

# Quickscribe Reporter

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Vol: XVII – Issue: IX – September 2018

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## QUICKSCRIBE NEWS:

### New Bills Introduced

The fall parliamentary session resumed October 1st and a number of new Bills have been tabled at the time this Reporter was released. The Bills include:

- [Bill 36](#), Miscellaneous Statutes Amendment Act (No. 3), 2018
- [Bill 37](#), Land Statutes Amendment Act, 2018
- [Bill 38](#), Opioid Damages and Health Care Costs Recovery Act
- [Bill 39](#), Poverty Reduction Strategy Act
- [Bill 40](#), Electoral Reform Referendum 2018 Amendment Act, 2018

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

### New Contributor For Arbitration Law

Quickscribe is pleased to announce that [Laura Cundari](#), a partner at Blake, Cassels & Graydon LLP in Vancouver, will soon be contributing annotations in the area of domestic and international arbitration laws. She has significant expertise in the arbitration of complex disputes, and regularly advises clients on all aspects of arbitration proceedings, including drafting arbitration clauses, interim orders, hearing processes and the enforcement of arbitral awards. Laura's arbitration experience includes both international and domestic institutional and ad hoc arbitrations. Laura is a member of the Chartered Institute of Arbitrators (CI Arb) and sits on the executive of the Vancouver Chapter of the Canadian Branch of the CI Arb. Laura regularly speaks at legal conferences on a variety of litigation and arbitration topics. Visit our [contributor page](#) to view and follow our expert annotators.

### Latest Annotations

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

- [Kimberly Jakeman](#), Harper Grey – [Tobacco Damages and Health Care Costs Recovery Act](#)
- [Stanley Rule](#), Sabey Rule LLP – [Supreme Court Civil Rules](#)
- [Peter Roberts](#), Lawson Lundell LLP – [Property Law Act](#)

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:

#### **BCSC Proposes Electronic Filing of Annual Reports of Exempt Distributions**

The British Columbia Securities Commission (BCSC) published proposed amendments (Proposed Amendments) to [British Columbia Instrument 13-502 Electronic Filing of Reports of Exempt Distribution](#) that would require investment fund issuers to use BCSC eServices when submitting Form 45-106F1s filed on an annual basis (currently these annual filings are submitted as paper filings to the BCSC). The Proposed Amendments would allow payments to be made through BCSC eServices or by cheque. Read the [full article](#) by [Andrea Kruyne](#) with Fasken Martineau DuMoulin LLP.

#### **OSFI Releases Final Updated Corporate Governance Guideline**

- On September 18, 2018, Canada's federal financial institutions regulator, the Office of the Superintendent of Financial Institutions ("OSFI"), released the final version of its revised and updated Corporate Governance Guideline (the "Final Updated Guideline").
- The Final Updated Guideline sets forth OSFI's current expectations for corporate governance of federally-regulated financial institutions ("FRFIs"), other than foreign bank branches and foreign insurance company branches.
- The release of the Final Updated Guideline follows a consultation process which included the release last fall of a draft updated guideline (the "Draft Updated Guideline"). The changes from the Draft Updated Guideline are mostly limited to minimal fine-tuning in response to comments received.

Read the [full article](#) by Stuart S. Carruthers of Stikeman Elliott.

#### **Mitigating Risk**

A recent BC court decision underscores why it is important for retailers to have a sound risk management program in place. In *Harrison v. Loblaws Inc.*, [2018 BCSC 575](#), a judge awarded the plaintiff more than \$750,000.00 in damages for injuries she sustained as a result of a slip and fall in a Loblaws store. This decision highlights the trend towards high damage awards in BC. It also underscores several important points with respect to the prevention of such accidents, and also the investigation and defence of claims when they do arise.

The plaintiff was shopping when she slipped on a pool of liquid laundry detergent. She struck her forehead on an end cap display and fell backwards, striking the back of her head on the floor. The fall occurred somewhere near the boundary between the grocery and front end areas of the store. The precise location of the fall was a significant issue at trial, as each of the areas in question had a separate sweep log. The defendant put only the front end sweep log into evidence. This proved a major problem because store employees were unable to identify the precise boundary between the areas. Read the [full article](#) by Kim Yee and Jennifer Woznesensky of Harper Grey LLP, published in [Grocery Business Magazine](#).

#### **FICOM News**

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

- [Pensions Plans](#) – 2018 Report on Pension Plans Registered in British Columbia
- [Acting Superintendent of Financial Institutions - Statement](#) – New guidance on fair treatment of insurance customers from CCIR and CISRO
- [Letter to Board Chairs and CEOs / GM of BC Credit Unions](#) – Draft Liquidity Management Guideline for Comment

[Draft for Comment](#) – Liquidity Management Guideline

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

**BC Securities – Policies & Instruments**

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

- [52-112](#) – Proposed NI 52-112 *Non-GAAP and Other Financial Measures Disclosure*
- [81-105](#) – CSA Notice and Request for Comment – Proposed Amendments to National Instrument 81-105 *Mutual Fund Sales Practices* and Related Consequential Amendments
- [BC Notice 2018/07](#) – BCSC Notice and Request for Comment Proposed Amendments to BC Instrument 13-502 *Electronic filing of reports of exempt distribution* related to filing annual reports of exempt distribution in eServices

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

Act or Regulation Affected	Effective Date	Amendment Information
Business Practices and Consumer Protection Act	Sept. 1/18	by 2007 Bill 27, c. 35, sections 4 (part) and 8 (part) only (in force by <a href="#">Reg 127/2018</a> ), <a href="#">Business Practices and Consumer Protection (Payday Loans) Amendment Act, 2007</a>
Community Care and Assisted Living Act	Sept. 1/18	by 2018 Bill 5, c. 6, sections 1, 2, 4 and 6 to 9 only (in force by <a href="#">Reg 130/2018</a> ), <a href="#">Community Care and Assisted Living Amendment Act, 2018</a>
Designated Accommodation Area Tax Regulation (93/2013)	Oct. 1/18	by <a href="#">Reg 144/2018</a>
Government Cheque Cashing Fees Regulation (127/2018)	<b>NEW</b> Sept. 1/18	see <a href="#">Reg 127/201</a>
Organic Certification Regulation (304/2016)	Sept. 1/18	by <a href="#">Reg 304/2016</a>
Payday Loans Regulation (57/2009)	Sept. 1/18	by <a href="#">Reg 126/2018</a>
Provincial Sales Tax Act	Oct. 1/18	by 2018 Bill 2, c. 4, sections 69, 79, 80 and 87 only (in force by <a href="#">Reg 141/2018</a> ), <a href="#">Budget Measures Implementation Act, 2018</a>
Provincial Sales Tax Exemption and Refund Regulation (97/2013)	Oct. 1/18	by <a href="#">Reg 141/2018</a>
Provincial Sales Tax Regulation (96/2013)	Oct. 1/18	by <a href="#">Reg 141/2018</a>
Societies Act	Oct. 1/18	by 2018 Bill 24, c. 23, sections 18 to 20 and 22 to 24 only (in force by <a href="#">Reg 192/2018</a> ), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2018</a>
Societies Transition Interim Regulation (99/2016)	<b>REPEALED</b> Oct. 1/18	by <a href="#">Reg 192/2018</a>

## ENERGY &amp; MINES

## Energy and Mines News:

**Disguised Expropriation: Protecting Oil and Gas Interests**

The concept of expropriation concerns the power of a public authority to deprive a property owner of the enjoyment of the attributes of his or her right of ownership. As the Supreme Court of Canada recently stated in the case of *Lorraine (Ville) v 2646 8926 Québec Inc.*, [2018 SCC 35](#), disguised (also known as *de facto*) expropriation involves an abuse of power which "occurs where a public body exercises its power of regulation unlawfully, that is, in a manner inconsistent with the purposes the legislature was pursuing in delegating the power ... it is the reasons for the act which must be assessed. The courts will accordingly determine whether the act is fraudulent, discriminatory, unjust or affected by bad faith, in which case it will be treated as an abuse of power". This occurs "[w]hen property is expropriated outside [the] legislative framework for an ulterior motive, such as to avoid paying an indemnity". In *Lorraine*, the Supreme Court considered the legitimacy of environmental regulation that impacted private property interests, affirming its previous position that the cause of action for *de facto* expropriation is a viable cause of action for testing the legitimacy of government action. It is clear that government action undertaken in the pursuit of environmental protection is increasingly being scrutinized as disguised or *de facto* expropriation, given its impacts on development rights, including those in the construction and oil and gas sectors. Read the [full article](#) by [Matti Lemmens](#) and [Joël Turgeon](#) with Borden Ladner Gervais LLP.

**Trudeau Calls LNG Project in BC the Biggest Private Investment in Canada's History**

Prime Minister Justin Trudeau says Canada is celebrating the single largest private investment in Canadian history with the \$40-billion liquefied natural-gas export terminal on BC's North Coast. Trudeau was in Vancouver on Tuesday [October 2nd] to formally announce the giant energy project's go-ahead, along with Premier John Horgan, LNG Canada and First Nations leaders. LNG Canada was given final approval late Monday to move to construction by a consortium of oil-and-gas companies headed by Royal Dutch Shell. Read the [full article](#) in *The Province*.

**Indigenous Communities Cautious as Feds Restart Pipeline Talks, Commits to not Appealing Trans Mountain Court Decision**

The government is hiring former Supreme Court of Canada justice Frank Iacobucci to oversee a new round of consultations with affected Indigenous communities.

The Liberals said Wednesday [October 3rd] that they won't appeal the August decision from the Federal Court of Appeal that tore up cabinet approval for the pipeline's expansion.

Instead, Natural Resources Minister Amarjeet Sohi said that the government is hiring former Supreme Court of Canada justice Frank Iacobucci to oversee a new round of consultations with affected Indigenous communities using the road map for those consultations the court laid out in its decision.

Iacobucci's first order of business will be to oversee the process to design the consultations in concert with First Nations and Métis leaders. Consultations themselves won't start until that design phase is completed, and there is no timeline for that.

Squamish First Nation, which has thus far opposed the construction of the pipeline, welcomed the decision not to appeal in a statement, but appeared wary about the new consultation process. Read *The Vancouver Sun* [article](#).

**Triangle of Controversy: Investors Keep the Faith in BC's Mining Region Despite Recent Setbacks**

Decades before he started exploring for minerals in British Columbia's Golden Triangle, Hugh 'Mac' Balkam said he used to investigate stock fraud with the Royal Canadian Mounted Police.

So last week when a hedge fund levelled explosive accusations of fraud against a miner in his district, Pretium Resources Inc., the company behind one of the highest grade gold mines in Canada, and its stock started sinking, Balkam thought about his own investment portfolio.

"Myself, I actually sold some bank stock and bought more Pretium," said Balkam, chief executive of Toronto-based Eskay Mining Corp. "I think that stock is worth a lot more." Read the [full article](#) in *The Vancouver Sun*.

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

## FAMILY & CHILDREN

### Family and Children News:

#### Comparing the Factors for Best Interests & Family Violence:

##### Bill C-78 (Divorce Act) & the Family Law Act

Although the timeline seems tight, it is a positive sign that [Bill C-78](#) has been welcomed by many stakeholders. The [Divorce Act](#) has long been seen by many as archaic, outdated and requiring an overhaul. Provincial family legislation, especially Alberta's 2003 Family Law Act and British Columbia's 2011 [Family Law Act](#) has already modernized the substance and process around family breakdown in those provinces and the new federal bill adopts many of those modern provisions. Like the provincial acts, the *Divorce Act* will focus on steering separating parties away from litigation and toward other dispute resolution options, the rationale being that the high expense of court battles, the time it takes to maneuver through a clogged court system and especially the negative effect that conflict itself has on children in separated families is all reduced by resolving matters other than at court. Read the [full article](#) by Judith A. Janzen with Onyx Law Group and published in the fall edition of *The Verdict* – a TLABC publication.

#### Proposed Changes to the Divorce Act:

##### Do They Go Far Enough?

A much-anticipated change to the federal divorce legislation was announced in May, 2018 promising a modernizing national reform. [Bill C-78](#) (the "Bill") brings a major legislative change to the [Divorce Act](#) for the first time in more than twenty years. The general purpose behind the change is seemingly simple – to put the best interests of the child in the center of the legislation that governs divorce. Tabled in the House of Commons on May 22, 2018, the Bill aims to modernize the federal law by introducing amendments to the *Divorce Act*, as well as to the [Family Orders and Agreements Enforcement Assistance Act](#) (FOAEAA) and the [Garnishment, Attachment and Pension Diversion Act](#) (GAPDA). Read the [full article](#) by [Michelle Raithby](#) with Leners LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Child Care Licensing Regulation (332/2007)	Oct. 1/18	by <a href="#">Reg 187/2018</a>
Child Care Subsidy Regulation (74/97)	Sept. 1/18	by <a href="#">Reg 148/2018</a>
Child, Family and Community Service Act	Oct. 1/18	by 2018 Bill 26, c. 27, sections 1 (a) (part), (c) (part), (e) (part), 14, 16, 18 (a) (part) and 27 only (in force by <a href="#">Reg 187/2018</a> ), <a href="#">Child, Family and Community Service Amendment Act, 2018</a>
Child, Family and Community Service Regulation (527/95)	Oct. 1/18	by <a href="#">Reg 187/2018</a>
Statutory Property Guardianship Regulation (115/2014)	Sept. 4/18	by <a href="#">Reg 152/2018</a>

## FOREST & ENVIRONMENT

### Forest and Environment News:

## **BC Land Transactions Streamlined and Modernized**

British Columbians will benefit from changes to a number of statutes that streamline, modernize and improve the security of BC's land title and survey systems.

"We're improving services that people count on by making land title transactions more efficient and secure," said Doug Donaldson, Minister of Forests, Lands, Natural Resource Operations and Rural Development. "We're also making life more affordable, because people will be able to make simple land title transactions without paying legal fees."

Bill 37, the [Land Statutes Amendment Act, 2018](#), proposes updating electronic filing provisions by making changes to a number of statutes to create a more robust system that adapts to technology over time. These include:

- Changes to the [Land Act](#) to enable more efficient electronic filing of survey plans that eliminate the need to print and sign paper copies of forms.
- *Land Title Act* changes, along with new technology, to enable broader access to electronic filing and eliminate the need for print and ink-signed paper documents. As a result, the public would no longer have to pay a lawyer or notary to authorize a simple land title change. Other proposed changes will make additions to treaty settlement lands easier and less administratively burdensome for Treaty First Nations.

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

## **Déjà Vu All Over Again: The New (Old) Fisheries Act**

Though many laws regulate water and water use, the [Federal] [Fisheries Act](#) remains the only legislation that directly addresses the protection and conservation of fish and fish habitat. Enacted in 1868, the Act is one of Canada's oldest pieces of environmental legislation. The *Fisheries Act* has a significant scope of application to a wide variety of undertakings that directly or indirectly involve water, ranging from hydroelectric projects to wetland improvement and conservation works.

Significant amendments to the Act are underway through [Bill C-68](#), now before the Senate. Some of the most important amendments will restore the broad habitat and fish protections that were removed in 2012. This article reviews what changed in 2012, why those changes occurred, and what protections Bill C-68 proposes to restore to the Act.

### ***The 2012 Amendments to the Act***

Other than the addition of pollution prevention provisions in 1970's, the *Fisheries Act* remained surprisingly similar to the original 1868 statute for most of its history. However, in 2012, the Act was significantly amended. The most controversial of these amendments involved a move from protecting fish generally to focus only on prohibiting serious harm to fish that were "part of a commercial, recreational or aboriginal fishery."

This more limited protection replaced two provisions from the pre-2012 Act: s. 32(1), which prohibited the killing of fish except by fishing and s. 35(1), which prohibited works or undertakings causing the Harmful Alteration Disruption or Destruction of fish habitat (the so-called "HADD" provision).

Read the [full article](#) by [Michael Finley](#) with Gowling WLG.

## **Changes to Organic Matter Recycling Regulation Proposed**

Proposed changes to the [Organic Matter Recycling Regulation](#) will support the processing of organic waste, which will reduce the burden on landfills, and give transparency and clarity to British Columbians who are affected by composting and land used for this purpose.

An Organic Matter Recycling Regulation (OMRR) intentions paper has been posted for public comment. It is based on extensive consultation over the past several years, as well as the latest scientific evidence and industry best practices.

The updated regulation will apply to compost facilities and land application of organic matter, and will align with the [Agricultural Waste Control Regulation](#) and the [Contaminated Sites Regulation](#). The proposed amendments address:

- opportunities for increased public transparency and information sharing;
- additional requirements for improved notification, including with local government;

- requirements for engagement with First Nations; and
- increased rigour around the authorization process.

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

### **Government Announces Next Phase of Forestry Contractor Sustainability Review – Facilitating Solutions**

A former BC premier and provincial government cabinet minister, Dan Miller, has been hired by the provincial government as the independent, third-party facilitator for the next stage of the logging contractor sustainability review. See the [press release](#).

The initial contractor sustainability report, drafted by George Abbott earlier this year, made 13 recommendations. These included making better use of technology, improving communications and information-sharing, and ensuring best practices for setting contractors' rates of pay and dispute resolution mechanisms. Read the [full article](#) in the October issue of *Forest Safety News*.

### **Ensuring Bridges are Safe for Industrial Users and Protect Forest Resources**

In the July-August 2018 edition of *BC Forest Professional*, there was a reminder to members in Association News to ensure they adhere to the *Guidelines for Professional Services in the Forest Sector – Crossings* if crossings form part of their practice. The Forest Practices Board echoes that reminder. In the span of one week in spring 2018, the Board published two compliance audit reports with a failing grade on bridge practices – this is unprecedented in 22 years of auditing forest practices. Since 2015, seven of 27 Board audits have found problems with bridge practices – eight non-compliances and two cases where the activities technically complied with the law, but were considered unsound.

Bridge planning, design, and construction practices on resource roads are governed by legislation and are overseen, in most cases, by engineering and forest professionals. The [Forest and Range Practices Act](#) (FRPA), the [Forest Planning and Practices Regulation](#) (FPPR), and the [Woodlot Licence Planning and Practices Regulation](#) (WLPPR) specify certain requirements for the planning, design, and construction of bridges. In general, these requirements are aimed at ensuring bridges are safe for industrial users and that forest resources such as water, soil, and fish are protected. The FPPR sets out the practice requirements that must be met for bridge construction and maintenance on resource roads on provincial land. Read the [full article](#) in the September-October edition of the *BC Forest Professional Magazine*.

### **Environmental Appeal Board Decisions**

There was one Environmental Appeal Board decision in the month of September.

#### [Wildlife Act](#)

- [Cassidy Caron v. Director, Wildlife and Habitat Branch](#) [Final Decision – Appeal Dismissed]

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

<b>Act or Regulation Affected</b>	<b>Effective Date</b>	<b>Amendment Information</b>
Gasoline Vapour Control Regulation (226/95)	Oct. 1/18	by <a href="#">Reg 191/2018</a>
Land-based Finfish Waste Control Regulation (68/94)	Oct. 1/18	by <a href="#">Reg 191/2018</a>
Open Burning Smoke Control Regulation (145/93)	Oct. 1/18	by <a href="#">Reg 191/2018</a>
Park Conservancy and Recreation Area Regulation (180/90)	Oct. 1/18	by <a href="#">Reg 193/2018</a>

## **HEALTH**

**Health News:**

**BC Tables Bill to Clear the Way for Lawsuit against Opioid Makers**

The British Columbia government has tabled legislation aimed at fast-tracking a lawsuit against dozens of players in the opioid industry that it says knowingly spread misinformation and downplayed the addictive properties of the drugs, contributing to the overdose crisis.

Attorney-General David Eby said the [Opioid Damages and Health Care Costs Recovery Act](#), introduced on Monday [October 1st], would help "facilitate the introduction of evidence" to expedite the [class-action lawsuit](#) announced in late August. Read the [full article](#) in *The Globe and Mail*.

**Medicare Protection Act Amendments in Force**

Effective October 1, 2018, some outstanding provisions of the [Medicare Protection Amendment Act, 2003](#) came into force, amending the [Medicare Protection Act](#) to further protect patients from extra billing. The legislative changes make it an offence to extra bill for services insured under the *Medicare Protection Act* or the [Hospital Insurance Act](#), including selling priority access to medically necessary care. The remaining provisions of the Act, applicable to diagnostic services, will come into effect on April 1, 2019, to allow the government a six-month time period to increase publicly funded MRI exams through new capacity.

**Private Medical Clinics Fighting Back over New Billing Rules**

Owners of some private BC medical clinics are warning longer wait times for surgeries are possible if new rules come into play in the province.

While many book procedures through the public system, some patients opt to pay to skip the wait. But starting Oct. 1, those looking to have their surgery sooner may have trouble finding someone to do it.

The province's health minister announced earlier this year that doctors who charge patients for publicly insured services will face hefty fines – as much as \$10,000 on first offence and \$20,000 on second. Practitioners can also be de-enrolled from the province's Medical Services Plan, meaning they're no longer able to bill the public health system at all. Read the [CTV article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Community Care and Assisted Living Act	Sept. 1/18	by 2018 Bill 5, c. 6, section 1, 2, 4, 6 to 9 only (in force by <a href="#">Reg 130/2018</a> ), <a href="#">Community Care and Assisted Living Act</a>
Community Care and Assisted Living Regulation (217/2004)	Sept. 1/18	by <a href="#">Reg 130/2018</a>
Hospital Act Regulation (121/97)	Sept. 4/18	by <a href="#">Reg 152/2018</a>
Laboratory Services Regulation (52/2015)	Sept. 4/18	by <a href="#">Reg 152/2018</a>
Medicare Protection Act	Oct. 1/18	by 2003 Bill 92, c. 95, sections 1, 2 (part), 3, 4, 5 (part), 6 (part), 7, 8, 12 (part) and 15 only (in force by <a href="#">Reg 178/2018</a> ), <a href="#">Medicare Protection Amendment Act, 2003</a> , as amended by 2014 Bill 7, c. 8, <a href="#">Laboratory Services Act</a>
Nurses (Licensed Practical) Regulation (224/2015)	Sept. 4/18	by <a href="#">Reg 93/2018</a>



Sewerage System Regulation (326/2004) | Oct. 1/18 | by [Reg 191/2018](#)

**LABOUR & EMPLOYMENT**

**Labour and Employment News:**

**Proactive Investigations: an Ingredient to Success**

A recent decision out of British Columbia highlights a common pitfall when employers terminate employees for cause: failing to thoroughly and proactively investigate the facts and circumstances regarding the alleged misconduct or neglect of duty.

In [Tymco v. 4-D Enterprises](#), 2018 BCSC 372, the employer terminated an employee with six years of service after a railcar, which the employee was responsible for guiding, derailed. As a switchman, the employee was responsible for, among other things, monitoring the railcar and advising the operator over a wireless radio when to activate the railcar's brakes.

On this particular occasion, the railcar did not brake when it should have, crashed into a warehouse, and derailed another train, causing significant damage. The reasons why the railcar's brakes were not activated were disputed. Read the [full article](#) by [Andrew Woodhouse](#) with Fasken Martineau DuMoulin LLP.

**Too Over-qualified for the Job?**

Employers usually promise job seekers that they are looking for the most qualified workers. It is in their interests to do so. But occasionally they do not wish to hire the most qualified applicants.

What if a slow economy produces many clearly over-qualified applicants and the employer is suspicious that they will not be challenged by entry level positions. The employer already may be experiencing high turnover and will seek to avoid short-termers who are desperately seeking any employment but who are not necessarily serious about the position advertised. Over-qualified employees can be a challenge to manage when they are working at well below their experience and skill level, as well as their earning potential.

As with mismatches where the employee is decidedly under-qualified for the job, can an employer choose not to hire the over-qualified applicant? Read the [full article](#) by [Peter Bowal](#) and [John Jamieson](#) and published in *Law Now*.

**Federal Government Announces Planned Overhaul of Federal Labour Legislation**

The Federal Labour Minister announced that legislation will be introduced this fall to modernize the decades-old *Canada Labour Code* (the "Code"). Restoring a work-life balance and better protections for precarious workers, such as part-time, temporary, and contract workers, will be among the key focuses of planned legislative changes. The federal government is also considering whether the revamped *Code* should include giving workers the "right to disconnect" and ignore their job-related emails at home.

The planned rewrite of Code will affect more than 900,000 workers in federally-regulated fields, such as banking, telecommunication, air transportation, and railway, which represents about 6 per cent of the national workforce. Read the [full article](#) by Victor Kim with McCarthy Tetrault LLP.

**Federal Labour Code Added**

Quickscribe is pleased to announce that we have added the [Canada Labour Code](#) to our site. Considering the changes that are expected this fall, we felt it was time to make this law available to subscribers.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Regulation (263/2002)	Oct. 1/18	by <a href="#">Reg 189/2018</a>
Employment and Assistance for Persons with Disabilities Regulation (263/2002)	Oct. 1/18	by <a href="#">Reg 189/2018</a>

## LOCAL GOVERNMENT

### Local Government News:

#### Shoreline Works and the Zoning Power

Local governments with shoreline zoning need to be aware of the B.C. Supreme Court's October 1, 2018 decision in [Fonseca v. Gabriola Island Trust Committee](#), in which the Trust Committee was unable to enforce its zoning bylaw in respect of a retaining wall that owners of land on Mudge Island had constructed to protect their shoreline property from erosion. The Trust Committee successfully enforced a 30-metre ocean setback regulation in respect of various accessory structures that the owners had constructed in the setback area, including a deck/walkway structure, stairs and fences. However, the Court accepted the owners' argument that the zoning regulations could not be read to prevent them from keeping the stone and concrete walls they had constructed near the shoreline of False Narrows if their purpose was to protect their land from erosion. The materials filed in the owners' application for a declaration that the zoning bylaw interfered with their exercise of riparian rights satisfied the Court that the action of the sea had actually caused erosion at this location. The Court's decision in favour of the owner rests on ancient English and Roman law pertaining to riparian rights, and the owners' argument that preventing them from building erosion control structures would constitute "a complete abrogation" of their common law riparian right to protect their property. That would require, under ordinary principles of statutory interpretation, either express provisions in the [Local Government Act](#) or the [Islands Trust Act](#), or a necessary implication from express provisions. There is, of course, no mention of riparian rights in either statute; nor could the Court find language that necessarily implied the abrogation of any riparian right. It did leave open the possibility that local bylaws could regulate how walls adjacent to the shoreline are constructed. This is a case on the scope of the zoning power, though the Court's reasoning could possibly extend to soil deposit bylaws and other types of bylaws that deal with shoreline alteration. Read the [full bulletin](#) by [Bill Buholzer](#) of Young Anderson, Barristers and Solicitors.

#### Amendments Proposed for Traffic Fine Agreement

The Province has consulted with UBCM regarding its intention to amend the Traffic Fine Revenue Sharing Agreement (TFRSA). As part of consultation, UBCM has provided responses to a set of proposals outlined by the office of the Attorney General.

On April 5, 2018, the provincial government [advised](#) UBCM of its intention to consult with local governments about the potential of amending the TFRSA. UBCM responded with a [letter](#) that outlined the importance of the TFRSA as a revenue source for local government.

Introduced in 1999 as an unconditional grant, the TFRSA was amended in 2004 to provide 100% of net provincial traffic fine revenue (violation fines minus provincial recovery costs) to local governments. While local governments over 5,000 in population receive a percentage of traffic fine revenue from the Province, local governments under 5,000 in population receive traffic fine revenue through a reduction in the Police Tax. Read the full UBCM [article](#), archived by the Regional District of Kitimat-Stikine.

#### BC to Review Campaign Finance

##### Laws after Civic Elections

The BC government will review its new campaign finance laws after next month's civic elections following an outcry over gaps in the rules on third-party advertising and transparency of donations.

Municipal Affairs Minister Selina Robinson said her government moved to get big money out of politics in British Columbia and address unfettered fundraising, but she acknowledged changes may be needed. "There's certainly more room to make sure that the elections are as fair as they can be. And we have committed to review everything around this election cycle," she said on Wednesday [September 26th]. Read [The Globe and Mail article](#).

#### Local Government Zoning Powers Eroded By Riparian Rights

In his first address to the UBCM Convention as Opposition Leader, BC Liberal Leader Andrew Wilkinson pledged that his party would work in partnership with local government.

Local governments that have zoning regulations in effect over properties adjoining a body of water need to be aware of the British Columbia Supreme Court's October 1, 2018 decision in [Fonseca v. Gabriola Island Trust Committee](#), 2018 BCSC 1684. At issue in the case was a zoning bylaw of the Local Trust Committee that required that all buildings and structures be sited a minimum of 30 metres from the natural boundary of the sea or other body of water.

In this case, the court heard two matters together:

1. the Local Trust Committee's petition for a declaration that the owners of a property on Mudge Island had contravened the zoning bylaw by building two concrete embankment walls within the 30-metre setback area, as well as a deck, stairs, and fences; and
2. an action commenced by the property owners seeking a declaration that the zoning bylaw was inapplicable to the extent it infringed upon their common law riparian right to protect their property from erosion, a declaration that the zoning bylaw was inapplicable to the structures in issue by reason of the doctrine of interjurisdictional immunity or was inoperative under the doctrine of paramountcy, and that the zoning bylaw infringed the owners' rights under section 7 of the *Canadian Charter of Rights and Freedoms*.

Read the [full article](#) on the Stewart McDannold Stuart website.

### **How Far is Too Far? Court Strikes Down the City of Richmond's Attempt to Curtail the Cannabis Industry**

The City of Richmond's attempt to prohibit the production of medical marijuana on a property was curtailed by the BC Supreme Court in the recent decision of *0826239 B.C. Ltd. v City of Richmond and Joe Erceg* [[2018 BCSC 1438](#)]. This decision considered whether Richmond can prohibit the production of medical marijuana by enforcing its own contrary zoning bylaws, despite the Agricultural Land Reserve Regulations ("ALR Regulations") that expressly allow for the production of licensed medical marijuana as a farm use.

#### **Background:**

This case involved an application by 0826239 B.C. Ltd. (the "Petitioners") to review Richmond's decision to refuse to lift a stop work order on a building permit (the "Stop Work Order") and to refuse to issue two additional building permits (the "Permits"). These building permits related to the construction of greenhouses and an electrical building on a 21-acre property in Richmond (the "Property").

The Property was located in the Agricultural Land Reserve ("ALR") and was zoned as "Agricultural" pursuant to Richmond's Zoning Bylaw No. 8500 (the "Zoning Bylaw"). This agricultural zoning designation permitted the Property to be used for a wide range of farming and compatible uses, which included "farm business use", consistent with the provisions of the ALR. In December of 2003, Richmond added section 3 to the Zoning Bylaw, which stated that "farm business use" does not include medical marijuana production facilities or medical marijuana research and development facilities.

Read the [full article](#) by [Joan M. Young](#) and Rosie Schlagintweit of McMillan LLP.

<b>Act or Regulation Affected</b>	<b>Effective Date</b>	<b>Amendment Information</b>
Bylaw Notice Enforcement Regulation (175/2004)	Sept. 26/18	by <a href="#">Reg 183/2018</a>
Liquor Control and Licensing Act	Oct. 1/18	by 2015 Bill 27, c. 19, section 83 (b) only (in force by <a href="#">Reg 186/2018</a> ), <a href="#">Liquor Control and Licensing Act</a>
		by 2018 Bill 30, c. 29, sections 144 to 153 only (in force by <a href="#">Reg 186/2018</a> ), <a href="#">Cannabis Control and Licensing Act</a>
Private Training Regulation (153/2016)	Sept. 1/18	by <a href="#">Reg 153/2016</a>
Resort Municipality of Whistler Act	Oct. 1/18	by <a href="#">Reg 191/2018</a>
Trespass Act	<b>STATUTE REVISION</b> Oct. 1/18	c. 3, RSBC 2018, in force by <a href="#">Reg 193/2018</a>

**MISCELLANEOUS**

**Miscellaneous News:**

**BC Government to Legislate a Second Referendum on Electoral Reform if New System Passes**

The BC Government will require British Columbians to vote again if the electoral system changes following this fall's referendum.

Attorney General David Eby introduced [legislation](#) on Tuesday [October 2nd] that, if passed, will mean a confirming referendum would take place after two elections under a proportional representation electoral system.

"It will be up to British Columbians to decide whether to change our province's voting system, and it should also be up to British Columbians to decide whether to keep a new voting system after they've tried it," said Eby. "By legislating a confirming referendum after two general election cycles, our government is giving voters a safety valve to revert to the previous voting system after an opportunity to actually experience both systems." Read the [full article](#) by Richard Zussman on *GlobalNews*.

**British Columbia Supreme Court Finds Defendants Liable for Trademark Infringement and Passing Off**

On July 30, 2018, after a 15-day trial in the British Columbia Supreme Court, Mr. Justice Sewell issued Reasons for Judgment in a trademark infringement and passing off claim brought by two Royal Pacific companies against a former sales agent, Vinh Phat Steven Dong, and two companies owned and controlled by Mr. Dong.

The Royal Pacific Plaintiffs have been in the real estate industry in Vancouver since the mid-1990s and have had enormous success. For example, in 2016, they arranged \$15 billion of sales. As a result, the Royal Pacific trademark and the name ROYAL PACIFIC have become well known in Vancouver in connection with real estate related services.

Mr. Dong became a real estate agent at one of the Royal Pacific Plaintiffs in 2012 and signed a Sales Representative Agreement ("SRA"). While the SRA authorized sales representatives to use the name and logo of Royal Pacific, the terms of agreement strictly limited this permission to activities in connection with the duties of a sales representative. However, in 2012, Mr. Dong purchased the domain name <royalpacific.co>. In 2013, the Defendants attempted to launch a software service called Bliip Box, aimed at creating a social media referral system for real estate professionals. The software platform displayed Royal Pacific's registered trademark and the launch of the business relied upon the use of the domain name <royalpacific.co>, as well as false statements made to the public such as "Royal Pacific...is looking to endorse local business on our Bliip Box". Read the [full article](#) by [Scott E. Foster](#) and [Kathy Tran](#) with Gowling WLG International Limited.

**Historic Legislation Sets Targets, Timelines to Reduce Poverty**

British Columbia's first Poverty Reduction Strategy, guided by legislation introduced today [October 2nd], will lift thousands of people out of poverty, create more opportunities to break the cycle of poverty and make it easier for people to participate in their community.

The [Poverty Reduction Strategy Act](#) will define the scope of the strategy, which will be released in early 2019, and sets poverty reduction targets and timelines that government must meet. Read the full government [news release](#).

**Class Proceedings Act Updated**

[Amendments](#) to the [Class Proceedings Act](#) came into force on October 1, 2018, which clarify and improve the processes for class proceedings involving both residents and non-residents of British Columbia. The changes ensure that all appropriate parties in a multi-jurisdictional class action are included in the proceedings, regardless of where they live. Further, plaintiffs in proceedings in Canada will be notified about similar class proceedings arising in British Columbia, and non-residents will now be allowed to make submissions at certification hearings. The amendments are based on the Uniform Law Conference of Canada's *Uniform Class Proceedings Amendment Act*.

Act or Regulation Affected	Effective Date	Amendment Information
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Civil Forfeiture Regulation (164/2006)	Oct. 1/18	by <a href="#">Reg 191/2018</a>
Class Proceedings Act	Oct. 1/18	by 2018 Bill 21, c. 16, sections 1 to 10 only (in force by Reg 129/2018), <a href="#">Class Proceedings Amendment Act, 2018</a>
Crown Counsel Act	Oct. 1/18	by <a href="#">Reg 191/2018</a>
Designation Regulation (363/95)	Sept. 14/18	by <a href="#">Reg 182/2018</a>
Freedom of Information and Protection of Privacy Act	Sept. 4/18	by <a href="#">Reg 140/2018</a>

## MOTOR VEHICLE & TRAFFIC

### Motor Vehicle and Traffic News:

#### BC Court of Appeal – "Segregated" Non-pecuniary Awards should be Avoided

Several years ago it was more common to see BC courts awarding damages for "*diminished housekeeping capacity*" as a stand alone head of damage in injury litigation. More recently the common practice is for courts to roll these in to the general damages awarded for non-pecuniary loss without a stand alone analysis. Last week the BC Court of Appeal published reasons indicating the latter is the preferred practice.

In the recent case ([Riley v. Ritsco](#)) the Plaintiff was injured in a vehicle collision and sued for damages. At trial non-pecuniary damages of \$65,000 were assessed. The Plaintiff successfully appealed and in doing so the BC Court of Appeal increased this head of damage to \$85,000. The Plaintiff also argued that the judge erred in not assessing damages for loss of housekeeping capacity as a stand alone head of damage. Read the [full article](#) by [Eric Magraken](#) of MacIsaac & Company on his blog.

#### Winter Tire Regulations October 1

Starting Monday, Oct. 1, 2018, people will be required to have winter tires on their vehicles on most British Columbia highways for safe travel during winter months.

Drivers must equip their vehicles with winter tires if they plan to travel on certain B.C. highways:

- in the North;
- in the Interior;
- on the South Coast, such as the Sea to Sky Highway; and
- on Vancouver Island, such as the Malahat and highways 4, 14 and 28.

In BC, regulations state that an appropriate winter tire is defined as one with either the M+S or mountain/snowflake symbol and in good condition with a minimum tread depth of 3.5 millimetres. Drivers are encouraged to choose their tires based on the region and conditions in which they regularly drive. Read the government [news release](#).

Act or Regulation Affected	Effective Date	Amendment Information
Violation Ticket Administration and Fines Regulation (89/97)	Oct. 1/18	by <a href="#">Reg 193/2018</a>

## OCCUPATIONAL HEALTH AND SAFETY

### Occupational Health & Safety News:

**WorkSafeBC Notice: Changes to the Online Notice of Project Submission Process**

The [Occupational Health and Safety Regulation](#) requires that WorkSafeBC be notified of certain types of projects before they begin. The form submitted is called a [Notice of Project](#) (NOP) and is currently available online and in print. To address employer feedback and aging technology, we are upgrading the Notice of Project online submission process.

All employers will have access to the new forms on worksafebc.com by the end of 2018. While both the online and print versions of the old form will continue to be available and accepted for a time, they will eventually be retired. Read the full [news article](#) on the WorkSafeBC website.

**Safety Violation Results in Contractor Getting 18 Months in Jail**

On Sept. 18, Sylvain Fournier, a Quebec based contractor, [was sentenced to 18 months in prison followed by two years of probation](#). Fournier had been found guilty of manslaughter under the [Criminal Code](#) relating to a worker's death by means of a breach of Quebec safety code. The case is the first of its kind in Canada and raises serious concerns about the use of criminal law to enforce provincial regulatory safety standards.

In April 2012, Fournier and several employees were replacing a sewer line in an excavation. This required the excavation of a trench; however, the trench collapsed causing the death of the worker who was in the trench and serious injury to Fournier. At trial, Fournier was convicted of Manslaughter and criminal negligence. The criminal law rule against multiple convictions for substantially the same offence was invoked to stay this charge and there was no further sentence imposed on Fournier. Read the [full article](#) by Norm Keith with Fasken Martineau DuMoulin LLP.

**Discussion Paper - Section 55 and Mental Disorder Claims**

[Section 55](#) of the [Workers Compensation Act](#) sets out the limitation period for filing an application for compensation. It states that no compensation is payable unless an application is filed, or an adjudication made, within one year after the date of injury, death, or disablement from an occupational disease.

The Policy, Regulation and Research Division (PRRD) is releasing a discussion paper reviewing how section 55 is applied to mental disorder claims. The PRRD is seeking stakeholder feedback on the questions for consideration set out in the discussion paper before draft policy is developed. Read the [discussion paper](#).

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

**PROPERTY & REAL ESTATE**

**Property and Real Estate News:**

**Adjustment to Strata Fees "Paid in the period between the end of a fiscal year and the passing of the budget for the next fiscal year, is not a retroactive charge": BC Supreme Court**

In *625536 B.C. Ltd v The Owners, Strata Plan LMS4385*, [2018 BCSC 1637](#), the Supreme Court of British Columbia took on the issue of whether an "adjustment" to strata fees to bring them into line with amounts approved in a budget passed after a strata corporation's fiscal year end is a valid practice. The issue had been considered in two decisions of the Civil Resolution Tribunal – *The Owners, Strata Plan NW 2729 v Haddow*, 2018 BCCRT 37, and *The Owners, Strata Plan KAS 1459 v Leonard*, 2018 BCCRT 159 – which concluded that the practice amounted to a retroactive assessment of strata fees that isn't authorized by the [Strata Property Act](#). Now the BC Supreme Court has "disagreed" with the tribunal's conclusions and upheld the practice in a case involving a "commercial development" located in Surrey. Read the [full article](#) by Kevin Zakreski with the BC Law Institute.

**New Fine for Short Term Rentals for Stratas**

There are [changes](#) in the [regulations \(7.1\)](#) which will allow stratas to fine \$1,000 per day if someone contravenes an anti-short term rental bylaw. VISOA has been made aware that:

- Some stratas do not realize this doesn't become effective until November 30, 2018.
- The strata must have a bylaw in the first place which prevents or regulates short term rentals so that the regulation can be applied.
- The government has not defined "short term rental" other than indicating they are "vacation, travel or temporary accommodation" for remuneration. The government has done this deliberately because some stratas which permit this use may agree only to two nights, or to two weeks. Importantly, the "rental" cannot be more than a month, because then the [Residential Tenancy Act](#) kicks in and the "landlord" and "tenant" have considerably more responsibilities.

Read [more](#) on the VISOA website.

### Province Cuts Rent Increase to Ease Pressure on Renters

The Minister of Municipal Affairs and Housing is listening to the concerns of renters and taking action on an early recommendation from B.C.'s Rental Housing Task Force by cutting the annual allowable rent increase by 2%, limiting it to inflation.

That means that effective Jan. 1, 2019, the annual allowable rent increase will be 2.5%.

"It's simply not sustainable for renters, many of whom are on fixed incomes, to see their rent increase by more than inflation each and every year," said Premier John Horgan. "We have to eliminate the risk of such huge increases for renters. Our new approach strikes a balance between giving relief to renters while encouraging people to maintain their rental properties."

The previous formula, set in 2004, allowed annual rent increases of 2% plus inflation. Read the full government [news release](#).

### New Information Collection Regulation

The [Information Collection Regulation](#) was enacted on September 17, 2018, which updates the property transfer tax return by requiring property buyers to report additional information when making a purchase through a corporation or trust. The return will now require the following additional information: name; date of birth; citizenship information; contact details; and tax identification numbers (such as social insurance number). These new requirements will apply to all property types, including residential and commercial, with exemptions for certain trusts, such as charitable trusts, and certain corporations, such as hospitals, schools and libraries. The new regulation is part of the government's 30-point plan for housing affordability by discouraging tax evasion in real estate transactions.

Act or Regulation Affected	Effective Date	Amendment Information
Information Collection Regulation (166/2018)	Sept. 17/18	see <a href="#">Reg 166/2018</a>
Manufactured Home Park Tenancy Regulation (481/2003)	Sept. 26/18	by <a href="#">Reg 184/2018</a>
Residential Tenancy Regulation (477/2003)	Sept. 4/18	by <a href="#">Reg 152/2018</a>
	Sept. 26/18	by <a href="#">Reg 184/2018</a>

## WILLS & ESTATES

### Wills and Estates News:

#### Trusts and Estates Freezes under Part 5 of the FLA – Walking on Thin Ice

Since the coming into force of the [Family Law Act](#), S.B.C. 2011, c. 25 [FLA], much has been written about the

implications of the family property provisions dealing with trusts, particularly with respect to their application to discretionary trusts. [Part 5](#) of the FLA moved British Columbia from a regime in which argument focused on whether assets were ordinarily used for a "family purpose" to an excluded property regime that defines property as being either "family property" or "excluded property".

The goal was to "make the law simpler, clearer, easier to apply, and easier to understand for the people who are subject to it". Despite this object and significant commentary on the impact of these changes on family trusts, we remain in a state of legal uncertainty given the limited judicial consideration of the trust provisions in Part 5. Read the [full article](#) by Chantal M. Cattermole and Polly Storey with Clark Wilson LLP.

**S. 151 WESA: Leave to Commence a Court Action on Behalf of the Executor**

Re Gordon Estate [2018 BCSC 487](#) is a decision that granted leave under [section 151 of WESA](#) for the residual beneficiary, the University of British Columbia, to commence an action in the name and on behalf of the executor of the estate of the deceased.

The University of British Columbia was the sole residual beneficiary under the deceased will, however prior to her death, the deceased transferred the majority of her assets to her gardener which totaled almost \$2 million.

There was very little in the way of assets left in the estate for the residual beneficiary. The petition and supporting materials filed by the University of British Columbia showed that the deceased was basically blind due to macular degeneration and was cognitively deficient. Read the [full article](#) by [Trevor Todd](#) on his blog *disinherited – Estate Disputes and Contested Wills*.

**Home is Where the... Domicile is?**

Born in Vancouver, raised in Toronto, educated in New York, graduate degree from England, first job in Hong Kong, transferred to Tokyo, retired in the Cayman Islands.

In our increasingly mobile world, it is not uncommon for a person to have lived in multiple jurisdictions throughout their lives. Educational and career opportunities can often take someone from one country to another, accumulating assets in many locations. In this era of the global citizen, when was the last time you asked yourself: what is my domicile? More likely than not, the answer is never. However, a recent decision of the British Columbia Court of Appeal suggests it may be time you did. The answer could have important implications on your estate planning, or even the validity of your will.

"Domicile" refers to the place where you are deemed to have your permanent home and determines what law will apply to you in certain situations, including the formal validity of your will and the distribution of property (excluding real estate) under your will. While it is possible to have multiple residences, you can only have one domicile. In Canada, domicile is provincial. You are domiciled in a particular province or territory, not in Canada as a whole. Read the [full article](#) by [Dwight D. Dee](#) and [Kathryn Gullason](#) of Miller Thomson LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Official Administrators Designation Regulation (24/58)	<b>REPEALED</b> Oct. 1/18	by <a href="#">Reg 190/2018</a>

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