

Quickscribe Reporter

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QUICKSCRIBE NEWS:

Attention Lawyers:

QS 2.0 Webinar – Free CPD Credit Opportunity

Do you know any lawyers who need a free CPD credit? Quickscribe owner, Mike Pasta, in cooperation with Courthouse Libraries BC, will be presenting a free lunch and learn webinar on the latest version of Quickscribe 2.0 on April 4th from 12:30 PM to 1:30 PM PST. The session will include an overview of latest QS features and will cover some lesser known time-saving tips. Please feel free to pass along this opportunity to colleagues who may not be familiar with the latest version of this service. Lawyers can claim a free CPD credit (Practice Management) for attending. For registration information: <https://attendee.gototraining.com/r/1308886526272000770>

New Bills Introduced

The 4th session, 41st parliament resumed February 12, 2019. The government has tabled several new Bills, including:

- [Bill 1](#), An Act to Ensure the Supremacy of Parliament
- [Bill 2](#), Protection of Public Participation Act
- [Bill 3](#), Municipal Affairs and Housing Statutes Amendment Act, 2019
- [Bill 4](#), Witness Security Act
- [Bill 5](#), Budget Measures Implementation Act, 2019
- [Bill 9](#), Attorney General Statutes Amendment Act, 2019
- [Bill 12](#), Supply Act (No. 1), 2019

Two non-government Bills were introduced as well:

- [M201](#), Miscellaneous Statutes (Passenger Transportation Services) Amendment Act, 2019
- [M202](#), Election Amendment Act, 2019

A reminder that if you would like to track the progress of these bills, or to track changes to any laws that bills amend, please feel free to make use of our [BC Legislative Digest](#) tracking tool, and have us monitor and alert you to changes for laws of your choosing.

QS Keyword Alert – Coming Soon!

Quickscribe will soon launch a new, custom email alert tool that will notify you of any new Orders, Bills or Hansard if they include key words or phrases that you deem as important. Stay tuned!

Latest Annotations


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

- Kimberly Jakeman, Harper Grey LLP – [Medicare Protection Act](#), [Health Professions Act](#)
- John-Paul Boyd, John-Paul E. Boyd – Arbitration Chambers – [Family 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".

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

View [PDF](#) of this Reporter.

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

[\[Previous Reporters \]](#)

CATEGORIES

COMPANY & FINANCE	LOCAL GOVERNMENT
ENERGY & MINES	MISCELLANEOUS
FAMILY & CHILDREN	MOTOR VEHICLE & TRAFFIC
FOREST & ENVIRONMENT	OCCUPATIONAL HEALTH & SAFETY
HEALTH	PROPERTY & REAL ESTATE
LABOUR & EMPLOYMENT	WILLS & ESTATES

COMPANY & FINANCE

Company and Finance News:

CBCA Private Corporations Subject to New Shareholder Record-Keeping Requirements

In December 2017, Canadian finance ministers announced their agreement in principle to "pursue legislative amendments to federal, provincial and territorial corporate statutes or other relevant legislation to ensure corporations hold accurate and up to date information on beneficial owners that will be available to law enforcement, and tax and other authorities." Changes to the [Canada Business Corporations Act](#) (CBCA) are coming soon to ensure compliance with these goals, at least at the federal level. For context, these requirements are in line with current rules in the UK and EU. Despite the ministers' agreement in principle, we are not aware of any Canadian province or territory following suit at this time. As of June 13, 2019, private CBCA corporations will need to maintain a register of their Individuals With Significant Control (each a Control Individual). This requirement will not apply to public companies incorporated under the CBCA. Read the [full article](#) by Andrew Pollock with Bennett Jones.

Critics Say Public Inquiry into Money Laundering Would have More Clout than Investigations

British Columbia needs more than a tip line or individual inquiring into money laundering, say members of the legal community who are supportive of a full-blown public inquiry that will wield more clout and answer many of the questions lingering in the public's mind. Christine Duhaime, a Vancouver lawyer specializing in counter-terrorism financing and anti-money-laundering law, says a public inquiry has the ability to take sworn testimony, call witnesses and subpoena individuals. A money-laundering tip line, such as the one initiated by BC, does not lend the same credibility to the information received. The BC government has asked lawyer Peter German to conduct fact-finding investigations into money laundering with the first report on casinos issued 18 months ago. Attorney General David Eby has appointed German to conduct a second investigation into real estate, luxury cars and horse racing. However, in these investigations, there is no onus on individuals to co-operate and supply information to German. Read the [full article](#) by Jean Sorenson in *Canadian Lawyer Magazine*.

Third Parties Paying Employer Health Tax on Behalf of Clients

If you are a third party, such as an accountant or bookkeeper, you may be able to make employer health tax payments on behalf of your clients using [eTaxBC](#). First, you must [enrol for a Third-Party/Bookkeeper account](#) in eTaxBC. If you are already enrolled as a Third-Party/Bookkeeper in eTaxBC, you can use your existing account. Once enrolled, you can request access to your client's account and start making payments on their behalf. Visit the [eTaxBC help guide for third party accountants and bookkeepers](#) to learn more. Source: BC Government [website](#).

BC Securities – Policies & Instruments

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

- [23-324](#) – CSA Staff Notice 23-324 *Order Protection Rule: Market Share Threshold* for the period April 1, 2019 to March 31, 2019
- [21-502](#) – Exemption from Certain Filing Requirements for Out-of-province Alternative Trading Systems
- [45-325](#) – CSA Staff Notice 45-325 *Filing Requirement and Fee Payable for Exempt Distributions involving Fully Managed Accounts*

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

Act or Regulation Affected	Effective Date	Amendment Information
Designated Accommodation Area Tax Regulation (93/2013)	Feb. 1/19	by Reg 250/2018
	Mar. 1/19	

ENERGY & MINES

Energy and Mines News:

New Dormant Site Provisions

BCOGC Bulletin:

The BC Oil and Gas Commission (Commission) is developing regulations to impose timelines on the clean-up of dormant well sites, which are wells and their associated operating areas that for five or more years have not met a certain threshold of activity. These changes are supported in legislation by [Bill 15](#) and associated amendments to the Oil and Gas Activities Act. The Bill 15 amendments were passed in May 2018 and allow the Commission to impose requirements for the clean-up of dormant sites. As a result, B.C. will become the first province in western Canada to impose timelines for clean-up. The Commission is currently developing regulations for restoration timeframes that promotes timely clean-up, while ensuring operators will have the flexibility to achieve cost-efficient restoration. Read the [bulletin](#) from the OGC website.

Fresh Blow to Canada's Oil Industry as Key Pipeline Delayed by a Year

Canada's already beaten-down oil industry is facing a fresh setback as regulatory issues bog down another key pipeline project. The roughly one-year delay to Enbridge Inc.'s expansion of its Line 3 conduit, announced last week, threatens to prolong a shortage of pipeline space that has made it difficult for Canada's drillers to ship their crude to refineries. That pinch caused a crisis in the industry last year, sending local oil prices to record lows and prompting the government of Alberta to embark on an unprecedented intervention in the market. Enbridge's Line 3, which would help move 370,000 more barrels of crude out of Alberta, is particularly important because the province's government was counting on it to help end mandated production cuts. The delay may scramble plans for drillers who were counting on the line and shift investors' focus to efforts by producers and Alberta's government to move more crude by rail. Read *The Vancouver Sun* [article](#).

NEB Recommends Approval of the Trans Mountain Expansion Project

On February 22, 2019, the National Energy Board ("NEB" or the "Board") released its reconsideration report (the "Reconsideration") on the Trans Mountain Expansion Project (the "Project"). The Reconsideration follows the August 2018 Federal Court of Appeal decision that set aside the NEB's previous approval of the Project and the federal government's subsequent direction for the NEB to reconsider the Project to take into account Project-related marine shipping. In its lengthy report, the Board recommends the approval of the Project subject to the 156 conditions that it had proposed in its previous recommendation and 16 new recommendations that are aimed at mitigating the environmental impacts of marine shipping that are beyond the scope of the Board's regulatory authority. This recommendation flows from the Board's finding that the Project is in the Canadian public interest and is required by present and future public convenience and necessity. The NEB's decision is timely as it sends a signal for potential relief of the oil and gas industry's pipeline bottleneck days following the Alberta government's announcement of a deal to market crude by rail. In the Reconsideration, the Board makes three key findings with respect to the Project's environmental effects. First, the Project-related marine shipping

is likely to cause significant adverse environmental effects on the Southern resident killer whale population and on Indigenous cultural use associated with same. Second, the marine shipping is likely to result in significant increases of greenhouse gas emissions. Finally, while unlikely to occur, the environmental effects from a worst-case spill would be significant. Ultimately, the Board concludes that the potential adverse effects can be justified in light of the Project's considerable benefits and the availability of mitigation measures. Read the [full article](#) by Alan L. Ross, Matti Lemmens, Chidinma Thompson and Tiffany Bennett on the BLG Energy Law Blog.

Act or Regulation Affected	Effective Date	Amendment Information
Direction No. 1 to the British Columbia Utilities Commission (105/2009)	REPEALED Feb. 14/19	by Reg 24/2019
Direction No. 3 to the British Columbia Utilities Commission (105/2012)	REPEALED Feb. 14/19	by Reg 24/2019
Direction No. 6 to the British Columbia Utilities Commission (29/2014)	REPEALED Feb. 14/19	by Reg 24/2019
Direction No. 7 to the British Columbia Utilities Commission (28/2014)	REPEALED Feb. 14/19	by Reg 24/2019
Direction No. 8 to the British Columbia Utilities Commission (24/2019)	NEW Feb. 14/19	see Reg 24/2019
Direction to the British Columbia Utilities Commission Respecting the Iskut Extension Project (137/2013)	Feb. 14/19	by Reg 24/2019
Special Direction No. 9 to the British Columbia Utilities Commission (157/2005)	Feb. 14/19	by Reg 24/2019
Standing Offer Program Regulation (320/2010)	Feb. 14/19	by Reg 23/2019

FAMILY & CHILDREN

Family and Children News:

New Family Maintenance Enforcement Measures Now in Force

Children and families will have greater support following changes to the Family Maintenance Enforcement Program (FMEP) that [came] into force March 1, 2019. The [amendments](#), introduced in April 2018, benefit families needing support by allowing the FMEP to instruct ICBC to now cancel, as well as refuse to renew, the driver's licence of someone with more than \$3,000 in arrears for child or spousal support payments. Previously, the FMEP could only direct ICBC to refuse to renew the driver's licence of someone with arrears over \$3,000, and the effectiveness varied as licences are only renewed every five years. Changes will also help paying parents reach repayment arrangements sooner and will increase opportunities to create a manageable payment plan by preventing arrears from accumulating for up to five years. Read the full government [news release](#).

Proposed Changes to Family Law Act

The recently introduced [Attorney General Statutes Amendment Act, 2019](#) was introduced on February 27, 2019. Among other things, the Bill proposes to amend the [Family Law Act](#) by adding statutory authority needed to implement planned reforms to the provincial court family rules to improve family court processes and provide

better access and outcomes for families who need assistance in resolving family law matters. The amendments include giving additional authority to family justice counsellors to conduct needs assessments, clarifying that participation in assessment and dispute resolution processes suspends the running of time limits for starting a spousal support claim under the *Family Law Act* and adding authority to allow a provincial court judge to review a decision of a judicial officer if they manage some aspects of cases. Read the full [news release](#).

Changes in Property Ownership Can Have Unexpected and Wide-ranging Consequences in Family Law

If you are granted right of survivorship on a property, does that constitute a gift? And if so, when does the gifting take place – at the time the right is established, or after the joint owner's death? Those were some of the questions raised in a recent family law case in British Columbia, in which a couple, the Barylas, decided to part ways after nearly forty years of marriage. Prior to their separation, their relationship was, by all accounts, a good one. The Barylas raised two children, became grandparents to four grandchildren, and owned a successful family business that afforded them a rather grand lifestyle in Vernon, B.C. The business ultimately allowed the couple to retire in their mid-forties and live off of the fruits of their hard work. Approximately five years after the parties' retirement and 10 years before their separation, Mr. Baryla's mother's health declined, leaving her with mobility issues. Mr. Baryla arranged for the purchase of the home next door to the Barylas' family home. Mr. Baryla's mother moved into the home and the Barylas assisted with her care. Read the [full article](#) in the *Financial Post*.

Advocacy Group Challenges Constitutionality of BC Family Law Legal Aid Regime

A British Columbia-based women's advocacy group says the provincial government and the Legal Services Society – the legal aid provider in the province – are failing to provide adequate legal aid for family law cases involving domestic violence, especially where women and children are involved. West Coast LEAF is representing the Single Mothers' Alliance of BC and Nicole Bell, a Fraser Valley, BC woman who is personally affected by the inability to access family law legal aid, in a constitutional challenge against the province and the LSS. The case, which was filed in April 2017, hasn't reached trial stage, but if it does, it's projected to commence during February of next year in the Supreme Court of British Columbia. "We are in a crisis situation in BC in terms of people getting access to the [justice] system, particularly in family law and civil law," says Kasari Govender, executive director of West Coast LEAF and co-counsel in the case. "We have a system that's supposed to govern everybody, but unless you could afford to get access to the justice system, that law is essentially meaningless to you." Read the [full article](#) by Alexia Kapralos in *Canadian Lawyer Magazine*.

Act or Regulation Affected	Effective Date	Amendment Information
Family Maintenance Enforcement Act	Mar. 1/19	by 2018 Bill 10, c. 14, sections 2 to 4 only (in force by Reg 20/2019), Family Maintenance Enforcement Amendment Act, 2018
Supreme Court Civil Rules (168/2009)	Feb. 11/19	by Reg 18/2019

FOREST & ENVIRONMENT

Forest and Environment News:

Amendments to the *Canada Shipping Act, 2001* and *Marine Liability Act*

On December 13, 2018, [Bill C-86](#), *A second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures*, otherwise known as the *Budget Implementation Act* was given royal assent. This Bill, which was first introduced on October 29, 2018, predominantly pertains to amendments of budget-related legislation, but also proposes significant amendments to both the [Canada Shipping Act, 2001](#) ("CSA") and the [Marine Liability Act](#) ("MLA"). The amendments to the CSA were introduced to allow the federal government to regulate for environmental reasons and specifically "to deliver on commitments made under the Oceans Protection Plan to enable the Government to respond to marine pollution incidents faster and more effectively, and to better protect marine ecosystems and habitats". The amendments provide significant new powers and authority that potentially change the marine safety and environmental protection framework in Canada. Read the [full article](#) by Joanna Dawson with McMillan LLP.

Winds of Change and Clouds of Uncertainty: The Professional Governance Act

For many companies operating in the natural resource sector, a common barrier to investment decisions is uncertainty; uncertainty around government policies, environmental regulations, tax regulations, fibre supply, and land claims. With the recently passed Bill 49, the [Professional Governance Act](#), regulators and registered professionals working in the natural resource sector now find themselves face to face with that bugaboo, uncertainty. At our forestry conference in early February, I jointly spoke on a plenary panel with the CEOs of Engineers and Geoscientists of BC (Ann English, P.Eng) and College of Applied Biology (Christine Houghton) about the *Professional Governance Act*; reflecting on both the lead up to the Act's passing, and what the future may hold. Uncertainty has held an overwhelming presence since the genesis of the Act. Tight timelines meant a rushed consultation process and writing of the legislation; it also meant a lack of policy clarity, and lack of information such as the cost and business implications for regulators and professionals prior to the Act's introduction. Broad discretion and far-reaching powers of the soon-to-be-established Office of the Superintendent of Professional Governance sustains a degree of ongoing uncertainty. When implemented, the new Act will change how the forest profession operates and requirements of forest professionals in providing professional services. Read the [full article](#) in the March - April 2019 issue of *BC Forest Professional Magazine*.

Federal Court Quashes Federal Policy allowing Transfer of Salmon into Fish Farms without Testing for Contagious Virus or Consulting with Indigenous Peoples

On Feb. 4, 2019, the Federal Court issued its reasons for judgment regarding certain decisions made by the Minister of Fisheries, Oceans and Canadian Coast Guard. The Court's reasons were extensive, spanning roughly 200 pages. 'Namgis First Nation, alongside biologist Alexandra Morton, challenged a policy relating to the process associated with authorizing the transfer of smolts (juvenile salmon) grown on land-based hatcheries into ocean-based fish farms. Specifically, the Department of Fisheries and Oceans ("DFO") had an established policy of not testing for the presence of Piscine Orthoreovirus ("PRV") or Heart and Skeletal Muscle Inflammation ("HSMI") prior to issuing licences authorizing such a transfer (the "Policy"). DFO had reconsidered, but maintained, the Policy on several occasions. In this litigation, 'Namgis and Ms. Morton challenged the latest iteration of the Policy, which the Minister confirmed on June 28, 2018. 'Namgis additionally challenged a decision by DFO to issue a specific license pursuant to the Policy, authorizing a transfer of smolts to restock a particular fish farm situated in its territorial waters. Read the [full article](#) by Paul Seaman, partner with Gowling WLG International Limited.

BC Budget: Environmentalists say Clean BC Cash is a Start

With the provincial budget including \$902 million for the Clean BC initiative the province has taken further steps to deal with climate change, but there's a long walk ahead, some environmentalists say. "They have checked another box," said Alan Andrews, climate change director with Ecojustice. "The big question for us is: Are we going to see legislation? Are we going to see laws that hold ministers to account for achieving targets?" Over the next three years, the \$902 million committed to the program will fund incentives to steer drivers into cleaner vehicles, fund renovations to improve the efficiency of buildings, offer incentives for homeowners to upgrade windows and heating systems, work with First Nations to switch to cleaner energy sources and provide incentives for industry to clean up. Andrews said despite the "good start," there remains a gap as the plan will only get BC 75 per cent toward its 2030 emissions target. Jill Doucette, chief executive of Synergy Enterprises, said the budget showed the government is putting its money where its mouth is. Read the full *Times Colonist* [article](#).

Environmental Appeal Board Decisions

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

[Water Sustainability Act](#)

- [Clara London v. Deputy Comptroller of Water Rights \(BC Hydro and Power Authority, Third Party\)](#) [Final Decision – Appeal Dismissed]

[Environmental Management Act](#)

- [Mark Spittael v. Delegate of the Director, Environmental Management Act](#) [Consent Order – Appeal Allowed in Part]

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

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Penalties Regulation (Environmental Management Act) (133/2014)	Feb. 28/19	by Reg 7/2019
Agricultural Waste Control Regulation (131/92)	REPEALED Feb. 28/19	by Reg 7/2019
Code of Practice for Agricultural Environment Management (8/2019)	NEW Feb. 28/19	see Reg 8/2019
Code of Practice for the Slaughter and Poultry Processing Industries	Feb. 28/19	by Reg 8/2019
Mushroom Compost Facilities Regulation (413/98)	Feb. 28/19	by Reg 7/2019
Organic Matter Recycling Regulation (18/2002)	Feb. 28/19	by Reg 7/2019
Solid Fuel Burning Domestic Appliance Regulation (218/2016)	Feb. 28/19	by Reg 7/2019
Water Sustainability Act	Feb. 22/19	by 2018 Bill 52, c. 56, section 54 only (in force by Reg 30/2019), Agricultural Land Commission Amendment Act, 2018
Water Sustainability Fees, Rentals and Charges Tariff Regulation (37/2016)	Feb. 19/19	by Reg 27/2019
Water Sustainability Regulation (36/2016)	Feb. 19/19	by Reg 27/2019
Waste Discharge Regulation	Feb. 28/19	by Regs 7/2019 and Reg 8/2019

HEALTH

Health News:

Ian Mulgrew: Marathon Medicare Challenge is BC's Zombie Trial

The marathon medicare trial has lurched back to life and plans to sail past its fourth anniversary of somnolent proceedings with a hearty, "Not dead yet!" After another languorous winter holiday, BC Supreme Court Justice John Steeves and the flock of lawyers decided this month that the plaintiffs will try to finish their case by the end of March – maybe, better add a week to make sure. "Given our history, I'm thinking April 8," Steeves suggested for the intervenors to begin their defence of the status quo. No need to rush, the justice said he needs to first ensure everything gets done. There are five outstanding applications he must rule on, continuing sour objections. In early March, for instance, he'll hear the government's objections to a children's spine surgeon testifying that someone at Children's Hospital manipulated wait times. "Frankly, I'm not about to let you close until all that is done," Steeves told the representative patients and private clinics challenging the [Medicare Protection Act's](#) prohibitions on access to private care. Read the full *Vancouver Sun* [column](#).

Case Summary: Can the Human Rights Tribunal Second Guess the Exercise of Medical Judgment:

Court rejects Hospital's argument that patient's human rights complaint for discriminatory treatment as having no prospect of success. The petitioner hospital was unsuccessful on judicial review in setting aside the decision of the Human Rights Tribunal to not summarily dismiss a human rights complaint as having no reasonable prospect of success under [section 27\(1\)](#) of the [Human Rights Code](#). The complaint was for alleged discrimination by the hospital on the grounds of mental and physical disability in relation to the provision of services. The court found that the complaint had some prospect of success and that the Tribunal's decision was not patently unreasonable. The court rejected the argument that the Tribunal was not in a position to second-guess the exercise of professional medical judgment by the hospital staff in the provision of services, absent discrimination. Read the [full article](#) by Adam Way of Harper Grey LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Hospital District Act	Feb. 22/19	by 2018 Bill 52, c. 56, section 41 only (in force by Reg 30/2019), Agricultural Land Commission Amendment Act, 2018
Public Health Impediments Regulation (50/2009)	Feb. 11/19	by Reg 21/2019
Veterinary Drug and Medicated Feed Regulation (47/82)	Feb. 19/19	by Reg 26/2019

LABOUR & EMPLOYMENT

Labour and Employment News:

BC Introduces Sick Days as Part of Proposed Employment Law Changes

Canadian Federation of Independent Business says entrepreneurs need flexibility to manage employees. British Columbia may soon introduce unpaid sick days as part of a slew of proposed changes to the province's [Employment Standards Act](#). The province released a report [late last week](#) seeking feedback on the adjustments to the act over the next month. The report says most of the review committee members agreed on a total of seven days unpaid leave per year for workers who are sick, or need to take time off to attend to urgent family needs. Currently, the province only protects up to five days unpaid leave per year for family care. BC and Nunavut are the only Canadian jurisdictions that don't include protections for workers who need to take time off when they're sick or hurt, according to the province's report. Read the CBC [article](#).

Major Changes Coming to the Canada Labour Code

The [Canada Labour Code](#) ("the Code") prescribes the minimum labour standards for federally regulated workplaces. On October 29, 2018, the Federal Government introduced in First Reading [Bill C-86](#), in order to amend a number of provisions of Part III of the Code. Bill C-86 received Royal Assent on December 13, 2018, and thus began the so-called "modernization" of the Code. The amendments will likely come into effect by the end of 2019, though the timeframe is not entirely clear at this point. The amendments are to the benefit of employees, with increases in leave provisions, termination notice and vacation pay, and the implementation of an equal pay rule. A general overview of some of the key amendments to the Code are detailed below: Read the [full article](#) by Elise Calvert and [Michael D. A. Ford](#), Q.C. with DLA Piper.

Human Rights and Labour Legislation Held not to Oust Jurisdiction over Class Action for Breach of Employment Contract

In [Lewis v. WestJet Airlines Ltd.](#), the British Columbia Court of Appeal confirmed that the court's jurisdiction to hear cases alleging breach of an employment contract will not be ousted by the operation of the [Canadian Human Rights Act](#), or the [Canada Labour Code](#), even if discrimination or harassment is alleged. Lewis is a proposed class action that has not yet been certified. Ms. Lewis brought an action for breach of contract against her employer, WestJet, for allegedly failing to fulfil an "Anti-Harassment" promise contained in her and her

colleagues' contracts of employment. The promise had incorporated WestJet's various policies relating to human rights and discrimination. WestJet brought an application to strike the class action on the basis that the courts lacked jurisdiction to hear the dispute. WestJet argued that the substance or essential character of the claim was that WestJet had breached the proposed class' statutory rights protected under the *Canadian Human Rights Act* and the *Canada Labour Code* by failing to provide a workplace free from discrimination, sexual and other harassment. As a result, WestJet alleged that the pleading of "breach of contract" was merely a drafting technique disguising the true substance of the claim, which was properly within the jurisdiction of the Canadian Human Rights Tribunal. The plaintiff argued that this was not a case where she was seeking to enforce statutorily conferred rights through a civil action where those rights arose solely from statute. Rather, her claim was for breach of the employment contract. While the statutory rights conferred under the human rights and labour legislation may overlap with or replicate her rights under the employment contract, this should not prevent her from choosing her cause of action, remedy or procedure (i.e. through a class proceeding). Read the [full article](#) by [Shelby Liesch](#) with Borden Ladner Gervais LLP.

Independent or Dependent Contractor? BC Court Finds No Severance Owing to Long Term Service Provider

A recent decision of the British Columbia Provincial Court serves as an important reminder of the factors a court will consider when determining whether an individual is a dependent contractor and of the repercussions dependent contractor status may have on severance obligations upon termination. In *Thomas v. Vancouver Free Press Publishing Corp.*, the BC Provincial Court considered whether Colin Thomas, a freelance writer, was a dependent contractor of the Vancouver Free Press Publishing Corp. ("Vancouver Free Press"). Mr. Thomas conceded that he was never an employee of the Vancouver Free Press, but claimed that he was a dependent contractor and was therefore entitled to reasonable notice or pay in lieu of notice upon his termination. Ultimately, the Court found that Mr. Thomas was not a dependent contractor and was therefore not entitled to notice or pay in lieu. Read the [full article](#) by Hilary D. Henley and Rosie Schlagintweit, Articling Student with McMillan LLP.

Genetic Characteristics: A Developing Ground of Discrimination

With companies like 23andMe, genetic testing has become increasingly popular in recent years. Genetic tests may confirm a diagnosis, indicate that a person is a carrier of a particular genetic mutation, or identify an increased risk of developing a certain disease. While this genetic information can help individuals make informed decisions about their health and take preventative action, there is some concern that this information may be used by employers to the disadvantage of individuals. Might it be used to refuse to hire someone, deny a promotion, or terminate an employee? The federal government was the first to enact legislation in response to such concerns. And a bill is now before the Ontario Legislature that would prohibit employers from discriminating against employees on the basis of their genetic characteristics. The courts have also started to weigh in on the issue, in the context of the subjective component of discrimination, or "perceived disability". Read the [full article](#) by [Rachel Devon](#) of Fasken.

Act or Regulation Affected	Effective Date	Amendment Information
Employment and Assistance Regulation (263/2002)	Feb. 11/19	by Reg 19/2019
Employment and Assistance for Persons with Disabilities Regulation (265/2002)	Feb. 11/19	by Reg 19/2019

LOCAL GOVERNMENT

Local Government News:

Legislative Changes to Benefit BC Local Governments, Communities

The Province has proposed a number of legislative changes that will clarify provincial and local government authorities, help local governments better respond to community needs and support British Columbia's affordable housing goals. If passed, the [Municipal Affairs and Housing Statutes Amendment Act, 2019](#) will amend the following provincial statutes:

The [Vancouver Charter](#): The proposed changes would align *Vancouver Charter* authorities with those under the *Local Government Act*, allowing the City of Vancouver to use housing agreements to limit sale, lease and share prices of housing units. These amendments support the city's initiatives to expand the range of affordable housing options and support government's 30-point plan on housing affordability.

The [Building Act](#): The proposed amendments would provide flexibility for the Province to share some authority on specific building regulations with local governments, while still allowing the Province to establish effective regulations on a number of emerging issues, including secondary suites, fire sprinklers and the establishment of a code for existing buildings as part of the climate action commitments in CleanBC.

The [Local Government Act](#): The proposed changes would allow local governments to better respond to various community needs. The proposed changes respond to the increasing recognition that access to high-speed internet has evolved into a basic service. The changes will allow regional districts to assist businesses in bringing high-speed internet to underserved communities. Amendments will remove a redundant requirement in relation to notices of assent voting.

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

Local Government Officials and the Duty of Care: The BC Court of Appeal Reverses the BC Supreme Court Decision in *Wu v. Vancouver (City)*

By its January 21, 2019 decision in *Wu. V. Vancouver (City)*, [2019 BCCA 23](#), the BC Court of Appeal has overturned the 2017 decision of the BC Supreme Court in the case of *Wu v. Vancouver (City)*, [2017 BCSC 2072](#) and has made important findings as it relates to the limits of legal duties owed by public bodies such as local governments, and the liability to which they may be exposed. The Court of Appeal has identified that public officials are under a statutory duty to act in accordance with their statutory obligations. Where a public official fails to act in accordance with his or her statutory obligations, including a duty to make a decision in a timely fashion, remedies exist in administrative law, for example, through legal proceedings intended to compel a decision to be made by the public official. Having identified this duty, however, the Court of Appeal has confirmed that liability on the part of a public authority does not flow as a consequence of a breach of a statutory duty, and has further identified that, with some exceptions, private law concepts such as the tort of negligence do not generally apply to the types of interactions with the public which are inherent as part of the regular business of a local government.

Background and BC Supreme Court Decision: In *Wu v. Vancouver (City)*, 2017 BCSC 2072, the BC Supreme Court found that the City of Vancouver (the "City") failed to process an application for a development permit within a "reasonable time". The plaintiff homeowner wished to demolish a pre-1940 heritage home that the City considered it may wish to protect. Under the existing legislative scheme, if the parties could not agree on terms of retention for the home, and if the City designate the home as protected heritage property by bylaw, the City was obliged to compensate the plaintiff for the loss of property value.

Read the [full article](#) by Jeff Locke and Kerri Crawford of Stewart McDannold Stuart.

Case Summary: Court Upholds District's Decision not to Grant Business Licenses for Short-term Rentals

The petitioners were townhouse owners in Tofino who rented out their units as short-term rentals. They applied for business licenses to operate their short term rentals in 2017 from the defendant, the Corporation of the District of Tofino (the "District"), a local government incorporated under the [Community Charter](#), SBC 2003, c. 26. The petitioners took the position that when the townhomes were built between 1998-2001, pursuant to the zoning bylaws in force at the time (the "1997 Zoning Bylaw"), and the terms of the restrictive covenant against the lands which were zoned RM2, the townhouse units could be rented out for more than one night but less than 30 nights. The petitioners argued that, notwithstanding amendments to the zoning bylaws which permits short-term rentals in some zones, but not in RM2, their short-term rentals are a lawful non-conforming use of the lands and that a business license is not required to operate their short-term rentals. Read the [full article](#) by Joanne Barnum with Harper Grey LLP.

Province Will Retain AGLG Office

Selina Robinson, Minister of Municipal Affairs and Housing, has [announced](#) that the province will retain the office of the Auditor General for Local Government (AGLG) following the completion of a [five-year review](#). The review found that a significant number of respondents had made changes to local practices based on the outputs of the

AGLG. The report also flagged the high average cost of performance audits, with a cost per audit of \$500,000. The five-year review of the [Auditor General for Local Government Act](#) and the AGLG office is required by legislation. The Ministry of Municipal Affairs and Housing (MMAH) contracted with Kelly Daniels, formerly the CAO of the Capital Regional District and Nanaimo Regional District, to undertake the review. A Working Group made up of UBCM President Arjun Singh and Executive Director Gary MacIsaac, along with representatives from the Local Government Management Association and three members from MMAH, including the Assistant Deputy Minister who functioned as the Chair, advised the consultant. Read the UBCM [article](#).

Agricultural Land Commission Act Updates

[Amendments](#) to the [Agricultural Land Commission Act](#) came into force on February 22, 2019, encouraging farming and protecting farmland by banning mega-mansions, preventing illegal dumping of waste on farmland and reunifying the Agricultural Land Reserve as a single zone to ensure consistent rules. A new regulation, the [Agricultural Land Reserve Use Regulation](#), was also introduced to strengthen changes to the Act and provide clarity on the permitted uses of land within the Agricultural Land Reserve.

Act or Regulation Affected	Effective Date	Amendment Information
Agricultural Land Commission Act	Feb. 22/19	by 2018 Bill 52, c. 56, sections 1 to 39 only (in force by Reg 30/2019), Agricultural Land Commission Amendment Act, 2018
Agricultural Land Reserve General Regulation (171/2002) (<i>title changed from Agricultural Land Reserve Use, Subdivision and Procedure Regulation</i>)	Feb. 22/19	by Reg 30/2019
Agricultural Land Reserve Use Regulation (30/2019)	NEW Feb. 22/19	see Reg 30/2019
Assessment Act	Feb. 22/19	by 2018 Bill 52, c. 56, section 41 only (in force by Reg 30/2019), Agricultural Land Commission Amendment Act, 2018
Assessment Authority Act	Feb. 22/19	by 2018 Bill 52, c. 56, section 42 only (in force by Reg 30/2019), Agricultural Land Commission Amendment Act, 2018
Cannabis Licensing Regulation (202/2018)	Feb. 25/19	by Reg 31/2019
Farm Practices Protection (Right to Farm) Act	Feb. 22/19	by 2018 Bill 52, c. 56, sections 43 and 44 only (in force by Reg 30/2019), Agricultural Land Commission Amendment Act, 2018
Local Government Act	Feb. 22/19	by 2018 Bill 52, c. 56, sections 47 to 50 only (in force by Reg 30/2019), Agricultural Land Commission Amendment Act, 2018
School Act	Feb. 22/19	by 2018 Bill 52, c. 56, sections 51 and 52 only (in force by Reg 30/2019), Agricultural Land Commission Amendment Act, 2018
South Coast British Columbia Transportation Authority Act	Feb. 22/19	by 2018 Bill 52, c. 56, section 53 only (in force by Reg 30/2019), Agricultural Land Commission

MISCELLANEOUS

Miscellaneous News:

British Columbia to Introduce UNDRIP Legislation

On February 12, 2019, the British Columbia government announced plans to introduce legislation that implements the [United Nations Declaration on the Rights of Indigenous People](#) (UNDRIP) (the Legislation), as part of the provincial government's reconciliation objective. UNDRIP consists of 46 articles that offer guidance to governments on recognizing and promoting basic human rights of Indigenous peoples around the world, as well as their right to self-determination. The most contentious principles relate to obtaining the free, prior and informed consent (FPIC) of Indigenous communities before undertaking certain actions, including prior to approving any project affecting their lands or resources. If the Legislation is passed, then B.C. will be the first province in Canada to endorse UNDRIP through legislation. This update summarizes the status of UNDRIP in Canada and discusses potential implications of the Legislation. Read the [full article](#) written by Radha D. Curpen, David Bursey, Sharon G.K. Singh and Amy O'Connor of Bennett Jones LLP.

BC Aims to Strengthen Consumer Protections with Payday Loan Law

Proposed amendments to existing law would set borrowing limits and prohibit some fees and charges. British Columbia is amending its consumer protection law to offer more safeguards for people forced to turn to high-cost loan services and risk being caught in an endless cycle of debt payments. Solicitor General Mike Farnworth says [proposed amendments](#) to BC's [Business Practices and Consumer Protection Act](#) will set limits on borrowing costs, prohibit certain fees and charges and restrict the use of borrowers' personal information. The minority New Democrat government highlighted stronger consumer protection measures in its throne speech earlier this month, saying it plans to crack down on unfair payday loan practices. Last June, the government capped fees for cashing assistance cheques at \$2 plus one per cent of the value of the cheque up to a maximum of \$10 and lowered the maximum fees for payday loans to \$15 for every \$100 borrowed. Read the CBC [article](#).

When a Privacy Policy is not Enough: Canadian Privacy Commissioners Issue New guidance on Obtaining Meaningful Consent

The Privacy Commissioners of Canada, Alberta and British Columbia have jointly issued guidelines to help organizations obtain meaningful consent from individuals for the collection, use and disclosure of their personal information. The previously written Guidelines came into effect in January 2019 and are now applied by the Commissioners when evaluating organizational conduct. The impetus for these Guidelines likely arises in large part from the European Union's General Data Protection Regulation ("GDPR"), which requires much greater transparency from organizations in order for consent provided by data subjects to be legally valid. In making clear that the Canadian [Personal Information Protection and Electronic Documents Act](#) ("PIPEDA"), the Alberta [Personal Information Protection Act](#) ("Alberta PIPA"), and the British Columbia [Personal Information Protection Act](#) ("BC PIPA") will be interpreted by the respective Commissioners in a way that conforms to GDPR-like consent standards, the Commissioners have taken a solid step toward maintaining Canada's adequacy status with the EU. Read the [full article](#) by Tamara Hunter with DLA Piper.

Act or Regulation Affected	Effective Date	Amendment Information
Exemption Regulation (27/2002)	Feb. 19/19	by Reg 28/2019
Freedom of Information and Protection of Privacy Act	Feb. 21/19	by Reg 29/2019
Supreme Court Civil Rules (168/2009)	Feb. 11/19	by Reg 18/2019

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

Case Summary: A Sandbar is not a Highway

Adam v. Insurance Corp. of British Columbia, [2018] B.C.J. No. 6943, [2018 BCCA 482](#), British Columbia Court of Appeal, December 20, 2018, S.D. Frankel, K.C. Mackenzie and D.C. Harris JJ.A. The British Columbia Court of Appeal heard an appeal from a summary trial application in which the issue was whether a sandbar on the Fraser River is a "highway" for the purposes of [s. 24](#) of the *Insurance (Vehicle) Act*. The plaintiff brought an action against ICBC under the unidentified motorist provisions of the *Insurance (Vehicle) Act* in respect of injuries he sustained as a result of a collision with an unidentified motorist. The accident occurred on a sandbar of the Fraser River in Chilliwack. The sandbar is approximately one kilometre wide and consists of sand and gravel. It is accessed by a road. The sandbar is used by vehicles to park, fish and camp along the Fraser River. On the day of the accident, the plaintiff was struck by an unidentified white jeep following an attempt to steal his cooler from the location where he was parked in his camper. Read the [full article](#) by [Cameron Elder](#), partner at Harper Grey LLP.

BC Attorney General – ICBC Does Not Have a "Meat Chart"

Last month ICBC withdrew many settlement offers on open claims and replaced them with lower unrealistic offers which were not tied to [judicially established legal principles](#) but rather internally designated criteria. The [media dubbed this strategy the "meat chart"](#) which appears to be resulting in fewer settlements and more claims now clogging the courts. BC's Attorney General, the man in charge of ICBC, has now come out and taken offence to the meat chart label and has outright denied its existence. In a lengthy exchange with MLA Michael Lee BC's Attorney General asked the opposition member to not call ICBC's strategy a "meat chart" and said "they do not have a meat chart". Here is the full exchange as recorded in Hansard: Read the [full article](#) by [Erik Magraken](#) on the *BC Injury and ICBC Claims Blog*.

Supreme Court Civil Rules Amended

Effective February 11, 2019, amendments to the [Supreme Court Civil Rules](#) aim to hasten settlements in motor vehicle-related actions and reduce the costs of settling vehicle injury claims. The changes will limit the number of experts and expert reports permitted to address the issue of damages, with parties allowed to use one expert and report for fast-track claims, and up to three experts and reports for all other claims.

CVSE Bulletins & Notices

The following notice was posted in February by CVSE:

- [Circular 01-19](#) – Announcement of a limited hitch offset exemption for flatbed tow trucks towing motor vehicles

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

Act or Regulation Affected	Effective Date	Amendment Information
Motor Dealer Act Regulation (447/78)	Feb. 8/19	by Reg 16/2019
Motor Vehicle Act Regulations (26/58)	Feb. 19/19	by Reg 25/2019
	Feb. 25/19	by Reg 33/2019
Violation Ticket Administration and Fines Regulation (89/97)	Feb. 11/19	by Reg 21/2019

OCCUPATIONAL HEALTH AND SAFETY

Occupational Health & Safety News:

Permanent Disability Evaluation Schedule (PDES) 2018 Review

The Policy, Regulation and Research Division is releasing a discussion paper on the PDES 2018 Review with options and draft policies to stakeholders for comment. The PDES is a guide set out in policy to assist in the

calculation of permanent disability awards. As medical and scientific methods and approaches to disability assessment change over time, it is necessary to review the PDES and associated policies regularly to ensure the content remains current. Read the full WorkSafe BC [bulletin](#).

Upcoming Changes to OHSR – Worksafe BC: Board of Directors Approves Amendments to the Occupational Health and Safety Regulation

At its January 2019 meeting, WorkSafeBC's Board of Directors approved [amendments](#) to the [Occupational Health and Safety Regulation](#). In addition, the Board of Directors approved consequential changes to Policy Item R20.17-1 of the *Prevention Manual* as a result of the amendment to [Part 20](#) of the Regulation. These amendments will become effective on June 3, 2019. Read the full WorksafeBC [article](#) for more details.

Forestry Industry Forum Allows for Improved Collaboration, Better Safety Outcomes

Industry via the Manufacturing Advisory Group (MAG) worked with WorkSafeBC and the BC Forest Safety Council (BCFSC) to develop a framework for what improved collaboration could look like, focusing on the shared goal of achieving a safer industry, and eliminating fatalities and serious injuries. The result was the creation of the Forestry Industry Forum to provide an effective mechanism between the BC Forestry industry and WorkSafeBC to address emerging issues, build a stronger working relationship, provide efficiencies for resolutions and communications, and improve safety standards and performance. Read the [full article](#) in the February 2019 issue of *Forest Safety News*.

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:

A Closer Look at the Report on Governance Issues for Stratas: Should the *Strata Property Act* Limit the Number of Proxy Appointments that a Person May Hold?

This post is the part of a series highlighting key recommendations in the [Report on Governance Issues for Stratas](#). For other entries in the series, click [here](#).

Brief description of the issue: One of the perennial complaints about strata-property proxy legislation is that it has encouraged what one law-reform body colourfully referred to as "proxy farming," which is "where an individual or small group of owners gather large numbers of proxy votes in order to gain control of the decisionmaking process." Among the ills attributed to proxy farming are that it breeds resentment and apathy, and results in unrepresentative decisions. The [Strata Property Act](#) (like all other strata-property legislation in Canada) places no limits on the number of proxy appointments that a person may hold for a general meeting. So, in theory at least, strata corporations in British Columbia are vulnerable to threats posed by proxy farming. Should the act be amended to stamp out proxy farming by limiting the number of proxy appointments one person may hold?

Read the [full article](#) by Kevin Zakreski with the BCLI.

Ministry of Finance Launches Condo and Strata Assignment Integrity Register

The Ministry of Finance [announced it has launched the Condo and Strata Assignment Integrity Register \(CSAIR\)](#) to improve real estate transparency in B.C. It is Canada's first pre-sale register, supporting the [Province's 30-point Housing Plan](#) to address housing affordability by making the market more transparent and fair for British Columbians. Learn more on the [Ministry of Finance website](#). As [announced in November 2018](#), the Land Title and Survey Authority of British Columbia (L TSA) administers the register, accessible through a myL TSA Enterprise account. A filing fee of \$195.00 plus \$1.50 service charge and tax will be applied when developers file the assignment. The fees help the L TSA manage the costs associated with developing, maintaining and supporting the register. Read the [full article](#) on the BC Land Title & Survey website.

Act or Regulation Affected	Effective Date	Amendment Information
Land Title Act	Feb. 22/19	by 2018 Bill 52, c. 56, section 46 only (in force by Reg 30/2019), Agricultural Land Commission Amendment Act, 2018

WILLS & ESTATES

Wills and Estates News:

Proposed Amendments to the *Wills, Estates and Succession Act*

The British Columbia government has introduced changes to the [Wills, Estates and Succession Act](#). The [Attorney General Statutes Amendment Act, 2019](#), if enacted, will include changes to sections 16, 61, 130, 131, 151, 152 and 155. I will highlight some of the changes to sections 151 and 155. Section 151 permits a beneficiary of an estate to apply to court to make or defend a claim on behalf of the estate if the personal representative does not do so. For example, a beneficiary of an estate may wish to make a claim that a house that the surviving joint tenant of the deceased's house holds the house in trust for the estate, while the surviving joint tenant claims beneficial ownership. If the personal representative refuses to pursue a claim, or perhaps the personal representative is also the surviving joint tenant, the beneficiary may apply to court pursuant to section 151 for permission to bring the claim. The current wording in section 151 only allows "a beneficiary or intestate successor" to apply. What if the person who wishes to make a claim is not currently a beneficiary of the will, but is making a claim as a child or spouse of the deceased to vary the will so that she will receive a share of the estate? Section 151 does not appear to apply to the wills variation claimant to allow her to apply for leave to sue. This is what occurred in *Sharma v. Sharma*, [2018 BCSC 1262](#), which I wrote about [here](#). Read the [full article](#) by [Stan Rule](#) with Sabey Rule LLP.

Resulting Trusts – A Question of Intention

Two recent decisions from the Supreme Court of British Columbia illustrate the importance, and difficulty, of determining the intentions someone who transfers property when ownership of that property is later challenged. In *Pavlovich v Danilovic*, [2019 BCSC 153](#), Justice Iyer found that she could not determine the intentions of a deceased father, concluding that his son held the properties on resulting trust for the estate. In contrast, in *Iberg v. Claridge*, [2019 BCSC 165](#), Justice Grauer was able to determine the plaintiff mother's intentions, holding that she did not intend to make a gift of certain funds to her son and declaring that a property registered in his name was impressed with a constructive trust. Read the [full article](#) by Polly Storey of Clark Wilson.

Speculating on Vancouver's Real Estate Market:

A Taxing Exercise for Executors

With experts forecasting a cooling real estate market for the beginning of 2019, some executors may be tempted to hang on to real property that falls within an estate and wait until more favourable market conditions before listing the property for sale. With the recent introduction of taxes targeting vacant homes in Vancouver, executors holding real property in Vancouver on behalf of an estate should consider the costs of these additional annual property taxes in their decision making. The much-anticipated Speculation and Vacancy Tax (the "SVT") was quietly passed by the BC government at the end of 2018. The SVT affects properties in several regions, including properties within the Metro Vancouver Regional District. In 2018, properties that are not subject to an exemption will be taxed at a rate of 0.5% of their assessed value. In 2019, this tax rate will increase to 2% for foreign owners and members of satellite families. All properties in a taxable region, including those held in estates, are automatically considered taxable properties under the SVT, unless the property qualifies for one of the many exemptions available to BC property owners. Executors may therefore be responsible for paying the SVT on behalf of the estate unless they can demonstrate that the estate property is exempt from the tax. Read the [full article](#) by Ephraim Fung of Alexander Holburn Beaudin + Lang LLP.

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There were no amendments this month.

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