

Quickscribe Reporter

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QUICKSCRIBE NEWS:

New "Updated To..." Reference Links Added

All laws on Quickscribe include a reference to the amending bill or regulation that bring into force the most recent changes to each law. These references will now link directly to the source so you can more easily determine the nature of the most recent changes to the law. Here are some examples:

- [Land Act](#): [includes [2018 Bill 37](#), c. 37 amendments (effective October 31, 2018)]
- [Provincial Forest Use Regulation](#): [includes [B.C. Reg. 262/2018](#), Sch. 1 amendments (effective December 10, 2018)]

While not all laws are covered at this time, we hope to apply this to the remaining laws over the next few months. These link references will also now appear in the BC Legislative Digest email alerts, making it easier than ever for you to quickly determine the nature of the changes with a single click.

Latest Annotations


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

- [Jeff Waatainen](#), DLA Piper LLP – [Forest and Range Practices Act](#), [Wildfire Act](#), [Forest Planning and Practices Regulation](#), [Woodlot Licence Planning and Practices Regulation](#)
- [Philippa Estall](#), Public Guardian and Trustee of British Columbia – [Patients Property Act](#), [Public Guardian and Trustee 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

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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:

New Record-Keeping Requirements Under the Canada Business Corporations Act: A Primer

Beginning June 13, 2019, private corporations regulated under the [Canada Business Corporations Act](#) ("CBCA") will be required to maintain a register of individuals who, directly or indirectly, have "significant control" over the corporation. Currently, CBCA corporations do not have to look behind the names of their registered shareholders to determine ultimate beneficial control.

This new register will not be available to the public but it will be open to shareholders and creditors of the corporation. Directors and officers will have personal liability to ensure the corporation complies with the new provisions. Note that these requirements will not apply to public companies and to some other corporations exempted by regulation.

The new register is consistent with initiatives in Canada and internationally to combat money laundering and terrorist financing. Lenders will find it of assistance in meeting their increasing "know your client" obligations. It is possible that similar requirements will soon be adopted under provincial legislation as well.

Many CBCA companies, however, are likely to find the requirements onerous and difficult to interpret. The government intends to bring in regulations that may clarify the new obligations. There may also be an opportunity for public comment on the regulations, although a specific process has not been announced. Read the [full article](#) by Megan Filmer and Erik Thorsteinsson with DLA Piper.

Mixed Results in British Columbia White Collar Enforcement Proceedings

Two high-profile cases in late 2018 demonstrate both the potentially grave consequences of securities law violations and the difficulties prosecutors face in securing convictions for white collar crime. In the first, the Provincial Court of British Columbia sentenced Vancouver-resident Ayaz Dhanani to a rare prison term for securities law violations following Dhanani's guilty plea in connection with the fraudulent solicitation of investments from five British Columbia residents. In the second, the Public Prosecution Service of Canada (PPSC) stayed charges against an alleged organized crime group believed to be laundering over \$1 billion per year through B.C. casinos in what was one of the largest money-laundering prosecutions in Canadian history. Read the [full article](#) by [Lawrence E. Ritchie](#), [Geoffrey Grove](#) and [Elie Farkas Osler](#) of Hoskin & Harcourt LLP.

The Difficulty with Raising the Dead (Company)

A recent case at the BC Supreme Court, [British Columbia v. The Administrator of the Ship-source Oil Pollution Fund](#), demonstrates how difficult it is to make a successful legal claim against a company that was dissolved at the time the claim arose.

In the proceeding at issue, the BC government sought to restore a company to the provincial Register of Companies. The company had dissolved in January of 2014, at which time it had owned a large derelict vessel moored in BC waters, the *Chilcotin Princess*. When the company dissolved, title to the *Chilcotin Princess* automatically transferred to the BC government.

The BC government was not aware this had occurred, however, and assisted the Coast Guard in decommissioning the *Chilcotin Princess* in early 2015. As part of that process, Coast Guard employees first removed potential oil pollutants from the vessel, at a total cost of \$137,680.88. Read the [full article](#) by Michael Larsen with Clark Wilson LLP.

FICOM News

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

- [Letter to Pension Stakeholders](#) – E-Filing System Updates – AIS User Authentication and Document Upload
- [Letter to CEOs/General Managers, BC Authorized Credit Unions](#) – Deadline Extension for the CUDIC Premium Structure Consultation

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 January:

- [11-901F](#) – BC Notice 2018/08 published on December 5, 2018 advised of amendments to the Securities Regulation to amend some fees and to add new fees for international dealers and advisers, and regulated entities such as exchanges, clearing agencies, trading repositories and alternative trading systems. The amendments are effective December 30, 2018. BC Form 11-901F Fee Checklist, which is submitted when paying a fee, has been updated to reflect the amended and new fees.
- [81-102](#) – Adoption of Amendments relating to Modernization of Investment Fund Product Regulation – Alternative Mutual Funds
- [11-340](#) – CSA Staff Notice 11-340 *Extension of Comment Period* CSA Staff Notice and Request for Comment 23-323 *Trading Fee Rebate Pilot Study*
- [BC Notice 2019/01](#) – Expiry of BC Instrument 32-517 *Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities* and registration requirements for persons relying on BCI 32-517 on February 15, 2019 – Frequently Asked Questions
- [23-324](#) – CSA Staff Notice 23-324 *Order Protection Rule: Market Share Threshold* for the period April 1, 2019 to March 31, 2019

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

Act or Regulation Affected	Effective Date	Amendment Information
Business Number Regulation (388/2003)	Jan. 24/19	by Reg 10/2019
Designated Accommodation Area Tax Regulation (93/2013)	Feb. 1/19	by Reg 250/2018
Income Tax Act	Jan. 1/19	by 2017 Bill 2, c. 12, section 36 only (in force by Royal Assent), Budget Measures Implementation Act, 2017
		by 2018 Bill 2, c. 4, sections 18 to 22, 24, 25 only (in force by Royal Assent), Budget Measures Implementation Act, 2018
		by 2018 Bill 25, c. 25, section 14 only (in force by Reg 230/2018), Real Estate Development Marketing Amendment Act, 2018
Multilateral Instrument 11-102 <i>Passport System</i> (58/2008)	Jan. 3/19	by Reg 287/2018
National Instrument 41-101 <i>General Prospectus Requirements</i> (59/2008)	Jan. 3/19	by Reg 287/2018
National Instrument 81-101 <i>Mutual Fund Prospectus Disclosure</i> (1/2000)	Jan. 3/19	by Reg 287/2018
National Instrument 81-102 <i>Investment Funds</i> (2/2000)	Jan. 3/19	by Reg 287/2018
National Instrument 81-104 <i>Commodity Pools</i> (283/2002)	Jan. 3/19	by Reg 287/2018
National Instrument 81-106 <i>Investment</i>		

Fund Continuous Disclosure (218/2005)	Jan. 3/19	by Reg 287/2018
National Instrument 81-107 <i>Independent Review Committee for Investment Funds</i> (276/2006)	Jan. 3/19	by Reg 287/2018

ENERGY & MINES

Energy and Mines News:

Commission Introduces New Regulations to Meet Methane Targets

OBCOGC Bulletin:

The BC Oil and Gas Commission (Commission) has introduced new regulations to reduce methane emissions from upstream oil and gas operations to meet or exceed federal and provincial methane emission reduction targets. The [amendments](#) to the [Drilling and Production Regulation](#) come into effect on Jan. 1, 2020.

The impact of the new regulations is a reduction in methane emissions by 10.9 megatonnes of carbon dioxide equivalent over a 10-year period, which is like taking 390,000 cars off the road each year.

Developed with input from environmental groups and industry, the new regulations address the primary sources of methane emissions from BC's upstream oil and gas industry, which are:

- Pneumatic devices
- Equipment leaks
- Compressor seals
- Glycol dehydrators
- Storage tanks
- Surface casing vents

The changes include enhancements to requirements for leak detection and repair, designed to ensure leaks are detected and repaired quickly. Additionally, robust data management and reporting requirements to ensure transparent reporting of industry actions are under development. The new regulations and methane reduction measures align with the Province's CleanBC plan. Read the [full OGC bulletin](#).

This Pipeline is Challenging Indigenous Law and Western Law. Who Really Owns the Land?

With members of the Wet'suwet'en First Nation blockading a pipeline project on their traditional lands, Na'moks was standing by a crackling campfire, next to an RCMP checkpoint, drawing in the snow with his right boot.

The hereditary chief of the Tsayu clan made a small circle to represent the authority of elected band councils within reserves. Outside that circle, he explained, is where Wet'suwet'en clans wield power over a vast territory. "We are hereditary chiefs," he said, "and we have control of this land."

The temporary checkpoint was set up in a remote area of the BC Interior as things got tense, with RCMP officers arresting 14 protesters on Monday [January 7th] at a blockade erected last month along a logging road.

The road leads to the Unist'ot'en camp on the Morice River bridge, where hereditary leaders were preventing construction workers from TransCanada Corp.'s Coastal GasLink pipeline project from passing. By Friday, the barriers were coming down, after the protesters agreed to comply with an interim court injunction to grant workers temporary access to the area. The way forward for the project, however, remains uncertain. Read *The Globe And Mail* [article](#).

Commission Launches Mediation Service Pilot Project

The BC Oil and Gas Commission (Commission) is launching a new mediation service to provide an additional level of support for land owners in cases where land owners and companies are not able to agree on remedies for complaints and site restoration post permit.

Due to a broadening of the Commission's role in engagement, the Commission has identified a need for support and processes to bridge existing services for stakeholders during the permitting process and managing

differences throughout the full lifecycle of energy activities. The Commission's new pilot mediation service will aim to resolve issues between land owners and companies. Read the [full BCOGC Bulletin](#).

Super-Priority for Environmental Liabilities in Insolvencies – A Comment on the Supreme Court of Canada's Decision in Redwater

On January 31, 2019, the Supreme Court of Canada released its landmark decision in *Orphan Well Association v Grant Thornton Ltd*, [2019 SCC 5](#) ("Redwater"). The question before the Court was whether the Alberta Energy Regulator and Orphan Well Association (collectively, the "Regulator") could require Grant Thornton Limited, as receiver and then trustee in bankruptcy (the "Trustee") of Redwater Energy Corporation ("Redwater"), to comply with abandonment, reclamation and remediation orders issued by the Regulator, or whether the Trustee was entitled to "disclaim" the assets subject to the orders (the "Renounced Assets") and not comply with the orders.

A 5:2 majority of the Supreme Court determined that the Trustee could not disclaim the Renounced Assets, effectively elevating the environmental orders to a super-priority status. Absent an immediate response from Parliament, *Redwater* will have profound and potentially severe impacts on many solvent and insolvent businesses in Canada, especially in Alberta's energy sector. Read the [full article](#) by [Josef G.A. Kruger](#), [Robyn Gurofsky](#), [Jack Maslen](#) and [Jessica Cameron](#) of Borden Ladner Gervais LLP.

NEB Wants Marine Protection Program from Trans Mountain Pipeline Builder

The National Energy Board would require the creation of a marine mammal protection program for the Trans Mountain pipeline in a series of draft conditions it has laid out before it considers the project.

The focus of the review is to apply the [Canadian Environmental Assessment Act](#) and the [Species at Risk Act](#) to project-related marine shipping, the board says in the document.

The conditions mitigate potential risks to the environment and protect the public, it says. Releasing these draft conditions and recommendations is not an indication of the board's forthcoming recommendation to the federal government to either approve or deny the project, it says. Read the [full article](#) on *CBC News*.

Act or Regulation Affected	Effective Date	Amendment Information
Mineral Tenure Act	Jan. 1/19	by 2018 Bill 7, c. 5, section 13 only (in force by Reg 272/2018), Miscellaneous Statutes Amendment Act, 2018

FAMILY & CHILDREN

Family and Children News:

Minister of State for Child Care Legislation

The [Minister of State for Child Care Expected Results for the 2019/2020 Fiscal Year Regulation](#) has been published, specifying the performance targets set by the Treasury Board for the Minister of State for Child Care for the upcoming fiscal year. The expected results from the Minister include:

- continued implementation of initiatives supporting government's universal child care plan;
- monitoring and publicly reporting results achieved under the Multilateral Early Learning and Child Care Framework agreement with the federal government; and
- continued engagement with all levels of government, child care providers and the private and not-for-profit sectors respecting the plan for universal child care.

Contingent Fee Agreements in Family Law Cases

The financial hurdles to accessing legal services and access to justice have been a topic of ongoing research and commentary. For example, in October 2017, the British Columbia Law Institute published a Study Paper on Financing Litigation, which reviewed various methods used by litigants to fund legal services and commented that (emphasis added):

An open and accessible justice system is one of the cornerstones of the rule of law. But access to the justice system is becoming increasingly difficult for many Canadians. This problem has grown more

acute over the last decade. Studies highlight that court delays, lengthy procedures, and complex processes are some of the key factors barring access to justice in our society. The cost of litigation has also been identified as a significant barrier to accessing the justice system.

Read the [full article](#) by Magal Huberman with Pietrow Law Group and published in the recent TLABC publication *the Verdict*.

The Irony of Representing Yourself in Family Law Litigation: It Can Cost You More than Hiring a Lawyer

A wife's decision to represent herself caused the husband to incur huge legal fees over 17 years. She was ordered to pay him \$150,000 There is no doubt the costs of family law litigation are simultaneously emotional and financial.

One of those financial costs, the need to engage a lawyer, may cause parties to be inclined to represent themselves.

While self-representation is the only option for many people due to their financial resources (a broader discussion of access to justice is beyond the scope of this article), for those with resources, the decision to self-represent may be quite costly in the end.

That is precisely what happened in a recent Ontario case, in which the issues arising from the separation of a couple were resolved after 17 years of litigation. In that case, the wife represented herself.

The resolution was reached after a 10-day trial in which Justice Conlan of Ontario's Superior Court of Justice made a final order in respect of spousal and child support, sharing of property and the distribution of the proceeds from the sale of the parties' home. Read the [full article](#) in the *Financial Post*.

Act or Regulation Affected	Effective Date	Amendment Information
Family Maintenance Enforcement Act	Jan. 1/19	by 2018 Bill 10, c. 14, section 1 only (in force by Reg 277/2018), Family Maintenance Enforcement Amendment Act, 2018
Small Claims Rules (261/93)	Jan. 1/19	by Reg 267/2018

FOREST & ENVIRONMENT

Forest and Environment News:

Bill 49 Signed into Law; Government Schedules More Meetings With Regulators in Advance of Professional Governance Act Implementation

[Bill 49, the Professional Governance Act](#), passed third reading and was signed into law by the lieutenant governor on November 22.

The *Professional Governance Act* is designed to be enacted through regulations. In preparation for drafting the regulations, the Ministry of Environment and Climate Change Strategy scheduled a series of meetings throughout December, January, and February with the five affected regulators (Association of BC Forest Professionals; BC Institute of Agrologists; College of Applied Biology; Engineers and Geoscientists of BC; and Applied Science Technologists and Technicians of BC). The intent of the meetings is to discuss the government's policy objectives and plans to develop regulations to implement the *Professional Governance Act*. Key among the issues to be addressed through new regulations are:

- right to practice (under the Act, biologists, agrologists, and technologists will be given right to practice, a status until now held only by engineers and foresters);
- regulation of firms (under the Act, the ABCFP will be responsible for also regulating firms that employ forest professionals);

Read the [full article](#) published the January/February addition of the ABCFP publication – *BC Forest Professional*.

BC "Revitalized" Environmental Assessment

Regime – The Path Ahead

In November 2018, British Columbia [passed legislation](#) designed to "revitalize" its [Environmental Assessment Act](#) as well as "to ensure the legal rights of First Nations are respected, and the public's expectation of a strong transparent process is met."

The new framework legislation – Bill 51 – is scheduled to come into force in the fall of 2019. Leading up to the implementation of the new Act, the government will consult with the public on the development of policy and regulations to elaborate on several core elements of the regime.

This commentary outlines the main changes and the implications for those involved with environmental assessments.

1. What Are the Goals and How Does the New Regime Measure Up?

The government says it focused on these three goals:

- enhancing public confidence;
- advancing reconciliation with First Nations; and
- protecting the environment while offering clear pathways to sustainable project approvals.

Read the [full article](#) by David Bursey, Radha D. Curpen, Brad Gilmour, Sharon G.K. Singh and Charlotte Teal with Bennett Jones LLP.

Forest Policy Reforms to Rebuild Coastal Forest Sector

To create and support good jobs in British Columbia's coastal forest sector, government is making policy changes to increase the processing of BC logs on the coast and to reduce wood waste by redirecting it to BC's pulp and paper mills.

The changes, as part of the Coast Forest Sector Revitalization Initiative, were announced by Premier John Horgan at the annual Truck Loggers Association (TLA) convention. Government is taking steps to reverse a systemic decline that has taken place in the coast forest sector over most of the last two decades.

"We're committed to rebuilding a strong and healthy coastal forest sector for British Columbians," said Premier Horgan. "Through the forest policy reforms I'm announcing today, we will see more logs and fibre processed in BC, supporting BC workers, their families and communities." The Coast Forest Sector Revitalization has five main goals:

- Rebuilding solid wood and secondary industries to ensure more BC logs and fibre are processed in BC
- Improving harvest performance to ensure more fibre is available for domestic mills, including the pulp and paper sector.

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

Changes to FRPA & RPPR

Staff in the Ministry of Forests, Lands, Natural Resources Operations and Rural Development (FLNRORD) are working on amendments to the [Forest and Range Practices Act](#) (FRPA) that are expected to be introduced into the legislature in 2019. We are told that some of the changes being considered are based on work the Board has done, including our 2017 *Special Report on Opportunities to Improve FRPA* and our work on range planning and practices. It's been 15 years since FRPA was introduced, without any substantive changes made to the legislation in that time. Read the [full article](#) in the Winter 2018/19 issue of the Forest Practices Board newsletter.

New BC Timber Sales Regulation

Effective January 8, 2019, the new [Refusal of Cutting Permit or Road Permit Regulation](#) will allow the minister or delegate to refuse a cutting permit or road permit application that is wholly or partially within a BCTS Operating Area subject to criteria specified in the regulation. The minister or delegate may, however, also consider any mitigating factors relevant to the criteria when determining the issuance of a cutting permit or road permit. For the purposes of this regulation only, the proposed harvest areas and roads that are applicable to this regulation are spatially identified in a multi-year development plan by BC Timber Sales, which is updated regularly.

Environmental Appeal Board Decisions

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

[Water Sustainability Act](#)

- [Harrison Hydro Project Inc.; Fire Creek Project Limited Partnership; Lamont Creek Project Limited](#)

[Partnership; Stokke Creek Project Limited Partnership; Tipella Creek Project Limited Partnership; Upper Stave Project Limited Partnership v. Comptroller of Water Rights](#) [Preliminary Applications for Dismissal – Denied]

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

Act or Regulation Affected	Effective Date	Amendment Information
Contaminated Sites Regulation (376/96)	Jan. 24/19	by Regs 11/2019 and 13/2019
Fish and Seafood Licensing Regulation (261/2016)	Jan. 1/19	by Reg 261/2016, section 68
Hunting Regulation (190/84)	Jan. 2/19	by Reg 1/2019
Hunting Licensing Regulation (8/99)	Jan. 2/19	by Reg 1/2019
Interest Rate Under Various Statutes Regulation (386/92)	Jan. 1/19	by Reg 268/2018
Permit Regulation (253/2000)	Jan. 2/19	by Reg 1/2019
Refusal of Cutting Permit or Road Permit (252/2018)	NEW Jan. 8/19	see Reg 252/2018
Wildlife Act Commercial Activities Regulation (338/82)	Jan. 2/19	by Reg 1/2019
Wildlife Act General Regulation (340/82)	Jan. 2/19	by Reg 1/2019

HEALTH

Health News:

Fake 'Dr. Lip Job' Gets Suspended Sentence for Posing as a Physician

A woman who forged a medical licence so she could buy pharmaceuticals like Botox to then inject into duped customers has been given a 30-day suspended sentence and two years' probation in B.C. Supreme Court.

Rajdeep Kaur Khakh's transgressions included contempt of court and passing herself off as a doctor so she could inject Botox into facial wrinkles and filler material into lips or other facial areas. Only licensed and trained doctors, dentists, registered nurses (or nurse practitioners) under the supervision of doctors, and naturopaths are allowed to perform such procedures under [Health Professions Act](#) regulations and Ministry of Health scopes of practice. Read *The Vancouver Sun* [article](#).

Ian Mulgrew: Dix Loses Another Round to Private Clinics, Accused of Ignoring Court Order

The BC government has been denied leave to appeal an injunction blocking it from enforcing tough new provisions of the [Medicare Protection Act](#) restricting access to privately provided medical services.

But those engaged in the health care battle say Victoria was already ignoring the injunction by trying to compel physicians and clinics to sign "compliance statements" agreeing to not provide any private-pay surgeries. "If they refuse to sign, their access to operating room time in the public system will be restricted," their new application to the B.C. Supreme Court states. "The only possible rationale for the requirement is to effectively prohibit physicians and private surgical clinics from continuing to provide Private-Pay Surgeries by restricting

access to public facilities to provide public surgeries ... This is directly contrary to both the spirit and express terms of the Injunction Order." Read the [full article](#) by Ian Mulgrew in *The Vancouver Sun*.

Registrations Now Required for Pill Presses and Related Manufacturing Equipment in BC

January has been an exciting month in the Regulatory world, with the [SFCR](#) (Safe Foods For Canadians Regulations) and the [Pill Press and Related Equipment Control Act](#) both coming into force on January 15, 2019. You can read our previous summary of the SFCR [here](#). The *Pill Press and Regulated Equipment Control Act* is specific to the province of British Columbia and aims at restricting manufacturing equipment in an effort to combat the opioid crisis by disrupting the access to equipment used in the illicit production of opioids in BC. Those who own, possess and/or use pill presses and related equipment (such as NHP Site License manufacturers, Drug Establishment License holders, and companies that sell such equipment) must now register their equipment via the online portal at www.gov.bc.ca/pill-press. At this time, there is an exemption for health professionals (pharmacists, naturopaths, etc) who possess controlled equipment. Read the [full article](#) by [Lori Hooper](#) on the NHP Consulting website.

Act or Regulation Affected	Effective Date	Amendment Information
Drug Plans Regulation (73/2015)	Jan. 1/19	by Reg 134/2018
Drug Schedules Regulation (9/98)	Jan. 23/19	by Reg 9/2019
Employer Health Tax Act	NEW Jan. 1/19	c. 42, SBC 2018, Bill 44 , whole Act in force by Royal Assent
Health Act Communicable Disease Regulation (4/83)	REPEALED Jan. 1/19	by Reg 167/2018
Pill Press and Related Equipment Control Act	NEW Jan. 15/19	c. 24 [SBC 2018], Bill 27 , sections 1 (part), 2 (1) (c) to (e), (3), (4), 3, 4, 5 (1), (2) (a) to (c), (f), (g), (3), (4), 6 to 16, 17 (1) (c), (2), (3), 18 to 19, 20 (1), (2) (a), (b), (c) (i), (iii), (iv), (3) (a), (d) to (f), 21 to 26, 27 (1) (a), (2) (b), (d) to (n), (3), (4) and 28 only (in force by Reg 278/2018)
Pill Press and Related Equipment Control Regulation (278/2018)	NEW Jan. 15/19	see Reg 278/2018
Public Health Act Transitional Regulation (51/2009)	REPEALED Jan. 1/19	by Reg 167/2018
Reporting Information Affecting Public Health Regulation (167/2018)	NEW Jan. 1/19	see Reg 167/2018

LABOUR & EMPLOYMENT

Labour and Employment News:

Risk in Use of an ESA Termination Clause?

It is relatively common for Canadian employers to use an "ESA termination clause" in their employment agreements. This type of clause limits the employee's entitlement on termination to the statutory minimums in the provincial employment standards legislation. However, a recent case out of British Columbia, [Bailey v. Service Corporation International](#), highlights a potentially unforeseen risk associated with the use of ESA termination clauses.

Fact Situation

Donald Bailey was a 17+ year employee. During his employment he executed a series of written employment agreements, each of which contained an ESA termination clause restricting his entitlement on termination without cause to the statutory minimums in the British Columbia employment standards legislation.

In 2013 Bailey experienced health issues. Supported by a note from his doctor that he was unable to work, he absented himself from the workplace. Because his salary was not continued he made a claim to the group policy insurer for short-term disability benefits. Processing of the claim took some time and, ultimately, his claim was denied as being excluded from the scope of coverage under the group policy.

Read the [full article](#) by [D. Barry Prentice](#) with Blaney McMurtry LLP.

**TLABC Employment Update –
The Verdict (Winter Edition)**

In the last few months, the Court of Appeal considered the circumstances when aggravated damages are awardable. In the British Columbia Supreme Court we had three decisions dealing with notice for short term employees, all on a summary trial basis. Other issues considered include recoverability of consequential damages and interpretation of a provision relating to restrictions on payment of a bonus to those who are actively employed at the time that the bonus is payable. The Court of Appeal confirmed in *Cottrill* that an employee must provide an evidentiary foundation establishing that the manner of dismissal caused them mental distress beyond that which accompanies any termination, for an award of aggravated damages to be made. This case was an appeal from an award of aggravated damages of \$15,000 made following trial. Read the [full article](#) by Rose Keith, with Rose Keith Law Corporation and published in the Winter edition of *the Verdict*, a TLABC publication.

**BC Court of Appeal Confirms High Standard for
Mental Distress Damages**

An employee who believes they have been wrongfully dismissed from their employment can seek damages in court for both the fact of their dismissal and the manner in which they were dismissed. This later form of damages, known in legal terms as aggravated damages and sometimes referred to as "mental distress" damages, is available to the dismissed employee if they can establish that the way the employer dismissed them resulted in mental distress, over and above the general upset caused by the fact of the dismissal itself. Courts recognize that dismissal, in and of itself, will usually cause hurt feelings which are not compensable.

In *Cottrill v. Utopia Day Spas and Salons Ltd.*, [2018 BCCA 383](#), the Court of Appeal affirmed that there remains a high threshold in British Columbia for plaintiffs seeking mental distress damages. Read the [full article](#) by [Julia Bell](#) of Roper Greyell LLP.

Preparing for 2019 Collective Bargaining?

This week, the British Columbia Business Council (the "BCBC") released its latest Collective Bargaining Bulletin containing collective agreement wage settlement data up to the end of November 2018 (the "Bulletin"). The Bulletin provides useful information for employers preparing for collective bargaining in 2019. Key highlights from the Bulletin include:

- For the period November 2017 – November 2018, the average first year wage increases negotiated in the private sector were 1.8% and 1.9% in the public sector.
- The average scheduled wage increases for British Columbia's unionized employees in 2019 are 2.1% in the private sector and 2% in the public sector.

Read the [full article](#) by [Nicole K. Skuggedal](#) of Lawson Lundell LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Employer Health Tax Act	NEW Jan. 1/19	c. 42, SBC 2018, Bill 44 , whole Act in force by Royal Assent
Employer Health Tax Regulation (268/2018)	NEW Jan. 1/19	see Reg 268/2018

Employment Standards Regulation (396/95)	Jan. 1/19	by Reg 80/2018
Pension Benefits Standards Regulation (71/2015)	Jan. 24/19	by Reg 12/2019

LOCAL GOVERNMENT

Local Government News:

Call for Local Government Resolutions

UBCM's annual resolutions process provides a forum for local governments from across the province to express concerns and develop united positions. Resolutions that are endorsed by the membership at our annual Convention become policy for UBCM. Local governments are encouraged to submit resolutions for consideration by regional Area Associations at their annual meetings. Resolutions endorsed by Area Associations are submitted automatically to UBCM for consideration in September. Area Association submission deadlines for 2019 are as follows:

- AVICC – February 7
- AKBLG – March 1
- SILGA – March 1
- NCLGA – March 7
- LMLGA – March 15

Read the UBCM [article](#).

Local Government Legislation Updates

Effective January 1, 2019, amendments made by [2018 Bill 7](#) to the [Interpretation Act](#) clarify provisions that establish time of day, and add definitions for Pacific Standard Time and Pacific Daylight Saving Time. Consequential amendments were also made to the [Community Charter](#), [Election Act](#) and [Local Government Act](#), updating references respecting calculation of time.

Act or Regulation Affected	Effective Date	Amendment Information
Community Charter	Jan. 1/19	by 2018 Bill 7, c. 5, section 9 only (in force by Reg 272/2018), Miscellaneous Statutes Amendment Act, 2018
First Investment Plan Regulation (271/2016)	REPEALED Jan. 5/19	by Reg 271/2016, s. 2
Interpretation Act	Jan. 1/19	by 2018 Bill 7, c. 5, sections 2 to 6 only (in force by Reg 272/2018), Miscellaneous Statutes Amendment Act, 2018
Local Government Act	Jan. 1/19	by 2018 Bill 7, c. 5, sections 11 and 12 only (in force by Reg 272/2018), Miscellaneous Statutes Amendment Act, 2018
Mineral Tenure Act	Jan. 1/19	by 2018 Bill 7, c. 5, section 13 only (in force by Reg 272/2018), Miscellaneous Statutes Amendment Act, 2018
		by 2018 Bill 7, c. 5, section 15 only (in force by Reg

Vancouver Charter	Jan. 1/19	272/2018), Miscellaneous Statutes Amendment Act, 2018
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MISCELLANEOUS

Miscellaneous News:

"Notice to Mediate": What Can We Learn from British Columbia?

As part of its role advising the Lord Chancellor and the Judiciary in England and Wales on civil matters, the Civil Justice Council (CJC) has published its final report on the positioning of alternative dispute resolution (ADR) within the civil justice system.

The report makes a number of recommendations around awareness and availability of ADR, as well as the extent to which ADR is encouraged by government and court processes.

We look here at one proposal that seeks to encourage the usage of ADR.

The CJC report recognises that the court has a difficult balance to strike when it comes to ADR. On the one hand, the courts need appropriate sanctions to encourage parties to engage. On the other, compelling ADR when it is inappropriate is often counterproductive as it increases cost and delay.

One approach proposed in the report is the British Columbia ("BC") quasi-mandatory "Notice to Mediate" procedure. Originally developed in 1998 to deal with personal injury actions, the procedure has been extended to a range of other actions raised in the BC courts. Read the [full article](#) by [Claire Brennan](#) of Shepherd and Wedderburn LLP.

Act or Regulation Affected	Effective Date	Amendment Information
Civil Resolution Tribunal Act	Jan. 1/19	by 2012 Bill 44, c. 25, section 86 (2) only (in force by Reg 232/2018), Civil Resolution Tribunal Act
		by 2018 Bill 22, c. 17, sections 1, 2 (part), 3, 4 (part), 5 to 8, 9 (part), 10 to 14, 15 (part), 17 to 24 only (in force by Reg 232/2018), Civil Resolution Tribunal Amendment Act, 2018
Civil Resolution Tribunal Small Claims Regulation (111/2017)	REPEALED Jan. 1/19	by Reg 232/2018
Election Act	Jan. 1/19	by 2018 Bill 7, c. 5, section 10 only (in force by Reg 272/2018), Miscellaneous Statutes Amendment Act, 2018
Interpretation Act	Jan. 1/19	by 2018 Bill 7, c. 5, sections 2 to 6 only (in force by Reg 272/2018), Miscellaneous Statutes Amendment Act, 2018
Minister of State for Child Care Expected Results for the 2019/2020 Fiscal Year Regulation (2/2019)	NEW Jan. 21/19	see Reg 2/2019
Minister of State for Trade Expected Results for the 2019/2020 Fiscal Year Regulation (3/2019)	NEW Jan. 21/19	see Reg 3/2019

Small Claims Rules (261/93)	Jan. 1/19	by Reg 267/2018
Tribunal Small Claims Regulation (232/2018)	NEW Jan. 1/19	by Reg 232/2018

MOTOR VEHICLE & TRAFFIC

Motor Vehicle and Traffic News:

Canadians Could Now Be Charged with Drunk Driving – Even If Not Drunk, Lawyers Warn

Canadians could now face criminal charges for driving with illegal amounts of alcohol in their system, even if they were stone cold sober while behind the wheel, under tough new impaired driving laws passed by Parliament, according to criminal defence lawyers.

[Bill C-46](#), which came into effect last month, gives police wide-ranging new powers to demand sobriety tests from drivers, boaters and even canoeists.

Police no longer need to have any reasonable grounds to suspect you're impaired, or driving with a blood alcohol concentration (BAC) of more than .08, which is 80 milligrams of alcohol in 100 millilitres of blood, before demanding you submit to testing. Refusing the test can result in a criminal charge.

But while the government says that's not the intent of the law, even drinking within two hours after you've stopped driving or boating could now get you arrested, if your BAC rises over .08. Read the [full article](#) by John Lancaster on the *CBC News* website.

"Standard of Perfection" Not Needed for Victims of Hit and Run Collisions

Reasons for judgment were published today by the BC Supreme Court, Vancouver Registry, canvassing what steps are adequate for a hit and run collision victim to take in ascertaining the identity of the offending motorist before they can successfully make a claim under [s. 24](#) of the [Insurance \(Vehicle\) Act](#).

In [this] case ([Ghuman v. ICBC](#)) the Plaintiff was struck by a vehicle that fled the scene shortly after impact. The Plaintiff's wife was in a separate vehicle nearby but did not notice the collision. The Plaintiff drove away from the scene and did not find any other witnesses. The Plaintiff sued ICBC as nominal Defendant in the place of the at fault motorist under s. 24 of the *Insurance (Vehicle) Act*.

ICBC argued the plaintiff should not be compensated for his injuries as he failed to take all reasonable efforts in identifying the offending motorist. Madam Justice Donegan rejected this argument finding a standard of perfection is not required under the legislation and that the plaintiff acted reasonably in the circumstances. Read the [full article](#) by [Erik Magraken](#) on the *BC Injury and ICBC Claims Blog*.

CVSE Bulletins & Notices

The following notices have been posted in January by CVSE:

- [CVSE1052](#) – District Authorizations & Notifications for Very Large Loads (October 2017)
 - [List of Contacts for Use with Form CVSE1052](#) (January 4, 2019)
 - [Information for Authorities Signing the CVSE1052](#)

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

Act or Regulation Affected	Effective Date	Amendment Information
Motor Vehicle Act	Jan. 7/19	by 2018 Bill 17, c. 18, sections 5 (a) (part), (b), (c), (e), 6 (b), (d), 8 to 12, 13 (a) (part) (b) to (d), 14 (a) to (c), 16 (b) (part), 21 to 23 only (in force by Reg 256/2018), Motor Vehicle Amendment Act, 2018

Motor Vehicle Act Regulations (26/58)	Jan. 7/19	by Reg 256/2018
Violation Ticket Administration and Fines Regulation (89/97)	Jan. 7/19	by Reg 256/2018

OCCUPATIONAL HEALTH AND SAFETY

Occupational Health & Safety News:

TSB Report Cites Fatigue in BC Tug Incident, Says Mate Asleep while on Watch

A tugboat accident has the Transportation Safety Board repeating its calls for heightened awareness about the dangers of crew fatigue while at sea.

There were no injuries or pollution spills when the lone mate on watch duty fell asleep as the Ocean Monarch touched bottom while on auto pilot in Princess Royal Channel in British Columbia, but it could have been deadly, the board's senior marine investigator, Glenn Budden, said Thursday [January 10th].

"We're talking very remote country," he said. "It could have been much, much worse. We could have had three fatalities on our hands."

The Ocean Monarch was towing a barge filled with cement when the July 2017 accident occurred south of Kitimat.

The tug's master and deck hand were asleep below deck and the vessel's navigational alarms were off, the board's report says. It concludes the mate likely fell asleep as a result of acute fatigue from previous night shifts, chronic sleep disruptions and the monotonous workload in the wheel house.

"You basically are impaired," said Budden. "Your reaction time is slower. Your cognitive thinking is not what it should be." Read the [full article](#) by Dirk Meissner of The Canadian Press.

Housekeeping Amendments to the Prevention Manual (OHS Policies)

The [Workers Compensation Act](#) (Act) is being reviewed by British Columbia's Office of the Legislative Counsel as part of a standard statute revision process. Changes made pursuant to the *Statute Revision Act* will result in editorial changes to language, as well as renumbering of sections, parts, and divisions of the Act.

At issue is the consequential revisions required for the policies in the *Prevention Manual*, to ensure they continue to reflect the legislation. These changes would all be housekeeping in nature, meaning there is no change in the substance of the applicable law or policy. Read the full WorkSafeBC [news release](#).

Proposed Revisions to the Workers Compensation Act

The BC government has [proposed changes](#) to the language and numbering of the [Workers Compensation Act](#). Proposed changes are intended to make the Act easier to read and understand.

The proposed changes include a reorganization of the Act's components, some new wording in various sections, and deletion of provisions that have been repealed or are no-longer needed.

The current Act has four parts with multiple divisions, sections, and subsections. To improve clarity, the proposed changes would rearrange the Act into eight parts. Complex provisions would be split up into individual components, creating more sections and subsections.

In some sections, the government has proposed minor wording revisions expected to modernize the language and help with clarity. Read the [full article](#) by Lori Guiton in the November/December edition of *WorkSafe* magazine.

Proposed Merits and Justice Policy Amendments

In January 2018, WorkSafeBC's Board of Directors commissioned an external compensation policy review. The resulting report, entitled *Restoring the Balance: A Worker-Centred Approach to Workers' Compensation Policy*, was published in April 2018 and contains a number of recommendations. Recommendation #1 is for WorkSafeBC to consider amending policy item #2.20, *Application to the Act and Policies*, in the Rehabilitation Services &

Claims Manual, Volume II, to explicitly incorporate the requirement "the Board must make its decision based on the merits and justice of the case," as required by section 99(2) of the [Workers Compensation Act](#). Read the full WorkSafeBC [news release](#).

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:

BCLI Recommends New Legislation to Improve Strata Governance

The British Columbia Law Institute's Strata Property Law Project Committee is calling for reforms to the [Strata Property Act](#), the [Strata Property Regulation](#), and the [Schedule of Standard Bylaws](#) to enhance the governance of strata corporations.

The *Report on Governance Issues for Stratas* is the third report published in the project. It represents over two years of work by the [Strata Property Law \(Phase Two\) Project Committee](#) at 23 committee meetings and consideration of 290 responses to the *Consultation Paper on Governance Issues for Stratas*. The report examines five topics relating to strata-corporation governance: (1) bylaws and rules; (2) statutory definitions; (3) general meetings and strata-council meetings; (4) finances; and (5) notices and communications. Read the [full article](#) by Kevin Zakreski with BCLI.

Vancouver Home Sales Fall Nearly 40 Per Cent in January, as Prices Pull Back

Vancouver's once red-hot housing market continued to cool last month as the number of home sales fell to the lowest level seen in January in 10 years.

The Real Estate Board of Greater Vancouver says 1,103 homes were sold in Metro Vancouver last month, down 39.3 per cent from the same month a year earlier.

Month-over-month, January home sales were up 2.9 per cent versus December 2018.

The board says last month's home sales were 36.3-per-cent below the 10-year sales average for January, and the lowest January sales figure recorded since 2009.

The composite benchmark price for a property, which includes detached properties, town homes and condos, dropped 4.5 per cent from a year ago to \$1,019,600. Read *The Vancouver Sun* [article](#).

Act or Regulation Affected	Effective Date	Amendment Information
Property Transfer Tax Act	Jan. 1/19	by 2018 Bill 25, c. 25, section 15 (in force by Reg 230/2018), Real Estate Development Marketing Amendment Act, 2018
Real Estate Development Marketing Act	Jan. 1/19	by 2018 Bill 25, c. 25, sections 4, 5, 7, 10, 12, 13 only (in force by Reg 230/2018), Real Estate Development Marketing Amendment Act, 2018
Real Estate Development Marketing Regulation	Jan. 1/19	by Reg 230/2018
Small Claims Act	Jan. 1/19	by 2018 Bill 57, c. 49, section 17 only (in force by Royal Assent), Attorney General Statutes

		Amendment Act, 2018
Strata Property Act	Jan. 1/19	by 2018 Bill 22, c. 17, sections 46 and 47 only (in force by Reg 232/2018), Civil Resolution Tribunal Amendment Act, 2018

WILLS & ESTATES

Wills and Estates News:

Interest on Legacies

In British Columbia, if a legacy is not paid within one-year of the will-maker's death, the beneficiary is entitled to interest at a rate of 5% per year from the first anniversary of the date of death. This rule applies unless the will provides that no interest is payable or provides for a different rate. In my experience, most will-makers do not address this issue in their wills.

The first year is sometimes referred to as the "executor's year." The notion is that an estate will be administered in about one year, but in practice estates often take longer to administer. The time is likely to be drawn-out much longer if there is litigation.

This rule was considered and explained in an Ontario case, *Rivard v. Morris*, 2018 ONCA 181. Alexander Rivard died on October 24, 2013. In his last will, he left legacies of \$530,000 to each of his two daughters and his farm land to his son. His daughters unsuccessfully challenged the will. As a result of the dispute, the two daughters did not receive their legacies until October 24, 2016. They sought interest on the legacies but the Ontario Superior Court denied interest, reasoning that it was the daughter's actions in challenging the will that caused the delay. Read the [full article](#) by [Stanley Rule](#) of Sabey Rule LLP.

Rest Assured, a Will is Not a Trust

The past few months have been quite dramatic for estate lawyers; both on the drafting and litigation end. As many of our readers know, Justice Dunphy stirred the pot in the estate world with his decision in *Milne Estate (Re)*. To recap, in the *Milne* decision, a husband and wife died on the same day. They each left mirror primary and secondary wills. Each of the primary and secondary wills contained the following, typical "basket clause":

Primary Will: all property owned by me at the time of my death EXCEPT... [*certain named assets and*] any other assets for which my Trustees determine a grant of authority by a court of competent jurisdiction is not required for a transfer or realization thereof.

Secondary Will: all property owned by me at the time of my death INCLUDING... [*certain named assets and*] any other assets for which my Trustees determine a grant of authority by a court of competent jurisdiction is not required for the transfer or realization thereof.

The estate trustees applied for probate for the primary wills. Justice Dunphy refused to grant probate, finding multiple wills that use the typical "basket clause" above invalid. His Honour's reasoning was that a will is a trust and must therefore meet the three requisite certainties of a valid trust (i.e. certainty of intention, subject matter, and object). Justice Dunphy held that the three certainties must be satisfied at the time the trust was created (i.e. at the time the testator died). Read the [full article](#) by Anna Alizadeh published by *All About Estates*.

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

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