

# Quickscribe Reporter

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Vol: XVII – Issue: VII – July 2018

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## QUICKSCRIBE NEWS:

### Latest Annotations

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

- [Erik Magraken](#), MacIsaac & Company – [Supreme Court Civil Rules](#)


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## COMPANY & FINANCE

### Company and Finance News:

#### Judge Orders Cyber-scam Artist to Pay Fine in Crypto-currency

A mid-summer's moment of high drama in a Quebec City courtroom is both a reminder and a warning about the legal and regulatory challenges posed by digital currencies, a Canadian pioneer in the emerging field of fintech says.

It started on July 5, when Superior Court of Quebec Judge Raymond Pronovost granted the request of the province's financial regulator, the Autorité des marchés financiers, and appointed a receiver with powers to take possession of bitcoins belonging to disgraced Montreal businessman Dominic Lacroix.

Lacroix was sentenced to two months in jail and a \$10,000 fine in December for fleecing investors from around the world of nearly \$15 million in a crypto-currency scam that made international headlines.

The money came from an initial coin offering – or ICO – that Lacroix launched on social media in August 2017 to fund a digital token startup called PlexCoin. The ICO promised lucrative returns, saying PlexCoin would soon rival Bitcoin thanks to its team of digital currency experts. Read the [full article](#) by Mark Cardwell on *Canadian Lawyer Magazine*.

### Cooperative Association Updates

Changes to the [Cooperative Association Act](#) on August 1st serve to restore rights of members who have had their membership in a housing cooperative terminated for financial default. A cooperative must provide notice of the appeal process and comply with prescribed requirements, specifically the requirement to pay court filing fees in certain circumstances, making the rules the same regardless of whether a membership is terminated for financial default or for another cause. The [Cooperative Association Regulation](#) was also updated to provide guidelines respecting the notice of the right to appeal a termination of membership.

| Act or Regulation Affected  | Effective Date               | Amendment Information  |
|---|------------------------------|--|
| Climate Action Tax Credit Regulation (135/2008)<br>(formerly <i>Low Income Climate Action Tax Credit Regulation</i> ) | July 1/18                    | by <a href="#">Reg 133/2018</a>  |
| Cooperative Association Act   | Aug. 1/18                    | by 2018 Bill 7, c. 5, sections 17 to 19 only (in force by <a href="#">Reg 156/2018</a> ), <a href="#">Miscellaneous Statutes Amendment Act, 2018</a> |
| Cooperative Association Regulation (391/2000)   | Aug. 1/18                    | by <a href="#">Reg 156/2018</a>  |
| Designated Accommodation Area Tax Regulation (93/2013)  | July 1/18                    | by <a href="#">Regs 53/2018</a> and <a href="#">91/2018</a>  |
| Excluded Employees (Legal Proceedings) Indemnity Regulation (62/2012)   | Aug. 1/18                    | by <a href="#">Reg 153/2018</a>  |
| Financial Information Regulation (371/93)   | Aug. 1/18                    | by <a href="#">Reg 153/2018</a>  |
| Guarantees and Indemnities Regulation (258/87)  | <b>REPEALED</b><br>Aug. 1/18 | by <a href="#">Reg 153/2018</a>  |
| Income Tax Act  | July 1/18                    | by 2018 Bill 14, c. 12, sections 2, 6, 9 10 12, 13, 16 and 17 only (in force by Royal Assent), <a href="#">Taxation Statutes Amendment Act, 2018</a> |
| Income Tax (BC Family Bonus) Regulation (231/98)  | <b>REPEALED</b><br>July 1/18 | by <a href="#">Reg 132/2018</a>  |
| Indemnities and Guarantees Regulation (/2018)   | <b>NEW</b><br>Aug. 1/18      | see <a href="#">Reg 153/2018</a>   |
| Provincial Sales Tax Exemption and Refund Regulation (97/2013)  | July 16/18                   | by <a href="#">Reg 97/2018</a>   |

|   |                               |                                  |
|---|-------------------------------|----------------------------------|
| Wines of Marked Quality Regulation (79/2005)  | <b>REPEALED</b><br>July 27/18 | by <a href="#">Reg 168/2018</a>  |
| Wines of Marked Quality Regulation (168/2018) | <b>NEW</b><br>July 27/18      | see <a href="#">Reg 168/2018</a> |

## ENERGY & MINES

### Energy and Mines News:

#### **It's 10 pm on the Climate Conduct and Compliance Clock. Do You Know where Your Risk Strategy Is?**

The climate risk landscape is constantly evolving and being reshaped by a number of factors including, globalization, political and economic events and heightened shareholder activism. Further, the shifts underway are unprecedented – in both scope and pace – with risk exposure being triggered even in the absence of established or "black letter" law.

This is new territory for many, and there is no question that companies need to stay abreast of developments through active monitoring and obtain guidance on what they should be doing. It is especially important given the expanding number of international organizations and groups pushing standards of conduct and compliance above and beyond current regulations. We see several key implications and considerations at play in this evolving risk landscape, including: Read the [full article](#) by Jane E. Caskey and Alan Harvie of Norton Rose Fulbright.

#### **BC Restricts Oil and Gas Developments in Blueberry River First Nation Territory**

The British Columbia Oil and Gas Commission (OGC) recently announced new interim measures for oil and gas developments in Blueberry River First Nation (BRFN) traditional territory. The interim measures address concerns raised by BRFN with respect to new oil and gas development activities by prohibiting or restricting new surface disturbance in defined critical areas of BRFN territory, while managing development activities in other specified areas.

The interim measures follow the adjournment of a treaty infringement claim by BRFN against the Province of British Columbia that alleged the cumulative effects of industrial development on its territory had breached the government's obligations under Treaty 8. After the adjournment of the claim, and significant consultation and negotiation between the OGC, BRFN and the Ministry of Energy, Mines and Petroleum Resources, the parties signed a Regional Strategic Environmental Assessment Interim Measures Agreement, which came into force on July 16, 2018. Read the [full article](#) by [Sandy Carpenter](#), [Sam Adkins](#) and Josh Smith (Student-at-Law) with Blake, Cassels & Graydon LLP.

#### **The Law that Broke up the Rockefeller Oil Empire 100 Years ago May soon Be Used on OPEC**

OPEC is consulting with lawyers to prepare a strategy to defend against proposed U.S. legislation that could open the cartel up to antitrust lawsuits, according to people familiar with the matter.

The organization's legal team will hold talks in the coming days with law firms including White & Case about the "No Oil Producing and Exporting Cartels Act," one of the people said, asking not to be identified because the information is not public. The cartel is seeking strategy recommendations for dealing with the NOPEC bill, which could allow the U.S. government to sue it for manipulating energy prices, the person said. A spokesman for White & Case declined to comment.

The planned meeting highlights the growing pressure on the Organization of Petroleum Exporting Countries from the world's largest oil consumer. President Donald Trump has repeatedly criticized the group on Twitter, accusing it of inflating prices and urging it to increase production. Read *The Vancouver Sun* [article](#).

| Act or Regulation Affected               | Effective Date | Amendment Information           |
|--|----------------|---------------------------------|
| First Nations Clean Energy Business Fund | July 13/18     | by <a href="#">Reg 149/2018</a> |

|  |            |                                 |
|--|------------|---------------------------------|
| Regulation (377/2010)                                |            |                                 |
| Transmission Upgrade Exemption Regulation (140/2013) | July 16/18 | by <a href="#">Reg 160/2018</a> |

## FAMILY & CHILDREN

### Family and Children News:

#### (Dis)Agreements

In the recent decision of *Kuo v. Kuo*, [2017 BCCA 245](#), the Court of Appeal stated (para 37):

There is a strong public interest in favour of resolving lawsuits by agreement. As Abella J. observed in *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37 at para. 11, "[s]ettlements allow parties to reach a mutually acceptable resolution to their dispute without prolonging the personal and public expense and time involved in litigation". As a result, the policy of the courts is to promote settlement and to enforce settlement agreements ... This judicial policy contributes to the effective administration of justice.

While made in the context of estate litigation, this statement is consistent with the legislative and judicial approaches to settlement in family law cases as well. Nonetheless, disputes often arise over whether a binding agreement has been reached, and if so, whether an agreement remains in force in the face of subsequent conduct or communications to the contrary by a party. Read the full article by Magal Huberman with Pietro Law Group, in the [latest issue](#) of *The Verdict*, published by the Trial Lawyers Association of BC.

#### Co-mediation in Divorce Cases: The Newest Trend

Co-mediation involves a lawyer-mediator and a mental health professional, both skilled in divorce mediation, working in concert with one another. The two mediators are a tag team, helping a couple break through the obstacles to settlement and reaching a successful outcome for them both. For decades, it was thought that when a couple separated, each spouse needed to retain a lawyer to resolve their affairs. Often, the lawyers would advocate that client's position to the opposing lawyer. In many cases, the parties would exchange demands and allegations until they arrived at a negotiated settlement. In some cases, negotiations failed and one of the spouses took their matter to court for an adjudication by a judge. Despite this method of divorce, more and more spouses came to realize that divorce mediation provided a more civil, speedy and inexpensive process for resolving their issues following separation. Read the [full article](#) by Steven Brenmor on *The Lawyer's Daily*.

#### **Malbon v. Malbon, 2017 BCCA 427**

Leslie Alan Malbon (Appellant) and Teresa Ruth Malbon (Respondent) married in 1980 and separated in 2002. In 2007, they entered into a consent divorce order (Order), which provided that the Appellant would pay the Respondent C\$1,000 each month in spousal support. The Order also stated that the pension plans of both the Appellant and the Respondent were family assets and that each party would be given a proportionate share in the benefits payable under the other party's pension plan pursuant to the former [Family Relations Act](#) (British Columbia) (FRA). The Appellant elected to receive his share of the Respondent's pension benefit by way of a lump-sum payment, instead of monthly instalments. The Respondent elected not to receive her share of the Appellant's pension as a lump-sum payment; however, she was precluded under the FRA from receiving monthly instalments until the Appellant retired. The legislative scheme changed in 2013 when the [Family Law Act](#) (British Columbia) (FLA) came into force, which stated that the Respondent is entitled to receive her share of the Appellant's pension on the earliest date that he could elect to have his pension commence (i.e., before retirement). In that same year, the Respondent started collecting her share of the Appellant's pension in monthly instalments. Read the [full article](#) published in the 21st issue of Blake, Cassels & Graydon LLP's *Pension Newsletter*.

| Act or Regulation Affected                 | Effective Date | Amendment Information           |
|--|----------------|---------------------------------|
| Child Care Licensing Regulation (332/2007) | July 27/18     | by <a href="#">Reg 167/2018</a> |
|  | July 1/18      | by <a href="#">Reg 133/2018</a> |

|                                       |            |                                 |
|---------------------------------------|------------|---------------------------------|
| Child Care Subsidy Regulation (74/97) | July 13/18 | by <a href="#">Reg 148/2018</a> |
|---------------------------------------|------------|---------------------------------|

**FOREST & ENVIRONMENT**

**Forest and Environment News:**

**Southern Mountain Caribou and the *Species at Risk Act***

Until recently, the federal [Species at Risk Act](#) (or "SARA" as it is known) has not played much of a role in the regulation of forestry in BC. We all know it exists, but in terms of its relative significance for day-to-day forestry operations, SARA ranks well behind provincial environmental statutes such as the [Forest and Range Practices Act](#), [Wildfire Act](#), [Water Protection Act](#), and others, and even behind the federal [Fisheries Act](#). Since SARA's protective requirements (as opposed to its process) only apply on provincial lands if "the laws of the province do not effectively protect" an endangered or threatened species, SARA's muted role in the regulation of the BC forest industry suggests that BC has effective laws. That said, SARA has recently assumed a more prominent role in the BC forest industry on account of southern mountain caribou ("SMC"). SMC are listed as a "threatened" species under SARA, a listing that opens the doors to federal regulation of activities on provincial lands (Crown and private) to protect SMC. Read the full article by [Jeff Waatainen](#) of DLA Piper in this issue of [BC Forest Professional](#).

**BC Government Protects Pension Money at Catalyst Paper Operations**

Looming forest industry tariff increases and deteriorating trade relations between Canada and United States prompted British Columbia's government to protect the pensions of retirees and workers at three Catalyst Paper pulp mills, Premier John Horgan said Friday [July 27].

Horgan said he is not aware of any impending closure or sale at Catalyst pulp operations in Powell River, Port Alberni or Crofton, but the government made the move in response to the company's sale of its U.S.-based forest companies last month and the prospect of higher lumber tariffs later this summer. Read the [Financial Post article](#).

**Green MLA Adam Olsen on How BC's New Fish Farm Rules could Backfire**

The law of unintended consequences could see the NDP government's new rules regulating fish farm tenures have the opposite effect, says BC Green Party MLA Adam Olsen.

The new regulations, which do not take effect until 2022, say companies must negotiate agreements with First Nations in whose territory they propose to operate and the industry must convince Fisheries and Oceans Canada their operations will not adversely affect wild salmon stocks.

Expiring tenures in the Broughton Archipelago, which have been the focus of First Nations protests and frustrations, are being renewed on a month-by-month basis while government-to-government talks are held between the province and First Nations in the area.

Olsen worries the NDP plan will create division among First Nations as some, within the immediate coastal area, could be persuaded to welcome the industry because of lucrative benefit agreements without broader consideration of the effect on wild salmon.

Government is taking the long overdue step of ensuring the industry offers benefits to First Nations, but divide and conquer tactics could potentially turn First Nations against each other, Olsen said.

If the Department of Fisheries and Oceans continues to allow the industry to operate, instead of open net pens disappearing within four years, as anticipated, there could actually be an increase, Olsen said. Read [The Narwhal article](#) by Judith Lavoie.

| Act or Regulation Affected         | Effective Date | Amendment Information           |
|------------------------------------|----------------|---------------------------------|
| Closed Areas Regulation (115/2018) | July 1/18      | by <a href="#">Reg 115/2018</a> |

|  |            |                                 |
|--|------------|---------------------------------|
| Hunting Regulation (190/84)                            | July 1/18  | by <a href="#">Reg 115/2018</a> |
|  | July 16/18 | by <a href="#">Reg 159/2018</a> |
| Limited Entry Hunting Regulation (134/93)              | July 25/18 | by <a href="#">Reg 165/2018</a> |
| Motor Vehicle Prohibition Regulation (196/99)          | July 1/18  | by <a href="#">Reg 115/2018</a> |
| Organic Matter Recycling Regulation (18/2002)          | July 27/18 | by <a href="#">Reg 167/2018</a> |
| Permit Regulation (253/2000)                           | July 16/18 | by <a href="#">Reg 159/2018</a> |
| Public Access Prohibition Regulation (187/2003)        | July 1/18  | by <a href="#">Reg 115/2018</a> |
| Wildlife Act Commercial Activities Regulation (338/82) | July 1/18  | by <a href="#">Reg 115/2018</a> |
| Wildlife Act General Regulation (340/82)               | July 16/18 | by <a href="#">Reg 159/2018</a> |

## HEALTH

### Health News:

#### **Cannabis - An Industry Based on an Ingredient**

Canada is jumping into the deep end of the international law pool with its move away from prohibition and towards the regulation of adult-use cannabis outside of medical use. This change in course is expected to more effectively curb cannabis use by children and remove a source of revenue held exclusively by criminals. It will also open an enormous new adult-use market alongside the already robust medical market for Canada's growing cannabis industry. This industry is about to become much more visible and far larger and significant opportunities exist for both ancillary businesses and new technologies aimed at quality, compliance, and efficiency.

For context, Canada has regulated production of medical cannabis in a commercial and competitive system since 2013 under the federal Access to Cannabis for Medical Purposes Regulations, [SOR/2016-230](#) (the "ACMPR") (and its predecessor regulations, the Marihuana for Medical Purposes Regulations, SOR/2013-119 (the "MMPR"). As of June 29, 2018, there were 112 entities licensed to cultivate cannabis plants, sell cannabis products, or both, in commercial medical channels regulated by the ACMPR. Read the [full article](#) by David Wood, Jason Wang and Jeffrey Taylor of Borden Ladner Gervais

#### **Voluntary Blood Donations Act in Force**

The [Voluntary Blood Donations Act](#) came fully into force on August 1, 2018. The Act prevents payment for blood and plasma collection in British Columbia by making it illegal to pay, offer to pay, or advertise that they will pay someone for blood or plasma. Fines for individuals found to be in contravention of the act will be up to \$10,000 for the first offence, and up to \$50,000 for subsequent offences. For companies, the maximum fine will be \$100,000 for the first offence, and \$500,000 for each subsequent offence.

| Act or Regulation Affected                        | Effective Date | Amendment Information           |
|---|----------------|---------------------------------|
| Health Act Communicable Disease Regulation (4/83) | July 27/18     | by <a href="#">Reg 167/2018</a> |

|                                       |                         |  |
|---------------------------------------|-------------------------|--|
| Residential Care Regulation (96/2009) | July 27/18              | by <a href="#">Reg 167/2018</a>  |
| Voluntary Blood Donations Act         | <b>NEW</b><br>Aug. 1/18 | c. 30 [SBC 2018], 2018 Bill 29, whole Act in force by <a href="#">Reg 158/2018</a> |

## LABOUR & EMPLOYMENT

### Labour and Employment News:

#### **BC Court of Appeal Adopts a New Approach to Contractual Amendments**

The B.C. Court of Appeal has recently adopted a significant reform to the "principle of consideration" that all employers should be aware of.

When parties to a contract agree to amend the contract's terms, the common law has always required each party to receive fresh consideration. The purpose of this is to distinguish a gratuitous promise from a legal obligation. To be enforceable, a party should receive something of value (e.g., a payment, benefit, avoiding a loss, etc.) in exchange for its promise to abide by new contractual terms.

In the workplace, employers are often confronted with the need for fresh consideration when they seek to implement new contractual terms for ongoing employees. For instance, when an employee's role in the company evolves to the point that a non-solicitation or non-competition covenant may be necessary. In these cases, the requirement for fresh consideration is often quite vague. Courts have provided little guidance on whether they will scrutinize the amount of a payment to an employee, and employers are left to speculate as to what amount might be sufficient. Read the [full article](#) by [Andrew Nathan](#) with Borden Ladner Gervais LLP.

#### **Age Discrimination and Employee Benefits: A Cautionary Message from the Human Rights Tribunal of Ontario**

When the Ontario government changed its human rights legislation in 2006 to prohibit age discrimination in employment for persons aged 65 or older, it left in place an exception in its *Human Rights Code* and *Employment Standards Act* allowing for employers to discontinue or reduce benefits of employees aged 65 or older. Recently, the Human Rights Tribunal of Ontario ("HRTO") in *Talos v. Grand Erie District School Board*, 2018 HRTO 680 ("*Talos*") held that these statutory provisions are discriminatory and contrary to the *Charter*. Although this legislation is still in effect, the implications of the Tribunal's findings are likely wide-ranging.

Mr. Talos worked as a teacher for the Grand Erie District School Board for 38 years. On his 65th birthday his employee benefits were discontinued. The HRTO, in a decision dated May 18, 2018, found that these statutory provisions are unconstitutional under [s. 15 of the Charter](#) in preventing employees from challenging a reduction or cut off of benefits as age discrimination under the *Code*. The HRTO also found that these laws could not be justified under [s. 1 of the Charter](#) as the goal of preserving the financial viability of benefits plans could be achieved by less drastic measures than a blanket carve-out of employees over 65. Read the [full article](#) by [Talya Nemetz-Sinchein](#) and [Allison Morrell](#) With Singleton Urquhart Reynolds Vogel LLP.

#### **BC Government Protects Pension Money at Catalyst Paper Operations**

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#### **Bill C-46 Provides Guidance for the Assessment of Marijuana Impairment in the Workplace**

The legalization of recreational (i.e., non-medical) marijuana in Canada finally has some clarity – and a date. Effective October 17, 2018, the possession and use of recreational marijuana will be legal across Canada.

To prepare for the legalization of recreational marijuana, Canadian employers should introduce or update

workplace policies that address the potential implications of recreational marijuana in the workplace, including possession, use, impairment and accommodation for dependency.

Among the many challenges faced by employers in crafting and implementing such policies, the assessment of impairment poses one of the most difficult. The level of THC (the primary psychoactive component of marijuana) present in a person's body does not necessarily correspond with the person's level of impairment, as each person will react to and metabolize marijuana differently. Until recently, there was no clear consensus on the *per se* limit for what constitutes marijuana impairment. Read the [full article](#) by [Duncan Burns-Shillington](#) with DLA Piper LLP.

| Act or Regulation Affected  | Effective Date | Amendment Information   |
|---|----------------|---|
| Employment and Assistance Regulation (263/2002)                               | July 16/18     | by <a href="#">Regs 150/2018</a> and <a href="#">151/2018</a> |
| Employment and Assistance for Persons with Disabilities Regulation (265/2002) | July 16/18     | by <a href="#">Regs 150/2018</a> and <a href="#">151/2018</a> |
| Pension Benefits Standards Regulation (71/2015)                               | July 27/18     | by <a href="#">Reg 169/2018</a>                               |

## LOCAL GOVERNMENT

### Local Government News:

#### **Burnaby Becomes First BC Municipality to Implement New Rental Zoning Laws**

The City of Burnaby will be the first in the province to take advantage of the BC government's new rental zoning law, aimed at maintaining rental stock at affordable costs.

"Burnaby has been a consistent advocate with asking provincial governments to invest in low-cost housing and give municipalities zoning for rental housing as a method to increase and protect the supply of rental housing in our community," said Burnaby Mayor Derek Corrigan.

The news follows an announcement by the provincial government in May of this year that it had passed the [Residential Rental Tenure Zoning Amendment Act](#), which provides new powers to cities via the [Local Government Act](#). The legislation provides local governments the authority to enact zoning bylaws which:

- Require that new housing in residential areas be developed as rental units;
- Ensure that existing areas of rental housing are preserved as such;
- Set different rules in relation to restricting the form of tenure of housing units for different zones and locations within a zone; and;
- Require that a certain number, portion or percentage of housing units in a building be rental.

Read the full [Daily Hive article](#) by Eric Zimmer.

#### **UBCM FOIPPA Submission**

The Union of British Columbia Municipalities (UBCM) represents 100% of the local governments in BC, as well as eight First Nations members, and has advocated for policy and programs that support its membership's needs since 1905.

In April 2018, the Ministry of Citizens' Services asked that UBCM provide local government input to inform the Province of BC's review of the [Freedom of Information and Protection of Privacy Act](#) (FOIPPA), and related issues regarding information access and privacy protection. With 198 members, UBCM represents a significant portion of adherents to the Act. As such, we value the opportunity to engage in meaningful dialogue regarding potential FOIPPA amendments and their impact on BC's local governments.

In order to provide current and comprehensive feedback, in May 2018 UBCM surveyed local government Corporate Officers (and designated Freedom of Information practitioners) to better understand current



application of the Act and associated challenges, as well as potential impacts of FOIPPA reforms on local government operations. The data from this survey, as well as interviews conducted with local government senior staff, provide the basis for this report. Read the [full submission](#) on the UBCM website.

### Wines of Marked Quality Regulation

On July 27, 2018, a new [Wines of Marked Quality Regulation](#) came into effect to replace the former regulation. Okanagan Falls is now officially recognized as a wine-producing area, enabling eligible wineries to label their wines as coming from this region. Other changes prohibit the use of unregulated geographical areas on BC Wine Authority members' wine labels, and grant recognition to the Thompson Valley, Shuswap, Lillooet and the Kootenays as new geographical indications, a standard element of appellation systems used around the world. In addition, a flat fee for small wineries has been implemented to and encourage more wineries to participate in the BC Wine Authority's programs.

| Act or Regulation Affected   | Effective Date           | Amendment Information   |
|--|--------------------------|---|
| Agricultural Land Reserve Use, Subdivision and Procedure Regulation (171/2002) | July 13/18               | by <a href="#">Reg 147/2018</a>   |
| British Columbia Fire Code Regulation (263/2012)                               | July 18/18               | by <a href="#">Reg 161/2018</a>   |
| Cannabis Control and Licensing Act   | <b>NEW</b><br>July 9/18  | c. 29 [SBC 2018], <a href="#">2018 Bill 30</a> , sections 1, 3, 4 to 9, 21 to 35, 122, 126, 127 to 141 only (in force by <a href="#">Reg 139/2018</a> ) |
| Cannabis Control and Licensing Interim Regulation (139/2018)                   | <b>NEW</b><br>July 9/18  | see <a href="#">Reg 139/2018</a>  |
| Cannabis Distribution Act  | <b>NEW</b><br>July 9/18  | c. 28 [SBC 2018], <a href="#">2018 Bill 31</a> , whole Act in force by <a href="#">Reg 143/2018</a>   |
| Cannabis Distribution Regulation (143/2018)                                    | <b>NEW</b><br>July 9/18  | see <a href="#">Reg 143/2018</a>  |
| Cannabis Transitional Regulation (142/2018)                                    | <b>NEW</b><br>July 9/18  | see <a href="#">Reg 142/2018</a>  |
| Electoral Reform Referendum 2018 Regulation (125/2018)                         | July 25/18               | by <a href="#">Reg 164/2018</a>   |
| Fire Code Administration Regulation (161/2018)                                 | <b>NEW</b><br>July 18/18 | see <a href="#">Reg 161/2018</a>  |
| Liquor Control and Licensing Regulation (241/2016)                             | July 16/18               | by <a href="#">Reg 155/2018</a>   |
|  | July 27/18               | by <a href="#">Reg 168/2018</a>   |
| Liquor Distribution Act  | July 16/18               | by 2018 Bill 24, c. 23, section 9 only (in force by <a href="#">Reg 155/2018</a> ), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>  |
| Volunteer Eligibility for Office Regulation                                    |                          |   |

|   |                               |                                  |
|---|-------------------------------|----------------------------------|
| (165/2011)                                    | June 15/18                    | by <a href="#">Reg 118/2018</a>  |
| Wines of Marked Quality Regulation (79/2005)  | <b>REPEALED</b><br>July 27/18 | by <a href="#">Reg 168/2018</a>  |
| Wines of Marked Quality Regulation (168/2018) | <b>NEW</b><br>July 27/18      | see <a href="#">Reg 168/2018</a> |

## MISCELLANEOUS

### Miscellaneous News:

#### **Supreme Court Bulletin – Appeal Allowed**

*R. v. Brassington*, [2018 SCC 37](#) – Criminal law – Defence – Disclosure

On appeal from a judgment of the British Columbia Court of Appeal (2017 BCCA 84) varying an order of Wedge J. (2016 BCSC 163).

Four police officers were charged with crimes relating to alleged misconduct during a police investigation. Prior to their trial, they applied for a declaration that they could discuss information they learned during the investigation with their defence counsel that might reveal the identity of confidential informers. The assigned case management judge granted the application, declaring that the officers could discuss any information in their possession with counsel. The Crown and the RCMP then brought proceedings to determine whether the communications authorized under the declaratory order constituted "disclosures" within the meaning of s. 37 of the [Canada Evidence Act](#). Pursuant to s. 37(1) of the Act, the Crown may object to disclosures on public interest grounds. Section 37.1 of the Act provides a special right of appeal from a determination of an objection. Read the [full article](#) by the editorial team of Gowling WLG (Canada) LLP .

#### **BC Residents with Disabilities Demand a Say on Proposed Accessibility Law**

For Amanda Reaume, acquiring a disability meant awakening to a civil rights movement in a way made possible through lived experience.

Last year, the 33-year-old writer suffered a brain injury that left her with balance problems and having to relearn how to walk and talk at the same time. She returned to work in Vancouver six months later but with a new, invisible disability.

"Becoming disabled, it really makes me consider accessibility a lot more, and the ways in which our society really restricts access," she said. "Disabled people often struggle in ensuring that their dignity is respected and that they are included and get proper services. Having disability legislation on the provincial level is critical to ensuring that their human rights are respected."

Reaume struggled with using public transit during her recovery. Unable to walk and talk simultaneously, she couldn't speak up for a courtesy seat on the bus and had to rely on expensive taxi trips to get around. Read *The Vancouver Sun* [article](#).

#### **Legislation Re-establishing Human Rights Commissioner Due in BC this Fall**

The BC government says it will introduce amendments to the [Human Rights Code](#) when the legislature resumes sitting this fall. Attorney General David Eby says the government wants to re-establish the position of human rights commissioner and support progress on gender equity and LGBTQ rights.

The commissioner would report to the legislature and have the mandate to develop educational tools, policies and guidelines to promote human rights and combat inequality and discrimination.

An all-party legislature committee would select and unanimously recommend a commissioner but the candidate would be subject to approval by the house. Read *The Vancouver Sun* [article](#).

#### **Loophole in Lobbyist Law Means Hector Bremner, Others, Avoid Penalties**

Former government employees, including a Vancouver mayoral candidate, are escaping penalties for improper lobbying because of what the province's lobbyist watchdog calls a "significant loophole."

The registrar of lobbyists, Michael McEvoy, said he was left with no choice but to reverse a \$2,000 fine levied against Hector Bremner, who worked for a Liberal cabinet minister in 2015. And McEvoy said he was similarly forced to exempt a B.C. Building Trades lobbyist from a two-year cooling off period after she worked for an NDP cabinet minister.

"It's apparent that there was an oversight in the drafting of this legislation because it seems to preclude the very people the legislature intended to cover," McEvoy said on Thursday [August 2nd]. "In other words, if you leave the employ of a cabinet minister, you are allowed to lobby those members because they are still in office." Read *The Vancouver Sun* [article](#).

| Act or Regulation Affected         | Effective Date | Amendment Information           |
|------------------------------------|----------------|---------------------------------|
| Designation Regulation (163/2018)  | July 24/18     | by <a href="#">Reg 163/2018</a> |
| Salary Range Regulation (152/2017) | July 9/18      | by <a href="#">Reg 145/2018</a> |

## MOTOR VEHICLE & TRAFFIC

### Motor Vehicle and Traffic News:

#### Court Finds "After the Event" Insurance a Factor to Consider when Awarding Post Trial Costs

In what, to my knowledge, is the first BC injury case commenting on the weight a court should place on "After the Event" insurance when awarding costs post trial, reasons for judgement were released this week by the BC Supreme Court, Vancouver Registry, addressing this. In the recent case (*Clubine v. Paniagua*) the Plaintiff was injured in a crash and sued for damages. Prior to trial the Defendant offered to resolve the claim for a total of \$94,848.32 plus costs and disbursements. The Plaintiff rejected this offer and proceeded to trial where he was awarded a total of \$77,224.32 in damages. The Defendant asked for costs of the trial arguing their offer should have been accepted.

The Plaintiff had ATE insurance which covers some of these adverse costs consequences. The Court was asked to take this factor into account in stripping the plaintiff post-offer costs and making the Plaintiff pay the Defendant's trial costs. In finding this was an appropriate factor to consider Madam Justice Watchuk provided the following reasons: Read the [full article](#) by [Eric Magraken](#) of MacIsaac & Company on his blog.

#### BC Delays Ride-hailing again, Draws Ire of Greens

The British Columbia government says it will ease into allowing ride-hailing services, laying the groundwork for new rides to enter the market as early as the fall of 2019.

In the meantime, Transport Minister Claire Trevena said the government plans to increase the number of taxis on the streets and allow flexible fares for existing taxi firms that arrange rides using apps.

The idea is to ensure the existing taxi industry is ready and able to compete on a level playing field when new players are introduced, she said.

Allowing services such as Uber and Lyft by the end of 2017 was a promise the NDP made during the last election, but Trevena would not commit to a new deadline during a news conference.

"I know that people are looking for expanded transportation options to be available very soon and I want to reassure them that a lot of work is happening to get this accomplished, but it is important that we get this right," she said. Read the *CTV News* [article](#) by Amy Smart.

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

## OCCUPATIONAL HEALTH AND SAFETY

### Occupational Health & Safety News:

#### **Cannabis Legalization and Farm Safety Considerations**

The occupational health and safety risks associated with farming have long been known. The introduction of recreational (legalized) cannabis, which will take effect on October 17, 2018, adds uncertainty for farmers, even if they are not part of the cannabis production or growing industry.

All provinces and territories have occupational health and safety legislation that broadly applies to all industries, including farming and agribusiness. While the specific requirements may differ from one jurisdiction to the next, most require that a farming or agribusiness employer prepare and review, at least annually, a written occupational health and safety policy, as well as develop and maintain a program to implement that policy. In Ontario, for example, an employer who regularly employs more than five employees must have a program in place to implement its occupational health and safety policy. In Saskatchewan, most employers with 10 or more workers must have an occupational health and safety program. Read the [full article](#) by Amy Groothuis and Carol S. VandenHoek with Miller Thomson LLP.

#### **Proposed Policy Amendments and Practice Materials Regarding the Certificate of Recognition (COR) Program**

The Policy, Regulation and Research Division [WorkSafeBC] is releasing a discussion paper on proposed policy amendments to the Certificate of Recognition (COR) Program. In addition, the Industry and Labour Services Department is releasing practice materials on proposed program developments.

The COR Program is a voluntary employer certification program designed to encourage employers in BC to take a proactive role in occupational health and safety. Employers registered in the COR Program who meet program requirements achieve a COR, and may be eligible to receive a financial incentive. Read the [full article](#) from WorkSafeBC.

#### **CHAG Continues to Work on Phase Congestion**

Following the BC Forest Safety Ombudsman's 2018 report on the status of phase congestion in forestry operations, the Coast Harvesting Advisory Group (CHAG) has identified phase congestion as one of its key 2018 priorities. A specific phase congestion CHAG meeting was held to identify actions that CHAG feels can best support continuous improvement in effective and safe phase management. Broadly, the areas of focus are:

1. Investigate the development of Safe Separation Distances Procedures that could outline recommended minimum distances between phases.
2. Develop resource materials that better define the roles and responsibilities of the owner and prime contractor related to phase management. This includes a review of BC Forest Safety Council (BCFSC)'s current Prime Contractor Guide and Workshop to see if updates are needed.

Read the [full article](#) in this issue of *BC Forest Safe*.

#### **More than \$5 Million in Disability Claims Paid to Kids 15 and under Injured on the Job in BC**

Child safety advocates are urging the provincial government to change BC labour laws to protect the province's youngest workers – those 15 and under – after more than \$5 million dollars in disability claims was paid to kids injured on the job between 2007 and 2017.

"The stories we've heard are very concerning," said Adrienne Montani, provincial coordinator with First Call BC, a coalition of organizations that advocate for children and youth. In its work across the province, the coalition has heard from several injured children, including a 12-year-old with battery acid burns and a 13-year-old with a back injury.

She said First Call had reports of 13-year-olds on construction sites, sometimes working with their parents on the same job sites. In the retail and fast food industries they've heard about the sexual harassment of young girls and of children under 15 working until 1 a.m.

Between 2007 and 2017, WorkSafeBC recorded 187 accepted claims by kids 14 and under, as well as 593

accepted claims by those age 15, for a total of 780 accepted claims, representing \$5.2 million in disability benefits. The data does not include claims accepted for health care benefits only.

"As many children and youth begin summer jobs, it's important for everyone to realize how few safeguards are in place to protect them from exploitation and injury," said Montani. "We want BC's child labour laws brought up to international standards."

The call for reform was recently echoed by the BC Law Institute during its review of the [Employment Standards Act](#). Read *The Vancouver Sun* [article](#) by Glenda Luymes.

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

## PROPERTY & REAL ESTATE

### Property and Real Estate News:

#### The BC Court of Appeal Weighs in on Strata Wind-ups

The B.C. Court of Appeal [in [2018 BCCA 280](#)] recently weighed in, for the first time, on the interpretation and application of the strata wind-up provisions in [Part 16](#) of the [Strata Property Act](#), (the "Act"). This is the first appellate decision to consider this aspect of the Act. It is an important decision because the court confirmed the validity of the practice and procedures for strata wind-ups that have developed in the last two years, since the amendments to the Act reduced the voting requirement to 80%.

Prior to July 2016, every owner in a strata had to agree to its wind-up. As the Court of Appeal noted, this effectively gave "every owner a veto" over the prospect of a provident sale of the strata lands. This requirement was so onerous that almost no strata corporations were ever wound up and there had been only been one court case (a three unit strata) that resulted in a wind-up. Read the [full article](#) by [Peter J. Roberts](#), [Bryan C. Gibbons](#) and [Edward L. Wilson](#) with Lawson Lundell.

#### Medicinal Marijuana Users Worry as Condos Rush to Ban Pot Smoking ahead of Legalization

Gerald Major goes out on the back balcony of his condo several times a day, leaning against the wall and smoking or vaping medicinal cannabis to ease the pain and other symptoms of severe arthritis.

But the looming legalization of recreational marijuana may put his daily ritual in jeopardy, as condominium corporations and apartment buildings across the country scramble to enact rules that would ban pot smoking inside units, on balconies and in common areas used by residents.

"I don't use inside my dwelling, I have a seven-year-old. I don't think it's healthy, nor is it necessary," said Major, 46, who has had eight surgeries in the last eight years related to ankylosing spondylitis and psoriatic arthritis, which he began developing at age 14. Read the [CBC article](#).

#### BC Government Takes Step to Crack Down on Tax Evasion in Real Estate

Taking aim at tax evasion in real estate, the B.C. government has announced [new rules](#) requiring property buyers to disclose more information when they make a purchase through a corporation or trust.

Beginning Sept. 17, 2018, purchasers will have to report the following additional information on their property transfer tax return:

- Name
- Date of birth
- Citizenship information
- Contact details
- Tax identification numbers (such as social insurance number)

"These changes give authorities another tool to make sure people are paying the taxes they owe," said Finance Minister Carole James.

According to the province, these changes are part of their [30-point plan for housing affordability](#). Read the *CBC News* [article](#) by Cory Correia.

**Strata Corporation's Bylaws, Lien against Strata Lot Set aside Due to Failure to Give Notice of Meetings and to Accept Proxy Appointment**

*The Owners, Strata Plan NW499 v Kirk*, [2018 BCSC 1249](#), is the latest chapter in a long-running dispute between a White Rock strata corporation and one of its residents, the beneficial owner of a strata lot. In a [decision issued late in 2016](#), the BC Court of Appeal allowed the owner's appeal on the issue of whether the owner would be entitled to relief under [section 163](#) of the [Strata Property Act](#). This latest decision considered that issue and formed supplemental reasons to the supreme-court decision that had been appealed from. In it, the court found that the strata corporation wasn't able to overcome procedural failings in relation to the meeting at which it adopted its bylaws. As a result, those bylaws and a lien against the owner's strata lot for failure to pay strata fees were declared to be invalid. Read the [full article](#) by Kevin Zakreski with the BC Law Institute.

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

**WILLS & ESTATES**

**Wills and Estates News:**

**Apportioning Court Costs**

*PKMB v DHL*, [2018 BCSC 1039](#), dealt with the apportionment of court costs where both the plaintiff and the defendant achieved some success. Rule 14-1 (15) permits the court to award costs:

The court may award costs of a proceeding that relate to some particular application, step or matter in or related to the proceeding, or except so far as they relate to some particular application, step or matter in or related to the proceeding and in awarding those costs the court may fix the amount of costs, including the amount of disbursements.

Read the [full article](#) by Trevor Todd on his blog *disinherited – Estate Disputes and Contested Wills*.

**Where Do Trust Assets Go when a Relationship Breaks Down?**

Upon the breakdown of a spousal relationship, dividing property between the two spouses is often a contentious issue. One common source of conflict is the interest one spouse has in a trust. Does the other spouse get half of that interest? In *HSS v SHD*, [2018 BCCA 199](#), the British Columbia Court of Appeal recently clarified what will and won't be taken into consideration when looking at those trust assets.

At issue in this case was how to apply [section 65](#) of the [Family Relations Act](#), RSBC 1996, c 128 [FRA]. Though the FRA has now been repealed and replaced by the [Family Law Act](#), SBC 2011, c 25 [FLA], this case still provides insight into what courts will do with trust assets.

The parties, Mr. S and Ms. D, married in April of 1989. Before getting married, they signed a marriage agreement outlining how their property would be divided upon separation. Though the parties separated in 2003, divorce proceedings didn't begin until 2013, when Ms. D applied to the court to disregard the marriage agreement on the grounds that following the agreement would be unfair. Section 65 of the FRA allows courts to set aside a marriage agreement if that agreement would be unfair considering, among other factors, "the needs of each spouse to become or remain economically independent and self-sufficient" (s 65(1)(e)). Read the [full article](#) by Chantal M. Cattermole and Alison Colpitts of Clark Wilson LLP.

**Society of Notaries Public of British Columbia v. Law Society of British Columbia: Affirming the Limits to the Legislated Authority of Notaries to Draft Wills**

In the fairly recent appellate court decision, *Society of Notaries Public of British Columbia v. Law Society of British Columbia*, [2017 BCCA 448](#), BC's highest court was faced with the question: What are notaries allowed to draft when it comes to wills?

This case dealt with a petition filed by the Society of Notaries Public of British Columbia (the "Society of

Notaries") seeking a declaration that:

Wills containing life estates, including limited life estates, and trusts in which the beneficial interest or interests vest immediately on the death of the will-maker are within the scope of [section 18\(b\)](#) of the [Notaries Act](#).

For reference, section 18(b) of the *Notaries Act*, R.S.B.C. 1996, c. 334 provides:

18. A member enrolled and in good standing may ... (b) draw and supervise the execution of wills:
- (i) by which the will-maker directs the will-maker's estate to be distributed immediately on death,
  - (ii) that provide that if the beneficiaries named in the will predecease the will-maker, there is a gift over to alternative beneficiaries vesting immediately on the death of the will-maker, or
  - (iii) that provide for the assets of the deceased to vest in the beneficiary or beneficiaries as members of a class not later than the date when the beneficiary or beneficiaries or the youngest of the class attains majority

Read the [full article](#) by Aubrie Girou of Alexander Holburn Beaudin + Lang LLP.

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*There were no amendments this month.*

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