

Law 104: Law, Legislation and Policy

G. Morgan (Crane, Fall 2011)

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LLP Statutory Interpretation Model (based on Crane)		
Step	Details	Short List
Read the question	Use the specific terms of the question to guide reading of fact pattern/legislative provisions/additional materials. Parse any question(s) to determine what type of response is required.	<input type="checkbox"/> Identify issue(s) <input type="checkbox"/> Response required
Read the fact pattern	Identify key terms and information that relate to the question	<input type="checkbox"/> Key terms <input type="checkbox"/> Key issue(s)
Read the legislative provisions and additional materials	Identify key terms, find definitions that clarify meaning, identify issues. Identify all instances in provision where Identify key wording (i.e. "means", "includes", "or", "may", "shall")	<input type="checkbox"/> Key terms <input type="checkbox"/> Key definitions <input type="checkbox"/> Key issue(s) <input type="checkbox"/> Key wording
Outline response	Identify the statutory interpretation issues. Identify relevant BCIA provisions and case law. Identify relevant information from fact pattern, legislative provisions and additional materials.	<input type="checkbox"/> S.I. issues <input type="checkbox"/> BCIA provisions <input type="checkbox"/> Case law <input type="checkbox"/> Relevant fact pattern-specific information
Set up response	Outline the statutory interpretation framework for response. Q: Which section(s) of the legislation is/are central to S.I. issues? Q: What parts of the legislation provisions are decided? in dispute? Q: Is it Canadian jurisdiction? Yes → Driedger approach (<i>Rizzo</i>) Q: It is BC legislation? Yes → <i>BCIA</i> S.2 → <i>BCIA</i> S.8	<input type="checkbox"/> Relevant provision(s) <input type="checkbox"/> Decided vs. in dispute <input type="checkbox"/> Jurisdiction
Grammatical and ordinary sense	See Driedger approach	<input type="checkbox"/> Statute definitions <input type="checkbox"/> BCIA definitions <input type="checkbox"/> "means" vs. "includes" <input type="checkbox"/> Ordinary meaning <input type="checkbox"/> Dictionary definitions
Scheme	See Driedger approach	<input type="checkbox"/> Other occurrences of text in act <input type="checkbox"/> Internal coherence <input type="checkbox"/> Coherence with other statutes
Object/Purpose	See Driedger approach	<input type="checkbox"/> Type of statute <input type="checkbox"/> Title <input type="checkbox"/> Preamble/Purpose Statement <input type="checkbox"/> Headers & Marginal Notes (limited) <input type="checkbox"/> Hansard records (limited)
Legislative intent	See Driedger approach	<input type="checkbox"/> Overall purpose of statutory interpretation <input type="checkbox"/> Presumptions <input type="checkbox"/> Principles / Rules
Subordinate Legislation	Apply statutory interpretation principles and <i>BCIA</i> (as appropriate depending on S.1 definition of "enactment")	<input type="checkbox"/> Authorization <input type="checkbox"/> Consistency
Conclusion	"On the balance, _____'s arguments are weaker and therefore it is likely that _____ is _____."	<input type="checkbox"/> Check response to outline <input type="checkbox"/> Proofread
Temporal Issues	Address temporal issues separately from Driedger analysis (after completion of interpretation.)	<input type="checkbox"/> Retroactivity <input type="checkbox"/> Retrospectivity <input type="checkbox"/> Vested rights <input type="checkbox"/> Accrued or accruing rights
Subordinate Legislation	Q: Is the subordinate legislation valid? → <i>BCIA</i> Def. & <i>BCRA</i> Def. Q: Is the subordinate legislation consistent with <i>BCIA</i> S.41(1) and its enabling provision/statute? * Assess w/ SI techniques to resolve any ambiguities	<input type="checkbox"/> Validity <input type="checkbox"/> <i>BCIA</i> S.1 and <i>BCRA</i> S.1 <input type="checkbox"/> Consistency <input type="checkbox"/> SI assessment

Approaches to Statutory Interpretation		
Approach	Definition	Cases
Driedger approach	“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, <i>Construction of Statutes</i> (2nd ed. 1983) (quoted in <i>Rizzo</i> , ¶21)	<i>Rizzo</i> , ¶21 <i>Merk</i> , ¶18 <i>C3000</i> , ¶36
Part	Details	Cases & Examples of application
“entire context”	Encompasses many of the subsequent parts of the approach	All cases
“grammatical and ordinary sense”	May include the dictionary definition, plain meaning or technical meaning	<i>McIntosh</i> , <i>C3000</i>
“harmoniously”	Harmonious and coherent interpretations (related to scheme/object/intention)	<i>C3000</i>
“the scheme of the Act”	Coherence within the statute (section, other sections) as well as related Acts, international conventions, etc.	<i>Merk</i> , <i>C3000</i> , <i>Baker</i> , <i>Columbia River</i>
“the object of the Act”	Object/purpose (from a purposive statement/preamble/inference) of both the section and the statute	<i>Merk</i> , <i>C3000</i>
“the intention of Parliament”	All evidence should be directed toward determining the intention of the legislature → both a part and an element	<i>Merk</i> , <i>C3000</i>
“Reading in” (minor corrections to existing legislation) (drafting error or scrivener error)		
Driedger on “reading in” (<i>McIntosh</i> , 3-22): (1) a manifest absurdity (2) a traceable error (3) an obvious correction	Côté on “reading in” (<i>McIntosh</i> , 3-22): “express what is already implied by the statute” (<i>Rizzo</i> , ¶27): an interpretation is absurd: (1) ridiculous or frivolous consequences (2) extremely unreasonable or inequitable (3) illogical or incoherent (4) incompatible with other provisions or with the object of the legislative enactment	Crane re: <i>R. v. Sharpe</i> : Court may be more likely to “read in” Charter cases <i>McIntosh</i> : Lamer characterises the error as “legislative oversight” (therefore not correctable) while McLachlin characterizes it as “drafting error” (and therefore correctable.)
General notes	<ul style="list-style-type: none"> • Broadening vs. narrowing (definitions/provisions/purpose) • Remedial legislation: broad scope, but limited by substantive provisions of act • Substantive provisions can be “contrary intention” to BCIA (S.2) and/or carry more weight than Preambles/Purpose Statements 	

LLP Vocabulary	
Term	Definition
Expiration	A statute expires when it no longer has any practical significance.
Amendment	A statute is amended when (1) existing text is modified, or (2) new text is added.
“Housekeeping”	“tidy up” the law
Declaratory	declaration or confirmation of what the law is
Implicitly Declaratory	if ambiguity or uncertainty in original enactment’s meaning, and the statutory solution is on that the courts would have reached independently of legislation (case law)
Remedial	substantive change
Repeal	A statute or part thereof that ceases to have the force of law due to “repeal” in an act of the legislature.
Temporal Operation	The period of time that the statute is in force. Typically a technical calculation (i.e. CIF date to date of expiry or repeal.)
Temporal Application	The period of time in which events are covered by the statute (i.e. the extent to which the new legislation might “reach back” and refer to or change situations that occurred in the past.)
Retroactive Application	A change to the past legal effect of a past event.
Retrospective Application	A change to the future legal effect of a past event (i.e. attach new future consequences to past events.)
Immediate Application	A change to the future legal effect of an on-going situation (i.e. the status/condition/series of events is incomplete.)
Prospective Application	A future legal effect for a future situation/event.

Aids in Statutory Interpretation			
Aid	Definition	Cases	Example of application
Type of Legislation	In order from broadest (most liberal) interpretation to most strict interpretation		
Human rights legislation	Quasi-constitutional status: interpret in a broad, purpose manner to achieve object	<i>Jubran</i>	"The accepted rules of construction are flexible enough to enable the Court to recognize in the construction of a human rights code the special nature and purpose of the enactment" (<i>Jubran</i> ¶29); interpret "to advance the broad policy consideration underlying it" (<i>Jubran</i> ¶30)
Benefits-conferring legislation	Typically granted a "large and liberal" interpretation to enable the legislation to fulfill its purpose	<i>Merk, Rizzo</i>	<i>Merk</i> , ¶20
Municipal legislation	Traditionally, narrow reading of delegated power but recent shift to purposive interpretation of scope of delegated power.	<i>Rascal Trucking, United Taxi</i>	"those powers expressly conferred by statute, those powers necessarily or fairly implied by the expressed power in the statute, and those indispensable powers essential and no merely convenient to the effectuation of the purposes of the corporation" (<i>Rascal Trucking</i> 4-76)
Tax legislation	Attention to specific wording of the legislation in light of contextual approach to fulfill need for predictability	<i>Re: SFU, Ludco, Imperial Oil</i>	"the underlying tension between textual interpretation, taxpayers' expectations as to the reliability of their tax and business arrangements, the legislature's objectives and the purposes of specific provision or of the statute as a whole" (<i>Imperial Oil</i> ¶28)
General History (Object/purpose, Legislative intent)	Factual context may aid interpretation. Judicial notice of matters of common knowledge related to matter remedied. (4-40)		Examples: prior judicial decisions, reports of Task Forces or Law Reform Commissions
Legislative Evolution (Object/purpose, Legislative intent)	The evaluation of previous versions of the legislation and subsequent amendments.	<i>Re: SFU</i>	"Any change in language is some indication of the change of intention on the part of the Legislation" (<i>Re: SFU</i> 4-41)
Legislative History (Object/purpose, Legislative intent)	(in order of decreasing weight)	<i>Re Firearms</i>	
Material prepared for drafting the legislation	In general, anything that is relevant and reliable provided not assigned undue weight (<i>Rizzo</i> , ¶35)		
Alternative/draft versions			
House Committee reports		<i>C3000</i>	
Hansard (record of Parliamentary debate)	"frail evidence" (<i>Rizzo</i> , ¶35) "limited reliability and weight" (<i>R. v. Morgentaler</i> qtd. in <i>Rizzo</i> , ¶35)	<i>Merk, Rizzo</i>	<i>Sharpe</i> , ¶34 (3-25) <i>Rizzo</i> , ¶33-35 (3-35/36)
Components of the Act	Parts of the Act that are not substantive provisions may be considered for determining intent, with varying weight		
Title (<i>BCIA</i> S.9 and <i>CIA</i> no specific provision)	Part of the Act; may be used to clarify meaning	<i>Lane</i> ; <i>CCCAn</i>	<i>Lane</i> : traditionally, titles were not part of the enactment <i>CCCAn</i> : clarify commercial context of statute
Purpose Section (no provisions in either act)	Significant, but may be overridden if it conflicts with substantive provisions	Sullivan article: <i>LeBlanc</i> ,	<i>T.(V.)</i> : disparate characteristics in an interpretative provision mean that each is not relevant to every situation (non-

	Factors to consider weight (Sullivan): (1) how specific and coherent the principles or polices are; (2) what directives from the legislature guide their use; (3) whether there are other indicators of legislative purpose	<i>T.(V.), National Farmers Union</i>	determinative) (4-19) <i>National Farmers</i> : use substantive legislation to determine whether expression of Parliamentary intent is met (4-20)
Preamble (<i>BCIA</i> S.9 and <i>CIA</i> S.13)	Assists in suggesting context, resolving ambiguity. Not determinative.	<i>Re Anti-Inflation</i>	“The validity [...] does not, however, stand or fall on that preamble, but the preamble does provide a base for assessing the gravity of the circumstances which called forth the legislation (<i>Re Anti-Inflation</i> 4-26)
Definitions (<i>BCIA</i> S.12, 13, 28(4), 29 and <i>CIA</i> S.15, 16, 33(3), 35)	Distinguish between “means” vs. “includes”		
Headnotes (<i>BCIA</i> S.11(1) and <i>CIA</i> no specific provision)	Useful for clarifying doubtful or ambiguous expressions but not part of the enactment and therefore weak weight. “convenience of reference only” (<i>BCIA</i> S.11(1))	<i>Lohnes, Basaraba, Wigglesworth</i>	“intrinsic aids in interpreting ambiguous statute” (<i>Lohnes</i> 4-31) <i>Charter</i> headings are integral part of statute but do not change clear meaning (<i>Wigglesworth</i> 4-34)
Marginal Notes (<i>BCIA</i> S.11(1) and <i>CIA</i> S.14)	Not part of the enactment (added after the fact), therefore accorded a weak weight. “convenience of reference only” (<i>BCIA</i> S.11(1))	<i>McIntosh</i> (dissent), <i>Basaraba, Wigglesworth</i>	Persuasive, but not binding as they may have been added after the act/legislation was passed (<i>McIntosh</i>) <i>Charter</i> marginal notes not part of statute therefore weaker weight (<i>Wigglesworth</i> 4-34)
Punctuation (<i>BCIA</i> S.29)	Disregarded in interpretation or granted “little attention”	<i>Jaagusta, Popoff, Rascal Trucking</i>	Arbitrary comma placement ≠ substantive change in law “pay little, if any, attention to punctuation” (<i>Popoff</i> 4-36)
Schedules (no provisions in either act)	Less weight than substantive text		
Bilingualism	Federal statutes must be bilingual (French and English). Interpreters must take both language versions of a statute into account, and both versions must have the same meaning.	<i>C3000, Medovarski</i>	(1) determine whether there is “an apparent discordance” and, if yes, whether there is a “common meaning” (<i>Medovarski</i> ¶25), and (2) determine whether the common meaning “is consistent with Parliament’s intent” (<i>Medovarski</i> ¶26) See also Sullivan, 3-6
Bijural legislation	Federal statutes apply bijurally (common law and civil law jurisdictions.)		<i>CIA</i> S.8
Specific Language	See also <i>BCIA</i> S.29 and <i>CIA</i> S. 11 and S.35		
“Means”	Typically: the definition/list/etc. that follows is exhaustive	<i>C3000</i>	
“Includes”	Typically: the definition/list/etc. that follows is not exhaustive and includes the ordinary meaning and possibly other meanings.	<i>C3000</i>	
“Or”	Typically: when two expressions are joined by “or”, they cover two different situations	<i>Riddell</i>	Rule of effectivity

Dictionaries (Grammatical and ordinary meaning)	Starting point to determine “grammatical and ordinary meaning”, but of limited value Potential for “ duelling dictionaries ” See also: Sullivan 3-64	<i>Shaklee</i> ; <i>Riddell</i>	Use with caution: of “limited usefulness” (<i>Shaklee</i> , ¶10); can provide too technical a meaning (<i>Shaklee</i> , ¶8) A starting point to discover ordinary meaning, with reservations (<i>Riddell</i> 4-5)
Coherence & Conflict			
Coherence with other statutes (Scheme)	A word/phrase’s meaning should be consistent with its larger statutory framework (relevant related statutes). * <i>in pari materia</i> (“in like subject matter”) most persuasive	<i>C3000</i> , <i>Sharpe</i> , <i>Merk</i> , <i>Columbia</i> <i>River</i> , <i>Ulybel</i>	“a harmony, coherency and consistency between statutes dealing with the same subject” (<i>Ulybel</i>) <i>C3000</i> : Consistency with other federal statutes (of same nature), consistency with international legislation <i>Sharpe</i> : “explicit sexual activity” compared to references in <i>CC</i> (¶46) and “counsel” compared to <i>CC</i> and case law (¶56) <i>Merk</i> : <i>CC</i> more explicit in restricting scope of whistleblowing (not relevant) (¶29)
Horizontal Coherence (Conflict Resolution between Horizontal Statutes)	<u>If same type of law:</u> Later enactment > earlier enactment Specific enactment > general enactment <u>Tie-breaker:</u> Earlier, specific enactment > later, general enactment	<i>Levis</i>	Presumptions from <i>Côté</i> : (1) “application of one must implicitly or explicitly preclude application of the other” (<i>Levis</i> ¶47); (2) the conflict “cannot be resolved by adopting an interpretation which would remove the inconsistency” (<i>Levis</i> ¶58); (3) “that the more recent law prevails over the earlier law, and that the special law prevails over the general” (<i>Levis</i> ¶58)
Vertical Coherence (Conflict Resolution between Vertical Statutes)	<u>Generally, if different level of enactment:</u> Legislation > common law Constitution > all legislation Federal legislation > provincial legislation Human rights legislation > ordinary legislation Enabling statute > subordinate legislation <i>Charter</i> : complete interpretation before determining whether there is a conflict	<i>CCCan</i> , <i>Sharpe</i> , <i>Bell</i> <i>ExpressVu</i>	“it should also not interpret legislation that is open to more than one interpretation so as to make it inconsistent with the Charter and hence of no force or effect” (<i>CCCan</i> ¶37) “If statutory meanings must be made congruent with the <i>Charter</i> even in the absence of ambiguity, then it would never be possible to apply, rather than simply consult, the values of the <i>Charter</i> ” (<i>Bell ExpressVu</i> 4-61)
International Coherence	Interpretative aid unless implemented by Parliament. Cautious application in dissent. International treaty interpretation guidelines (from <i>Vienna Convention on the Law of Treaties</i>): (1) interpret in good faith; (2) ordinary meaning; (3) in context, and (4) in light of object and purpose	<i>Baker</i>	Majority: in an unimplemented convention “the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review” (<i>Baker</i> ¶69) Dissent: “inadvertently grant the executive the power to bind citizens without the necessity of involving the legislative branch” (<i>Baker</i> ¶80)
Judicial treatment (previous decisions)	Previous interpretations of a particular provision or word may clarify meaning in interpretation.	<i>McDiarmid</i> (Man. CA)	Previous treatment of “treaty” and “agreement” (4-72)

Rules and Guides in Statutory Interpretation			
Rule/Guide	Definition	Cases	Example of application
“Golden rule of literal construction” (not Driedger)	Only depart from literal meaning if the literal meaning would lead to absurdity or inconsistency with the rest of the statute	<i>McIntosh</i> (majority)	“a statute should be interpreted in a manner consistent with the plain meaning of its terms” (3-12)
Co-text (Sullivan)	Use words nearby to give meaning to word or phrase in question. Sullivan: area of significant discretion	<i>McIntosh</i> (majority) <i>Merk</i>	Lamer: focuses on word (not ambiguous in isolation; only ambiguous more broadly) CA reads “lawful authority” more narrowly than SCC
Internal coherence (scheme)	A word/phrase’s meaning should be consistent with the rest of the statute.	<i>C3000</i>	Consistency within different provisions of the statute.
Internal coherence (scheme) (counter)	Some words may carry different meanings in the same statute	<i>Sharpe</i>	“person” can have a plurality of meanings within the statute
Interpretation of penal provisions (legislative intent)	When two interpretations of a provision that affects the liberty of an individual are available, the one that is more favourable to the accused should be adopted.	<i>McIntosh</i> (majority); <i>Merk</i> (limited); <i>Hasselwander</i>	“ambiguity should be resolved in a manner most favourable to accused persons” (<i>McIntosh</i> 3-16) “limited value when interpreting a regulatory statute” (<i>Merk</i> ¶33, 3-45) “the rule of strict construction [of penal statutes] becomes applicable only when attempts at the neutral interpretation [...] still leave reasonable doubt as to the meaning or scope of the text of the statute” (<i>Hasselwander</i> ¶30)
Ordinary meaning (grammatical and ordinary sense)	Can include the dictionary definition (but may result in “ duelling dictionaries ”)	<i>Shaklee</i>	Test: what would a reasonable person of average intelligence and understanding take to be the usual meaning of the word or phrase? (4-1) “Meal test” (<i>Shaklee</i> , ¶10)
Strict Construction (not Driedger)	The text can only be applied as written (therefore no consideration of contextual material.)	<i>McIntosh</i> (majority)	
Technical meaning (Sullivan)	The meaning of a word or phrase for a specific profession or technical subject.	<i>Ontario Mushroom Co. Ltd. and Learie</i>	“When legislation deals with a technical subject and is addressed to a specialized audience familiar with that subject, ordinary meaning is likely to give way to any relevant technical meaning of words or expressions” (Sullivan 3-6)

Presumptions and Principles in Statutory Interpretation			
Presumption/Principle	Definition	Cases	Example of application
Application of presumptions (qualifier)	External legislative aids (including principles of interpretation or presumptions) only apply when there is real ambiguity	<i>Bell ExpressVu, Hasselwander</i>	“It is only when genuine ambiguity arises between two or more plausible readings , each equally in accordance with the intentions of the statute, that the courts need to resort to external interpretative aids ” as well as “other principles of interpretation ” (<i>Bell ExpressVu</i> ¶29, 4-85) “the rule of strict construction” only applies when the neutral interpretation “ still leave[s] reasonable doubt as to the meaning or scope of the text of the statute” (<i>Hasselwander</i> ¶30)
Ejusdem Generis Principle (Limited Class Rule) <u>Usage:</u> (1) Limit or narrow meaning	A general phrase (“ basket clause ”) takes its meaning from specific words that precede it. <u>Threshold requirement:</u> Preceding words must have a “common denominator”	<i>Rascal Trucking</i>	“the legislature, by including the phrase “or other matter or thing,” did not intend to expand the scope of s.936 to allow municipalities to declare almost anything to be a nuisance” (4-77) <u>Counter:</u> rule of effectivity (narrowing the obvious meaning undercuts legislative intent)
Express Meaning Principle (<i>expressio unius est exclusio alteri</i>) <u>Usage:</u> (1) Limit or narrow meaning	The express mention of one thing excludes all others by necessary implication. <u>Counter</u> (Sullivan qtd. in <i>Children’s Aid</i> 4-80): (1) words used for emphasis; (2) context-specific application; (3) sometimes may be more accurate to imply inclusion rather than exclusion	<i>Children’s Aid</i>	“a presumption that legislative silence is intentional” (<i>Children’s Aid</i> ¶22) “while it is often a valuable servant, it is a dangerous master to follow” (<i>Children’s Aid</i> ¶23) <u>Judicial reluctance:</u> (1) “it may be unclear whether legislative silence is deliberate”; and (2) “the courts have limited powers to correct under-inclusiveness” (Sullivan qtd. in <i>Children’s Aid</i> ¶24)
Presumption against Absurdity (legislative intent) <u>Usage:</u> (1) Select interpretation	Legislation does not intend to produce absurd consequences	<i>Rizzo; McIntosh</i> (majority and dissent)	Test from <i>Côté</i> (<i>Rizzo</i> , ¶27 at 3-34): “an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences , if it is extremely unreasonable or inequitable , if it is illogical or incoherent , or if it is incompatible with other provisions or with the object of the legislative enactment”
Presumption against Absurdity (legislative intent) (counter) <u>Usage:</u> (1) Counter presumption against absurdity	Absurdity does not equal ambiguity, and therefore does not have to be resolved if the plain meaning is clear (golden rule)	<i>McIntosh</i> (majority)	“where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be” (<i>Maxwell on the Interpretation of Statutes</i> quoted in <i>McIntosh</i> 3-15); “Parliament, after all, has the right to legislate illogically ” (<i>McIntosh</i> 3-16)
Presumption against Anomalous Results (legislative intent)			Sullivan on anomalous results: “[a] variation on irrational distinction occurs when an interpretation leads to an outcome in which persons deserving of better treatment receive worse treatment or vice versa” (<i>Merk</i> ¶27)
Presumption against Tautology / Rule of Effectivity (scheme, legislative intent)	Each word should be assumed to have a unique meaning (i.e. no word should be considered to be superfluous or redundant.)	<i>Rizzo, Sharpe, Riddell, McDiarmid</i>	<i>Rizzo</i> : “Transitional” Provision (S.40a) must have been necessary to outline an exemption, not restate an existing state

<p><u>Usage:</u> (1) resolve ambiguity (2) determine scope of meaning</p>	<p><u>Counter:</u> Words are used out of an abundance of caution (<i>ex abundanti caution</i>) and overlap in meaning or coverage should be ignored.</p>		<p><i>Sharpe</i>: “explicit sexual conduct” (¶45, 3-27)</p> <p><i>Riddell</i>: the legislation would not writer “smuggles or clandestinely introduces” if smuggling had to be secretive</p> <p><i>McDiarmid</i>: “it is presumed that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain” (<i>McDiarmid</i> ¶36)</p>
<p>Presumption of Accessibility (legislative intent)</p>	<p>Legislation should be clear and certain to a lay person.</p>	<p><i>McIntosh</i> (majority), <i>Shaklee</i></p>	<p>“when freedom is at stake, clarity and certainty are of fundamental importance” (<i>Marcotte</i> quoted in <i>McIntosh</i> 3-16)</p> <p>“Given that citizens have to live with the <i>Criminal Code</i> ... [the legislation] must be interpreted according to its plain terms” (<i>Shaklee</i> ¶6, 3-17)</p>
<p>Presumption of Constitutionality (legislative intent)</p>	<p>Legislatures intend to conform with the Constitution</p>	<p><i>Sharpe</i></p>	<p>Given the choice between a constitutional interpretation and a unconstitutional one, adopt the constitutional interpretation</p>
<p>Presumption of Ordinary Meaning (legislative intent)</p>	<p>Legislature intended to use language in its ordinary and grammatical sense.</p> <p>Additionally, the legislature intended to be understood by target audience of statute.</p>	<p><i>Shaklee</i></p>	<p>Sullivan, 3-6: the ordinary meaning is given more preference over technical meanings.</p> <p>“Parliament is presumed to use words in their ordinary and common meaning ... Statutes are presumed to be written for the people they affect” (<i>Shaklee</i>, ¶6)</p>
<p>Presumption of Rationality (legislative intent)</p>	<p>Legislatures intend to write rational legislation.</p>		
<p>Presumption relating to Specific Areas of Law</p>	<p>(1) Individual rights (2) Property rights (3) Criminal Law (4) Human rights (5) Tax statutes</p>	<p><i>Bell ExpressVu</i>, <i>Jubran</i>, <i>Ludco</i>, <i>Imperial Oil</i></p>	<p>(2) presumption against interference; payment for expropriation (3) penal provisions</p>
<p>Presumption relating to Territorial Application</p>	<p>(1) Enactments apply to the entire territorial jurisdiction, unless specified otherwise. (2) Extra-territorial effect is not intended.</p>		
<p>Principle of Associated Meaning (<i>noscitur a sociis</i>)</p> <p><u>Usage:</u> (1) Read broad in light of narrower surrounding text</p>	<p>A word takes its meaning from the surrounding words.</p>	<p><i>McDiarmid</i></p>	<p>“the meaning of a term is revealed by its association with other terms: it is known by its associates” (<i>McDiarmid</i> ¶30)</p> <p>“Applying this principle may result in the scope of the broader term being limited to that of the narrow term” (<i>McDiarmid</i> ¶31)</p> <p><u>Limitation:</u> “As with all rules of interpretation, the principle function as an aid to ascertaining the intention of the legislature” (<i>McDiarmid</i> ¶34)</p>
<p>Uniformity of Expression</p>	<p>Words have the same meaning throughout the enactment.</p> <p>(See also <i>BCIA</i> S.12 and S.13)</p>	<p><i>Schwartz</i></p>	<p>“It is a well-established principle of interpretation that words used by Parliament are deemed to the same meaning throughout the same statute” (<i>Schwartz</i> 4-81)</p>

Temporal Application Problems in Statutory Interpretation			
Presumption/Problem	Definition	Cases	Example of application
Presumption against Retroactivity	<p>Strong presumption that enactments should not change the past legal effect of a past event.</p> <p><u>Rebuttal:</u> Typically requires clear legislative intention to apply the provision retroactivity (i.e. express legislative language or another very strong and clear indication.)</p>	<i>Rizzo, Gustavson, MacKenzie</i>	<p><i>Rizzo</i>: express legislative intention for act to apply retroactively (common with tax or other commercial money legislation to prevent opportunity to avoid compliance)</p> <p>“An amending enactment may provide that it shall be deemed to have come into force on a date prior to its enactment or it may provide that it is to be operative with respect to transactions occurring prior to its enactment” (<i>Gustavson</i> 5-25)</p> <p>“it does not reach into the past and declare that the law or the rights of parties as of an earlier date shall be taken to be something other than they were as of that earlier date” (<i>Gustavson</i> 5-25)</p>
Presumption against Retrospectivity	<p>A common law presumption exists to not interfere with the future legal effects of past events, but there is weak case law support (typically address as either vested rights, or immediate application).</p> <p><u>Three exceptions:</u> (1) procedural laws (2) beneficial laws (3) laws designed to protect the public</p>	<i>Bellechasse Hospital, Benner</i>	<p><i>Bellechasse Hospital</i>: new termination guidelines apply to existing contracts to achieve legislative purpose (5-11)</p> <p><i>Benner</i>: SCC distinguishes between event and “ongoing status” (birth) to find immediate application of <i>Charter</i> (as opposed to retroactive or retrospective application) (5-20)</p>
Presumption against interference with vested rights	<p>There is a common law presumption against the removal or diminishment of a protected expectation or interest without express indication.</p> <p><u>Counter:</u> Legislative role is to change or limit these rights.</p>	<i>Dikranian</i>	<p>Two criteria for vested rights to exist (from <i>Côté</i>): (1) legal (juridical) situation is “tangible, concrete and distinctive”; and (2) the situation has “materialized” (<i>Dikranian</i> 5-22)</p> <p>“No one has a vested right to the continuance of the law as it stood in the past; in tax law it is imperative that legislation conform to changing social needs and government policy” (<i>Gustavson</i> 5-32)</p>
Interference with accrued or accruing rights	<p>Only applies to (1) a right or obligation (2) accrued/ accruing under repealed legislation (<i>BCIA</i> S.35) or under replaced legislation (<i>BCIA</i> S.36)</p>	<i>Puskas, Scott</i>	<p><u>Two elements</u> (<i>Puskas</i>): (1) concrete, significant and substantive steps (2) certain and not conditional on future events</p> <p>“necessarily or inevitably, not possibly or even probably, arising in due course” (<i>Scott</i> 5-34)</p> <p>Appeal as substantive (not procedural) right (<i>Puskas</i>)</p>

Analysis of Subordinate Legislation (adapted from Crane handout, 2011)			
Component	Details	Cases	Example of application
Characterization of the Instrument (Law or policy)	Is the instrument a subordinate legislation (i.e. "regulation" in <i>BCIA</i> S.1) or administrative directive (policy)? Key: only law is enforceable by the courts	<i>Oldman River</i>	EARPGO was law (and therefore enforceable) because (1) use of "order" implied possibility of enforceable law; (2) did not look like a policy guideline (mandatory terms, etc.); (3) formal process that differs from policy documents; (4) term "guidelines" is neutral
Source of Authority (Enabling statute)	(1) identify the enabling provision in the enabling Act (must be explicit.) (2) If power granted, <i>BCIA</i> S.41(1) applies to supplement the scope of that power.	<i>Forest and Range Practices Act</i> (6-16)	Policy consideration: power to make subordinate legislation is significant, therefore must be granted expressly (Mullan article)
Compliance with Regulations Act (BCRA)	Per S.1 of <i>BCRA</i> , is the regulation subject to the provisions of <i>BCRA</i> ? Trigger: "regulation(s)", "prescribe(s)(d)", in Schedule		
Framework Legislation (broad principles in enabling statute)	The enabling statute identifies general principles and the regulations flesh out the details.	<i>De Guzman</i>	Difficult to argue inconsistency as principle-based, and act requires regulations to achieve purpose (<i>De Guzman</i>)
Challenge	Details	Cases	Example of application
Authorized by enabling statute	Enabling provision of enabling act must expressly confer the power to make regulations. See also <i>BCRA</i> S.1	<i>De Guzman</i>	"If there is a conflict between the express language of an enabling clause and a regulation purportedly made under it, the regulation may be found to be invalid" (<i>De Guzman</i> ¶126)
Consistency with enabling statute	Regulation must be (a) within the object or purpose of enabling act, and (b) otherwise consistent with the enabling act. Apply statutory interpretation tools (see <i>BCIA</i> S.1 "enactment" to determine applicability of <i>BCIA</i> .)	<i>De Guzman</i> , <i>Anti-Poverty</i>	"discriminatory": admin law term for ability to single out or exclude specific groups, as opposed to the presumption of uniformity or equal application of benefits (<i>Anti-Poverty</i>) Purposive interpretation to see whether residency requirement was authorized by the enabling statute: "regulatory power [must be] given by the statute, either expressly or by necessary implication" (<i>Anti-Poverty</i> 6-40) Used what was excluded in Act to see what could be excluded in regulation (<i>Anti-Poverty</i> 6-39)
Consistency with other legislation (horizontal and vertical coherence)	Consistent with other legislation (especially if similar subject matter.) Apply same principles as legislation.		DO NOT need to address constitutional (i.e. division of powers or <i>Charter</i>) grounds

BC Interpretation Act Provisions	
Section	Provisions (BCIA)
BCIA S.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.
BCIA S.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.
BCIA S.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.
BCIA S.9	The title and preamble of an enactment are part of it and are intended to assist in explaining its meaning and object.
BCIA S.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.
BCIA S.25	Calculation of time or age (4) “clear” and “at least” and “not less than” = first and last days excluded . (5) if these modifiers are not used, then first day is excluded and last day is included
BCIA S.28	(2) Gender specific terms include both genders and include corporations. (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.
BCIA S.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.
BCIA S.35	(1) If all or part of an enacted is repealed, the repeal does not (a) revive an enactment or thing not in force or existing immediately before the time when the repeal takes effect (c) affect a right or obligation acquired, accrued, accruing or incurred under the enactment so repealed
BCIA S.36	(1) If an enactment (the “former enactment”) is repealed and another enactment (the “new enactment”) is substituted for it, (b) every proceeding commenced under the former enactment must be continued under and in conformity with the new enactment so far as it may be done consistently with the new enactment (c) the procedure established by the new enactment must be followed as far as it can adapted in the recovery or enforcement of penalties and forfeitures incurred under the former enactment , in the enforcement of rights existing or accruing under the former enactment, and in a proceeding relating to matters that happened before the repeal. (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 reflecting 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
BCIA S.37	(1) The repeal of all or part of an enactment, or the repeal of an enactment and the substitution for it of another enactment, or the amendment of an enactment must not be construed to be or to involve either a declaration that the enactment was or was considered by the Legislature or other body or person who enacted it to have been previously in force, or a declaration about the previous state of the law. (2) The amendment of an enactment must not be construed to be or to involve a declaration that the law under the enactment prior to the amendment was or was considered by the Legislature or other body or person who enacted it to have been different from the law under the enactment as amended. (3) An amendment, consolidation, re-enactment or revision of an enactment must not be construed to be or to involve an adoption of the construction that has by judicial decision or otherwise been placed on the language used in the enactment or on similar language.
BCIA S.41	(1) If an enactment provides that the Lieutenant Governor in Council or any other person may make regulations, the enactment must be construed as empowering the Lieutenant Governor in Council or that other person, for the purpose of carrying out the enactment according to its intent, to (a) make regulations as are considered necessary and advisable , are ancillary to it, and are not inconsistent with it (2) A regulation made under the authority of an enactment has the force of law .

BC Interpretation Act Definitions (BCIA S.1)	
In this Act, or in an enactment:	
“enact”	includes to issue, make, establish or prescribe
“enactment”	means an Act or regulation or a portion of an Act or regulation
“regulation”	means a regulation, order, rule, form, tariff of costs or fees, proclamation, letters patent, commission, warrant, bylaw or other instrument enacted <ul style="list-style-type: none"> (a) in execution of a power conferred under an Act, or (b) by or under 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

BC Interpretation Act Definitions (BCIA S.29)	
“corporation”	means an incorporated association, company, society, municipality or other incorporated body, where and however incorporated, and includes a corporation sole other than Her Majesty or the Lieutenant Governor
“deliver”	with reference to a notice or other document, includes mail to or leave with a person, or deposit in a person's mail box or receptacle at the person's residence or place of business
“dispose”	means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things
“government agent”	means a person appointed under the <i>Public Service Act</i> as a government agent
“herein”	used in a section or part of an enactment must be construed as referring to the whole enactment and not to that section or part only
“holiday”	Sunday, Christmas Day, Good Friday, Easter Monday, Canada Day, Victoria Day, British Columbia Day, Labour Day, Remembrance Day, New Year's Day, December 26, and a day set by Parliament or the Legislature
“may”	is to be construed as permissive and empowering
“must”	is to be construed as an imperative
“now”	must be construed as referring to the time of commencement of the enactment containing the word
“obligation”	includes a duty and a liability
“person”	, and the personal or other legal representatives of a person to whom the context can apply includes a corporation, partnership or party according to law
“prescribed”	means prescribed by regulation
“record”	includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise
“shall”	is to be construed as imperative
“words”	includes figures, punctuation marks, and typographical, monetary and mathematical symbols

Other words defined in BCIA S.29

“acquire” | “affidavit” or “oath” | “bank” or “chartered bank” | “barrister” or “solicitor” or “barrister and solicitor” | “British Columbia land surveyor” | “Cascade Mountains” | “commencement” | “commercial paper” | “consolidated revenue fund” or “consolidate revenue” “correctional centre” | “county” | “Court of Appeal” | “credit union” | “Criminal Code” | “Deputy Provincial Secretary” | “electoral district” | “Executive Council” | “Gazette” | “government” | “Governor”, “Governor of Canada” or “Governor General” | “Governor in Council” or “Governor General in Council” | “Great Seal” | “Her Majesty” | “insurance company” | “justice” | “land” | “land title legislation” | “lawyer” | “Legislative Assembly” | “Legislature” | “Lieutenant Governor” | “Lieutenant Governor in Council” | “mail” | “medical practitioner” | “mentally disordered person” or “mentally ill person” or “person with a mental disorder” | “minister” | “minor” | “month” | “municipality” | “newspaper” | “peace officer” | “personal representative” | “proclamation” | “professional engineer” | “property” | “Province” | “province” | “Provincial Court” | “Provincial Treasurer” or “Treasurer” | “Railway Belt” | “regional district” | “registered mail” | “registrar” | “Registrar of Companies” | “Registrar of Titles” | “right” | “Rules of Court” | “rural area” | “savings institution” | “school district” | “security” | “Supreme Court” | “sureties” | “Surveyor General” | “trust company” | “will” | “writing”, “written” | “year” | “youth custody centre” |

BC Regulation Act Definition (S.1)

For the purposes of LLP, only need to know if triggered under these conditions (full act CP 6-28)

“regulation”	means a regulation, as defined in the <i>Interpretation Act</i> , <ul style="list-style-type: none"> (a) made under a power in an Act where the word “regulation”, “regulations”, “prescribe”, “prescribes”, or “prescribed” is used in conferring the power, or (b) identified in the Schedule but does not include
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	<p>(c) material adopted by reference</p> <p>(d) a regulation adopted by reference, and</p> <p>(e) a regulation, as defined in the <i>Interpretation Act</i>, of a corporation unless the regulation is identified in the Schedule</p>
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Problems in Statutory Interpretation	
Problem	Definition
Ambiguity	A word or phrase that has two different meanings and is used without clarification of which meaning is intended
Contextual Ambiguity	A word or phrase is not ambiguous in itself, but because of contextual factors (e.g. contradiction or incompatibility with another word or phrase in the legislation)
Diversity in experience	The use words or phrases within a profession in a different way from lay people and/or other professions.
Elliptical Communications	The drafter makes assumptions that gaps will be filled or factors will be taken for granted, and therefore omits clarifying information in the legislation.
Improper Bivalence	An assumption that the subject matter can be analysed as bivalent (true/false) while the experience of the audience may be one of gradation.
Miscommunication	A writer may unintentionally omit or include a word or phrase.
New Circumstances	Circumstances that were not contemplated at the time the word or phrase was used.
Over-Inclusiveness	The classification in the legislation may be too broad to achieve its aims. It may be unclear whether the rule should apply where the aims would not be promoted or would be jeopardized.
Syntactic Ambiguity	It is unclear within the context which terms are modified by an included word or phrase.
Under-Inclusiveness	The classification in the legislation may be insufficiently general to allow for the achievement of aims.
Vagueness	A general term is used under the assumption that the audience will use particular criteria to render them more specific.

Canadian Democracy and Statutory Interpretation Concepts from Brooks and Sullivan	
Concept	Definition
Rule of Law	"In a democracy such as ours, persons and their activities are governed not by the whim of rulers but by the rule of law. We know that the rule of law is legitimate because law is made by the elected representatives of the people, at the end of a democratic process" (Sullivan qtd. in 3-56)
Responsible Government	Requirement that the government have the confidence of the House (Parliament) (Brooks 1-3) Moderated by party discipline and rights of the legislature/obligations of the government.
Parliamentary Sovereignty	Brooks suggests that parliamentary supremacy is replaced by constitutional supremacy (1-5); perhaps more accurate to say that parliamentary supremacy with constitutional obligations
Judicial independence	"judges are to be free from any and all interference in their decision making" (Brooks qtd. in 1-6)
Key Assumptions in Statutory Interpretation	(1) plain meaning: "meaning inheres in legislative texts" (Sullivan qtd. in 3-55) (2) fidelity to legislative intent: legislative intent is "knowable to the courts" (Sullivan qtd. in 3-55)
Promise of Certainty	Plain meaning and fidelity to legislative intent secure a promise of certainty: "what you see is what you get" (Sullivan qtd. in 3-59); interpretation by judges constrained by these two principles (3-59)
Statutory Interpretation Techniques	"used to make choice look like choicelessness, to make discretion look like constraint, and to make judge-made law look like the intention of parliament" (Sullivan qtd. in 3-60)
How to Interpret a Text (and Pretend Not To)	(1) artful text selection (3-60); (2) elastic co-text (3-62); (3) shifting meaning game: dictionary meaning, literal meaning, intended meaning, audience-based meaning, applied meaning (3-64); (4) my "plain" meaning is the plain meaning (3-65); (5) inherent meaning = there is meaning in the text w/o interpretation (3-66)
How to Find Legislative Intent (w/o giving up freedom to interpret)	(1) presume that "legislative meaning is fixed once and for all at enactment" and can "discover that original meaning" (3-69); (2) more meaning games: connotation vs. denotation (3-69); (3) distinction between drafting error and legislative error (<i>McIntosh</i>) (3-71); (4) conflate legislative intent with own preferred meaning (3-73)

Canada Interpretation Act Provisions	
Section	Provisions (CIA)
CIA S.3	(1) Every provision of this Act applies, unless a contrary intention appears, to every enactment , whether enacted before or after the commencement of this Act.
CIA S.8	(1) Every enactment applies to the whole of Canada , unless a contrary intention is expressed in the enactment.
CIA S.8.1	Both the common law and the civil law are equally authoritative and recognized sources of the law of property and civil rights in Canada and, unless otherwise provided by law, if in interpreting an enactment it is necessary to refer to a province's rules, principles or concepts forming part of the law of property and civil rights, reference must be made to the rules, principles and concepts in force in the province at the time the enactment is being applied.
CIA S.10	The law shall be considered as always speaking , and where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to the enactment according to its true spirit, intent and meaning.
CIA S.11	The expression " shall " is to be construed as imperative and the expression " may " as permissive .
CIA S.12	Every enactment is deemed remedial , and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.
CIA S.13	The preamble of an enactment shall be read as a part of the enactment intended to assist in explaining its purport and object.
CIA S.14	Marginal notes and references to former enactments [...] form no part of the enactment, but are inserted for convenience of reference only.
CIA S.15	(1) Definitions or rules of interpretation in an enactment apply to all the provisions of the enactment , including the provisions that contain those definitions or rules of interpretation.
CIA S.27	Calculation of time or age (4) a number of clear days or "at least" = first and second events excluded . (5) if these modifiers are not used, then first event is excluded and second event is included
CIA S.33	(2) Words importing female persons include male persons and corporations and words importing male persons include female persons and corporations. (3) Where a word is defined, other parts of speech and grammatical forms of the same word or expression have corresponding meanings.
CIA S.43	(c) Where an enactment is repealed in whole or in part, the repeal does not affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment so repealed.
CIA S.44	Where an enactment, in this section called the "former enactment", is repealed and another enactment, in this section called the "new enactment", is substituted therefor, (c) every proceeding taken under the former enactment shall be taken up and continued under and in conformity with the new enactment in so far as it may be done consistently with the new enactment (e) when any punishment, penalty or forfeiture is reduced or mitigated by the new enactment, the punishment, penalty or forfeiture if imposed or adjudged after the repeal shall be reduced or mitigated accordingly . (f) except to the extent that the provisions of the new enactment are not in substance the same as those of the former enactment, the new enactment shall not be held to operate as new law , but shall be construed and have effect as a consolidation and as declaratory of the law as contained in the former enactment.
CIA S.45	(2) The amendment of an enactment shall not be deemed to be or to involve a declaration that the law under that enactment was or was considered by Parliament or other body or person by whom the enactment was enacted to have been different from the law as it is under the enactment as amended.

Canada Interpretation Act Definitions (CIA S.35)	
"contravene"	includes fail to comply with
"corporation"	does not include a partnership that is considered to be a separate legal entity under provincial law.
"government agent"	means a person appointed under the <i>Public Service Act</i> as a government agent
"herein"	used in any section shall be understood to relate to the whole enactment and not to that section only
"holiday"	Sunday, New Year's Day, Good Friday, Easter Monday, Christmas, day of celebration of birthday of reigning Sovereign, Victoria Day, Canada Day, Labour Day, Remembrance Day, any other appointed day
"oath" and	includes a solemn affirmation or declaration when the context applies to any person by whom and to any case in which

“sworn”	a solemn affirmation or declaration may be made instead of an oath, and in the same cases the expression “sworn” includes the expression “affirmed” or “declared”
“person”	, or any word or expression descriptive of a person, includes a corporation
“province”	means a province of Canada, and includes Yukon, the Northwest Territories and Nunavut
“territory”	means Yukon, the Northwest Territories and Nunavut
“writing”	, or any term of like import, includes words printed, typewritten, painted, engraved, lithographed, photographed or represented or reproduced by any mode of representing or reproducing words in visible form
Other words defined in CIA S.35	
“Act” “bank” “British Commonwealth” or “British Commonwealth of Nations” “broadcasting” “Canada” “Canadian waters” “Clerk of the Privy Council” “Clerk of the Queen’s Privy Council” “commencement” “Commonwealth” or “Commonwealth of Nations” “Commonwealth and Dependent Territories” “contiguous zone” “continental shelf” “county” “diplomatic or consular officer” “exclusive economic zone” “Governor”, “Governor General” or “Governor of Canada” “Governor General in Council” or “Governor in Council” “Great Seal” “Her Majesty”, “His Majesty”, “the Queen”, “the King” or “the Crown” “Her Majesty’s Realms and Territories” “internal waters” “legislative assembly”, “legislative council” or “legislature” “lieutenant governor” “lieutenant governor in council” “local time” “military” “month” “Parliament” “proclamation” “radio” or “radio communication” “reserve force” “security” and “sureties” “standard time” “statutory declaration” “superior court” “telecommunications” “territorial sea” “two justices” “United Kingdom” “United States”]	

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