far in BC

Before July 2016, in order to wind-up a strata corporation voluntarily through a liquidator in BC, unanimous approval of the strata owners was generally required. The unanimity requirement made strata wind-ups a rare event, and consequently it was exceedingly difficult for owners to sell a strata complex in its entirety for redevelopment. In an influential 2015 report, the BC Law Institute ("BCLI") identified some of the problems with the unanimity requirement:

It is widely conceded that it's very difficult, if not impossible, to obtain unanimous consent in all but the smallest stratas. This means that majorities may often find their wishes thwarted. As a result, many strata owners will suffer significant financial losses. And the broader society may also find its plans for urban renewal and redevelopment to be frustrated. For these reasons, most jurisdictions avoid making unanimous consent the lynchpin of their termination regimes.

Based on the recommendations issued in the BCLI report, the BC [Strata Property Act](#) (the "Act") was amended to make it easier for strata corporations to wind themselves up. As of July 2016, 80% approval now suffices, provided the resolution is subsequently confirmed by the B.C. Supreme Court. The confirmation requirement is primarily intended to protect against significant unfairness to those who oppose the wind-up. Accordingly, in determining whether to grant such confirmation, the Act directs the court to consider the best interests of the owners, the probability and extent of significant unfairness to one or more owners, and the probability and extent of significant confusion and uncertainty. Read the [full article](#) by Connor Bildfell with McCarthy Tétrault LLP.

Strata's Sprinkler System Found to be Part of Its "Plumbing Delivery and Distribution System," Allowing Home Warranty Insurance Claim to Proceed

The Owners, *Strata Plan 4249 v Travelers Insurance Company of Canada*, [2018 BCSC 114](#), concerned interpretation of a home warranty insurance policy, provided under the [Homeowner Protection Act](#), to a strata corporation. The words at issue in the case were found on the cover page of the home-warranty certificate. They read as follows:

- a) **15 Months** for Common Property; **Expiry Date: January 19, 2013**
- b) **2 years** defects in Materials and Labour supplied for . . . i. the gas, electrical, plumbing, heating, ventilation and air conditioning delivery and distribution systems; . . . **Expiry Date: October 19, 2013**. [emphasis in original]

The court described the "factual background" of the case as "straightforward." The strata property at issue was "a 33-storey residential tower (with some commercial retail units), over seven levels of underground parking." Its "[c]onstruction was completed in 2011." Almost immediately, the strata had problems with the sprinkler component of its fire-suppression system. It alleged "that between November 2011 and January 2014, the [strata] was subject to 15 separate failures in the Sprinkler System." Read the [full BCLI article](#) by Kevin Zakreski.

Mortgage Lending: Case Law Update and Best Practices

– from *CLEBC website*

In this paper, Timothy J. Lack of Lunny Atmore LLP discusses practical takeaways from: 1) recent interesting case law on mortgage lending; and 2) best practices relating to Form B, guarantees and covenants to pay, interest, second mortgages, and GST and priority concerns. Click [here](#) to view a pdf version of the paper.

Director of Land Titles Issues Practice Note 01-18 in effect February 1, 2018

The Director of Land Titles has issued Practice Note 01-18 Requirements for Portions of Buildings that Extend Beyond the Limits of the Parent Parcel in effect February 1, 2018. The Note addresses certain requirements for those strata plan types outlined in [Strata Property Act, section 244\(1\)\(f\)\(ii\)](#). Read the full note on the [BC Land Title and Survey website](#).

Non-profit BC, Landlord Launches Pet-friendly Policy

Housing pressures forced 1,700 pet owners to surrender their animals to the BC SPCA in the past year, according to an advocacy group that's trying to persuade the provincial government to ban pervasive no-pet rental policies.

Jordan Reichert, the Vancouver Island representative for Pets OK BC, said the group has been turned down for a meeting with B.C.'s housing minister on the issue. But a non-profit housing provider in Victoria isn't waiting for legislation to launch a new pet-friendly policy.

The policy will eventually cover most of Pacifica Housing's 2,000 units. Its executive director, Dean Fortin, told *CBC On the Island's* Khaili Akhtar that his experience doesn't support the widespread assumption that pets cause a lot of damage in rental housing. Read the *CBC News* [article](#).

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

WILLS & ESTATES

Wills and Estates News:

Unsigned and Undated Will Valid (s. 58 WESA)

An unsigned will was found to be valid under section 58 *WESA* as representing the deceased person's fixed and final testamentary intentions that varied an earlier will in the decision *Skopyk Estate*, [2017 BCSC 2335](#).

The application to cure the will, under the provisions of [section 58](#) of the [Wills, Estates and Succession Act](#) was unopposed, and the order was granted.

The deceased had made a prior 1995 will that was found to be validly varied by the subsequent unsigned will that was not dated, but was in handwriting reasonably similar to the handwriting in a letter entered into evidence, that was signed by the deceased. That letter was found in a drawer in the deceased's apartment next to the 1995 will.

The unsigned and undated document referred to the will dated November 16, 1995 and purported to change the distribution of the residue of the estate. Read the [full post](#) by [Trevor Todd](#) on his blog *disinherited – Estate Disputes and Contested Wills*.

BC Court of Appeal Confirms that Notaries are Not Permitted to Draw Wills with Life Estates

The British Columbia Court of Appeal confirmed that notaries public are not permitted to draw wills that create life estates or trusts in a decision released December 21, 2017. In British Columbia, generally only lawyers may practise law, which includes drawing wills for a fee. However, members of the Society of Notaries Public of British Columbia are also permitted to draw wills for a fee, but there are restrictions on the types of wills they may draw. Read the [full article](#) by [Stan Rule](#) of Sabey Rule LLP.

The Third Party Beneficiary Rule: Claims by Disappointed Beneficiaries Against A Solicitor

Generally, a solicitor who accepts instructions to draft a will owes a legal duty of care to an intended beneficiary under that will. This duty of care will be breached if that intended beneficiary was deprived of a gift under the will due to that solicitor's negligence. For example, if a solicitor in British Columbia fails to ensure a will is witnessed correctly, and the will is therefore void, someone that would have been a beneficiary under the will can bring a claim for damages against that solicitor. The claim would be based on the solicitor's failure to use reasonable care, skill and diligence in attending to the witnessing of the will.

The duty of care to intended beneficiaries is known as the "third party beneficiary rule". The rule is exceptional, in that lawyers usually only owe a duty of care to their client (i.e., the will-maker). Under the third party beneficiary rule, there is not a broad and general duty to act in the best interests of the third party. Instead, there is only a duty to use proper care in carrying out the will-maker's instructions for conferring a benefit on the third party. That beneficiary will have no claim where these interests conflict (for example, where the will-maker gave instructions to create a new will that would disinherit a particular beneficiary). The principle becomes difficult to apply, however, where the will-maker's actual intentions are not clear, or are questioned after being given. Read the [full article](#) by [Emily Clough](#) and [Michael Larsen](#) of Clark Wilson.

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

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