
LAW 104 | law, legislation and policy

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APPROACHES TO STATUTORY INTERPRETATION

THE DRIEDGER APPROACH

STATEMENT

“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.” – Driedger, *Construction of Statutes* (2nd ed. 1983) – Rizzo

APPLICATION

- Grammatical and Ordinary Sense
 - Only interpretations that the words may “reasonably bear” may be imposed – *McIntosh*
- Entire Context
 - Contextual Analysis
 - Consider conditions at time of enactment and the present conditions – *Merk*
- “Harmoniously with... “
 - “the scheme of the Act”
 - e.g. Employee protection legislation – *Merk*
 - “the object of the Act”
 - e.g. Reconcile employee loyalty with the public interest – *Merk*
 - “the intention of Parliament”
 - e.g. To protect legitimate whistle-blowers – *Merk*

THE CONTEXTUAL APPROACH

- Considers the following factors:
 - Economic and social realities the Act is meant to address
 - Statutory and regulatory framework existing around the Act
 - International treaties
 - Purpose and object of the entire Act
 - Includes the meaning of the Act, and internal consistency
 - Purpose and object of the specific provision
 - Shared meaning between English and French version may be relevant
 - Policy considerations

THE PURPOSIVE APPROACH

- Attempt to determine legislative intent
- Considers the following factors:
 - Ordinary and grammatical factors:
 - Statutory context (i.e. examine the Act itself for intent)
 - Broader legislative framework (presume Legislature intended harmony)

- Legislative history (e.g. Hansard)
- “Mischief” rule (what mischief is meant to be addressed?)
- Assume Legislature didn’t intend absurd, anomalous, or irrational results – *Merk*

AIDS IN STATUTORY INTERPRETATION

LEGISLATIVE EVOLUTION:

- Previous versions, amendments, and transitional provisions can indicate legislative intent. – *Rizzo*
 - Note *BCIA* s. 37 and *CIA* s. 45(2) – amendment ≠ change in meaning!
 - Historically, amendment did mean change in meaning

LEGISLATIVE HISTORY:

- Extrinsic history may be considered. Listed with decreasing weight:
 - Briefing notes
 - Alternative draft versions
 - House Committee reports
 - Hansard (“frail” evidence)
 - Government publications, press releases, etc.
 - Anything that’s “relevant and reliable”, so long as it’s not assigned “undue weight”

TYPE OF STATUTE:

- Although all statutes are subject to *BCIA* s. 8 (*CIA* s. 12), this takes effect in different ways, depending on the type of statute:
 - **Human Rights:** To be given such fair/large/liberal interpretation as will best ensure the attainment of their objects.
 - **Benefit-Conferring:** “Broad and generous interpretation”. Any doubts are resolved in the claimant’s favour. – *Merk*
 - **Penal:** Strict construction; doubts are to be resolved in favour of the accused. – *McIntosh*
 - Only applies if there are legitimate doubts as to meaning, and can be overridden if the consequences are contrary to the purpose of the enactment. – *Merk*
 - **Regulatory:** Consider “all relevant circumstances” for type of interpretation – *Merk*
 - Strict construction is of “limited value” – *Merk*
 - **Tax Statutes:** Broad purposive considerations are secondary to the specific language used. It is Parliament’s intent for people to be able to rely on the wording
 - Driedger applies, but courts must be wary of “judicial innovation”. Try to avoid finding “unexpressed legislative intentions”
 - **Provincial Statutes Granting Power to Municipalities:** If supported by text, apply a broad and purposive construction. Grant broad authority over generally-defined matters
- **Dictionaries:** May be used (with caution) – *McIntosh* [dissent]
 - are of “limited value” – *Shaklee* [10]

COMPONENTS OF THE ACT:

- Outside of substantive provisions, there are many parts of an Act which may be considered for determining intent, of varying utility:
 - **Title:** Part of the Act, may be used to clarify meaning – *Commonwealth*
 - Can be used to remove ambiguity – *R. v. Lane*
 - **Purpose Section:** Overridden by conflicting substantive provisions *R. v. T.V.*
 - **Preamble:** Assists in finding context, resolving ambiguity. *Not* determinative. – *Lohnes, Re Anti-Inflation*
 - **Definitions:** Pay attention to the use of “means” vs. “includes”.
 - Means – Is exhaustive (excludes other meanings)
 - Includes – Also includes the ordinary meaning, possibly others.
 - **Headings:** Useful for clarifying doubtful or ambiguous expressions. – *Lohnes*
 - **Marginal Notes:** Helpful but not part of Act – *McIntosh*
 - BCIA s. 11 says not at all for interpretation purposes
 - **Punctuation:** Disregarded in interpretation – *Jaagusta*
 - **Schedules:** Less weight than substantive text – *Houde*
 - **Bilingualism:** Both same weight – *Medovarski*

RULES OF STATUTORY INTERPRETATION

- Plain Meaning: When words are “clear”, apply the obvious meaning.
 - Formerly the “Golden Rule” of statutory construction – *McIntosh*
 - Now “incomplete” and of secondary importance – *Rizzo*
- Strict Construction: For penal provisions, the interpretation most favourable to the accused should be selected. – *McIntosh*
 - Can be overridden if the consequences are contrary to the purpose of the enactment – *Merk*
- Anomalous Results: Interpretations with irrational results should be rejected. – *Merk*
 - Applies especially when persons “deserving of better treatment receive worse treatment or vice versa” – *Sullivan cant use*
- Absurdity: Two similar characterisations accepted by the courts:
 - Cote gives four grounds (affirmed by court): - *Rizzo*
 - Ridiculous or frivolous consequences
 - Extremely unreasonable or inequitable
 - Illogical or incoherent
 - Incompatible with other provisions or with the object of the enactment
 - Sullivan also notes that “a label of absurdity can be attached to interpretation which defeats the purpose of a statute or render some aspect of it pointless or futile” – *Rizzo*
- Presumption against tautology: No words in an enactment are redundant or unnecessary – *CHRC*
- Uniformity of expression: “Words used by Parliament are deemed to have the same meaning throughout the same statute”. – *Schwartz*
 - Regulations under that statute are also assumed to share that meaning
 - Presumption, not a rule; circumstances may demonstrate contrary intent – *Schwartz*

- Shared meaning: For bilingual legislation, adapt narrower meaning, so long as consistent with legislative intent - *Medovarski*

OTHER RULES

REFERENTIAL INCORPORATION

- When Statute A uses a definition in Statute B, A is *referentially incorporating* that definition.
- If B is then amended or repealed, the *BCIA* (and *CIA*) define the effect on A:
 - *B amended*: The definition used by A incorporates any amendment to the definition. – *BCIA* s. 32
 - *B repealed and replaced*: A uses the new definition provided in the replacement of B. – *BCIA* s. 36 (1)(f)
 - *B repealed*: The definition in B at the moment of repeal survives, and A continues to referentially incorporate it. – *BCIA* s. 36 (1)(f)

JUDICIAL REDRAFTING AND “READING IN”

- The Driedger approach allows this, but we’ve only seen it in the *McIntosh* dissent.
 - No precedent or statutory authority for the application of this “rule”
- A judge may “read in” words not in the text if the following are true of the provision:
 - There is *manifest absurdity* (in the unrevised text)
 - There is a *traceable error* (may apply legislative history to find this)
 - There is an *obvious correction*

RELEVANT INTERPRETATION ACT PROVISIONS

- Definitions (for the IA) – B1 C2
- Tense, enactment is always speaking – B7 C10
- Enactment is remedial – B8 C12
- Preamble – B9 C13
- Title – B9
- Marginal notes and references to former enactments – C14
- Headnotes not part of Act – B11
- Definitions have effect throughout Act – B12 C15(1)
- Regulations use definitions of enabling Act – B13 C16
- Calculation of time – B25 C26-30, 37
- Deviations from prescribed form – B28 C 32
- Gender, plural/singular, grammatical forms – B28 C 32
- Definitions (for all Acts) – B29 C35
- Referential incorporation (amendments) – B32
- No revival upon repeal – B35(1)(a) C43(a)
- Repeal does not affect acquired/acrued/acruing rights – B35(1)(c) C43(c)
- Repeal and replace (incl. referential incorporation) – B36(1)(f) C44(h)
- Amendments don’t imply a change in law – B37(2) C45(2)

FORMING YOUR ANSWER

IRAC APPROACH

- Issue
 - Identify the issue. What is the statute, legislation, specific section, judgment call.
- Rule Principle
 - Modern approach. Relevant interpretation act. Remedial.
- Analysis/Application
 - Most of the marks are here.
 - Bulk of your answer.
 - Take law as you've heard it; apply it. Step by Step.
- Conclusion
 - What the scheme favours
 - Overall legislation shows
 - How would the judge conclude here (answer at end, one sentence).
 - Rarely can you say anything with 100% certainty.

HOW TO ANSWER

- Should be candid, expansion of judicial role.
 - Critics think judges should just be more candid about their decision process.
- Subheadings for application of the law
 - Grammatical and Ordinary Meaning
 - Scheme
 - Purpose
 - Legislative Evolution
 - Legislative History
 - Public Policy / Consequences
 - Absurdity / Avoidance of Anomalous Results
 - Presumption Against Tautology
- Do you have to present best arguments first?
 - If it asks what is the best position?
 - If it asks you to act like a judge.
 - Will have to organise answer according to these headings above.
- Answer
 - Organise by each element of contextual approach at a time.
 - At the end, have a general conclusion about the balance of factors.
 - "... favours party A's conclusion"
 - Right jurisdiction for interpretation act
 - Mention what courts often mention in opening remarks, remedial provision of the relevant statute (of BCIA)
 - Must just say that modern approach must be applied, Rizzo para 21.
 - "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." (*Rizzo*, para. 21)

INTRODUCTORY PARAGRAPH

The modern approach to statutory interpretation was first delineated by Justice McLachlin in her dissenting opinion in *McIntosh* and later established in *Rizzo*. This method calls for the words of an act to be considered in their entirety and with regard to legislative intent, and was outlined by Driedger in 1983 as follows:

“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.”

Both arguments in this case will be argued utilising Driedger’s modern approach, along with consideration to Sullivan’s expanded definition, which calls for judges to consider all relevant factors rather than just those articulated by Driedger. In addition, arguments will reflect section 8 of the *British Columbia Interpretation Act* which states that “[e]very enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.”

CASE BRIEFS

R V. MCINTOSH (1995)

DOES S.34(2) APPLY TO SOMEONE WHO INITIATED ASSAULT?

LITERAL/PLAIN MEANING RULE (NOT HOW WE DO STATUTORY INTERP. TODAY)

- Where there is NO ambiguity, then its clear word should be given effect.
- “golden rule”
- In these cases the task of interpretation does not arise
- Looks at the technical meaning of the specific section, in isolation, and refuses to take context into account, because legislation is so confused so legislative intent cannot be deciphered
- If this rule results in absurdity it doesn’t matter! If the legislature wanted to make an absurd legislation, they are at liberty to do that.
 - Absurdity- if wording is clear (not ambiguous) must go with wording, even if result is absurd (Parliament is free to create absurd legislation); although statute may be “deserving of much criticism” since there is no ambiguity, and must be interpreted according to text (literal construction)
 - Source of absurdity in this case is that you have a better defence for killing someone than for injuring someone, which would fall under s.35
- The criminal justice system assumes that everyone knows the law, so if the courts read-in words that don’t appear in the provision, how can a citizen possibly know the law?
- An ambiguous penal provision must be interpreted in the most favourable way for the accused persons, and in the manner most likely to provide clarity and certainty in the criminal law
- Lamer argued that if parliament did it they must have done it intentionally, they wouldn’t have just left it out for no reason

- Lamer's policy considerations- reading in is not appropriate and if there is a problem with legislation it should be changed
- **Dissent (McLachlin)**
- You always have to interpret, even if words are clear, must look at context
 - Refers to Driedger, supra, at p.3 "The purpose of the legislation must be taken into account, even where the meaning appears to be clear, and so must the consequences."
 - Sussex Peerage case: "The only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of Parliament which passed the Act"
- After determining the intent she takes 3 different approaches:
 - Legislative history: how it got legislated and how it went through the system. She looked at how the wording changed over time and that there was no intention of Parliament to try and change they law. Traceable error (demonstrated through history of provision)

R V. SHARPE (2001) MCLACHLIN C.J.

ISSUE: IS THE BANNING OF CHILD PORNOGRAPHY UNCONSTITUTIONAL?

DECISION: IT IS CONSTITUTIONAL

REASONS: IF THE LAW IS TOO BROAD, IT WILL BE CONSIDERED UNCONSTITUTIONAL

- Statutory Intent:
 - Prevent harm to children, send the message to Canadian's that "children need to be protected from the harmful effects of child sexual abuse and exploitation and are not appropriate sexual partners"
 - Person- includes imaginary persons as well as real ppl because graphics can be harmful as well, and also it could provoke the desires or having sexual relations with a real child. Other issue does it include persons who possess the material
- Depicted: in this case means to be what a reasonable person would think that was a child
- Explicit Sexual Activity- they put in explicit for a reason, otherwise they would have just said sexual activity. Para 47 she looks at the context of the legislation, if you read section I and II together it suggests a restrictive understanding. Use of a modifier.
- Other Notes:
 - Purposive- reflects, societal values, Hansard, legislative intent
 - Broad interpretation of statute but not so broad that it violates charter rights. "Reading legislation down."

RE RIZZO V RIZZO SHOES (1998)

- bankruptcy = termination under Employment Standards act?
- **Absurdity:** if employees were fired day before bankruptcy then they would get termination/severance pay, but not if they were fired the day of.

- **Quote:** “an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable with other provisions or with the object of the Act”- Iacobucci Para 47

MERK V IABSORIW (2005) BINNIE J.

- Protection an employee has under the whistle blower legislation: what is meant by lawful authority?
 - The lower courts said that it is only government officials, police etc.
- Binnie says that in the case of public property a lawful authority can be anyone who has the right to stop someone...not just a public official .
- **Statutory Interpretation**
 - Driedger: He analyzes based each part of the Driedger wording
- **Grammatical and Ordinary Sense:** Looks at the word “offences” Dealing with this can include action by employer or other **private** authority who has **lawful authority** to put stop to the conduct...doesn’t simply mean **prosecution**
- **Scheme of Act:** (*type ie. Benefits conferring, penal etc.*) The legislation as a whole is in place to protect employees. One of the injustices that the *Labour Standards Act* was supposed to address was workplace retaliation against employees who blow the whistle on unlawful conduct
- **Object of the Act:** (*intent*) Encouraging “loyal” employees to resolve problems internally rather than marching straight to the police
- **Public policy debate:** (*Consequences on Society*) Many courts have shown through cases that they think going to a public authority should only be exercised when the employee has already tried to deal with the problem internally
- **Avoidance of Anomalous Results:** (*Absurdity*) irrational that an employer can terminate without any fear of prosecution an employee for bringing serious wrongdoing to its attention internally but cannot do that as soon as the employer goes to outside authorities
- The judge thinks: what if I’m wrong, how would that result? Then the result wouldn’t make sense, and adds that to the decision (**Consequentialist Analysis**)
- **Subsequent Amendments to s.74:** The legislature, changed the act to include supervisors, the judge dealt with this by saying that he can’t look at that according to the interpretation act. But basically said that the legislature is CLARIFYING the law not changing it, they are fixing what the court appeal had wrong.
- **Penal Provisions:** The judge feels that “other interpretive factors” outweigh the principle of strict construction of penal statutes.
- **Dissent: Deschamps**
 - Argues that the majority based their decision on what they felt the desired level of protection should be...rather than using the **plain meaning** to offer the broadest protection available
 - Didn’t take what the legislature said into account

SHAKLEE CANADA INC V CANADA (1995)

Are vitamins ‘food for consumption’ and indigestible (too broad)

- **“Meal test”:** what would ordinary person bring home for evening meal?
- They use the **ordinary person test** because the legislation was made for an ordinary person. Not for experts with special knowledge.
- Also looks at labels-dosage, taken, therapeutic use, keep from children, does not imply food

R V. RIDDELL (1973)

“smuggles or clandestinely introduces”

- Effectivity Rule: Words and phrases are never wasted
- “s.190(3): Everyone who smuggles **OR** clandestinely introduces into Canada any goods subject to duty...”
- -The word **OR** separates phrases with different meanings. Smuggle does not mean hide/clandestinely, it means taking goods across the border without paying fees – according to the English Law dictionary
 - o the common dictionary definitions did suggest smuggling

R. V. LANE, E X P. GOULD (1937)

- if you owned a slot machine the prov. said you didn't own it and they could take possession
- Court held that this was mainly property & civil rights, thus the act was valid, despite the title suggesting it was a criminal act.
- Lack of an accused and no charges or punishment other than taking of the property was reasons given for it not being criminal
- This is the **counter-argument for use of a title**

COMMITTEE COMMONWEALTH CANADA V. CANADA (1991) LAMAR C.J.

- Political pamphleteers invoked freedom of speech to continue presence in airport. Freedom of expression case, court decided that freedom of expression existed
- The court used the title
- The court used the title to say the the Fed statute was not meant to catch the pamphleteers but to regulate business
- Lamar also looked at the long and the short title:
 - o Long title: “Regulations respecting the control of commercial and other operations at government airports.” Even though the title says ‘other’ which could refer to a broad scope, the judge notes that the title indicates regulations apply to “operations”-which gives the connotation of industry or profit
 - o Short title: “government airport concession operations regulations”-still gives commercial feeling-concessions would not likely be operated for any other purpose than profit

RE ANTI-INFLATION ACT (1976) LASKIN CJ

- Fed gov't decided to impose wage and price controls, problem was wage and price controls was exclusive prov jurisdiction
- Fed gov't had to rely on its general authority to make laws for “Peace, order and Good Government of Canada”
- In the **preamble** they said there is an emergency or “serious national concern” to overcome challenges that it was *ultra vires*
- SCC found that the preamble was “sufficiently indicative that Parliament was introducing a far-reaching programme prompted by what in its view was a serious national condition.” (CB p.4-26)

R. V. LOHNES (1992) MCLACHLIN J

- The court is deciding what constitutes a disturbance under s.175(1)a in the Criminal Code
- In reaching its determination the courts use headings to decide that the McLachlin says that **headings may be used** as intrinsic aids in interpreting ambiguous statutes
 - o Court decided without elevating headings to determinative status, that the heading under which s.175(1)a appeared "Disorderly Conduct" supported the view that Parliament had in mind, not emotional upset or annoyance of individuals, but disorder and agitation which interfere with the ordinary use of a place

R. V. BASARABA (1975)

- Marginal notes appear as headings in some versions of the Criminal Code
- In this case the head notes said that the law in question applied to 'trade unionists'
- Judge stated that "marginal notes ought not to be relied upon in interpreting a statute" (Pg.4-32 Hunt J)

R. V. WIGGLESWORTH (1987) WILSON J SCC

- Police officer physically assaulted a suspect during an investigation. Charged under the criminal code with common assault and under the Royal Canadian Mounted Police Act as acting unnecessarily violently towards prisoner
- Issue: s.11 of the Charter says that any person charged with an offence has the right...if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again,...
 - o So the court had to determine if the major offence under the RCMP Act fits the meaning within s.11
 - o The court looked to the **marginal notes**, which implied that s.11 is only concerned with criminal and penal matters.
 - **marginal notes used**

INTERPRETATION ACT'S RELEVANT SECTIONS

DEFINITIONS

1 In this Act, or in an enactment:

"**Act**" means an Act of the Legislature, whether referred to as a statute, code or by any other name, and, when referring to past legislation, includes an ordinance or proclamation made before 1871, that has the force of law;

"**enact**" includes to issue, make, establish or prescribe;

"**enactment**" means an Act or a regulation or a portion of an Act or regulation;

"**public officer**" includes a person in the public service of British Columbia;

"**regulation**" means a regulation, order, rule, form, tariff of costs or fees, proclamation, letters patent, commission, warrant, bylaw or other instrument enacted

(a) in execution of a power conferred under an Act, or

(b) by or under the authority of the Lieutenant Governor in Council,

but does not include an order of a court made in the course of an action or an order made by a public officer or administrative tribunal in a dispute between 2 or more persons;

"repeal" includes to revoke, cancel or rescind.

APPLICATION

2 (1) Every provision of this Act applies to every enactment, whether enacted before or after the commencement of this Act, unless a contrary intention appears in this Act or in the enactment.

(2) The provisions of this Act apply to this Act.

(3) Nothing in this Act excludes the application to an enactment of a rule of construction applicable to it and not inconsistent with this Act.

ENACTMENT ALWAYS SPEAKING

7 (1) Every enactment must be construed as always speaking.

(2) If a provision in an enactment is expressed in the present tense, the provision applies to the circumstances as they arise.

ENACTMENT REMEDIAL

8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

TITLE AND PREAMBLE

9 The title and preamble of an enactment are part of it and are intended to assist in explaining its meaning and object.

REFERENCE AIDS AND CLARIFICATIONS

11 (1) In an enactment, a head note to a provision or a reference after the end of a section or other division

(a) is not part of the enactment, and

(b) must be considered to have been added editorially for convenience of reference only.

DEFINITIONS AND INTERPRETATION PROVISIONS

12 Definitions or interpretation provisions in an enactment, unless the contrary intention appears in the enactment, apply to the whole enactment including the section containing a definition or interpretation provision.

APPLICATION OF EXPRESSIONS IN ENACTMENTS TO REGULATIONS

13 An expression used in a regulation has the same meaning as in the enactment authorizing the regulation.

USE OF FORMS AND WORDS

- 28** (2) Gender specific terms include both genders and include corporations.
- (3) In an enactment words in the singular include the plural, and words in the plural include the singular.
- (4) If a word or expression is defined in an enactment, other parts of speech and grammatical forms of the same word or expression have corresponding meanings.

CALCULATION OF TIME OR AGE

- 25** (1) This section applies to an enactment and to a deed, conveyance or other legal instrument unless specifically provided otherwise in the deed, conveyance or other legal instrument.
- (2) If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.
- (3) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.
- (4) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.
- (5) In the calculation of time not referred to in subsection (4), the first day must be excluded and the last day included.
- (6) If, under this section, the calculation of time ends on a day in a month that has no date corresponding to the first day of the period of time, the time ends on the last day of that month.
- (7) A specified time of day is a reference to Pacific Standard time, or 8 hours behind Greenwich mean time, unless Daylight Saving time is being used or observed on that day.
- (8) A person reaches a particular age expressed in years at the start of the relevant anniversary of his or her date of birth.

S.29 WITH REGARDS TO TIME PERIODS:

"holiday" includes

- (a) Sunday, Christmas Day, Good Friday and Easter Monday,
- (b) Canada Day, Victoria Day, British Columbia Day, Labour Day, Remembrance Day, Family Day and New Year's Day,
- (c) December 26, and
- (d) a day set by the Parliament of Canada or by the Legislature, or appointed by proclamation of the Governor General or the Lieutenant Governor, to be observed as a day of general prayer or mourning, a day of public rejoicing or thanksgiving, a day for celebrating the birthday of the reigning Sovereign, or as a public holiday;

"month" means a period calculated from a day in one month to a day numerically corresponding to that day in the following month, less one day;

"year" means any period of 12 consecutive months; but a reference to a **"calendar year"** means a period of 12 consecutive months beginning on January 1, and a

reference by number to a dominical year means a period of 12 consecutive months beginning on January 1 of that dominical year;

REFERENTIAL INCORPORATION

32 In an enactment a reference to another enactment of the Province or of Canada is a reference to the other enactment as amended, whether amended before or after the commencement of the enactment in which the reference occurs.

36 (1) If an enactment (the "former enactment") is repealed and another enactment (the "new enactment") is substituted for it,

(f) a reference in an unrepealed enactment to the former enactment must, for a subsequent transaction, matter or thing, be construed as a reference to the provision of the new enactment relating to the same subject matter, but if there is no provision in the new enactment relating to the same subject matter, the former enactment must be construed as being unrepealed so far as is necessary to give effect to the unrepealed enactment.

MUTATIS MUTANDIS

44 If an enactment provides that another enactment applies, it applies with the necessary changes and so far as it is applicable.

Note – Latin phrase meaning “changing [only] those things which need to be changed” or more simply “[only] the necessary changes having been made” – means you should pay attention to the specifics of what has been changed.

SUBDIVISIONS OF ACT

42 (1) A section is divided into subdivisions known in descending order as subsections, paragraphs, subparagraphs and clauses.