

# Quickscribe Reporter

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Vol: XVII – Issue: V – May 2018

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## QUICKSCRIBE NEWS:

### What's Happening in the House?

The session officially wrapped up at the end of May with a total of 35 government bills achieving Royal Assent. In May, the following government Bills were introduced:

- [Bill 19](#), Protected Areas of British Columbia Amendment Act, 2018 (*in force by RA – May 31*)
- [Bill 32](#), Protection of Public Participation Act (*First Reading – May 15*)
- [Bill 33](#), South Coast British Columbia Transportation Authority Amendment Act, 2018 (*in force by RA – May 31*)
- [Bill 34](#), Greenhouse Gas Reduction Targets Amendment Act, 2018 (*partially in force by RA – May 31*)
- [Bill 35](#), Supply Act, 2018-2019 (*in force by RA – May 31*)

One notable private member bill (Bill [Pr401](#), Canadian Chinese School of Theology Vancouver Act) achieved Royal Assent on May 31st and is partially in force.

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

### Bankruptcy and Insolvency Annotations

As part of Quickscribe's ongoing efforts to expand annotation coverage to other areas of law, we are pleased to announce that [Greg Gehlen](#) has come on board as our official [expert annotator](#) in the area of Bankruptcy and Insolvency law. Greg was called to the British Columbia Bar in 1984. His practice at Gehlen Dabbs focuses on insolvency matters including corporate restructuring, security realization, and bankruptcy. He is currently Chair of the Insolvency Discussion Group, a forum of accountants and lawyers practising in the area of insolvency. Greg has lectured on insolvency issues at CLEBC conferences as well as conferences for other professional groups such as accountants and doctors, and each year contributes the chapter on bankruptcy and insolvency for CLEBC's Annual Review of Law & Practice.

### Survey – We Need Your Input!

Every few years we like to conduct a short [survey](#) to get your thoughts on Quickscribe – what you like, dislike and anything in between. This survey will give you an opportunity to provide us with your feedback, which will then be used to help determine future enhancements for this user-driven service. The survey should take approximately five minutes of your time. Thank you!

### Latest Annotations

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

- [Kimberly Jakeman](#), Harper Grey LLP – [Health Professions Act](#)
- [Michael Bain](#), Hamilton Howell Bain & Gould – [Employment Standards Act](#)


Watch this 20-minute [YouTube video](#) to learn more about annotations and how to receive alerts when new annotations are published to the laws that matter most to you. To receive notification when these or any of our contributors publish new annotations, search for their name, open an annotation and select "follow" adjacent to their name.

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**Tip: Log in to Quickscribe Online prior to clicking Reporter links...**

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View [PDF](#) of this Reporter.

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

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#### CATEGORIES

[COMPANY & FINANCE](#)    [LOCAL GOVERNMENT](#)  
[ENERGY & MINES](#)    [MISCELLANEOUS](#)  
[FAMILY & CHILDREN](#)    [MOTOR VEHICLE & TRAFFIC](#)  
[FOREST & ENVIRONMENT](#)    [PROPERTY & REAL ESTATE](#)  
[HEALTH](#)    [WILLS & ESTATES](#)  
[LABOUR & EMPLOYMENT](#)

### COMPANY & FINANCE

#### Company and Finance News:

##### **BCCA Rules Overdraft Fees Exceeding \$5 Constituted "Interest" under *Criminal Code***

Can a financial institution's "overdraft charges" be considered criminal "interest"? That was the question facing the B.C. Court of Appeal in [Bodnar v. Community Savings Credit Union](#), a class action alleging that several B.C. credit unions' fees associated with assessing customers' overdraft requests constituted "interest" under the [Criminal Code](#). The B.C. Court of Appeal, confirming the wide breadth of the definition of "interest" under [s. 347](#) of the *Criminal Code*, answered in the affirmative. *Bodnar* stands as an important reminder for Canadian financial institutions and businesses engaged in extending credit that any fees charged in relation to that process are at risk of being characterized as criminal interest, regardless of the intent of the fees and whether or not the credit arrangement resembles a "loan-shark" situation.

##### **Background**

Several BC credit unions entered into agreements with their members that gave members the ability to submit overdraft requests. Should a member tender a cheque or other financial instrument in an amount exceeding the amount available in the member's account, the credit union would assess whether to honour the overdraft or instead reject the instrument due to insufficient funds.

Read the [full article](#) by Connor Bildfell with McCarthy Tétrault.

##### **British Columbia Amends its *International Commercial Arbitration Act***

On May 17, 2018, British Columbia's [International Commercial Arbitration Act](#), RSBC 1996, c 233, (ICAA) was amended when the changes passed by the Legislature on April 12, 2018, through [Bill 11 – International Commercial Arbitration Amendment Act, 2018](#), received royal assent. The amendments significantly revise several aspects of the province's international commercial arbitration legislation and make British Columbia the second jurisdiction in Canada, after [Ontario](#), to update its international commercial arbitration legislation to account for revisions in the [2006 UNCITRAL Model Law](#) (2006 Model Law), as compared to the [1985 UNCITRAL Model Law](#) on which most other Canadian legislation is based, along with other recent developments in the area.

While the amendments primarily adopt certain changes seen in the 2006 Model Law, notably the expansion at Article 17 therein on interim measures and preliminary orders, the manner in which British Columbia does so is quite different from the approach taken by Ontario. Rather than schedule the 2006 Model Law to rather brief introductory legislation, the province has updated its statute throughout to account for changes in the 2006 Model Law and other developments that it wanted to capture. Read the [full article](#) by Rachel A. Howie and David Wotherspoon of Dentons.

##### **BC Introduces Anti-SLAPP Legislation to Protect Public Interest Debates**

The BC government has introduced [legislation](#) that would prevent lawsuits used to silence critics with unfair or

costly legal action.

Attorney General David Eby says the bill would ensure the protection of free public debate by safeguarding people from strategic lawsuits against public participation (SLAPP) suits.

Eby says such lawsuits can limit or prevent criticism over issues of public interest. The legislation was an NDP promise from last year's election campaign.

The proposed law would allow defendants to ask courts to dismiss lawsuits on the grounds they harm the defendant's ability to speak freely on a matter of public interest.

Eby says the proposed law will be debated next fall in the legislature. Read the full *CBC News* [article](#).

**Text "Y" to Confirm your Subscription! Companies Agree to \$100,000 Payment for Alleged CASL Violations**

We now have the first [Undertaking](#) involving alleged text message violations of [Canada's Anti-Spam Legislation](#) ("affectionately" known as CASL). The CRTC investigation alleges that two ticket resale companies sent text messages without consent and without setting out the prescribed information to enable the recipient to easily identify and contact the sender.

According to the Undertaking, the majority of the texts sent by the companies were requests for consent, offering the opportunity to receive future commercial offers. Recall that the [CRTC Regulations](#) require requests for consent to include specific information about the sender, together with a statement indicating that the recipient may withdraw their consent. The text messages failed to provide this information or hyperlink access to it.

In March 2018, the companies voluntarily entered into an Undertaking with the CRTC to resolve all CASL violations and agreed to pay \$100,000 in compensation (\$75,000 in the form of \$10 rebate coupons offered to 7,500 clients together with \$25,000 paid to the Receiver General for Canada). Read the [full article](#) by Amanda Branch J.D., associate at Bereskin Parr.

**BC Securities – Policies & Instruments**

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

- [BC Notice 2018/05](#) – Consultation on Proposed Fee Changes
- [21-323](#) – CSA Staff Notice and Request for Comment 21-323 Proposal for mandatory Post-Trade Transparency of Trades in Government Debt Securities, Expanded Transparency of Trades in Corporate Debt Securities and Proposed Amendments to National Instrument 21-101 Marketplace Operation and Related Companion Policy
- [81-329](#) – CSA Staff Notice 81-329 Reducing Regulatory Burden for Investment Fund Issuers
- [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
Business Corporations Act	May 31/18	by 2018 Bill 24, c. 23, sections 13 and 14 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Business Practices and Consumer Protection Authority Act	May 31/18	by 2018 Bill 24, c. 23, section 27 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Cooperative Association Act	May 31/18	by 2018 Bill 24, c. 23, section 15 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>

Credit Union Incorporation Act	May 31/18	by 2018 Bill 24, c. 23, section 16 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Designated Accommodation Area Tax Regulation (93/2013)	May 1/18	by <a href="#">Regs 5/2018</a> , <a href="#">53/2018</a> and <a href="#">91/2018</a>
	June 1/18	by <a href="#">Reg 91/2018</a>
Financial Institutions Act	May 31/18	by 2018 Bill 24, c. 23, section 17 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Income Tax Act	<b>RETROACTIVE</b> to Oct. 8/10	by 2018 Bill 14, c. 12, section 1 only (in force by Royal Assent), <a href="#">Taxation Statutes Amendment Act, 2018</a>
	<b>RETROACTIVE</b> to Jan. 1/15	by 2018 Bill 14, c. 12, sections 5 and 18 only (in force by Royal Assent), <a href="#">Taxation Statutes Amendment Act, 2018</a>
	<b>RETROACTIVE</b> to June 22/16	by 2018 Bill 14, c. 12, section 11 only (in force by Royal Assent), <a href="#">Taxation Statutes Amendment Act, 2018</a>
	<b>RETROACTIVE</b> to Dec. 15/16	by 2018 Bill 14, c. 12, section 7 only (in force by Royal Assent), <a href="#">Taxation Statutes Amendment Act, 2018</a>
	May 17/18	by 2018 Bill 14, c. 12, sections 3, 8, 14 and 15 only (in force by Royal Assent), <a href="#">Taxation Statutes Amendment Act, 2018</a>
International Commercial Arbitration Act	May 17/18	by 2018 Bill 11, c. 8, sections 1 to 22 only (in force by Royal Assent), <a href="#">International Commercial Arbitration Amendment Act, 2018</a>
National Instrument 81-102 <i>Investment Funds</i> (2/2000)	May 25/18	by <a href="#">Reg 102/2018</a>
National Instrument 81-104 <i>Commodity Pools</i> (283/2000)	May 25/18	by <a href="#">Reg 102/2018</a>
Societies Act	May 31/18	by 2018 Bill 24, c. 23, section 21 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>

## ENERGY & MINES

### Energy and Mines News:

#### Contaminated-site Developments

#### Hit 20,000-page Speed Bump

After the most recent update, BC's [Contaminated Sites Regulation](#) (CSR) now covers 20,000 pages, and the costs to meet the requirements continue to increase, according to companies hired to decipher how the rules apply to real estate developers and owners.

On November 1, 2017, Stage 10 omnibus amendments to the CSR came into effect. It updated more than 8,500 environmental quality standards. The amendments changed concentrations deemed harmful for a broad range of

contaminants and added a significant number of new ones.

This threatens to further complicate land development and discourage developers from investing in contaminated site redevelopment.

"This meant that work before that date would become non-compliant overnight. This caused environmental consulting companies to rush over 100 submissions before the deadline to grandfather their work and avoid additional costs for their clients," said Harm Gross, a biologist and president of Next Environmental of Burnaby. Read the [full article](#) by Frank O'Brien in *Business in Vancouver*.

### AI in Mining

Recent developments in Artificial Intelligence (AI) are changing the way mining companies do business. Traditionally AI has been the domain of tech giants, but the wide ranging application of its techniques has the potential to disrupt almost every industry. Mining companies must begin to prepare for these seismic changes as these new techniques unlock new potential.

#### AI Basics:

Despite recent gain in popularity, AI has been around in one form or another for quite some time. Up until recently, the amount of computing power required to deploy AI tools put them out of reach for all but the largest of technology companies. However, cheap cloud computing has caused a rush of investment and has unlocked the use of AI techniques in more industries.

Read the [full article](#) by Mark D. Penner, Roxana Monemdjou and Trevor Snider with Fasken Martineau DuMoulin LLP.

### BC Introduces Legislation in Response to Redwater

On April 25, 2018, the government of BC approved new legislation that aims to strengthen BC's orphaned well restoration and prevention regime. Once it receives royal assent, [Bill 15](#), the *Energy, Mines and Petroleum Resources Statutes Amendment Act, 2018*, will result in additional requirements for those seeking to develop oil and gas in BC through amendments to the [Oil and Gas Activities Act](#) ("OGAA") and the [Petroleum and Natural Gas Act](#).

The main feature of the Bill is the replacement of the current orphaned site restoration tax under the OGAA with a levy to be paid by permit holders to BC's Orphan Site Reclamation Fund (the "OSRF"), which the province uses to pay the cost of restoring sites that have been abandoned by unviable operators. Currently, producers must make monthly payments of \$0.03 per 1,000 cubic metres of marketable gas produced and \$0.06 per cubic metre of petroleum produced. In place of this fixed tax, the B.C. Oil and Gas Commission (the "Commission") will determine the total amount that is to be raised by the levy and is permitted to impose the levy more than once in a calendar year, giving the Commission flexibility to ensure the OSRF is adequately funded at all times. Read the [full article](#) by Auke Visser and Lisa Hiebert of Borden Ladner Gervais LLP.

### BC Judge Expands Pipeline Injunction as Protesters Use "Calculated" Defiance

Anti-pipeline protesters have made a calculated effort to blockade two Trans Mountain work sites in Burnaby, says a British Columbia Supreme Court judge who scrapped a 10-minute pre-arrest warning and expanded an injunction to include other facilities used by the company.

Justice Kenneth Affleck said Friday [June 1] he would have some sympathy for people opposed to Trans Mountain's application to vary his March 15 order prohibiting protests within a five-metre buffer zone, but an abundance of evidence indicates people have found ways to get around it.

"In my view, the clear attempt to frustrate the injunction is not acceptable and there needs to be a means by this court to determine that its orders are respected," Affleck said. "They have a right to make their views known in a way that captures the attention of the world, if they wish to do so, but they are not entitled to block what is lawful activity." Read *The Vancouver Sun* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Mines Fee Regulation (54/2015)	May 1/18	by <a href="#">Reg 73/2018</a>

Oil and Gas Activities Act	May 17/18	by 2018 Bill 15, c. 15, sections 3, 4, 6, 9 to 11, 13, 14, 16 to 18 and 20 only (in force by Royal Assent), <a href="#">Energy, Mines and Petroleum Resources Statutes Amendment Act, 2018</a>
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## FAMILY & CHILDREN

### Family and Children News:

#### **Did Appeal Court Decision Reinforce Discrimination?**

Are women to obtain preferential treatment under some aspects of our common law system? Or should the courts revisit such dated concepts and implement gender equality, which is what most women wish in our modern society? These questions were bravely and intelligently posed by British Columbia Supreme Court Justice Peter Voith who squarely addressed and opened a dialogue with BC's highest court, the Court of Appeal. The BCCA had confirmed and applied the common law principle of the presumption of advancement to a family law case. The problem? Possible reinforcement of gender discrimination. It all started with the concept of excluded property which was introduced through BC's [Family Law Act](#). The Act essentially said that normally an inheritance received by a spouse during the marriage or relationship is that spouse's excluded asset as long as he or she can trace it to its source and prove its exclusion. Read the [full article](#) by Leena Yousefi on *The Lawyer's Daily*.

#### **What Divorced Parents and Family Lawyers Have to Say about Proposed Updates to the Divorce Act**

Liberals tabled [bill C-78](#) Tuesday [May 22nd], which if passed will update federal divorce laws for 1st time in 20 years

Barry Fraser, a divorced father of two, says he applauds a federal bill tabled Tuesday that proposes the first major changes to Canada's divorce laws in more than 20 years.

"It would have saved me thousands in legal fees," he said from Guelph, Ont. Fraser had a rocky split from the mother of his children starting about six years ago, and said the amendments proposed by the federal Liberals in Bill C-78 could help people in situations like his avoid drawn-out and expensive court battles.

Now remarried and a stepfather of three, Fraser said he's glad to see the act redrawn to emphasize less adversarial processes and put the best interests of the children out front, even when one party seems bent on escalating matters.

"Especially knowing that the kids have a say in it will definitely make people stop in their tracks."

Fraser is one among many divorced parents and family law experts to greet Bill C-78 with some measure of optimism. It was introduced Tuesday [May 22] in the House of Commons by Justice Minister Jody Wilson-Raybould. Read the [CBC article](#).

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>
Family Law Act Regulation (347/2012)	May 18/18	by <a href="#">Reg 99/2018</a>
Provincial Court (Family) Rules (417/98)	May 1/18	by <a href="#">Reg 68/2018</a>
	May 18/18	by <a href="#">Reg 99/2018</a>
Public Guardian and Trustee Act	May 17/18	by 2018 Bill 7, c. 5, section 14 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act, 2018</a>



Supreme Court Family Rules  
(169/2009)

May 18/18

by [Reg 99/2018](#)**FOREST & ENVIRONMENT****Forest and Environment News:****"Owners" of Forestry Licenses in British Columbia can receive Administrative Penalties, even if the Owner is not the Injured Worker's Employer**

The Supreme Court of Canada ("SCC") has released its [decision](#) on whether administrative penalties for non-compliance with British Columbia's [Occupational Health and Safety Regulation](#), B.C. Reg. 296/97 ("Regulation") can be applied to "owners" of forestry licenses, even if the "owner" is not the "employer" of the injured worker. The answer was "yes".

This case arose from a review of the Workers Compensation Appeal Tribunal decision, WCAT 2013-01952. The Accident In this case, a tree faller was fatally injured when he was struck by a rotting tree. He was working within an area of a forest license held by West Fraser Mills Ltd. ("WFM"). WFM was the "owner" of the workplace, as defined in Part 3 of British Columbia's [Workers Compensation Act](#), R.S.B.C. 1996, c. 492 ("Act"). Part 3 of the Act addresses occupational health and safety. Read the [full article](#) by [Tari M. Hiebert](#) with Miller Thomson LLP.

**Target 2030 and Beyond: BC Government Unveils Legislation to Update Greenhouse Gas Reduction Targets**

On May 7, 2018, the BC government unveiled [Bill 34](#), the *Greenhouse Gas Reduction Targets Amendment Act, 2018*, which updates the province's greenhouse gas (GHG) emissions reduction targets. The bill repeals the [Greenhouse Gas Reduction Targets Act](#) (GGRTA), passed by the former Liberal government in 2007, and replaces it with the *Climate Change Accountability Act* (Act), which contains an updated set of GHG reduction targets and introduces other new features, including ministerial power to establish GHG emissions targets for individual industry sectors and government reporting requirements.

GHG emissions in BC in 2007 were 64.7 carbon dioxide equivalent tonnes (Mt CO<sub>2</sub>e). The most recent statistics available from BC's [GHG inventory](#) show that provincial GHG emissions in 2015 were 61.6 Mt CO<sub>2</sub>e, representing a 4.7% reduction. In order to meet the new targets, provincial GHG emissions would have to fall below 38.8 Mt CO<sub>2</sub>e by 2030, 25.9 Mt CO<sub>2</sub>e by 2040, and 12.9 Mt CO<sub>2</sub>e by 2050. Read the [full article](#) by Selina Lee-Andersen and Connor Bildfell with McCarthy Tetrault LLP.

**The Death of the Sustained Yield Concept**

*Opinion – Letter to ABCFP*

On March 8, 2017, the *Times Colonist* published an article by Joel Wood, assistant professor in the School of Business and Economics at Thompson Rivers University. As a retired professional forester, I was interested to read what he had to say on the subject of log exports. When I began my career in 1953, the driving philosophy of the Forest Service was sustained yield, as proposed by Chief Justice Gordon Sloan. The tree farm licence system was being introduced, with the goal of turning forest management over to the forest industry. The reason was simple, the sustained yield was to ensure each TFL holder had a licence of a size that could provide enough logs to supply their conversion facilities. I could see no reference in the above-mentioned article identifying the benefits of ensuring employment in BC towns that relied on the forest industry for economic survival. Read the [full letter](#) published in the May-June edition of the ABCFP *BC Forest Professional* and submitted by Norm Godfrey, RPF(Ret), Life Member, ABCFP Past President – 1990.

**Danger Tree Blasting: A Good Tool for Fallers to Deal with Dangerous Trees**

To support a further reduction in the high injury rate among fallers in BC, WorkSafeBC would like to encourage all licensees and contractors to ensure that they have easy access to qualified faller blasters for their operations.

The importance of fallers having options and tools to effectively manage risk is key. "When a faller stops to assess each falling situation, he needs to know that the saw is not the only method of getting hazardous trees to the ground," said Tim Birkett, a Cranbrook-based WorkSafeBC Safety Officer for 13 years, having previously worked in the forest sector.

The [Occupational Health and Safety Regulation Part 26.26\(3\)](#) states that if conventional methods cannot be safely employed to fall a dangerous tree, blasting or other acceptable methods must be used.

"Blasting dangerous trees is a valuable tool to help effectively manage risks and should not be ignored. It is an excellent low risk method when it is not practical to leave the trees or use mechanical methods due to terrain slope limitations for machines or adjacent work activities that are affected by the danger trees." Read the [full article](#) in the *Forest Safety Newsletter*.

### Supreme Court of Canada Confirms Fine against Company in Forest Worker's Death

A recent decision by the Supreme Court of Canada confirmed the broad powers of the BC Workers Compensation Board to adopt and enforce regulations under the [Workers Compensation Act](#) (the "Act") in order to promote workplace health and safety.

#### Background

A tree faller was fatally struck while working within the area of a forest licence held by West Fraser Mills Ltd. ("West Fraser"). The tree faller was employed by an independent contractor, not West Fraser, and also reported to and was supervised by the contractor. However, as the licence holder, West Fraser was the "owner" of the workplace as defined under the Act. The Workers Compensation Board ("Board") investigated the incident and found that the tree was dangerous and should have been removed before the work began.

Under [section 225](#) of the Act, the Board has broad powers to enact rules about workplace safety that it considers "necessary and advisable in relation to occupational health and safety and occupational environment." Different parties, including "owners" and "employers," have specific responsibilities.

Read the [full article](#) by Jennifer M. Fantini of Borden Ladner Gervais.

### Environmental Appeal Board Decisions

There were two Environmental Appeal Board decisions in the month of May:

#### [Water Sustainability Act](#)

- [Michael Lindelauf v. Attorney General of British Columbia representing the Assistant Regional Water Manager, and the Ministry of Forests, Lands and Natural Resource Operations, and the Environmental Appeal Board of British Columbia](#) [Judicial Review – Appeal Dismissed]

#### [Environmental Management Act](#)

- [Emily Toews; Elisabeth Stannus; Unifor Local 2301 v. Director, Environmental Management Act](#) [Application for Severance and Expedited Hearing – Denied]

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

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Orders and Remedies Regulation (101/2005)	May 15/18	by <a href="#">Reg 95/2018</a>
Allowable Annual Cut Administration Regulation (69/2009)	May 25/18	by <a href="#">Reg 101/2018</a>
Greenhouse Gas Reduction Targets Act	May 31/18	by 2018 Bill 34, c. 32, section 2 only (in force by Royal Assent), <a href="#">Greenhouse Gas Reduction Targets Amendment Act, 2018</a>
Community Tenures Regulation (352/2004)	May 25/18	by <a href="#">Reg 101/2018</a>
Environmental Management	May 31/18	by 2018 Bill 24, c. 23, section 53, Schedule 1 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act</a>



Act		<a href="#">(No. 2), 2018</a>
Forest Act	May 15/18	by 2016 Bill 12, c. 11, sections 19, 20 and 24 (part) (in force by <a href="#">Reg 95/2018</a> ), <a href="#">Forests, Lands and Natural Resource Operations Statutes Amendment Act, 2016</a>
	May 25/18	by 2016 Bill 12, c. 11, sections 8 and 24 (part) (in force by <a href="#">Reg 101/2018</a> ), <a href="#">Forests, Lands and Natural Resource Operations Statutes Amendment Act, 2016</a>
Protected Areas of British Columbia Act	May 17/18	by 2018 Bill 19, c. 21, sections 1 to 6 only (in force by Royal Assent), <a href="#">Protected Areas of British Columbia Amendment Act, 2018</a>
Water Protection Act	May 31/18	by 2018 Bill 24, c. 23, section 53, Schedule 1 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>

## HEALTH

### Health News:

#### **BC Unveils Plans for "Renewed" Primary Health-care System**

*Primary care centres will offer health care on evenings and weekends*

The NDP government's promised urgent primary care centres that offer health care on evenings and weekends will become a reality within the next three years, according to the health ministry.

The health-care centres are part of the BC government's "renewed system" for primary health care, unveiled Thursday morning [May 24th].

The plan shifts the focus for family health care to team-based care, bringing together general practitioners, nurse practitioners and nurses, according to a technical briefing from the ministry. The province has pledged funding for 200 new GPs and 200 new NPs, as well as 30 new university training spaces for NPs. Read the [CBC article](#).

#### **Victoria Woman Seeks Class-action Lawsuit over Failed Birth Control Pills**

A Victoria woman who became pregnant last November while using birth-control pills has filed a proposed class-action lawsuit.

Taylor MacKinnon, who is expecting a baby girl in August, is suing Pfizer Canada Inc. and Wyeth Canada, manufacturers of Alesse 21 and Alesse 28 oral contraceptives.

In a statement released by her lawyer, the 23-year-old said she planned to have children someday when her career was more established and she was financially stable.

"Becoming pregnant while taking Alesse has impacted my life and my partner's life as I am now less than a year out of school with a large student loan and he is only completing university this spring," MacKinnon said. "He must now look for work to support a family, and I, taking leave from my career much earlier than planned, am left less established in my field of work upon return. Opportunities to further our educations will need to be put on hold as well, affecting both our future careers." Read [The Vancouver Sun article](#).

#### **Mental Health Form Updated**

On May 15, 2018, Form 7, Application for Review Panel Hearing, of the [Mental Health Regulation](#) was updated by adding a section on a patient's right to legal representation, which provides the options available to a patient with respect to counsel/representation when attending a review panel hearing. In addition, to facilitate scheduling of the hearing, the form now includes a separate part to be completed by the facility, requiring details of the patient, their admission, examination, treating psychiatrist and case presenter.

Act or Regulation Affected	Effective Date	Amendment Information
Health Care Costs Recovery Act	May 18/18	by <a href="#">Reg 99/2018</a>
Information Management Regulation (74/2015)	May 15/18	by <a href="#">Reg 97/2018</a>
Mental Health Regulation (233/99)	May 15/18	by <a href="#">Reg 96/2018</a>

## LABOUR & EMPLOYMENT

### Labour and Employment News:

#### **The Overtime Game: Select Issues in Working Past the Clock – Part I**

– from [CLEBC – Practice Points](#)

In this paper, Melissa Vander Houwen of Moore Edgar Lyster discusses overtime provisions in the [Employment Standards Act](#) and the [Canada Labour Code](#), and provides an overview of the ways overtime and hours of work has been dealt with in case law. View [PDF](#) of the paper.

#### **An Expansion of Statutory Leaves: Recent Changes to the British Columbia Employment Standards Act**

On May 17, 2018, the *Employment Standards Amendment Act, 2018* ([Bill 6](#)) came into force increasing maternity, paternity, and compassionate care leave and establishing two new job-protected leaves: crime-related child disappearance leave and child death leave. Read the [full article](#) by [Kristen Woo](#) and [Richard Press](#) of DLA Piper.

#### **Upcoming Changes to the Canada Labour Code**

Federally-regulated employers should be aware of upcoming changes to the [Canada Labour Code](#) (the "Code"). [Bill C-63](#) received royal assent on December 14, 2017 and will introduce changes to work scheduling, overtime, vacation, bereavement leave and several statutory leaves of absence. While a date for implementation has not yet been set, we anticipate that the will take effect in 2018. Notable amendments to the Code include the following:

##### **Work Scheduling**

Currently, an employer can introduce, modify or cancel a work schedule which exceeds the standard and/or maximum hours of work if approved by 70% of the affected employees (where the employees are not represented by a union). The Code will be amended to allow for a modified work schedule that affects only one employee to be agreed to by that employee.

Read the [full article](#) by [Shandra Czarnecki](#) and [Devin Wehrle](#) with MLT Aikins LLP.

#### **Supreme Court of Canada Confirms Fine against Company in Forest Worker's Death**

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Under [section 225](#) of the Act, the Board has broad powers to enact rules about workplace safety that

it considers "necessary and advisable in relation to occupational health and safety and occupational environment." Different parties, including "owners" and "employers," have specific responsibilities.

Read the [full article](#) by Jennifer M. Fantini of Borden Ladner Gervais.

### Employment Law Updates

- Effective May 17, 2018, the [Employment Standards Act](#) was updated by the [Employment Standards Amendment Act, 2018](#) to provide extended and more flexible maternity, parental and compassionate care leaves. In addition to extended maternity and parental leaves, the changes include a new unpaid, job-protected leave of up to 52 weeks to help if a worker's child is missing as a result of a crime. Also, a new unpaid leave was introduced to provide job protection for parents dealing with the death of a child.
- The [Workers Compensation Amendment Act, 2018](#) brought changes to the [Workers Compensation Act](#) by extending the existing cancer presumptions for municipal firefighters to include federal firefighters on military bases, who frequently assist municipalities at off-base incidents. Additionally, a new mental disorder presumption was added for first responders, sheriffs and correctional officers, covering recognized mental disorders that may arise from exposure to traumatic events at work, including post-traumatic stress disorder.
- Amendments were made by the [Public Service Amendment Act, 2018](#) to the *Public Service Act* in response to the report issued by the BC Ombudsperson, [Misfire: The 2012 Ministry of Health Employment Terminations and Related Matters](#). As a result, the Office of the Merit Commissioner has been assigned a new responsibility for the review of just cause dismissals in the public service.
- Both the [Employment and Assistance Regulation](#) and the [Employment and Assistance for Persons with Disabilities Regulation](#) were amended to include walking boots under the definition of "orthosis" as a health supplement.
- Effective June 1, 2018, the [Employment Standards Regulation](#) was updated to increase the minimum wage to \$12.65 per hour and the liquor server minimum wage to \$11.40 per hour. The resident caretaker minimum wage, per month, will increase to \$759.32 for those that manage from nine to 60 units (plus \$30.43 per unit), or \$2,586.40, for 61 or more units, and the live-in camp leader minimum wage, per day, will increase to \$101.24. These wage increases are the first of four annual increases that will take effect on June 1 of each year. By June 2021, British Columbia's minimum wage will rise to at least \$15.20 per hour, and the separate lower liquor server wage will be eliminated.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Regulation (263/2002)	May 15/18	by <a href="#">Reg 94/2018</a>
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	May 15/18	by <a href="#">Reg 94/2018</a>
Employment Standards Act	May 17/18	by 2018 Bill 6, c. 7, sections 1 to 4 only (in force by Royal Assent), <a href="#">Employment Standards Amendment Act, 2018</a>
Employment Standards Regulation (396/95)	June 1/18	by <a href="#">Regs 12/2018</a> and <a href="#">80/2018</a>
Excluded Employees (Legal Proceedings) Indemnity Regulation (62/2012)	May 18/18	by <a href="#">Reg 99/2018</a>
Public Service Act	May 17/18	by 2018 Bill 13, c. 9, sections 1 to 8 only (in force by Royal Assent), <a href="#">Public Service Amendment Act, 2018</a>
Public Service Labour	May 18/18	by <a href="#">Reg 99/2018</a>

Relations Act		
Workers Compensation Act	May 17/18	by 2018 Bill 9, c. 10, sections 1 and 2 only (in force by Royal Assent), <a href="#">Workers Compensation Amendment Act, 2018</a>

## LOCAL GOVERNMENT

### Local Government News:

#### BC Communities to Benefit from More Community Forest Opportunities

A community forest is a long-term agreement to manage Crown land that may be held by a local government, community group, First Nation or community-held corporation. Rural communities and First Nations see community forests as a tool to manage the local Crown land base, to provide benefits to the residents and help support their local economies and provide long-term employment opportunities. There are 57 community forests in the province.

"We have been actively working with the provincial government to strengthen the role of people and communities in decisions around the resources they depend on for jobs and community well-being," said Erik Leslie, president of the BC Community Forest Association. "These are welcome amendments, and are being implemented after full consultation with those affected."

The change is as a result of amendments to the [Forest Act](#) and [Community Tenures Regulation](#). With the change, the expansion of a community forest will be allowed, provided there is available area. Read the government [news release](#).

#### Bylaw Notices: Popular, but also Lacking in Appeal?

The issuing of notices under the [Local Government Bylaw Notice Enforcement Act](#) is an increasingly popular method of bylaw enforcement. Bylaw notices offer a simpler, local government run, process that is somewhat similar to municipal ticket informations except that the disputes are decided by an adjudicator in a non-courtroom setting. The adjudicator does not have the same powers as a judge and issues can arise over what facts and law the adjudicator can and should consider in deciding a dispute. The recent decision of *Leaf v. Langley (Township)* illustrates the challenges associated with having a court judicially review an adjudicator's decision.

It is important for local governments to note that judicial review is the only statutorily authorized means of challenging an adjudicator's decision. Judicial review proceedings must be commenced within 30 days of the decision. Except for review on a question of law or a lack of jurisdiction, the decision of an adjudicator in a bylaw notice proceeding is final and cannot be appealed. In the *Leaf* case, an operator of a kennel sought judicial review in the Supreme Court of British Columbia of an adjudicator's decision that an operator contravened the Township of Langley's animal control bylaw. The adjudicator had found that the operator had unlawfully allowed dogs to bark so as to disturb a person in the neighbourhood. Read the [full article](#) by Michael Moll of Young Anderson.

Act or Regulation Affected	Effective Date	Amendment Information
Agricultural Land Commission Act	May 31/18	by 2018 Bill 24, c. 23, section 53, Schedule 1 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Building Act	May 17/18	by 2018 Bill 7, c. 5, section 20 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act, 2018</a>
Bylaw Notice Enforcement Regulation (175/2004)	May 2/18	by <a href="#">Reg 90/2018</a>
		by 2018 Bill 24, c. 23, sections 33 and 34 only (in force by

Capital Region Water Supply and Sooke Hills Protection Act	May 31/18	Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Community Charter	May 31/18	by 2018 Bill 24, c. 23, section 54, Schedule 2 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Community Planning Area No. 30 Regulation (71/81)	May 17/18	by <a href="#">Reg 98/2018</a>
Development Cost Charge (Instalments) Regulation (166/84)	May 17/18	by <a href="#">Reg 98/2018</a>
Fire Services Act	May 17/18	by 2018 Bill 7, c. 5, section 21 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act, 2018</a>
Freedom of Information and Protection of Privacy Act	May 31/18	by 2018 Bill 24, c. 23, sections 28 and 54, Schedule 2 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Greater Vancouver Sewerage and Drainage District Act	May 31/18	by 2018 Bill 24, c. 23, section 53, Schedule 1 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Greater Vancouver Water District Act	May 31/18	by 2018 Bill 24, c. 23, section 53, Schedule 1 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Home Owner Grant Act	May 31/18	by 2018 Bill 24, c. 23, section 53, Schedule 1 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Improvement District Bylaw Registration Exemption Regulation (367/2008)	May 17/18	by <a href="#">Reg 98/2018</a>
Islands Trust Act	May 31/18	by 2018 Bill 24, c. 23, sections 35, 36 and 54, Schedule 2 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Jury Regulation (282/95)	May 18/18	by <a href="#">Reg 100/2018</a>
Liquor Control and Licensing Act	May 31/18	by 2018 Bill 24, c. 23, sections 3 to 8 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Local Elections Campaign Financing Act	May 18/18	by <a href="#">Reg 99/2018</a>
	<b>RETROACTIVE</b> to Jan. 1/16	by 2018 Bill 24, c. 23, section 38 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>

Local Government Act	May 31/18	by 2018 Bill 23, c. 23, sections 1 to 11 only (in force by Royal Assent), <a href="#">Local Government Statutes (Residential Rental Tenure Zoning) Amendment Act, 2018</a>
		by 2018 Bill 24, c. 26, sections 37, 39 and 53, Schedule 1 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Local Government Grants Regulations (221/95)	May 18/18	by <a href="#">Reg 99/2018</a>
Municipal Finance Authority Act	May 31/18	by 2018 Bill 24, c. 23, section 53, Schedule 1 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Regional Context Statements Regulation (191/98)	May 17/18	by <a href="#">Reg 98/2018</a>
Regional Districts Establishing Bylaw Approval Exemption Regulation (113/2007) <i>(formerly Regional Districts Establishing Bylaw Approval Exemption Regulation)</i>	May 17/18	by <a href="#">Reg 98/2018</a>
Regional Growth Strategies Regulation (192/98)	May 17/18	by <a href="#">Reg 98/2018</a>
Safety Authority Act	May 31/18	by 2018 Bill 24, c. 23, section 30 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Sheriff Powers, Duties and Responsibilities Regulation (263/2009)	May 18/18	by <a href="#">Reg 100/2018</a>
South Coast British Columbia Transportation Authority Act	May 31/18	by 2018 Bill 24, c. 23, section 53, Schedule 1 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
		by 2018 Bill 33, c. 31, sections 1 to 6 only (in force by Royal Assent), <a href="#">South Coast British Columbia Transportation Authority Amendment Act, 2018</a>
Subdivision Parkland Valuation Regulation (20/86)	May 17/18	by <a href="#">Reg 98/2018</a>
Vancouver Charter	May 17/18	by 2018 Bill 18, c. 20, sections 6, 7 and 9 to 11 only (in force by Royal Assent), <a href="#">Local Government Statutes (Housing Needs Reports) Amendment Act, 2018</a>
		by 2018 Bill 23, c. 26, sections 12 to 19 only (in force by Royal Assent), <a href="#">Local Government Statutes (Residential</a>



	May 31/18	<a href="#">Rental Tenure Zoning) Amendment Act, 2018</a> by 2018 Bill 24, c. 23, sections 43 to 48 and 53, Schedule 1 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
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**MISCELLANEOUS**

**Miscellaneous News:**

**Lottery Winner Loan Case Sets Precedent, BC Court Reforms Centuries-old Consideration Doctrine**

In its May 18, 2018 decision, [Rosas v. Toca](#) (*Rosas*), the British Columbia Court of Appeal (Court of Appeal) permitted a contract to be varied without the exchange of fresh consideration. If adopted more broadly, *Rosas* may have wide-ranging implications.

**Background**

In January 2007, the plaintiff won over C\$4-million in the lottery. After depositing the proceeds, she loaned C\$600,000 for one year to the defendants to help them buy a home.

Every year, the plaintiff asked for full repayment and every year, the defendants said they could not repay the loan, but would do so "next year". From 2008 to 2013, the plaintiff accepted those assurances without requiring any compensation. However, in July 2014, the plaintiff brought an action against the defendants for the seven-year overdue C\$600,000 loan. The defendants responded that the entire amount was a gift, or otherwise that the claim was barred by the six-year limitation period under British Columbia's former *Limitation Act*.

**Supreme Court Decision**

The British Columbia Supreme Court dismissed the plaintiff's claim, holding that it was barred by the limitation period. The trial judge found that the C\$600,000 was an interest-free loan for a one-year period.

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

**Litigation Privilege over Adjusters' Files in BC**

This article identifies a significant development in 2016 in British Columbia jurisprudence with respect to insureds' claims for litigation privilege over adjusters' reports produced well before the commencement of litigation.

There are different types of privilege. Solicitor-client privilege protects legal advice communications between a lawyer and client, while common interest privilege extends that protection by carving out an exception to waiver of solicitor-client privilege. When documents subject to solicitor-client privilege are disclosed to another party with a common legal interest, those documents remain protected despite disclosure. Settlement privilege protects communications that have been made in the course of negotiations to resolve a dispute. Litigation privilege is meant to create a zone of privacy in relation to pending or apprehended litigation, so that lawyers and their clients can freely investigate in preparation for trial. As the cases described below show, the protection afforded by litigation privilege is an important facilitator of the adversarial process. Read the [full article](#) by [Anita Yuk](#), Articling Student with Gowling WLG.

Act or Regulation Affected	Effective Date	Amendment Information
Attorney General Act	May 18/18	by <a href="#">Reg 99/2018</a>
College and Institute Act	May 31/18	by 2018 Bill 24, c. 23, section 1 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Commissioners for Taking		

Affidavits for British Columbia Regulation (142/2015)	May 18/18	by <a href="#">Reg 99/2018</a>
Court of Appeal Rules (297/2001)	May 18/18	by <a href="#">Reg 99/2018</a>
Criminal Asset Management Regulation (275/2012)	May 18/18	by <a href="#">Reg 99/2018</a>
Crown Counsel Act	May 18/18	by <a href="#">Reg 99/2018</a>
Crown Proceeding Act	May 17/18	by 2018 Bill 7, c. 5, section 1 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act, 2018</a>
	May 18/18	by <a href="#">Reg 99/2018</a>
Election Act	May 18/18	by <a href="#">Reg 99/2018</a>
Library Act	May 31/18	by 2018 Bill 24, c. 23, sections 50 and 51 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Lobbyists Registration Act	May 1/18	by 2017 Bill 8, c. 19, sections 1 to 9 only (in force by <a href="#">Reg 71/2018</a> ), <a href="#">Lobbyists Registration Amendment Act, 2017</a>
Lobbyists Registration Regulation (284/2002)	May 1/18	by <a href="#">Reg 71/2018</a>
Ministry of Provincial Secretary and Government Services Act	May 17/18	by 2018 Bill 7, c. 5, section 7 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act, 2018</a>
Ombudsperson Act	May 31/18	by 2018 Bill 24, c. 23, section 52 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Police Act	May 18/18	by <a href="#">Reg 99/2018</a>
Procurement Services Act	May 31/18	by 2018 Bill 24, c. 23, section 12 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Provincial Court Practice Directions Regulation (188/98)	May 18/18	by <a href="#">Reg 99/2018</a>
Small Claims Rules (261/93)	May 18/18	by <a href="#">Reg 99/2018</a>
Supreme Court Civil Rules (168/2009)	May 18/18	by <a href="#">Reg 99/2018</a>
Victims of Crime Act	May 18/18	by <a href="#">Reg 99/2018</a>

## MOTOR VEHICLE & TRAFFIC

### Motor Vehicle and Traffic News:

#### **B.C. Supreme Court Upholds Roadside Testing to Help Curb Impaired Driving**

Court rules roadside prohibitions don't breach rights B.C.'s Supreme Court says provincial legislation aimed at fighting impaired driving does not breach the charter rights of people who blow over the legal alcohol limit.

In a [ruling released Monday](#) [May 28th], Justice Jennifer Duncan dismissed a challenge from four drivers who claimed the review process for 90-day roadside prohibitions was flawed.

The claimants claimed the Immediate Roadside Prohibition legislation places the onus on the accused to prove a flaw or gap in police evidence if they want to appeal a ban. They also said the rules favour police in the event of a "tie" decision. Read the [CBC article](#).

#### **Container Trucking Rates Increased**

On May 4, 2018, the [Container Trucking Regulation](#) was amended to improve the rate structure for container truck drivers in the Lower Mainland. Trip rates and hourly wages will be raised 2.6% for licensed container truck drivers serving the Port of Vancouver, and the minimum daily call-out rate will be raised to \$300, from \$200, effective June 1, 2018. In addition, the changes allow the BC container trucking commissioner more capacity to enforce and investigate existing regulations with more auditors and investigative support, to ensure everyone in the industry is following the rules.

#### **ICBC Benefits Double to Better Support Crash Victims**

*Government News Release:*

People injured in a traffic crash on or after Jan. 1, 2018 are now eligible for up to \$300,000 from ICBC toward their medical care and recovery, up from a previous maximum of \$150,000.

This improvement will help the 35 British Columbians on average each year who are catastrophically injured in crashes, and face lifetime care expenses that would have exceeded the previous limit. In addition to wage loss and medical appointments, accident benefits can cover extraordinary supports, such as home care, wheelchairs and vehicle upgrades for accessibility.

"This is the first major improvement to ICBC's accident benefits in more than 25 years, made possible by reining in out-of-control legal and other costs, which will also put ICBC on the road to fiscal sustainability," said Attorney General David Eby. "We're shifting the focus to a care-focused insurance system – one that makes taking care of people injured in a crash the top priority, with more money for the treatments and support they need to get better, and firm control on legal and autobody repair costs." Read the full government [news release](#).

#### **TLABC Believes that the NDP's Proposed Changes to ICBC's Injury Caps Scheme and the Civil Resolution Tribunal are *Unconstitutional***

The Trial Lawyers Association of British Columbia (TLABC) believes that the proposed NDP legislation pertaining to the Insurance Corporation of British Columbia (ICBC) is unconstitutional, including the proposed legislative changes in [Bill 20](#) (the *Insurance (Vehicle) Amendment Act, 2018*) and [Bill 22](#) (the *Civil Resolution Tribunal Amendment Act, 2018*). Together, this legislation plans to remove motor vehicle accident claims assessed at \$50,000 or less from the jurisdiction of B.C. Courts to the Civil Resolution Tribunal (CRT). It also places artificial caps on damages compensating for "minor injuries", and gives Cabinet unprecedented power to dictate to British Columbians what constitutes a "minor injury", how doctors may examine, assess, diagnose and treat car accident injuries, and the type and number of treatments British Columbians will be compensated for after a car crash. "In our view, both of these legislative measures are unconstitutional", says TLABC President Sonny Parhar. Read the [full statement](#) by the Trial Lawyers Association of BC.

#### **BC Passes Marijuana Driving-impairment Law, but Confusion Remains**

BC's top cop says he's frustrated by Ottawa's slow pace in selecting the roadside testing equipment that provinces will use to police drivers under the influence of soon-to-be-legal marijuana.

Solicitor General Mike Farnworth said it was difficult for BC to pass [new legislation](#) [early May] that sets out a ticketing and policing regime for drivers and cannabis, because it still doesn't have details from Ottawa on what will be considered the federal standard for roadside drug-impairment testing.

"That's again what is frustrating for us as a province," he said Thursday [May 24th]. "And so what we've got to do is at least get the legislative framework that we can operate in place."

BC's new law, which passed [May 9th], sets up a particularly labour-intensive system to test and penalize people who drive under the influence of cannabis. Read *The Vancouver Sun* [article](#).

### **\$20,700 "Accelerated Depreciation" Claim Succeeds Following Vehicle Damage in Crash**

In the recent case (*Chiang v. Kunar*) the Plaintiff purchased a Mercedes for just over \$68,000. The following year the Plaintiff was involved in a crash caused by the negligence of the Defendant. The crash caused over \$34,000 in repair costs leaving the vehicle far less valuable after repairs. The Plaintiff sued to recover the value of this accelerated depreciation but ICBC argued that there was no loss. In siding with the Plaintiff, who to his credit succeeded in litigation while self represented, The Honourable Judge K. Arthur-Leung provided the following reasons:

I am satisfied that the Claimant has met the burden of proof, and that this low to mid-level luxury vehicle was indeed a customized vehicle that was in the high end of its own category of Mercedes Benz, and sustained accelerated depreciation. The Bill of Sale shows thousands of dollars of extras that he ordered for this Vehicle. It was a rare vehicle at the time that it was initially in the Vancouver market, and the experts both testified that it remains an in demand vehicle if it was not in an accident.

Read the [full article](#) by [Erik Magraken](#).

### **CVSE Bulletins & Notices**

The following notices have been posted in May and first week of June by CVSE:

- [VI Notice 02-18](#) – Changes to Process for Purchasing Certificate of Approval Decal
- [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](#).

<b>Act or Regulation Affected</b>	<b>Effective Date</b>	<b>Amendment Information</b>
Container Trucking Regulation (248/2014)	May 4/18	by <a href="#">Reg 92/2018</a>
Emergency Vehicle Driving Regulation (133/98)	May 18/18	by <a href="#">Reg 99/2018</a>
Insurance (Vehicle) Act	May 17/18	by 2018 Bill 20, c. 19, sections 1 to 30 only (in force by Royal Assent), <a href="#">Insurance (Vehicle) Amendment Act, 2018</a>
Insurance (Vehicle) Regulation (447/83)	<b>RETROACTIVE</b> to Jan. 1/18	by <a href="#">Reg 105/2018</a>
Senior Citizen Automobile Insurance Grant Act	May 17/18	by 2018 Bill 20, c. 19, section 35 only (in force by Royal Assent), <a href="#">Insurance (Vehicle) Amendment Act, 2018</a>

## **PROPERTY & REAL ESTATE**

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

#### **Legal Challenge to BC's Foreign-buyers Tax Heads to Court in June**

The battle is about to begin. Local real estate experts are submitting their testimonies for both sides of what promises to be a hugely significant lawsuit, not just for British Columbia, but for other provinces.

A foreign buyer is claiming that the BC property transfer tax for foreign buyers is unlawful and discriminatory, and she's setting in motion what could become a class action lawsuit, with potentially huge costs to the province if it were to lose.

The summary trial for the case runs the week of June 25, and again on July 16. A judge will determine whether the foreign-buyers tax is legal, in response to the lawsuit filed by Chinese citizen Jing Li against the province of BC. Read the *Globe and Mail* [article](#).

### When Can a Lien be Secured for Less than Face Value?

The B.C. Court of Appeal last week released reasons for judgment addressing the factors to be considered where an owner seeks to secure a claim of builders lien for less than the claim's full value. This decision confirms that a judge should exercise caution in favour of the lien claimant in determining the appropriate amount of security.

When an owner (or general contractor) seeks, under [section 24](#) of the *Builders Lien Act*, to remove a claim of lien from title by posting security for less than the lien's full value (or to reduce the value of already-posted security), the Court asks two questions:

1. Which of the lien claimant's claims should be taken into account for the purposes of security?
2. For those claims, what amount of security is "appropriate"?

The parties disputed whether the burden was on the lien claimant to establish, through evidence, that the lien claim had a reasonable chance of success, or whether the burden was on the owner to establish that the lien had no reasonable chance of success.

The Court of Appeal concluded:

1. In addressing the first question of which claims to take into account, a judge must order security be posted for a claim or component of a claim of lien unless the owner can demonstrate that it is plain and obvious that the claim is bound to fail.
2. In addressing the second question of the appropriate amount of security, a judge must consider the evidence as a whole and exercise caution in favour of the lien claimant.

Read the [full article](#) by [Krista M. Johanson](#) with Borden Ladner Gervais LLP.

### BC Government Wants Your Say on Changes to Rental Laws

Renters and landlords in British Columbia will soon be able to push the government for changes to tenancy laws. A provincewide consultation has been launched by a task force to help "modernize and balance provincial tenancy laws to provide safe, secure and affordable housing." The three-member task force, led by Vancouver-West End MLA Spencer Chandra Herbert, will hold public meetings across the province in June and is also seeking input online. Read the *CBC* [article](#).

### Spotlight on Strata Governance: Should the Strata Property Regulation Create a New Maximum Fine for Contravention of a Short-term Accommodation bylaw?

Dealing with short-term, hotel-like rentals of residential strata lots has become an emerging concern on the strata-property scene. Commentators agree that the case law on this issue has taken dealing with it outside the scope of a rental-restriction bylaw, so that "a strata corporation that wishes to prohibit hotel-type accommodation should do so by way of a bylaw governing the use of a strata lot, and not by way of a rental limitation bylaw." Has the time come to bring the maximum fine for contravention of a short-term accommodation bylaw into line with the maximum fine for contravention of a rental-restriction bylaw?

Although they aren't addressed by rental-restriction bylaws, short-term rentals raise many of the same concerns that motivate strata corporations to adopt rental-restriction bylaws. These concerns include issues relating to control of property, security, and building character. The similar rationales for these types of bylaws is an argument in favour of harmonizing the maximum fines applicable to them. Read the full BCLI [article](#) by Kevin Zakreski.

Act or Regulation Affected	Effective Date	Amendment Information
Land Title and Survey Authority Act	May 31/18	by 2018 Bill 24, c. 23, section 29 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2)</a> .

		<a href="#">2018</a>
Property Law Act	May 31/18	by 2018 Bill 24, c. 23, section 10 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Property Transfer Tax Act	May 31/18	by 2018 Bill 24, c. 23, section 53, Schedule 1 only (in force by Royal Assent), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Real Estate Development Marketing Act	May 31/18	by 2018 Bill 25, c. 25, sections 1 to 3, 6, 8, 9, 11 only (in force by Royal Assent), <a href="#">Real Estate Development Marketing Amendment Act, 2018</a>
Residential Tenancy Act	May 17/18	by 2018 Bill 12, c. 11, sections 6, 7 and 9 to 11 only (in force by Royal Assent), <a href="#">Tenancy Statutes Amendment Act, 2018</a>

## WILLS & ESTATES

### Wills and Estates News:

#### **BC Court Decisions on Competency Highlight Need for Changes to Provincial Law: Experts**

Legal experts are saying a decision from the B.C. Court of Appeal overturning a lower court judge's consolidation of two proceedings in an estate case shows issues of interpretation with provincial legislation on competency proceedings which may suggest a need to rework the law. The appeal arises from an order by Justice Nigel Kent of the Supreme Court of British Columbia regarding the care of an elderly New Westminster man. In 2012 Gheorghe Serban gave his sons Ion and Costel power of attorney, with power to act separately. In February 2016 Gheorghe, who had suffered a stroke the previous June, gave his wife Fanica power of attorney and revoked his sons' appointment. But in June 2016 Gheorghe executed a new power of attorney in favour of Ion, revoking all previous appointments. This was followed up with him signing a representation agreement and a nomination of committee instrument also in favour of Ion, on June 24, 2016. Read the [full article](#) by Ian Burns, published in *The Lawyer's Daily*.

#### **Gordon Estate**

[Section 151](#) of the [Wills, Estates and Succession Act](#) permits a beneficiary of a will, or in the case of an intestacy, an intestate successor to apply to court to bring or defend a claim in the name of the personal representative. The conditions for a successful application are set out in section 151 (3) as follows:

- (3) The court may grant leave under this section if
  - (a) the court determines the beneficiary or intestate successor seeking leave
    - (i) has made reasonable efforts to cause the personal representative to commence or defend the proceeding,
    - (ii) has given notice of the application for leave to
      - (A) the personal representative,
      - (B) any other beneficiaries or intestate successors, and
      - (C) any additional person the court directs that notice is to be given, and
    - (iii) is acting in good faith, and
 it appears to the court that it is necessary or expedient for the protection of the estate or the
  - (b) interests of a beneficiary or an intestate successor for the proceeding to be brought or defended.



In *Gordon Estate*, 2018 BCSC 487, Mr. Justice Milman granted leave to the University of British Columbia to bring a claim in the name of the executor of Mary Gordon's will, David Ohori, against Mr. Ohori himself and his wife to set aside the transfer of a house from Ms. Gordon to them, as well as claims to other assets they received during her lifetime. 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
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*There were no amendments this month.*

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