

A Guide to
Legislation and Legislative Process
in British Columbia

PART 2

PRINCIPLES OF LEGISLATIVE DRAFTING

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PART 2 – PRINCIPLES OF LEGISLATIVE DRAFTING

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PART 2

PRINCIPLES OF LEGISLATIVE DRAFTING

Goals, challenges and constraints

The goals

In drafting legislation, British Columbia legislative counsel have 2 goals:

- (1) to construct legislation that gives legal effect to government policy;
- (2) to communicate the law clearly to the people who are affected by it, the officials who administer it and the judges who interpret it.

Satisfying both goals is often difficult.

Legislative counsel write law based on the drafting instructions they receive from the sponsoring ministry. The meaning of that law, in the end, is not necessarily the meaning the sponsoring ministry or drafter intended, nor the meaning the average reader might give it. Rather, the meaning of the law is what the courts determine it to be by applying the substantial body of legal rules known as the *principles of statutory interpretation*.

To put this in a constitutional context, the role of our courts as the final authority on the meaning of legislation is one of the most important components of the rule of law. Because the courts, independent of the executive government, determine the meaning of the law, that meaning does not change simply because a different executive government is in power. That keeps the law sufficiently certain to enable the people who are subject to it to know their rights and obligations.

In drafting legislation, legislative counsel are not merely putting words to proposed government policy. They are also giving a legal opinion, based on the application of the principles of statutory interpretation, that the words they are writing will have the intended legal effect.

At the same time, the Office of Legislative Counsel is committed to a drafting style that makes British Columbia legislation as understandable as possible to the people who use it. It has adopted modern language, improved formats and a plain-language writing style, all with the goal of making the law more accessible to both the courts and the general public.

The challenges: more readable law takes longer to draft

As discussed at the start of this Part, the goals of a legislative drafter are, first, to create legislation that gives legal effect to government policy and, second, to communicate the law clearly and effectively. The first goal must always be given priority – legal effectiveness cannot be sacrificed for improved readability.

This means that the drafter must initially focus on understanding all elements of a proposed legislative scheme. Often the pressures of a legislative session are such that almost all of a drafter's time is consumed in getting to this point, leaving little opportunity to revise in light of the second goal. This extra time for revision is vital to producing more readable legislation.

The constraints

Statutory interpretation is the domain of the courts. This imposes a number of direct and indirect constraints on the style of legislative drafting.

- ◆ ***Legal principles:*** The legal principles of statutory interpretation must always be considered. (A few of the most important principles are discussed below under the heading *Key principles of statutory interpretation*.)
- ◆ ***Historical style:*** While British Columbia legislative counsel are committed to improving the readability of our statutes, changes in style must be approached cautiously. The historical drafting style used throughout the Commonwealth is the style on which the principles of statutory interpretation were developed. Changes in style must be carefully considered to ensure as much as possible that they do not imply changes in meaning.
- ◆ ***Canadian Drafting Conventions:*** The Drafting Conventions established by the Uniform Law Conference of Canada have been largely adopted across the country. Consistency in style facilitates consistency in judicial interpretation. This is particularly important for legislation in relation to commercial activities that operate in an increasingly global environment so that differences between jurisdictions are minimized.

Key principles of statutory interpretation

Three key principles of statutory interpretation constrain all legislative drafting.

(1) Different words mean different things

This principle assumes that different words intend different legal effects. The assumption applies even if words are synonyms of each other. What would be elegant variation in other writing is legally risky in legislation.

For example, to refer to “the *purposes* of this Act” in one section then to the “the *goals* of this Act” in another would indicate that different meanings were intended. Or, to refer to “a person’s *property*” in one provision, and then to “the person’s *land*” in the next, would suggest that the first was to be read in its broader sense of what is known in legal terms as “real and personal property”.

(2) Every word has meaning

This principle assumes that every word of an enactment is intended to have legal effect. The assumption has a number of components.

- ◆ Legislation will not say anything that it has already said.

As expressed in the often-cited 1949 decision of the British Court of Appeal in *Hill v. William Hill (Park Land Ltd.)*:

... though a Parliamentary enactment (like parliamentary eloquence) is capable of saying the same thing twice over without adding anything to what has been said once, this repetition in the case of an Act of Parliament is not to be assumed. When the legislature enacts a particular phrase in a statute the presumption is that it is saying something which has not been said immediately before. The rule that a meaning should, if possible, be given to every word in the statute implies that, unless there is a good reason to the contrary, the words add something which would not be there if the words were left out.

- ◆ Legislation will not say anything that does not need to be said.

Under this component there is an assumption that an Act will not repeat what another Act already provides, and that a regulation will not repeat what is provided in its authorizing Act. There is also an (arguably somewhat weaker) assumption that an Act will not merely restate the common law unless the Act is intended to replace the common law.

- ◆ Words in one place but not in another intend a different effect.

To describe this component by way of example, if one provision of an Act requires that something be done “as soon as possible” while another requires that it be done “as soon as reasonably possible”, the assumption is that those are different requirements—the word “reasonably” would not have been added unless a different standard was intended.

The practical effect of this principle and its components is that legislative counsel will avoid multiple statements of the same rule; they will resist restating the common law or another enactment; and they will ask why the instructions ask for variation between provisions.

(3) Ordinary meaning in context (the overriding general principle)

Finally, there is the overriding general principle, as confirmed by the Supreme Court of Canada in *Rizzo & Rizzo Shoes*, [1998] 1 S.C.R. 27:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

E. Driedger, *Construction of Statutes* (2nd ed. 1983)

The components of this statement direct as follows:

- ◆ Words are to be given their ordinary grammatical meaning.

Unless a word is specially defined in the enactment where it is used or in the *Interpretation Act*, the word will be taken to have its ordinary

meaning. To determine this ordinary meaning, courts will often look to dictionaries for assistance.

- ◆ Meaning will be drawn from the entire context of the enactment, not only from the single provision in which the words are found.

A single section of an Act will not be read in isolation, as if it were a separate enactment. Rather, it will be read in relation to the other provisions of the Act. As a common statutory interpretation expression puts it, the provision will be read “within the four corners of the Act”.

- ◆ Meaning will be determined so as to best accord with the scheme of the Act, the object of the Act and the intention of Parliament.

The court will consider the following:

- ◇ *what an Act does and how it operates*

For example, one Act may be regulatory while another is empowering.

- ◇ *what appears to be the purpose of the Act*

The purpose of an Act will usually be apparent from a consideration of the rights, duties, prohibitions and powers established by the Act. If an Act includes a preamble or purpose section, the court will take this into account when determining the purpose.

- ◇ *the intention of Parliament*

This consideration has historically been far more restricted than it is today. In the past, intention could be drawn from the words of the Act and the apparent mischief at which it was aimed. If the legislation was enacted in response to recommendations of a body such as a Law Reform Commission, reference could be made to the Commission’s report. Today, courts are likely to consider statements made by the sponsoring minister in presenting the legislation to Parliament (or even, in rare cases, statements made by opposition members).

This general principle has many implications for legislative drafting. For example, legislative counsel will object to defining a word to give it its ordinary meaning, but will insist on a definition if there is to be some restriction on or extension of the ordinary meaning. They will discourage the use of preambles or purpose clauses. They will need to be aware of the whole picture of the Act we are drafting or amending—a change of language in one section may require parallel changes in a number of other sections, or an intended change in effect for one section may inadvertently change the effect of other sections.

The Interpretation Act

In addition to the common law rules of statutory interpretation, the *Interpretation Act* plays a significant role in determining how legislation is interpreted and, consequently, how it is written.

The general principle, established by section 2 of the *Interpretation Act*, is that every provision of that Act applies to every enactment “unless a contrary intention appears.”

Among other things, the *Interpretation Act*

- ◆ defines words that are used throughout our legislation,
- ◆ determines how to calculate periods of time that are set by legislation,
- ◆ gives general direction on how courts are to approach statutory interpretation,
- ◆ establishes when legislation comes into force, and
- ◆ provides transitional rules that apply when one provision is repealed and another enacted in its place.

Legislative counsel take the *Interpretation Act* into account in many ways, including the following:

- ◆ they will avoid using a word that is defined in the *Interpretation Act* in a sense that differs from that Act’s definition;
- ◆ they will draft in the present tense, relying on the Act’s direction that this means the law continues to apply through time;
- ◆ they will generally draft in the singular, relying on the Act’s direction that the singular includes the plural.

Making the law more readable

Plain language techniques

Even with the constraints described above, British Columbia’s legislative drafting style is evolving to meet the goal of communicating the law clearly, and legislative counsel are committed to continuing this work.

The following are examples of techniques they use to make legislation more readable.

- ◆ ***Words:*** A drafter will prefer words that are ordinary and familiar. Technical words will be used only if they are necessary to achieve precision or if they are familiar to the primary public audience for the legislation.
- ◆ ***Sentence length:*** Shorter sentences will be preferred. Long sentences that include parallel provisions can be improved by paragraphing the

parallels. (Paragraphing is the legislative equivalent to creating bulleted items like the list here.)

- ◆ **Sentence structure:** The aim is to draft with sentence structures that assist the reader in understanding the elements of a legal statement. The person to whom the provision applies is identified at the start. Conditions and qualifications will not be embedded in the middle of a sentence. If possible, sentences will be stated in a positive form rather than in the less-understandable negative.
- ◆ **Organization:** Provisions will be grouped together and ordered in ways that are meaningful to the reader. For example, provisions may be grouped by topic and ordered chronologically.
- ◆ **Indicators:** Sometimes readers want to read an entire Act, but more often they are looking for specific provisions. Indicators are provided to assist the reader in moving through the legislation. These include provisions that appear as part of the legislative text, such as Part headings. Indicators also include editorial additions such as marginal notes, cross-reference descriptors, tables of contents and running headers.
- ◆ **Document design:** Much has been learned about how the design of printed material affects its readability. Attention is given to the relative readability of different fonts, the use of different fonts to signal different types of information, the use of white space to separate elements, and variation in white space to indicate levels of relationship between different provisions.

More readable laws may be longer laws

At the start of this Part, we cautioned that more readable laws often take longer to draft. They are also often longer in fact than their less readable equivalents.

For example, lawyers will understand the following statement: “An application for an order under this section may be made *ex parte*.” A reader without legal training would likely need a jargon-free version: “A person may apply to the court for an order under this section without giving notice to any other party unless required by the court”.

In other cases, long sentences need to be split into their conceptual components. So, an older statute might have read as follows:

4 Where a person who does not reside, ordinarily reside or carry on business in the Province brings or sends into the Province or receives delivery in the Province of tangible personal property, the person shall immediately report the matter in writing to the commissioner, supply to the commissioner all pertinent information required by the commissioner in respect of the tangible personal property and pay to Her Majesty in right of the Province tax on the purchase price of the tangible personal property at a rate established under section 3.

Redrafted into a plainer style, this brick wall of text might become the following:

- 4 (1) This section applies to a person who
- (a) does not reside, ordinarily reside or carry on business in the Province, and
 - (b) brings or sends tangible personal property into British Columbia, or receives delivery of tangible personal property in British Columbia.
- (2) A person referred to in subsection (1) must
- (a) immediately report the matter in writing to the commissioner,
 - (b) supply to the commissioner all pertinent information required by the commissioner in respect of the tangible personal property, and
 - (c) pay to the government tax on the purchase price of the tangible personal property at the rate in section 3.

Organization and structure of legislation

The importance of organization

Logical organization is key to clear communication. This is particularly so with legislation, which is often complex and lengthy. Readers need to be able to easily identify relevant sections or, at least, to determine where in the Act to look for the relevant sections.

Good organization has a number of aspects:

- ◆ ***ordering*** (for example, chronologically);
- ◆ ***grouping*** (for example, into Parts and Divisions);
- ◆ ***indicating*** (for example, by the use of explanatory marginal notes);
- ◆ ***indexing*** (for example, by the use of a table of contents).

Bills will be organized differently, depending on whether they propose an entirely new Act or whether amend existing legislation.

Sections: the legislative building blocks

Sections are the legislative building blocks—that is, they are the provisions that accomplish the legal effect of legislation by establishing the rights, duties, prohibitions and powers provided by law.

Each section will address a single topic. Approaches to separating topics may differ. Consider, for example, legislation that establishes a right of appeal and the procedure to be followed on the appeal.

If the right of appeal is established by a new Act that is entirely or primarily focussed on the appeal, then each aspect of the appeal process (who can appeal, time limit, grounds for appeal, who can be a party) may best be described in a separate section.

If the right of appeal is established by amendment to an existing Act that is of some length, a single section may be more appropriate.

If the appeal procedure is complex, a number of sections may be required and separation into a Part or Division would be considered.

Structure and format of legislation

Legislative counsel have established a standard ordering of sections and other legislative components. By drafting within a basic framework for British Columbia statutes, legislative counsel ensure that readers who are familiar with the format are able to locate key provisions readily. Readers can generally find, in section 1, definitions for words used in the Act, and likewise can find, in the final section of the Act, any provision dealing with how the Act is to come into force. The basic framework still allows considerable flexibility for organizing the main provisions of an Act to facilitate the goal of clear communication.

The table on the following page describes the standard order of legislative provisions in a new Act. As noted at the top of the table, not all types of provisions will be found in every Act.

The table is followed by a description of the key structural elements of legislative provisions in British Columbia and the standardized numbering system used in British Columbia legislation (which is based on the Drafting Conventions of the Uniform Law Conference of Canada). This description is presented in the format of a statute so that it can directly provide examples of the types of provisions it is describing.

STANDARD ORDER OF PROVISIONS IN A NEW ACT

[Note that not all of the following provisions are needed in each Act. This table describes the standard order of provisions if they are included.]

Introductory Provisions

- ◆ Title Descriptive of the general scope of the Bill
- ◆ Table of Contents Added editorially, lists Part and Division headings, section numbers and marginal notes
- ◆ Enacting clause Statement that expresses the exercise of legislative authority

Preliminary Provisions (Sections)

- ◆ Definitions Section that provides definitions of certain words or expressions used in the Act
- ◆ Special general rules General provisions that affect how the entire Act is to be read (such as purpose provisions, special interpretation rules or statements that restrict or extend the scope of the Act)

Main Provisions (Sections)

- ◆ Substantive provisions Sections that establish the substantive rules
- ◆ Administrative provisions Sections that establish administrative processes
- ◆ Offences and other enforcement Sections that establish offences, penalties and related matters
- ◆ Regulation-making authority Sections that authorize subordinate legislation

Final Provisions (Sections)

- ◆ Consequential amendments Any amendments needed for the purposes of the main provisions
- ◆ Transitional provisions Any special provisions needed for transition from the existing law
- ◆ Repeal Any repeals of other Acts
- ◆ Commencement Statement of when or how the Act is to come into force

STRUCTURE AND NUMBERING IN BRITISH COLUMBIA LEGISLATION

PART 1 – BASIC RULES

Structure of a section: one sentence

- 1 If a section contains only one sentence, it has no subsections.

Structure of a section: more than one sentence

- 2 (1) If a section contains more than one sentence, each sentence is a separate subsection.
(2) Despite subsection (1), a section in an older statute may contain more than one sentence. When a section containing 2 or more sentences is revised or amended, it will be split into subsections.

Structure of sentences: purpose of subdivisions

- 3 (1) A sentence may be subdivided into many levels.
(2) A sentence may be subdivided for one or more of the following purposes:
 - (a) improving readability;
 - (b) listing different matters;
 - (c) clarifying parallel application of an expression that
 - (i) precedes, or
 - (ii) followsthe subdivided expression;
 - (d) subject to consideration of readability, avoiding repetition of an expression that precedes or follows the subdivided expression;
 - (e) allowing specific reference in another provision;
 - (f) clarifying whether the subdivided expressions are to be read conjunctively or disjunctively.
- (3) If a list is given in the format of
 - (a) “one or more of the following:”,
 - (b) “any or all of the following:”,
 - (c) “as follows:”, or
 - (d) similar language ending in a colon,the listed provisions end in semicolons, as in subsection (2).
- (4) If a list is simply items with “and” or “or” ending the penultimate item, the listed provisions end in commas, as in subsection (3).

Structure of sentences: form of subdivisions

- 4 The levels of a subdivided sentence, whether the sentence is a section without subsections or is itself a subsection, are named and numbered, and appear, as follows:
- (a) paragraphs, given consecutive lower case letters;
 - (i) subparagraphs, given consecutive lower case Roman numerals;
 - (A) clauses, given consecutive upper case letters;
 - (I) subclauses, given consecutive upper case Roman numerals.

Principle of avoiding too many subdivisions

- 5 (1) As a general drafting rule, a subsection or section should not be subdivided below the subparagraph level.
- (2) If a provision appears to need subclauses, it is getting too complex for reasonable readability.

How we refer to other provisions

- 6 If a provision refers to another provision of an Act, the reference is made by indicating the highest level of the other provision, as in the following examples:
- (a) a reference to a provision in another section of the same Act or in another Act uses the section reference regardless of the level of provision referenced, as in “section 12 (2)” or “section 3 (4) (a) (iii)”;
 - (b) a reference to a provision in another subsection of the same section uses the subsection reference, as in “subsection (2)” or “subsection (4) (a) (iii)”;
 - (c) a reference to a provision in another paragraph of the same subsection uses the paragraph reference, as in “paragraph (a) (iii)”.

PART 2 – NUMBERING

Numbering sections and subdivisions

- 7 (1) Sections in new legislation are given consecutive arabic numbers: 1, 2, 3 and so on.
- (2) Subsections are given consecutive arabic numbers within parentheses: (1), (2), (3) and so on.
- (2.1) The sentence subdivisions described in section 4 are given the consecutive numbering described in that section.
- (2.2) If a new section is added by amendment between existing sections, it is given a decimal number: for example, sections 2.1, 2.2 and 2.3 could be added between sections 2 and 3.
- (3) If additions between existing decimal numbers are needed, they are added using a decimal number in the next numerical group: for example, subsection (2.11) could be added between subsections (2.1) and (2.2).

- (4) The principle of using decimal numbers to insert new provisions applies to all subdivisions of a sentence, as the following examples indicate:
 - (a) paragraphs (a), (a.1), (b), (c), etc.
 - (i) subparagraphs (i), (ii), (ii.1), (ii.2), (iii), etc.

Renumbering is very limited

- 8 (1) As a general rule, the existing numbering is not changed when a provision is amended:
 - (a) if a subsection is added between subsections (1) and (2),
 - (i) the new subsection will not become subsection (2) with all the following subsections renumbered, and
 - (ii) instead, the new subsection will be numbered (1.1);
 - (b) if a subsection (4) was previously repealed and a new subsection is now being added,
 - (i) the new subsection will not be put in the existing gap as subsection (4), and
 - (ii) instead, the new subsection will either be added at the end of the section or inserted using a decimal number, as appropriate to the organization of the section.
- (2) The rule against renumbering
 - (a) allows the legislative history of a provision to be tracked over time, and
 - (b) reduces the risk of missing changes in cross-references.
- (3) As an exception, if
 - (a) a provision is being repealed and replaced at the same time, and
 - (b) the replacement provision deals with the same subject matter,the number of the repealed provision may be reused for the replacement.

Statute revisions as a means to renumbering

- 9 (1) If an Act has been amended to the point that its numbering is complex, for example,
 - (a) if it has many decimal additions, or
 - (b) if many sections have been repealed,the Act may be renumbered using the limited revision authority under the *Statute Revision Act*.
- (2) The *Statute Revision Act* allows legislative counsel to revise a single Act, present the revision to a Standing Committee of the Legislative Assembly and have the revised Act replace the former Act.

Marginal notes indicate content

Each section in British Columbia legislation will be headed by a bold head note (as they are called in the Interpretation Act). Legislative counsel may

refer to these as marginal notes—a reference to their historical placement in the margin outside the legislative text.

Legislative counsel consider marginal notes to be of great importance. They are intended to provide explanatory guides to the reader, who can use them to scan the legislation and identify relevant provisions. Marginal notes are used to create the table of contents at the beginning of an Act.

The *Interpretation Act* indicates that marginal notes are not to be used in the legal process of statutory interpretation.

- 11** (1) In an enactment, a head note to a provision ...
- (a) is not part of the enactment, and
 - (b) must be considered to have been added editorially for convenience of reference only.

On this basis, marginal notes are not amended by legislation. They are changed editorially by our publications staff in consultation with legislative counsel. This is done most commonly in conjunction with a legislative amendment to the relevant section, so that the marginal note will better reflect the content of the section.

Cross-reference explanations

Cross-references are common in legislation. The most frequent uses are the following:

- ◆ to indicate relationships between provisions:

Despite section 12 of the *Insurance Act*,
or
Subject to section 14,

- ◆ to make other provisions applicable:

(1) Sections 23, 246, 580 to 582, 612 and 670 to 678 and Parts 24 and 25 of the *Local Government Act* apply to the city.

Unless readers have the cross-referenced Act at hand, they will often have no means of determining the intended effect of this cross-reference. Even within the same Act, particularly if it is a large Act, cross-references can be difficult for a reader.

Recognizing the problems this presented for readers, legislative counsel proposed that section 11 of the *Interpretation Act* be amended to allow cross-reference notes to be added to legislation on the same terms as marginal notes. In other words, they are not part of the legislation but are instead considered editorial additions for convenience of reference only. The proposal was accepted by government, put forward to the Legislative Assembly, enacted in 1999 and now appears as section 11 (2) of the *Interpretation Act*:

- (2) In an enactment, if a reference to a provision of the enactment or any other enactment is followed by italicized text in square brackets that is or purports to be descriptive of the subject matter of the provision, subsection (1) (a) and (b) applies to the text in square brackets.

This provision allows a brief description of the cross-reference to be included, without affecting the interpretation of the provision in which it appears. As an example, a provision can now be presented as:

- (1) The following provisions of the *Local Government Act* apply to the city:
- (a) section 23 [*transfer of provincial tax money*];
 - (b) sections 536 to 538 [*boundary and transecting highways*];
 - (c) Division 2 of Part 20 [*Licensing of Commercial Vehicles*];
 - (d) Division 2 of Part 22 [*Protection of Trees*];
 - (e) Part 24 [*Regional Districts*];
 - (f) Part 25 [*Regional Growth Strategies*].

Amending Bills

Little of any year's legislative program is directed to establishing entirely new Acts. By far the largest portion of the legislative program is in the form of "amending Bills" that propose changes to existing legislation. The following is a brief description of the form, content and title of amending Bills.

Form of Amending Bills

Our current amending provision format is designed to provide visual distinction between the amending provisions of the Bill and the provisions being amended by the Bill.

The section of a Bill that first amends an Act will include the full citation of the Act. Any following sections of the Bill that amend the same Act will not include that citation.

Generally the provisions of an Act are amended in ascending numerical order, beginning with the earliest provision being amended.

For example:

| | |
|---|---|
| 1 | <p><i>Section 1 (1) of the Cooperative Association Act, S.B.C. 1999, c. 28, is amended by adding the following definition:</i></p> <p>“subscriber” means a person or eligible organization that makes and subscribes the memorandum that is filed with the registrar.</p> |
| 2 | <p><i>Section 6 (c) is amended by striking out “sections 297, 298 and 313.” and substituting “sections 297, 298, 312 (2) and 313.”</i></p> |
| 3 | <p><i>Section 12 (b) is repealed and the following substituted:</i></p> <p>(b) show opposite the name of every subscriber the number of each class of investment shares, if any, taken by the subscriber and, for each class taken, whether the shares are without par value or the par value of those shares, .</p> |
| 4 | <p><i>Section 13 (2) is repealed.</i></p> |

Content and title of Amending Bills

The content of an Amending Bill determines its title and organization. There are 4 recognized classes of Amending Bills:

- (1) Specific Act Amending Bills;
- (2) Specific Topic Amending Bills;
- (3) Ministry Statutes Amending Bills;
- (4) Miscellaneous Statutes Amending Bills.

A description of each follows.

(1) Specific Act Amending Bills

- ◆ **Content:** These Bills, as their main purpose, amend a specific Act. The only amendments to other Acts included in such a Bill are consequential to the specific Act amendments.
- ◆ **Title:** The title is based on the title of the specific Act being amended, changing “Act” to “Amendment Act” and adding the year of introduction of the Amending Bill at the end of the title. If multiple Specific Act Amending Bills are introduced in the same legislative session, an indicating number is added to the second and subsequent Bills:

Business Corporations Amendment Act, 2003
Business Corporations Amendment Act (No. 2), 2003
- ◆ **Organization:** The Bill begins with the amendments to the specific Act, followed by any consequential amendments to other Acts.

- ◆ **Example:** *The Cooperative Association Amendment Act, 2000* contained 45 sections amending the *Cooperative Association Act* and one section making a consequential amendment to the *Securities Act*.

(2) Specific Topic Amending Bills

- ◆ **Content:** These Bills amend a number of Acts in relation to a specific matter.
- ◆ **Title:** The title indicates the matter being dealt with, and includes the year of introduction:

*Economic Incentive and Stabilization Statutes
Amendment Act, 2008*

An exception is the Bill that makes the amendments required to implement the government's budget. Its topic-driven title includes the year of introduction, but it does not include the word "Amendment":

Budget Measures Implementation Act, 2011

- ◆ **Organization:** The Acts being amended are arranged alphabetically, with the amendments to each of those Acts arranged numerically according to the provisions being amended. A centred heading is provided for each amended Act.
- ◆ **Example:** The *Adult Guardianship Statutes Amendment Act, 2007* amended 33 Acts, all in relation to adult guardianship matters.

(3) Ministry Statutes Amending Bills

- ◆ **Content:** These Bills amend a number of Acts in relation to various matters, but all in relation to the responsibilities of a single minister.
- ◆ **Title:** The title is based on the ministry name and will include the year of introduction:

Finance Statutes Amendment Act, 2010

- ◆ **Organization:** The Acts being amended are arranged alphabetically and numerically in the same manner as Specific Topic Amending Bills. Consequential amendments to Acts that are not the responsibility of the sponsoring minister are included at the end of the Bill.
- ◆ **Example:** The *Labour and Citizens' Services Statutes Amendment Act, 2008* amended 4 Acts for which the Minister of Labour and Citizens' Services was responsible and made consequential amendments to 2 other Acts.

(4) Miscellaneous Statutes Amending Bills

- ◆ **Content:** These Bills amend several Acts in relation to various matters that are not related and that are not the responsibility of a single minister. By convention, these Bills are limited to housekeeping and

non-contentious amendments and are presented to the Legislative Assembly by the Attorney General.

- ◆ **Title:** These have a standardized form of title and, since several Miscellaneous Statutes Amending Bills may be introduced during a single legislative session, an indicating number is added to all but the first of these Bills:

Miscellaneous Statutes Amendment Act, 2010

Miscellaneous Statutes Amendment Act (No. 2), 2010

Miscellaneous Statutes Amendment Act (No. 3), 2010

- ◆ **Organization:** The Acts being amended are arranged first into Parts, by sponsoring ministry, and then within each Part alphabetically and numerically in the same manner as Specific Topic Amending Bills.
- ◆ **Example:** The *Miscellaneous Statutes Amendment Act (No. 3), 2010* included amendments to 40 Acts, with responsibility spread among 12 ministries.

Other included material

Consequential amendments

The matters covered by a proposed new Act may require that existing legislation be amended. The same is true for Amending Bills. The required amendments are known as consequential amendments.

In a new Act or a Specific Act Amending Bill (using the classification above), the consequential amendments will appear after the provisions of the proposed new Act or amendments to the specific Act, as applicable. They will be presented in Amending Bill format, with an italicized heading indicating each Act that is being consequentially amended.

Consequential amendments are arranged alphabetically according to the titles of the Acts they are amending and then, as for other amending provisions, in numerical order of the sections being amended. For example:

Consequential Amendments

British Columbia Railway Act

27 ***Section 5 of the British Columbia Railway Act, R.S.B.C. 1996, c. 36, is amended by adding the following subsection:***

- (3) A subsidiary as defined in section 1 of this Act is a government corporation for the purposes of the *Budget Transparency and Accountability Act*.

Columbia Basin Trust Act

28 ***Section 14 (2) of the Columbia Basin Trust Act, R.S.B.C. 1996, c. 53, is repealed and the following substituted:***

- (2) The *Financial Administration Act* and the *Budget Transparency and Accountability Act* apply to the corporation as if the corporation were a government corporation.

Explanatory Notes in First Reading Bills

In addition to the actual legislative content, a First Reading Bill will include short Explanatory Notes. These notes are drafted by legislative counsel to provide a neutral description of the effect or purpose of the Bill or the provision for which the note is prepared.

A new Act usually has a single explanatory note describing the intent and scope of the Act. For example:

Explanatory Note

This Bill represents the British Columbia contribution to the consumer credit disclosure project currently underway across the country. The Bill establishes disclosure requirements applicable to credit arrangements and related advertisements, including credit arrangements relating to credit sales, credit cards and leases of goods, and provides for a range of enforcement mechanisms to support the new statutory requirement.

In an Amending Bill, a separate explanatory note is provided for each section of the Bill. The explanatory note identifies the amended legislation by Act name and, if applicable, by section number. For example:

Explanatory Notes

SECTION 30: [*Cooperative Association Act, section 139*] adds section references to other decisions of an association that require a special resolution and must be filed with the registrar.

SECTION 31: [*Cooperative Association Act, section 140*] adds “solicitor” of the association to the list of positions that may authenticate a notice, return or resolution for filing with the registrar.

Explanatory notes appear only in the First Reading version of a Bill.

Recent First Reading Bills with Explanatory Notes can be found on the Legislative Assembly’s website by selecting *Legislation* at the left, then *Bills* on the Legislation page, and choosing *First Reading* or a previous session. The Legislative Assembly’s website is: www.leg.bc.ca.

House amendments

What they are

After a Bill has been introduced in the Legislative Assembly, it may be amended by the Legislative Assembly. These amendments are known as House amendments and may be presented by any member of the Legislative Assembly during the Committee stage of debate. They may be made directly from the House floor without notice or they may be proposed by advance notice in the Orders of the Day.

House amendments are commonly used for 2 very different matters:

- (1) to correct typographical or other editorial errors that were not caught during the drafting process;
- (2) to make substantive changes in response to public or other input following introduction.

Legislative counsel prepare any House amendments that will be proposed by the sponsoring minister or another government member. The Law Clerk of the Legislative Assembly is available to assist other members.

How they are presented

A substantive amendment being proposed by the sponsoring minister must proceed through an approval process. While the process is less formal than that described in Part 1 of this Guide (*The Legislative Process*) in that it does not require submission of a new RFL, it still requires consultation with and the approval of many of the same people whose approval was required for the initial RFL.

While advance notice of a proposed House amendment is not required, as a matter of courtesy and in the interests of allowing debate to proceed more smoothly, notice is often provided in the Orders of the Day. For this, the proposing member must deliver a signed copy of the House amendment to the Clerk's table in the Legislative Assembly while it is in session. This should be done at least one day before Committee debate is to take place, so that there is time for the amendment to be printed in the Orders of the Day.

It should be noted that, as for Bills, the *Constitution Act* requires that, if a House amendment would establish an appropriation or a tax, it will be accepted only if it is accompanied by a Message from the Lieutenant Governor.

If advance notice has been provided and the purpose of the House amendment is other than to delete a section of the Bill, the member then need only rise when the Chair calls for debate on the applicable section of the Bill and say, “*I move the amendment to section [#] standing in my name in the Orders of the Day*”.

If advance notice has been provided and the purpose of the House amendment is to delete a section of the Bill, the member rises when the Chair calls for debate on the applicable section of the Bill and says, “*Honourable Chair, I wish to advise the Committee that an amendment to delete section [#] is standing in my name in the Orders of the Day*”. The House amendment itself is not proposed or voted on. Rather, the section is voted on and defeated. This is because, under the rules of parliamentary procedure, each section is dealt with by a separate vote. To delete the section, therefore, members vote to defeat the section.

The need to consult legislative counsel

On occasion, the sponsoring minister may be prepared to accept a House amendment proposed by an opposition member or a member of the government caucus, either made on advance notice or directly from the floor.

If this happens, legislative counsel strongly recommend that the minister do the following:

- ◆ not proceed with the House amendment immediately;
- ◆ instead postpone debate by moving that the applicable section of the Bill be stood down;
- ◆ contact legislative counsel.

The reason for this recommended procedure goes back to the basic rules of statutory interpretation. A single provision of an Act will not be read in isolation. Any changes must be consistent with the existing language of the Act and may require consequential amendments in other sections.

If legislative counsel are involved, they can review the proposed House amendment to ensure its consistency with language used in other provisions of the Bill and to determine if any consequential amendments are required.

A cautionary example from a few years back: A minister's acceptance of a helpful opposition House amendment created an unintended offence in another section. The Office of Legislative Counsel was not given the opportunity to vet the House amendment, and the Bill went through Third Reading and Royal Assent before the issue could be raised. The result? The Act was not brought into force until a correcting amendment was made in the subsequent legislative session.

Format of House amendments prepared by legislative counsel

The format for House amendments varies. Where they add complete provisions (sections, subsections, etc.), the format is similar to that used for Amending Bills. In other cases, they will be done by redlining—a technique that indicates any text to be deleted by strikethrough lines and any text to be added by underlining. For example:

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|---|
| <h2>PROPOSED AMENDMENTS TO BILL</h2> |
| <p><i>Community Living Authority Act</i></p> <p>to amend as follows:</p> |
| <p>SECTION 1, in the proposed definition of “private dwelling”, by adding the following paragraph:</p> |
| <p>(c.1) repair or maintain a well, .</p> |
| <p>SECTION 4, by adding the following subsection:</p> |
| <p>(2.1) If the minister considers this to be in the public interest, the minister may extend the time period under subsection (1) by up to 6 months.</p> |
| <p>SECTION 5, by deleting the text shown as struck out and adding the text shown as underlined:</p> |
| <p>Composition of board</p> |
| <p>5 (1) The board consists of up to 9 directors <u>11 directors</u> appointed by the minister.</p> |
| <p>(2) All directors, <u>other than a director referred to subsection (3.1),</u> must have the necessary skills, qualifications and experience to direct the authority.</p> |
| <p>(3) Subject to subsection (2) <u>and section 6 (2) (c),</u> a majority of directors must be</p> |
| <p>(a) individuals referred to in the definition of “community living support”, or</p> |
| <p>(b) individuals who have a significant connection to the individuals referred to in paragraph (a), including family members.</p> |
| <p>(3.1) Subject to section 6 (2) (c), 2 of the directors must be individuals with a developmental disability.</p> |

Report Bill and inclusion in Third Reading Bill

If House amendments are accepted by the Legislative Assembly, a Report Bill will be prepared before the Bill is presented for Third Reading. The Report Bill format shows the changes, using strike out to indicate text that has been deleted and double underline to indicate text that has been added.

If the Bill proceeds to Royal Assent, the changes will be incorporated into the Third Reading form of the Bill. If a House amendment adds or deletes a provision, the Bill will be renumbered at the Third Reading stage to remove decimal additions or to correct gaps in numbering.