

# Quickscribe Reporter

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Vol: XVII – Issue: VI – June 2018

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## QUICKSCRIBE NEWS:

### Latest Annotations

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

- [Greg Gehlen](#), Gehlen Dabbs Lawyers – [Bankruptcy and Insolvency Act](#) [Federal]
- [Richard Bereti](#), Harper Grey LLP – [Environmental Management Act](#)
- [OnPoint Legal Research Corporation](#) – [Wildfire Regulation](#) (38/2005), [Police Act](#), [Family Law Act](#), [Land Title Act](#), [Public Sector Pension Plans Act](#), [Canada Water Act](#) [Federal]
- [Bill Buholzer](#), Young Anderson Barristers and Solicitors – [Local Government Act](#)
- [Erik Magraken](#), MacIsaac & Company – [Supreme Court Civil Rules](#)

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

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**FEDERAL LEGISLATION** – For notification of federal amendments, we recommend you use our [Section Tracking](#)  tool.

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## CATEGORIES

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## COMPANY & FINANCE

### Company and Finance News:

#### Limitation Periods on Secured Loans Come under Review in BC Court of Appeal Decision

Lenders will want to take note of a recent BC Court of Appeal decision which decided that on a secured loan, the two year limitation period to enforce security will start from the day the security becomes enforceable, even if

demand has not been made. In any case in which the terms of the security provide that it is enforceable upon default, the right to enforce may be triggered without the lender taking any action. Absent postponement of the right to enforce, the limitation period on the security will expire two years after default. The lender may then be left with an unsecured covenant to pay.

In [\*Leatherman v 0969708 BC Ltd\*](#), 2018 BCCA 33 ("Leatherman"), the Court of Appeal overturned a lower court decision granting an order nisi following an action for enforcement of security on a private loan between friends. The court held that although the personal covenant to pay the principal on demand remained, the security was unenforceable. The limitation period had started to run on the security when interest had not been paid (ie there was a default), three years earlier. Read the [full article](#) by [Megan Filmer](#) and Rachael Breeze (Student) with DLA Piper LLP.

### **BC Announces Tougher Rules to Rein in Payday Lenders**

The BC government is tightening rules around payday-lending practices, lowering the maximum amount a company can charge for a \$100 loan from \$17 to \$15.

The new regulations, which go into effect Sept. 1, also extend the payday-loan agreement cancellation period to give a borrower two full business days to cancel a loan without penalty.

More than 160,000 British Columbians or approximately four per cent of the population over age 18, used payday lenders in 2016, according to government statistics. Read the [CBC article](#).

### **Free Trade Agreement Between Canada and the Mercosur Member States**

The first round of negotiations for a comprehensive Canada-Mercosur Free Trade Agreement (FTA) took place in Ottawa on March 20, 2018. The Canadian Minister of International Trade, François-Philippe Champagne, welcomed representatives from the Mercosur member states of Brazil, Argentina, Paraguay and Uruguay. Following a broad range of consultations with stakeholders, including representatives from companies, industry and business organizations and non-governmental organizations, a second round of negotiations took place in Brasilia between June 11-15, 2018. The third round of negotiations is scheduled to be held in Ottawa in September 2018.

As one of the top ten importing countries in the world, Canada purchased more than CAD\$500 billion in international goods and services in 2017. The FTA has the potential to create significant opportunities for companies from Mercosur member states that provide or want to provide goods and services to Canada. Despite the benefits to all four countries that are part of the Mercosur bloc, this article is going to focus primarily on the anticipated impact on trade between Canada and Brazil.

The main benefit of the FTA to Mercosur members is expected to be a reduction on tariffs on Mercosur's exports to Canada. Companies that are part of Mercosur member states will be able to provide competitive pricing which will benefit Canadian customers looking for affordability. According to the Minister of International Trade, the FTA with Mercosur could reduce the current tariffs of up to 35% on Canadian automotive, 18% on chemicals, plastics and scientific instruments, 14% on pharmaceuticals, 16% on aluminum and forest products, 20% on machinery, equipment and information and communications technology. Read the [full article](#) by [Barbara R.C. Doherty](#) and Eliane Leal da Silva of Miller Thomson.

### **Proposed National Instrument 93-101**

#### ***Derivatives: Business Conduct***

On June 14, 2018, the Canadian Securities Administrators ("CSA") published Proposed National Instrument 93-101 *Derivatives: Business Conduct* and Proposed Companion Policy 93-101 *Derivatives: Business Conduct* (collectively, the "Proposed Instrument") for a 95-day comment period, expiring on September 17, 2018. This is the second comment period for the Proposed Instrument. The Proposed Instrument has been revised and republished to reflect the comments received in the first comment period between April 4, 2017 and September 1, 2017 and so that it can be considered together with the recently published Proposed National Instrument 93-102 *Derivatives: Registration* and Proposed Companion Policy 93-102 *Derivatives: Registration* (collectively, the "Proposed Registration Instrument"). The comment period for the Proposed Registration Instrument will also close on September 17, 2018. Read the [full article](#) by Michael Bunn, Elana M. Hahn, and Matthew Lau of Norton Rose Fulbright.

### **Province Releases Employer Health Tax Implementation Details**

The Ministry of Finance has released an Employer Health Tax (EHT) tax notice, as part of the next steps toward the elimination of Medical Services Plan (MSP) premiums and transition to the EHT.

"Our government is working hard to make life more affordable for people in our province. We are proud to be eliminating regressive MSP premiums, and returning up to \$1,800 each year to families across our province," said Carole James, Minister of Finance. "While other provinces scrapped MSP premiums, the former government doubled and downloaded these unfair fees onto middle-class individuals, families, and seniors. Replacing MSP premiums with the EHT follows the lead of other provinces, and is a much fairer and progressive approach."

The tax notice includes implementation information on effective rates, calculation and scheduling, remuneration, payroll definition, rules regarding instalment payments, locational and threshold rules for non-profits, and other technical implementation details. Read the government [news release](#).

### BC Securities – Policies & Instruments

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

- [46-308](#) – CSA Staff Notice 46-308 *Securities Law Implications for Offerings of Tokens*
- [44-101](#) – Adoption of Amendments relating to Designated Rating Organizations – Amendments to National Instrument 44-101 *Short Form Prospectus Distributions*, National Instrument 44-102 *Shelf Distributions* and related amendments
- [45-102](#) – Adoption of Amendments to National Instrument 45-102 *Resale of Securities*, related companion policy changes and consequential amendments - new foreign trade exemption
- [93-101](#) – CSA Notice and Second Request for Comment: Proposed National Instrument 93-101 *Derivatives: Business Conduct* – Proposed Companion Policy 93-101 *Derivatives: Business Conduct*
- [31-103](#) – CSA Notice and Request For Comment – Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*
- [21-324](#) – CSA Staff Notice 21-324 - *Information Processor for Exchange-Traded Securities other than Options*
- [81-330](#) – CSA Staff Notice 81-330 *Status Report on Consultation on Embedded Commissions and Next Steps*
- [81-102](#) – Adoption of Amendments to National Instrument 81-102 Investment Funds relating to T+2 Settlement Cycle for Conventional Mutual Funds
- [94-501](#) – Notice of adoption of amended BC Instrument 94-501

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

Act or Regulation Affected	Effective Date	Amendment Information
Climate Action Tax Credit Regulation (135/2008) (formerly Low Income Climate Action Tax Credit Regulation)	July 1/18	by <a href="#">Reg 133/2018</a>
Designated Accommodation Area Tax Regulation (93/2013)	June 1/18	by <a href="#">Reg 91/2018</a>
	July 1/18	by <a href="#">Regs 53/2018</a> and <a href="#">91/2018</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> July 1/18	by <a href="#">Reg 132/2018</a>
International Commercial Arbitration Regulation (168/86)	<b>REPEALED</b> June 4/18	by <a href="#">Reg 103/2018</a>
Motor Vehicle Returned to Manufacturer Tax Remission Regulation (90/2018)	June 15/18	by <a href="#">Reg 118/2018</a>

National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> (226A/2009)	June 4/18	by <a href="#">Reg 210/2017</a>
	June 12/18	by <a href="#">Regs 111/2018</a> and <a href="#">112/2018</a>
National Instrument 33-109 <i>Registration Information</i> (226B/2009)	June 12/18	by <a href="#">Reg 111/2018</a>
National Instrument 44-101 <i>Short Form Prospectus Distributions</i> (370/2005)	June 12/18	by <a href="#">Reg 111/2018</a>
National Instrument 44-102 <i>Shelf Distributions</i> (425/2000)	June 12/18	by <a href="#">Reg 111/2018</a>
National Instrument 45-102 <i>Resale of Securities</i> (107/2004)	June 12/18	by <a href="#">Reg 112/2018</a>
National Instrument 45-106 <i>Prospectus Exemptions</i> (227/2009)	June 12/18	by <a href="#">Reg 111/2018</a>
National Instrument 51-102 <i>Continuous Disclosure Obligations</i> (110/2004)	June 12/18	by <a href="#">Reg 111/2018</a>
National Instrument 81-102 <i>Investment Funds</i> (2/2000)	June 12/18	by <a href="#">Reg 111/2018</a>
National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i> (218/2005)	June 12/18	by <a href="#">Reg 111/2018</a>
Provincial Sales Tax Regulation (96/2013)	Jun 26/18	by <a href="#">Reg 128/2018</a>
Securities Act	June 26/18	by 2018 Bill 16, c. 13, sections 1 to 5 only (in force by <a href="#">Reg 135/2018</a> ), <a href="#">Securities Amendment Act, 2018</a>
Securities Regulation (196/97)	June 26/18	by <a href="#">Reg 135/2018</a>

## ENERGY & MINES

### Energy and Mines News:

#### **B.C. Court of Appeal Decision Clarifies Scope of Collateral Attack Doctrine: Lawyer**

The B.C. Court of Appeal has reinstated an energy company's civil action for misfeasance against the province over its denial of a permit for a hydro project, saying a lower court judge erred when she determined the case was a collateral attack against provincial decision-makers. The genesis of the case dates back to run-of-river hydropower project Greengen was proposing at Fries Creek, which is near Squamish, BC, on the traditional territories of the Squamish First Nation. Greengen applied for a water licence and a Crown law tenure and began some preliminary work, providing a \$300,000 performance bond to BC Hydro and obtaining an archaeological review assessment of Fries Creek, which said Indigenous people had not used the site extensively in the past. In July 2007, the province entered into a land use agreement with the Squamish Nation, providing for the protection of 22 cultural sites, including Fries Creek. In August 2009 it denied Greengen's applications, citing the

land use agreement as an "important consideration" in denying the Crown land tenure and referring to Squamish Nation's concerns about the impact the project would have on the practice of "spiritual bathing." Greengen appealed the decision denying the water licence to the Environmental Appeal Board (EAB), which was dismissed in November 2015 for "lack of jurisdiction to provide the remedies sought" because Greengen, as an applicant without land tenure, was not eligible to hold a water licence. Read the [full article](#) by Ian Burns on *The Lawyer's Daily*.

### **Mining Association of BC Comments on Release of BC Professional Reliance Review Report**

As part of the consultation process, MABC made several recommendations including that any changes considered for the professional reliance model need to ensure that all government oversight and reviews are performed by suitably qualified and experienced professionals and that a clear chain of responsibility is maintained for professional work.

The [Mines Act](#) (the Act) and [Health, Safety and Reclamation Code for Mines in British Columbia](#) (the Code) govern mineral exploration and mining in the province and provide the overall context for the professional reliance regime in the mining sector.

"The current professional reliance regime provided by the Act and Code is comprehensive and clearly articulates the roles and responsibilities of qualified professionals in relation to mine-related approvals," continued Cox. "Additionally, the environmental assessment and permitting processes for mines in BC provide government oversight and review, as well as Indigenous and public input into the planning and design work performed by qualified professionals for BC's mines." Read the [full article](#) on the *Mining Association of BC* website.

### **Petronas Invests in British Columbia LNG Project**

Less than a year after cancelling the \$36-billion Pacific Northwest LNG megaproject in British Columbia, Petronas announced on May 31, 2018, that one of its wholly-owned entities will assume a 25 per cent stake of the LNG Canada project located in Kitimat, BC.

Petronas, a Malaysian oil and gas company, cancelled their original Pacific Northwest LNG megaproject in July 2017 due to "the extremely challenging environment brought about by the prolonged depressed prices and shift in the energy industry." The company had cited the decreased price of natural gas and local concerns as the main barriers that caused their exit from the Pacific Northwest LNG project, which was created in 2012. Petronas had spent upwards of \$10 billion on the project before its cancellation.

Natural gas prices have remained low over the past six months, and the industry outlook has predicted that 2018 will be a challenging year for producers. Read the [full article](#) by Zoë Thoms and Peter Dalglish of Aird Berlis on *Energy Insider*.

Act or Regulation Affected	Effective Date	Amendment Information
Oil and Gas Activities Act	June 26/18	by 2018 Bill 15, c. 15, section 15 only (in force by <a href="#">Reg 131/2018</a> ), <a href="#">Energy, Mines and Petroleum Resources Statutes Amendment Act, 2018</a>
Petroleum and Natural Gas Act	June 26/18	by 2018 Bill 15, c. 15, sections 27 and 28 (part) only (in force by <a href="#">Reg 131/2018</a> ), <a href="#">Energy, Mines and Petroleum Resources Statutes Amendment Act, 2018</a>
Petroleum and Natural Gas General Regulation	June 26/18	by <a href="#">Reg 131/2018</a>

## **FAMILY & CHILDREN**

### **Family and Children News:**

#### **Various Definitions of "Spouse"**

Historically, spouses were those that had undergone a formal marriage ceremony before a religious or secular

authority. We now live in a world where the concept of a "spouse" has broadened to include a more diverse array of relationships, without the requirement of a formal ceremony. Modern legislation has evolved with this changing idea, and many laws in Canada now define the concept of "spouse" to include both those in traditional marriages, and those in "marriage-like relationships".

The legal definition of a "spouse" can vary depending on what the law is for, or more precisely, on what the law needs to define "spouse" for. For example, the [Wills, Estates and Succession Act](#) (WESA) is concerned with defining "spouse" to determine who may be entitled to a portion of the estate of a deceased person. The [Family Law Act](#) requires a definition of "spouse" to determine if a separated couple is subject to property division, and to calculate spousal support payments. The [Income Tax Act](#) needs a definition of "spouse" to determine whether or not tax rules and exemptions apply to a taxpayer. Read the [full article](#) by Gordon Behan of Clark Wilson LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Abortion Services Access Zone Regulation (337/95)	June 1/18	by <a href="#">Reg 104/2018</a>
Child Care Subsidy Regulation (74/97)	July 1/18	by <a href="#">Reg 133/2018</a>

## FOREST & ENVIRONMENT

### Forest and Environment News:

#### Independent Panel Appointed to Review BC's Forest Inventory Program

In February 2018, Doug Donaldson, Ministry of Forests, Lands and Natural Resource Operations and Rural Development, announced the appointment of an independent panel to conduct an evaluation of the province's forest inventory program. "We have a robust forest inventory program, but it has been 10 years since the program was last reviewed, and since that time, we've seen significant changes to our forests, most notably from the mountain pine beetle epidemic and wildfires," Donaldson said at the announcement. "Having a reliable inventory is important to garner public trust in how we manage our public forests." The forest inventory, including growth and yield models, provide fundamental information that supports decisions regarding: allowable annual cuts (AAC); wildfire management; wildlife habitat and species at risk; managing hydrology; carbon sequestration accounting; and long-term capital investments such as re-opening, building, or shutting down mills. Maintaining BC's forest inventory program is no small task. With more than 60 million hectares of forest, BC has the most diverse range of ecosystem types on the largest publicly-managed land base in North America. Read the [full article](#) by [Jeff Waatainen](#) of DLA Piper in this issue of *BC Forest Professional*.

#### BC Government Announces New Approach to Salmon Farm Tenures

The Government of British Columbia will establish rigorous new rules and expectations for the renewal of salmon farm tenures in BC waters.

"The challenges facing our wild salmon have been ignored for far too long," said Lana Popham, Minister of Agriculture. "That's why we are putting in place a new approach to provide clarity and outline our expectations moving forward for a sustainable industry that protects wild salmon, embraces reconciliation, and provides good jobs."

The new requirements provide clarity on the salmon farming tenure process, establishing key criteria for tenures past 2022.

"We need to take the necessary steps – steps that should have been taken years ago – to ensure that fish farm operations do not put wild salmon stocks in jeopardy," said Doug Donaldson, Minister of Forests, Lands, Natural Resource Operations and Rural Development. "The thousands of British Columbians who rely on our clean ocean waters for jobs, culture and recreation expect no less."

Effective June 2022, the Province will grant [Land Act](#) tenures only to fish farm operators who have satisfied Fisheries and Oceans Canada (DFO) that their operations will not adversely impact wild salmon stocks, and who have negotiated agreements with the First Nation(s) in whose territory they propose to operate. A key court ruling in 2009 clarified that the federal government has the exclusive jurisdiction for regulating fisheries,



including fish farms. Read the full government [news release](#).

### Environmental Appeal Board Decisions

There were three Environmental Appeal Board decisions in the month of June:

#### Water Sustainability Act

- [Bruce Gibbons v. Assistant Water Manager](#) [Preliminary Issue of Standing – Appeal Dismissed]

#### Environmental Management Act

- [Emily Toews; Elisabeth Stannus; Unifor Local 2301 v. Director, Environmental Management Act](#) [Preliminary Applications – Granted in Part; Granted]

#### Wildlife Act

- [Leslie S. Allen v. Deputy Director](#) [Consent Order – Appeal Allowed]

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

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Boundaries Regulation (137/2014)	June 25/18	by <a href="#">Reg 124/2018</a>
Closed Areas Regulation (115/2018)	July 1/18	by <a href="#">Reg 115/2018</a>
Code of Practice for Soil Amendments (210/2007)	June 14/18	by <a href="#">Reg 116/2018</a>
Contaminated Sites Regulation (375/96)	June 14/18	by <a href="#">Reg 116/2018</a>
Forest Planning and Practices Regulation (14/2004)	June 25/18	by <a href="#">Reg 124/2018</a>
Great Bear Rainforest (Forest Management) Regulation (327/2016)	June 25/18	by <a href="#">Reg 124/2018</a>
Greenhouse Gas Emission Control Regulation (250/2015)	June 4/18	by <a href="#">Reg 107/2018</a>
Greenhouse Gas Industrial Reporting and Control Act	June 4/18	by 2016 Bill 19, c. 15, sections 1 (a) and (d), 3, 4, 6, 8 and 11 to 13 only (in force by <a href="#">Reg 107/2018</a> ), <a href="#">Greenhouse Gas Industrial Reporting and Control Act</a>
Hunting Regulation (190/84)	July 1/18	by <a href="#">Reg 115/2018</a>
Limited Entry Hunting Regulation (134/93)	June 13/18	by <a href="#">Reg 113/2018</a>
Motor Vehicle Prohibition Regulation (196/99)	July 1/18	by <a href="#">Reg 115/2018</a>
Open Burning Smoke Control		

Regulation (145/93)	June 15/18	by <a href="#">Reg 117/2018</a>
Permit Regulation (253/2000)	June 15/18	by <a href="#">Reg 117/2018</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 Management Areas Regulation (12/2015)	June 20/18	by <a href="#">Reg 123/2018</a>

## HEALTH

### Health News:

#### BC Considers Forcing Drug Companies to Disclose Payments to Doctors

British Columbia is planning to join Ontario in forcing pharmaceutical companies to reveal their payments to physicians, patient groups and other health-care organizations.

Consultations are set to begin in Vancouver and Victoria next month on a potential health-sector transparency program, one that could compel the makers of drugs and medical devices to disclose what they pay individual physicians for delivering speeches, sitting on advisory boards, travelling to conferences and other work. Read *The Globe and Mail* [article](#).

#### Andrew Weaver Urges "Very Cautious" Approach to Law Changes over Prescriptions for Teens

Elliot Eurchuk and Dorrian Wright, both 16-year-old students from Vancouver Island, are two of the most recent names on a long list of youth who have died in the ongoing overdose crisis. Wright died last week and Eurchuk in April. Brock Eurchuk says his son's drug use started after he was prescribed opioids for four surgical procedures last year, even though the family had requested alternative treatments. On Friday [June 8th], Andrew Weaver, Green Party leader and MLA for Oak Bay-Gordon Head, met with Elliot Eurchuk's parents who are pushing for changes to BC laws which prevented them from having a say in their son's prescriptions. Read the *CBC* [article](#).

#### Cannabis Legislation Receives Royal Assent

On May 31, [Bill 30](#), the *Cannabis Control and Licensing Act*, and [Bill 31](#), the *Cannabis Distribution Act*, received royal assent and will come into effect to coincide with [Bill C-45](#), the federal *Cannabis Act*, on October 17, 2018. Bill 30 regulates the possession, sale, supply, production and consumption of cannabis, and establishes a licensing scheme for the retail sale of cannabis in private stores and for agents involved in the purchase and sale of cannabis. Bill 31 grants authority to the government to buy and sell cannabis and cannabis accessories and to establish and operate warehouses, stores and an online sales system. The provincial government is now in the process of developing regulations to support the implementation of this legislation. For your convenience, Quickscribe has published early consolidations of the [Cannabis Control and Licensing Act](#) and the [Cannabis Distribution Act](#).

Act or Regulation Affected	Effective Date	Amendment Information
Abortion Services Access Zone Regulation (337/95)	June 1/18	by <a href="#">Reg 104/2018</a>

## LABOUR & EMPLOYMENT

### Labour and Employment News:



## Legalization of Recreational Cannabis and the Workplace

### Issues Employers Should Consider

On June 20, 2018, Prime Minister Justin Trudeau announced that recreational use of cannabis in Canada will be legal as of October 17, 2018. The Prime Minister's announcement came just one day after the Senate voted to pass [Bill C-45](#), the *Cannabis Act*. Upon coming into force as of October 17, 2018, the *Cannabis Act* will allow Canadian adults, subject to provincial and territorial restrictions, to:

- purchase fresh cannabis, dried cannabis, cannabis oil, cannabis seeds, or cannabis plants from retailers authorized by the provinces and territories;

Read the [full article](#) by Ben Ratelband and Jessica Wuergler with McCarthy Tétrault LLP

## US Supreme Court Rules Union

### Agency Fees not Enforceable

Last Wednesday's [June 27th's] ruling on the Janus Union Fees Case is sure to change the American labour landscape. In a 5-4 decision, the Supreme Court ruled that public sector employees cannot be required to pay money towards funding a union.

The original lawsuit stemmed from Janus, an Illinois-state employee, who did not support his union because he felt that its salary and benefits demands for employees (like himself) "would impose an unreasonable financial burden on the state".

In the United States, employees represented by a union are required to either pay union dues or agency fees. Both are virtually the same but union dues only apply to registered due-paying members. The rest of the employees whose job form a part of the bargaining unit are required to pay agency fees to the union representing their position. By law, these fees cannot be more than union dues and are used for the same purpose – to fund a union's efforts in representing employees, for collective bargaining, and other various lobbying activities including providing political support to candidates who support its platform.

Currently, 28 of 50 US states already have "Right to Work" laws. "Right to Work" originates from the American Constitution's Freedom of Association right, allowing individuals the choice of being associated with a union. This means that no person can be compelled as a condition of employment to join (or pay dues) to a union regardless if their position is represented by a union. These laws impede a union's effectiveness, requiring them to provide equal representation to individuals who pay dues to become union members and those who choose not to join the union or contribute dues. Read the [full article](#) by Kyla Graham and Benjamin T. Aberant of McCarthy Tétrault.

Act or Regulation Affected	Effective Date	Amendment Information
Employment Standards Regulation (396/95)	June 1/18	by <a href="#">Regs 12/2018</a> and <a href="#">80/2018</a>
Mental Disorder Presumption Regulation (136/2018)	<b>NEW</b> June 26/18	see <a href="#">Reg 136/2018</a>

## LOCAL GOVERNMENT

### Local Government News:

#### UBCM Submission to FOIPPA Review

On June 14, UBCM presented Minister Jinny Sims with local government perspectives on information access and privacy protection. UBCM President Wendy Booth, Vice-President Arjun Singh, and Executive Director Gary MacIsaac made the presentation to inform the Minister's current review of the Freedom of Information and Protection of Privacy Act (FOIPPA), and associated information and privacy measures. [Read more.](#)

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establish and operate warehouses, stores and an online sales system. The provincial government is now in the process of developing regulations to support the implementation of this legislation. For your convenience, Quickscribe has published early consolidations of the [Cannabis Control and Licensing Act](#) and the [Cannabis Distribution Act](#).

### **Victoria's Plastic Bag Bylaw Upheld by B.C. Supreme Court**

The Canadian Plastic Bag Association challenged the bylaw, arguing the city does not have jurisdiction under the [Community Charter](#) to prohibit businesses from providing plastic bags to their customers. The association said the ban amounts to an environmental regulation that needs provincial approval.

Further, it argued the city has no authority to compel a business to charge consumers a mandatory fee or tax for paper and reusable bags. Justice Nathan Smith disagreed, saying that the court must consider both the purpose and effect of a bylaw.

"The fact that a measure has merely incidental effects on areas within the powers of another level of government does not render the measure *ultra vires*," says Smith's decision. "I find no evidence of bad faith in this case. Although some members of council may have been motivated by broad environment concerns, council's attention was properly drawn to ways in which discarded plastic bags impact municipal facilities and services." Read the full *Times Colonist* [article](#) by Bill Cleverley.

### **Improved Compensation for Tenants of Manufactured Home Parks**

New compensation for tenants of manufactured home parks facing eviction take effect on Wednesday, June 6, 2018. Changes to the [Manufactured Home Park Tenancy Act](#) will provide more security for park tenants facing eviction as a result of park owners closing or converting a park. Changes include:

- a consistent 12-month notice to end tenancy: Ensuring the effective date of a 12-month notice to end tenancy is the same for all tenancy agreements under the act;
- increased compensation landlords must pay tenants when the park is closed: Compensation for tenants will now be \$20,000, an increase from the previous requirement of 12 months of pad rental costs;

Read the [full news release](#) on the BC government website.

### **Expanded Toolkit Supports Making Local Roads Safe**

The Province has released an expanded toolkit to help local governments interested in making their streets and related features safer, no matter how people get around. Two new modules and an introduction round out the BC Community Road Safety Toolkit, which discusses and illustrates some of the safest, most innovative road design features from around the world:

- Introduction: gives an overview of the underlying themes and concepts contained in the toolkit, the role of local governments in road safety, the goal of Vision Zero (that is, working toward zero traffic fatalities and serious injuries) and the Safe Systems Approach.
- Module 2: Safe Roadway Designs to Protect All Road Users provides rationales and implementation considerations for dozens of roadway designs and features geared to making intersections and corridors safer. Topics include narrowed vehicle lanes, speed humps, various traffic control enhancements, and ways to improve street signs and lighting. This module includes a bibliography of, and links to, guides, technical manuals and other documents with more information on specific design and infrastructure options.

Read the full government [news release](#).

### **2018 Convention Code of Conduct Finalized**

At the 2016 Convention, delegates endorsed resolution B2013 asking UBCM to implement a code of conduct for the convention. Under the direction of the Presidents Committee, UBCM has undertaken extensive work on this and a formal [Convention Code of Conduct](#) will be in place for the 2018 Convention. UBCM adopted a statement of expectations for the 2017 Convention as an interim step. Over the past year UBCM has worked with a lawyer/mediator to prepare a Convention Code of Conduct that not only reinforces our [statement of expectations](#), but also clearly outlines an implementation plan in the event that a breach to the Code occurs at Convention. Read the full article on the UBCM website.

Act or Regulation Affected	Effective Date	Amendment Information

Agricultural Land Reserve Use, Subdivision and Procedure Regulation (171/2002)	June 15/18	by <a href="#">Reg 117/2018</a>
Capital Regional District Regulation (65/90)	June 15/18	by <a href="#">Reg 117/2018</a>
Central Fraser Valley Regional District Additional Power to Contract Regulation (493/95)	June 15/18	by <a href="#">Reg 118/2018</a>
City of Victoria Additional Powers Regulation (69/97)	June 15/18	by <a href="#">Reg 118/2018</a>
Conflicts of Interest Exceptions (Sun Peaks Mountain Resort Municipality) Regulation (78/2010)	June 15/18	by <a href="#">Reg 117/2018</a>
Development Cost Charge Amendment Bylaw Approval Exemption Regulation (130/2010)	June 15/18	by <a href="#">Reg 117/2018</a>
Development Cost Charge Regulation (114/2018)	<b>NEW</b> June 14/18	see <a href="#">Reg 114/2018</a>
Financial Information Regulation (371/93)	June 15/18	by <a href="#">Reg 117/2018</a>
Fraser Valley Regional District Additional Power to Contract Regulation (174/96)	June 15/18	by <a href="#">Reg 118/2018</a>
Improvement District Tax Regulation (438/2003)	June 15/18	by <a href="#">Reg 118/2018</a>
Islands Trust Electronic Meetings Regulation (283/2009)	June 15/18	by <a href="#">Reg 117/2018</a>
Islands Trust Natural Area Protection Tax Exemption Regulation (41/2002)	June 15/18	by <a href="#">Reg 117/2018</a>
Islands Trust Regulation (119/90)	June 15/18	by <a href="#">Reg 117/2018</a>
Local Government Elections Regulation (380/93)	June 15/18	by <a href="#">Reg 117/2018</a>
Local Government Grants Regulations (221/95)	June 15/18	by <a href="#">Reg 117/2018</a>
Local Government Officers Oath Regulation (315/96)	June 15/18	by <a href="#">Reg 118/2018</a>

Municipal Tax Regulation (426/2003)	June 15/18	by <a href="#">Reg 117/2018</a>
Prescribed Classes of Property Regulation (438/81)	June 15/18	by <a href="#">Reg 117/2018</a>
Publication of Letters Patent Regulation (121/98)	June 15/18	by <a href="#">Reg 118/2018</a>
Regional District Liabilities Regulation (261/2004)	June 15/18	by <a href="#">Reg 118/2018</a>
Regional District Service Withdrawal Regulation (398/2000)	June 15/18	by <a href="#">Reg 118/2018</a>
Regional District Electronic Meetings Regulation (271/2005)	June 15/18	by <a href="#">Reg 118/2018</a>
Regional District Requisition Regulation (347/2008)	June 15/18	by <a href="#">Reg 118/2018</a>
Regional District Tax Regulation (439/2003)	June 15/18	by <a href="#">Reg 118/2018</a>
Resort Regions Regulation (90/2007)	June 15/18	by <a href="#">Reg 118/2018</a>
Sechelt Indian Government District Advisory Council Regulation (156/2014)	June 15/18	by <a href="#">Reg 117/2018</a>
The Cultus Lake Park Act	June 15/18	by 2018 Bill 24, c. 23, sections 40 to 42 only (in force by Royal Assent), <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>

## MISCELLANEOUS

### Miscellaneous News:

#### **New Standards for BC Police Expected to Address Carding Practices**

The BC government plans to finalize provincial standards around unbiased policing next year in response to recommendations from its 2012 missing-women inquiry and the director of police services expects the new standards to address the use of street checks.

The province said Wednesday [June 6th] it is working on the new standards after its public consultation process closed in mid-April. It said feedback from the consultation process will help inform new policing standards that promote equality. Read *The Globe and Mail* [article](#).

#### **Supreme Court to Reconsider Fundamental Elements of Antitrust Class Actions**

Antitrust class actions have proliferated in Canada following the Supreme Court's 2013 "trilogy" of competition law decisions headlined by *Pro-Sys Consultants Ltd. v. Microsoft Corp.* Those decisions held that "indirect purchasers" of price-fixed goods do have a cause of action under section 36 of the federal [Competition Act](#), but they left a number of follow-on issues not clearly decided, or unaddressed.

The Supreme Court of Canada will soon hear a case that may settle some of the resulting controversies. On June 7, 2018, the Supreme Court granted leave to appeal the decision of the British Columbia Court of Appeal in [Godfrey v. Sony Corporation](#). The issues raised in the ensuing appeal will include:

- What is the nature of the harm that must be suffered by indirect purchasers to permit their recovery as a class?
- Does the existence of a statutory cause of action in section 36 of the *Competition Act* for persons harmed by anti-competitive conduct preclude overlapping and inconsistent common law claims?
- Does liability under section 36 extend to any consequences of prohibited conduct, no matter how remote?

The first issue goes to the very heart of class proceedings: whether the procedure grants the class a legal identity separate from its individual class members. Read the [full article](#) by [John F. Rook Q.C.](#), [Emrys Davis](#) and [Christiaan A. Jordaan](#) of Bennett Jones LLP.

### **Class Actions Made Easy: Bill 21 Amendments Burnish British Columbia's "Friendly Forum" Reputation**

- British Columbia has long been known as one of Canada's friendlier jurisdictions for class proceedings.
- Until now, this reputation has largely been due to the province's "no cost" regime, under which an unsuccessful representative plaintiff on a certification motion does not have to pay the defendant's legal costs (with a few exceptions).
- Recent amendments to the *Class Proceedings Act*, known as "Bill 21", may make British Columbia an even more attractive forum for the initiation of class proceedings by making it easier to include residents of other Canadian jurisdictions in the plaintiff class.

#### **What the Bill 21 Amendments Do**

On May 17, 2018, Bill 21 (the [Class Proceedings Amendment Act, 2018](#)) received Royal Assent, having been passed by the BC Legislative Assembly in April. Once its provisions are proclaimed in force, Bill 21 will amend the existing CPA to:

- Expressly provide for multi-jurisdictional class proceedings;

Read the [full article](#) by [Darlene Crimeni](#) and [Samaneh Hosseini](#) of Stikeman Elliott LLP.

### **The Bill of Costs, a Registrar's View**

– from [CLEBC – Practice Points](#)

In this paper, District Registrar Scott A. Nielsen of the BC Supreme Court shares his registrar's view and tips for lawyers preparing bills of costs in a personal injury action. View [PDF](#) of the paper.

### **Internet Research by Jurors and Judges during Cases Challenged: Julius Melnitzer**

Toronto lawyer Paul Slansky has alleged that judges or court staff at the Federal Court of Canada (FCC) appear to have conducted independent internet searches of his client's website while his case was pending, without disclosing the searches to him and subsequently refusing to provide details of the searches.

The allegations come on the heels of widespread media coverage of three Ontario cases in which jurors were found to have disobeyed judges' instruction and conducted their own research on the internet, resulting in two mistrials in lengthy criminal proceedings.

The allegations regarding the FCC, which have not been proven in court, are found in an eight-page affidavit from Eric Cole, a resident of Virginia and expert on computer network design and cybersecurity. Read the full *Financial Post* [article](#) by Julius Melnitzer.

Act or Regulation Affected	Effective Date	Amendment Information
Electoral Reform and Referendum 2018 Regulation (125/2018)	June 22/18	see <a href="#">Reg 125/2018</a>

### **MOTOR VEHICLE & TRAFFIC**

## Motor Vehicle and Traffic News:

### **\$75,000 Non-Pecuniary Assessment for Probably Permanent Soft Tissue Injuries**

Reasons for judgement were published this week by the BC Supreme Court, Victoria Registry, assessing damages for chronic and probably permanent soft tissue injuries. In today's case ([McColm v. Street](#)) the Plaintiff was injured in a 2014 collision. Fault was admitted. The crash resulted in injury to the Plaintiff's neck, back and shoulder. Symptoms persisted to the time of trial. The court noted while there was a possibility the symptoms would improve in the future it was more likely that complete recovery would not occur. In assessing non-pecuniary damages at \$75,000 Madam Justice Warren provided the following reasons: Read the [full article](#) by [Erik McGraken](#).

### **CVSE Bulletins & Notices**

The following notices have been posted in June by CVSE:

- [CT Notice 01-18](#) – Effective immediately, BC will allow increased weight allowances for Wide Base Single Tires that are 455 mm or wider to receive a single axle weight of 8,500 kg.
- [CT Notice 03-18](#) – Request For Participants In A Pilot Program To Evaluate Automatic Lift Devices Set To Deploy Under Pre-Determined Loads On Trailers

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

Act or Regulation Affected	Effective Date	Amendment Information
Insurance (Vehicle) Regulation (447/83)	<b>RETROACTIVE</b> to Jan. 1/18	by <a href="#">Reg 105/2018</a>

## OCCUPATIONAL HEALTH AND SAFETY

### Occupational Health & Safety News:

#### **Quickscribe Introduces New OH&S Category**

We are pleased to announce a new category for your Reporter. While occupational health and safety amendments and articles were included in the Reporter in the past, we didn't have a dedicated category to house them. In addition to seeing more related OH&S articles, Quickscribe is looking to bring on a dedicated expert annotator who will provide you with additional commentary and references to relevant case law pertaining to this section. Stay tuned!

#### **Board Bulletin, Volume 18: Fire Hazard Assessment**

Logging and most other industrial activities on forested land can create or contribute to an existing fire hazard. In British Columbia, the [Wildfire Act](#) requires a person carrying out an industrial activity such as logging to assess and abate fire hazards.

A fire hazard assessment considers the risk of a fire starting, the hazard associated with the industrial activity, the difficulty in controlling a fire and the potential threat to values. A fire hazard assessment must also include an assessment of the fuel hazard, which is the potential behavior of a fire based on the arrangement, condition and amount of forest fuels such as branches, leaves and stems.

Assessing fire hazard is the law and therefore it must be done. But fire hazard assessment is also a critical step in demonstrating due diligence. Due diligence means taking all reasonable steps to comply with the law. [Section 29](#) of the [Wildfire Act](#) states that a person may not be found to have contravened the Act if they can demonstrate due diligence. Read the [full article](#) on the Forest Practices Board website.

#### **Mentorship Program Helps Young Carpenters**

Young workers are the backbone of Fourth-Rite Construction – in fact, many of their current senior staff got their start at the company. Now, they give back to their new employees with training, mentorship, and a safety culture that starts in recruitment.

Carpenter and superintendent Dimitri Margaritis has been doing the job he loves for three decades, but he still remembers his early days in the industry – and how daunting a construction site initially seemed.



"I worked hard," Margaritis recalls. "But I remember what it was like: When you go onto a site for the first time, it's intimidating."

Margaritis got his start as an apprentice for Fourth-Rite Construction – the same Abbotsford-based company he works at today as a superintendent. While the company put him through apprenticeship training through Kwantlen Polytechnic University, he tended to keep quiet on the job and didn't ask a lot of questions.

His early experience was a common one. Canadian research studies on young workers have shown that young workers can be reluctant to speak up and may feel that they lack the authority or experience to address workplace health and safety. Margaritis wanted to change that. Read the [full article](#) in *Worksafe Magazine* by Gail Johnson.

#### **Policy Item R5.48-1 RE: Occupational Exposure Limits**

[Section 5.48](#) [of the [Occupational Health and Safety Regulation](#)] provides established limits for a worker's exposure to hazardous chemical substances. Generally, these exposure limits are established according to the Threshold Limit Values ("TLVs") adopted by the American Conference of Governmental Industrial Hygienists ("ACGIH"). However, the Board has authority to make exceptions and adopt occupational exposure limits for specific chemical substances that are not consistent with the TLVs established by the ACGIH. This policy sets out those exceptions. Read the [full policy](#) on the WorkSafeBC website.

Act or Regulation Affected	Effective Date	Amendment Information
Mental Disorder Presumption Regulation (136/2018)	<b>NEW</b> June 26/18	see <a href="#">Reg 136/2018</a>

### **PROPERTY & REAL ESTATE**

#### **Property and Real Estate News:**

##### **No Strata Supermajority Needed to Hire Realtor, BC Supreme Court Confirms**

The BC Supreme Court recently confirmed that a strata council only needs a simple majority of owners to authorize the council to hire a realtor to solicit offers for the sale of the strata building.

In *Buckerfield v. The Owners of Strata Plan VR 92*, [2018 BCSC 839](#), the court dismissed the minority owners' petition which sought to require the support of 75 to 80 percent of owners before the strata council could retain a realtor. The court determined the supermajority requirement would impose an unnecessary and cumbersome procedural threshold before a strata council could take the first step in the process of winding-up the strata.

##### **The Strata Wind-Up Process**

Effective July 28, 2016, the [Strata Property Act](#) was amended to ease the sale of strata complexes by reducing the unanimous consent provisions for winding-up and terminating a strata corporation to 80 percent consent to appoint a liquidator to wind up the strata corporation. [Sections 276 through 285](#) of the *Strata Property Act* specify the procedures to wind up the strata corporation, including court approval of the appointment of the liquidator. The sale of the strata complex by the liquidator must be approved by a supermajority of three-quarters of the owners.

Read the [full article](#) by Vicki Tickle, Daniel Shouldice and Damon Chrisholm of McMillan LLP.

##### **End to "Dual Agency" among Changes to BC Real Estate Industry Coming into Force**

[New rules](#) for the BC real estate industry [came into force Friday, June 15] and the Real Estate Council of BC says those changes will better protect buyers and sellers.

In a statement, the council said the rules will ban the practise of "dual agency," where an agent represents both the buyer and seller in a transaction (though an exception is made for "remote locations underserved by real estate professionals").

The other change is an increase in disclosure: agents will have to provide more information to a client up front, at the start of their business relationship. Read the [CBC article](#).

## Implied Agency: If It Quacks Like a Duck, It May Be a Duck

Implied agency is very much on the brain these days with the Superintendent of Real Estates [new rules](#) on agency now in effect. [Rule 5-10.1](#) requires that licensees use a new form from the Real Estate Council of British Columbia to disclose the risks faced by unrepresented parties, the limited assistance that licensees can provide them and to recommend that they seek independent professional advice. Licensees need to be aware that they can provide only very limited services to unrepresented consumers in a property transaction. Failure to take extreme care may result in claims of implied agency.

Implied agency is defined in the 20th Edition of *Bowstead & Reynolds on Agency* at p. 61:

*Agreement between principal and agent may be implied in a case where one party has conducted himself towards the other in such a way that it is reasonable for that other to infer from that conduct assent to an agency relationship.*

The danger in going beyond the very limited services that a licensee can offer to unrepresented parties in a transaction is that the consumer will argue that an implied agency relationship has been created. Read the [full article](#) on the BC Real Estate Agency website by Chris Johnston, B.A., L.L.B.

## New Consumer Protection Rules: Information for Consumers

The Superintendent of Real Estate has announced [new rules](#) for real estate licensees that will change the way a real estate professional can provide service to consumers. Under the new rules, real estate licensees will be required to:

- give consumers more information about commissions and fees – in particular, how the commission is to be divided between a listing brokerage and cooperating brokerage, or when there is no cooperating brokerage, retained by the listing brokerage;
- before working with consumers, inform them of the duties and responsibilities owed to clients and unrepresented parties;
- inform unrepresented consumers of the risks of dealing with a licensee who is representing another party to the transaction;
- only work for either the buyer or the seller in a single real estate transaction. Under the new Rules, dual agency, the practice of acting on behalf of both the buyer and seller on the same trade, will be prohibited except in extremely limited circumstances.

The new rules [came] into effect on June 15, 2018. Read the [full article](#) on the Real Estate Council of British Columbia website.

Act or Regulation Affected	Effective Date	Amendment Information
Application for Subdivision Approval Regulation (8/89)	June 15/18	by <a href="#">Reg 117/2018</a>
Compensation Action Procedure Rule Regulation (100/2005)	June 15/18	by <a href="#">Reg 117/2018</a>
Manufactured Home Park Tenancy Act	June 6/18	by 2018 Bill 12, c. 11, sections 1 to 5 only (in force by <a href="#">Reg 109/2018</a> ), <a href="#">Tenancy Statutes Amendment Act, 2018</a>
Manufactured Home Park Tenancy Regulation (481/2003)	June 6/18	by <a href="#">Reg 109/2018</a>
Property Transfer Tax Regulation (74/88)	June 15/18	by <a href="#">Reg 117/2018</a>
Real Estate Development Marketing	June 15/18	by <a href="#">Reg 117/2018</a>

Regulation

## WILLS & ESTATES

### Wills and Estates News:

#### **S. 58 WESA Does Not Apply to Wills with "Pour Over" Revocable Trusts**

Re *Quinn Estate*, [2018 BCSC 365](#), held that the curative provisions of [section 58 WESA](#) did not apply to a will, with a "pour over" clause that created a revocable and amendable trust.

Mr. Quinn was a well known general manager in the National Hockey League, including with the Vancouver Canucks.

In 1996, he executed a will in respect to his Canadian assets situated in Canada. At the time of his death in 2014 his Canadian assets consisted primarily of shares in the capital of several private corporations. Subject to the resolution of a particular liability, the value of his estate was either \$750,000 or near nil.

The will was prepared by a US attorney and was executed in British Columbia. Read the [full article](#) by [Trevor Todd](#) on his blog *disinherited – Estate Disputes and Contested Wills*.

#### **Converting a Petition or Application to Prove a Will into an Action**

The [Supreme Court Civil Rules](#) provide that a proceeding to prove the validity of a will must be started by either a notice of application, if there is an existing proceeding in which it is appropriate to do so, or by a petition. This is set out in [Rule 25-14\(4\)](#). This is a significant change to the practice. Prior to the changes to the Rules with the coming into force of the [Wills, Estates and Succession Act](#), contested proceedings to prove a will were brought by a notice of civil claim. A proceeding begun by Notice of Civil Claim is referred to as an "Action." The difference is that an Action has pretrial procedures such as disclosure of documents, and oral examinations for discovery, and ultimately a trial with witnesses testifying in court. In contrast, a notice of application or petition does not have the pretrial disclosure process and the evidence is by way of affidavits.

The changes in the procedure may have significant implications for someone challenging a will, perhaps on the grounds that the will-maker did not have the mental capacity to make a will or was unduly influenced. The person making the claim often will not have as much information as the person seeking to uphold the will, often the named executor. Successful challenges of wills may depend on obtaining pretrial disclosure from the other parties, as well as information from persons who are not part of the lawsuit. Accordingly, the Rule change may tend to work against those challenging a will, including those with meritorious claims. Read the [full article](#) by [Stan Rule](#) of Sabey Rule LLP and published on the Sabey Rule Blog.

**Act or Regulation Affected**

**Effective Date**

**Amendment Information**

*There were no amendments this month.*

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