

Statute Revision for the Future — a path to coherence recovery

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Janet Erasmus

Legislative Counsel
Ministry of Attorney General
British Columbia

The views expressed in these notes are those of the author only

Statute revisions for the future

My first CIAJ presentation was 20 years back (1998) and it was about BC's then-recent RSBC 1996 statute revision of our entire statute book. 20 years later I am here to talk about what I consider to be the best available tool for recovering coherence in our legislation. And, yes, it is about statute revision.

I will start this presentation by going back to that 1996 revision.

1992 – planning for the future

Work on the revision began in 1990 and was completed in early 1997 – over 7 years of preparation & ending up with 15 volumes of revised legislation.

For the 1996 revision, our Office of Legislative Counsel proposed – and government agreed to present – a new *Statute Revision Act*. Many of the new Act's provisions, including the most important powers (from a revision power perspective), go back to the *Revised Statutes Act, 1923*.

Along with the needed powers of numbering, arrangement and consistent terminology, that 1923 Act included the power to --

- make such minor amendments as are necessary
 - to bring out more clearly what is considered to have been the intention of the Legislature,
 - to reconcile seemingly inconsistent enactments, or
 - to correct clerical or typographical errors.

[This was the Act established for the first revision (1924) prepared by Legislative Counsel. Our Office has been the reviser since that time]

Revised Statutes Act, 1923

Alterations permissible

4. In carrying out his work under this Act the Legislative Counsel ...
[yes, there was a missing comma] ...
 - may alter [the Statutes] numbering, and the arrangement of the different sections thereof where considered necessary or advisable, and
 - may make such alterations in their language as are requisite in order to preserve a uniform mode of expression, and
 - may make such minor amendments as are necessary
 - to bring out more clearly what is considered to have been the intention of the Legislature,
 - or to reconcile seemingly inconsistent enactments, or
 - to correct clerical or typographical errors, and ...

These powers were continued in the 1992 *Statute Revision Act* but, thinking ahead, that 1992 Act included authority for statute revision of individual Acts ("limited revisions" in the language of that Act).



Statutes of British Columbia
November 2015

This picture of our legislation library, with the revisions identified, is included in the materials we provide to the Select Standing Committee of the Legislative Assembly assigned to review our proposed revisions.

It is quite calming for Assembly Members who have never before considered a statute revision to see that this is not a new practice.

But I expect that this is not-at-all comforting for my audience today – The rate of legislative amendment and the introduction of new legislation has massively sped up over the years. (That bottom row is a fine demonstration of the digital era and its expectation of instant legislation delivery.)

It turns out those 1992 revision powers were a good idea – it seems almost certain that we will never again do a general revision. BC is now using that limited revision authority to deal with the growing loss of coherence in our Acts.

2012 Insurance Act – first limited revision of a Public Act

Our first Public Act revision was the *Insurance Act*, now RSBC 2012, c. 1.

This first limited revision had an interesting history. BC and Alberta were working together to establish parallel general insurance legislation and Legislative Counsel from both provinces were part of the team.

The changes for BC were made by a 2009 Act making major amendments – repeals, replacements and many new decimal additions. Enacted in 2009, but not to be brought into force until 2012.

We were able to prepare a statute revision of the as-it-would-be-amended Act, with the Act amendments and the Act revision coming into force on the same day. On July 1, 2012, the public had a good-as-new *Insurance Act*.

Continuing limited revision program

The B.C. Office of Legislative Counsel is now developing a system for ongoing delivery of limited revisions. This is focussed on Acts

- that are most in need – that is, amendments over time have much reduced coherence
- where there will be good benefit to the public, to the authority administering the Act or, as is often the case, both.

My experience with the 1996 general revision has been very helpful for this.

Using the limited revision authority, we delivered single revisions in 2015 and 2016, starting with our 469 page *Local Government Act*.

This year we are presenting another major Act – the *Workers Compensation Act* – much shorter at 191 pages, but with text that has not changed in 100 years, along with 3 smaller Acts.

Starting with major Acts was a deliberate part of our planning for the future – it has allowed us to identify and address issues that had not been specifically considered back in the 1992 *Statute Revision Act*.

- e.g. dealing with not-in-force provisions of the revised Act
- e.g. cross-reference changes to regulations

Our Office of Legislative Counsel goal is to continue delivering these limited revisions (I find myself using the “targeted revision” term) as resources permit. My personal goal is to have a *Revision Process Manual* in place that will allow that continuation into a long and satisfying future beyond my retirement.

Developing our limited revision process

Ministry contact

The Office of Legislative Counsel started the continuing limited revision process by identifying appropriate “candidate” Acts. There was then direct contact between the Legislative Counsel who was taking on the project and policy staff with the applicable ministry.

If there was a positive response from policy staff, Chief Legislative Counsel contacted the Deputy Minister to indicate our interest in preparing the contemplated revision.

We are still doing this, but are also starting to have ministry “expressions of interest”.

Revision team

The revision team for a project will be the lead Legislative Counsel reviser, a second reviser, our Revision Coordinator, at least one Ministry policy analyst and a Legal Services Branch advising lawyer for the ministry.

It seems that teams will be getting larger – ministries are discovering additional benefits to participation – for large Acts, more staff involved in the revision will result in analysts having an appreciation of the entire scope of the Act being revised.

Delivery to the Legislative Assembly

The completed revision is delivered to the Clerk of the Legislative Assembly for review by an assigned Select Standing Committee of the Assembly. In addition to the completed revision, we provide

- a “redline” (track changes) version indicating the text changes being made
- section concordances of where-did-it-go and where-did-it-come-from
- accompanying general statute revision information and short notes respecting the Acts being revised. (This information includes our library picture.)

It has been an interesting process development. Committee questions are leading us to develop further explanatory materials. And we have a new aspect -- the Legislative Assembly website is now posting proposed revisions, in their final format and in “redline” format, along with the concordances.

Revision approval and enactment

If the Committee approves the revision, it will make a recommendation to the Lieutenant Governor for the revision to be brought into force. The LG will then act on this recommendation by signing the official copy of the revised Act. This will be returned to the Clerk for deposit. With that deposit we now have a revised Act that will be assigned an official RSBC citation. It will be brought into force by regulation.

What can be done in a statute revision

Renumbering and reorganization are at the top of our revision techniques list.

Renumbering

The renumbering process is obvious – start at section 1 and move forward. If there are not-in-force amendments to the Act being revised, these amendments will be replaced by a Revision Schedule of amendments to the revised Act, with their section numbers being given the usual decimal placement approach.

Reorganization

Reorganization depends on the coherency state of the Act being revised. Examples are in order here.

Local Government Act

For this revision, most of the changes were about reorganization and specifically about regional district legislation. For BC, these are the local governments for large regions of the province. They include appointed representatives of municipalities within their district and elected representatives of rural areas.

The *Local Government Act* used to cover municipalities (many Parts of the Act) and regional districts (a single Part, with many regional district powers and responsibilities provided by making municipal provisions apply). The structure changed with enactment of the 2003 *Community Charter*, which replaced the previous municipal provisions of the *Local Government Act*.

Regional districts got some of the new powers, accomplished by making provisions of the *Community Charter* apply. The organization problem was with the former municipal provisions that were to continue application. The municipal application statements were repealed and, instead, the referenced provisions were amended to directly apply to regional districts. The result was that regional district provisions were scattered over 11 Parts of the Act, with related provisions in separate Parts. Quite the coherency loss.

Workers Compensation Act

Originally the WCA was a two-Part Act that only dealt with compensation related to worker injury or death. Part 1 dealt with that compensation. Part 2 was four short sections about legal liability of employers that were outside the Part 1 scheme.

In 1998, the Act was amended by adding Part 3, establishing Workers Compensation Board responsibility for occupational health and safety.

The Board does not use its “Workers Compensation Board” legal name on its website -- it is now publically known as WorkSafe BC – emphasizing prevention of injury over compensation for injuries that were not prevented. The revision will be placing the Occupational Health and Safety Part ahead of the compensation rules.

Splitting long sections

Local Government Act

For this revision, it was the *Planning and Land Use Management* Part that had major section splitting. An example is the former section 911 – it split into 7 sections and became what is now all but one provision of Division 14 of Part 14:

PART 14 – PLANNING AND LAND USE MANAGEMENT

RS2015 section		Pre-RS2015 section
Division 14 – Non-conforming Use and Other Continuations		
528	Non-conforming uses: authority to continue use	911 (1) to (4)
529	Non-conforming structures: restrictions on maintenance, extension and alteration	911 (9), (10)
530	Restrictions on increasing non-conforming use of land	911 (6)
531	Restrictions on alteration or addition to building or other structure	911 (5), (11)[pt]
532	Restrictions on repair or reconstruction of non-conforming structures	911 (8), (8.1), (11)[pt]
533	Non-conforming uses in relation to terminated land use contracts	911 (12) to (14)
534	Change in ownership, tenants or occupants in relation to use	911 (7)
535	Non-conforming use and subdivision in relation to expropriation of land	912

Workers Compensation Act

The example here is the current section 17. This is the section that establishes compensation payable to dependants in the case of a worker's death.

It goes on for 6 dense pages of many subsections. And a reader cannot be sure of the one applicable to their situation without reading the full set.

The statute revision splits this single section into a Division of 24 sections – yes, each of those sections has a separate rule for different circumstances.

Each of them opens with an application statement:

- # (1) This section applies if a deceased worker leaves a dependent spouse and one or more child dependants.

And each one has a headnote that will allow readers to find the rule that applies to their situation by looking at the table of contents. (table included on the next page)

Splitting a very long section – section 17 of the *Workers Compensation Act*

<i>revision</i>	Division 5 – Compensation in Relation to Death of Worker	<i>pre-revision</i>
165	Definitions and other interpretation rules	17 (1), (7), (8)
166	Payment towards funeral and related expenses	17 (2), (2.1)
167	Lump sum payment to dependent spouse or foster parent	17 (13)
168	Compensation payable to dependants of deceased worker	17 (3)[pt], 19.1[pt]
169	Dependent spouse who is 50 years of age or older or is incapable of earning, no dependent children	17 (3) (c)
170	Dependent spouse who is under 50 years of age and not incapable of earning, no dependent children	17 (3) (d)
171	Dependent spouse and one or more dependent children	17 (3) (a), (b), (g)[pt]
172	One or more dependent children but no dependent spouse	17 (3) (f), (g)[pt]
173	Compensation to dependent parents in addition to spouse or children	17 (3) (h) (ii)
174	No dependent spouse or child: compensation to other dependants	17 (3) (h) (i)
175	Compensation to persons other than dependants	17 (3) (i)
176	Compensation to foster parent and dependent children	17 (3) (j)
177	Apportionment between dependants	17 (14)
178	Dependent spouse living apart from worker at the date of death	17 (9), (10)
179	Restriction on compensation to spouse living in marriage-like relationship	17 (11)
180	Worker leaves more than one dependent spouse	17 (12)
181	Change in circumstances: dependent spouse and dependent children – reduction in number of dependent children	17 (4)[pt]
182	Change in circumstances: spouse ceases to have dependent children	17 (4)[pt]
183	Change in circumstances: spouse and dependent children – spouse dies	17 (5)
184	Change in circumstances: only dependent children – reduction in number of dependent children	17 (4)[pt]
185	Change in circumstances: dependent spouse ceases to be incapable of earning	17 (4)[pt]
186	Compensation in relation to the death of more than one worker	17 (16) to (16.2)
187	Board authority in relation to dependent spouse who has impairment of earning capacity	17 (6)
188	Proof of dependant status	20
189	Board authority in relation to matters not otherwise dealt with	17 (17)

If you are interested in seeing more about this *Workers Compensation Act* revision (the reorganization and section splitting is massive – with an exception being the more recent Occupational Health and Safety Part, which has very few text changes and only 1 section split) – you can go to our Legislative Assembly website, look for the Committee with the long name to find the “redline” version of the revised *Workers Compensation Act*.

That long name: The Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills.

A personal note – What I wish was in the *Statute Revision Act*

I would very much like to see a general authority in the SRA to allow a single Lieutenant Governor in Council regulation to do this for revisions. These regulations amendments could be included in the regulation bringing the revision into force -- a very efficient single package.

- **Act amendment:** Section 2 (1) (f) of the *Statute Revision Act* provides authority for a revision to include consequential amendments to other Acts. Almost all of these will be cross-reference updates.
- **Reg amendment - a missing authority:** But there is currently no parallel authority for updating references in regulations under the revised Act or regulations under other Acts.

A few other statute revision considerations and techniques

time of bringing into force

General revisions come into force as a package. Limited revision allows for a targeted time of coming into force.

This targeted future time can allow the Office of Legislative Counsel to prepare regulation amendments for cross-reference updates that can be ready to be brought into force when the Act revision comes into force. Indeed, for regulations made by the Lieutenant Governor in Council, we can combine these regulation amendments with the Order in Council that will bring the revision into force.

Having sufficient time for transition to the revised Act can be important. For example, we were advised fairly early in the process of the *Workers Compensation Act* revision that many cross-reference changes would be needed for WorkSafe BC policies. My understanding is that the same need for transition time may well apply to employer manuals relating to occupational health and safety matters.

renumbering – dealing with section numbers that are getting too long

This is the most obvious technique and, for revisions of newer Acts, renumbering may be very little other than the only changes that are needed. But eliminating the gaps and decimals will make the Act more readable. And it will provide additional room for future amendments.

We have another issue in BC that may be making this room more important than we might have imagined. It seems that our current legislation template does not allow section numbers that use more than 5 digits. We may already be at the limit with some legislation.

“application” statement as subsection (1)

This is a readability technique that separates the circumstances of application from the consequences of application, allowing readers to identify relevant provisions much more quickly.

The *Workers Compensation Act* section 17 splits are structured so that each of the 24 revision sections open with an “application” statement.

As an example: current opening of subsection 3 (d):

- (3) where the dependant, at the date of death of the worker, is a surviving spouse who is not an invalid and is under the age of 50 years, and there are no dependent children,
.....

And the revised opening of subsection 3 (d):

- (1) This section applies if
 - (a) a deceased worker leaves a dependent spouse but does not leave any child dependants, and
 - (b) at the date of the worker’s death, the dependent spouse
 - (i) was under 50 years of age, and
 - (ii) did not have a physical or mental disability that resulted in the spouse being incapable of earning.

adding cross-reference descriptors

Section 11 (2) of the B.C. *Interpretation Act* allows us to provide better information in relation to cross-references. These “cross-reference descriptors” (as they are known in our office) are bracketed italic notes that explain the nature of the provision being referenced. They are added editorially as we do for headnotes.

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.
- (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.

These were a post-RSBC 1996 addition. The use of these descriptors for new legislation is growing. Statute revision provides an opportunity for older Acts to adopting the descriptors.

Example of cross-reference descriptors from the *Workers Compensation Act* revision:

Exclusive jurisdiction of Board in relation to compensation provisions

- 122** (1) Subject to sections 288 and 289 [*appeals to appeal tribunal*], the Board has exclusive jurisdiction to inquire into, hear and determine
- (3) Subsection (1) does not restrict the Board's authority under the following provisions:
- (a) section 123 [*Board authority to reconsider previous decisions*];
 - (b) section 124 [*Board authority to set aside decision or order*];
 - (c) section 125 [*Board authority to reopen matter: recurrence of injury or significant change in medical condition*];
 - (d) section 152 (2) [*Board reconsideration relating to occupational disease*].

These cross-reference descriptors can be particularly helpful were there are cross references to a number of sections in another Act.

The old approach:

Application of the *Administrative Tribunals Act*

- # Sections 11, 13 to 15, 28 to 32, 35, 37, 38 and 42 of the *Administrative Tribunals Act* apply to the appeal tribunal.

With descriptors

Application of the *Administrative Tribunals Act*

- # The following sections of the *Administrative Tribunals Act* apply to the appeal tribunal:
- (a) section 11 [*general power to make practice and procedure rules*];
 - (b) section 13 [*practice directives tribunal may make*];
 - (c) section 14 [*general power to make orders*];
 - (d) section 15 [*interim orders*];
 - (e) section 28 [*facilitated settlement*];
 - (f) section 29 [*disclosure protection*];
 - (g) section 30 [*tribunal duties*];
 - (h) section 31 [*summary dismissal*];
 - (i) section 32 [*representation of parties to an application*];
 - (j) section 35 (1) to (3) [*recording tribunal proceedings*];
 - (k) section 37 [*applications involving similar questions*];
 - (l) section 38 [*examination of witnesses*];
 - (m) section 42 [*discretion to receive evidence in confidence*].

“list format” – readability and easier amendment

The section references on the descriptors example above are in what we refer to as “list format”. These are provisions that have an opening statement indicating the application of the listed items below.

Readers will immediately know whether the items are an “all of the following” list rather than a “any of the following” list.

Bonus: it is easier to add new additions to a provision that uses the list format.

overrides that create exceptions to general rules: “Subject to... ”

These overrides are common in legislation. Going back in time, they would often use “notwithstanding” terminology.

B.C. replaced “notwithstanding” in our 1996 general revision, with our revision guide offering alternatives, with different options requiring different locations:

“Subject to...” override pointer in the general rule

“Despite...” override in exception rule

“As an exception to...” override in exception rule.

For the 1996 revision, “as an exception to” would be my usual replacement.

Now I use and recommend the “Subject to” approach if the override is not in the same section as the general rule.

The reason for this recommendation — having the override in another section may leave readers thinking that they have all the information they need by looking at the general section. This is a result quite contrary to our “plain language” commitment for people being able to “find what they need”.

Using the “Subject to” approach gives readers a heads-up notice that should have them checking whether the override section has implications for their situation. (And, by way of extra assistance, having a cross-reference descriptor for the override section can further assist readers about application of the override.)

Unofficial consolidation

STATUTE REVISION ACT
RSBC 1996, c. 440

- 1 Preparation of revision
- 2 Revision powers
- 3 Revision to be submitted to committee of Legislative Assembly
- 4 Approved revision to be deposited as official copy
- 5 How revision comes into force
- 6 Title and publication of revision
- 7 Repeal of previous version of statutes
- 8 Legal effect of revision
- 9 How references are to be interpreted
- 10 Interim corrections to revision
- 11 *Interpretation Act* applies
- 12 Statute corrections generally

Preparation of revision

- 1 The Chief Legislative Counsel may prepare
 - (a) a general revision consisting of the public Acts enacted before a date chosen by the Chief Legislative Counsel together with those other Acts considered advisable, or
 - (b) a limited revision consisting of an Act or a portion of an Act.

Revision powers

- 2 (1) In preparing a revision, the Chief Legislative Counsel may do any or all of the following:
 - (a) combine Acts or provisions of them;
 - (a.1) separate an Act or a provision of an Act into 2 or more Acts or provisions;
 - (b) alter the numbering and the arrangement of Acts or provisions;
 - (c) rename an Act or portion of an Act;
 - (d) alter language and punctuation to achieve a clear, consistent and gender neutral style;
 - (e) make minor amendments to clarify the intent of the Legislature, to reconcile inconsistent provisions or to correct grammatical or typographical errors;
 - (f) for a limited revision, make minor amendments to other Acts required to reconcile them with a revised Act as if the minor amendments were consequential amendments to the revised Act;
 - (g) include in the revision those Acts or provisions that, although enacted, have not been brought into force, and indicate how they are to come into force;
 - (h) omit Acts or provisions that are spent, are repealed or have no legal effect;
 - (i) omit Acts or provisions that do not apply throughout British Columbia;
 - (j) omit forms or schedules from an Act.
- (2) If a form or schedule is omitted under subsection (1) (j), a power to prescribe the form or schedule by regulation may be added to the appropriate Act.

- (3) A form or schedule omitted from a revision is repealed on the coming into force of the revision.
- (4) A regulation prescribing a form or schedule may be enacted before a revision comes into force but the regulation has no effect until the revision comes into force.

Revision to be submitted to committee of Legislative Assembly

- 3 The Chief Legislative Counsel must give a revision to the Clerk of the Legislative Assembly for presentation to a select standing committee of the Legislative Assembly designated by the Legislative Assembly to examine the revision.

Approved revision to be deposited as official copy

- 4
 - (1) If the select standing committee approves a revision and recommends that it be brought into force, the Lieutenant Governor may direct that a copy of the revision be deposited with the Clerk of the Legislative Assembly as the official copy of the revision.
 - (2) The official copy must be signed by the Lieutenant Governor and countersigned by the Clerk of the Legislative Assembly.
 - (3) The Clerk of the Legislative Assembly is responsible for keeping the official copy of a revision deposited under this section.

How revision comes into force

- 5
 - (1) The Lieutenant Governor in Council may specify by regulation when a revision deposited under section 4 (1) comes into force.
 - (2) A revision comes into force for all purposes as if it were expressly included in and enacted by an Act.
 - (3) A provision in a supplement to a revision comes into force as provided in the supplement.
 - (3.1) If an Act or a provision is included in a revision under section 2 (1) (g), the Act or provision
 - (a) comes into force for the purposes of the revision in accordance with the regulation under subsection (1) of this section, and
 - (b) comes into force as law as indicated in the revision.
 - (4) From the time a revision comes into force, the official copy deposited with the Clerk of the Legislative Assembly must be considered to be the original of the statutes of British Columbia replaced by the revision.
 - (5) [Repealed 2013-12-39.]

Title and publication of revision

- 6
 - (1) A general revision
 - (a) may be published with the title Revised Statutes of British Columbia, and
 - (b) may include in the title the year of the revision as specified by the Chief Legislative Counsel.
 - (2) A limited revision
 - (a) may be given a chapter number as if it were enacted by the Legislature in the year in which the official copy of the limited revision is deposited with the Clerk of the Legislative Assembly, and
 - (b) may be published as a Revised Statute of British Columbia for that year in the volume of Acts for that year.

Repeal of previous version of statutes

- 7 (1) When a general revision comes into force,
 - (a) the existing Revised Statutes of British Columbia, and
 - (b) all other Acts and provisions that are included in the general revision but were not included in the existing Revised Statutes of British Columbia are repealed to the extent that they are incorporated in the general revision.
- (2) When a limited revision comes into force, the Acts or provisions it replaces are repealed to the extent that they are incorporated in the limited revision.

Legal effect of revision

- 8 (1) A revision does not operate as new law but has effect and must be interpreted as a consolidation of the law contained in the Acts and provisions replaced by the revision.
- (2) If a revised provision has the same effect as a provision replaced by the revision, the revised provision
 - (a) operates retrospectively as well as prospectively, and
 - (b) is deemed to have been enacted and to have come into force on the day on which the provision replaced by the revision came into force.
- (3) If a revised provision does not have the same effect as a provision replaced by the revision,
 - (a) the provision replaced by the revision governs all transactions, matters and things before the revision comes into force, and
 - (b) the revised provision governs all transactions, matters and things after the revision comes into force.

How references are to be interpreted

- 9 (1) A reference in any of the following to an Act or provision included in a revision must be interpreted, in relation to any transaction, matter or thing after the coming into force of the revision, as a reference to the revised Act or provision having the same effect as the Act or provision replaced by the revision:
 - (a) an Act or provision that was enacted before the coming into force of the revision and that is not included in the revision;
 - (b) a regulation or other instrument enacted before the coming into force of the revision;
 - (c) a document existing before the coming into force of the revision.
- (2) A reference in any of the enactments or documents referred to in subsection (1) (a) to (c) to the Revised Statutes of British Columbia must be interpreted, in relation to any transaction, matter or thing after the coming into force of a general revision, as a reference to the new Revised Statutes of British Columbia.

Interim corrections to revision

- 10 (1) The Lieutenant Governor in Council may make regulations to correct, in a manner consistent with the powers of revision in this Act, any error in a revision.
- (2) A regulation under this section may be made retroactive to the coming into force of the revision.
- (3) Unless confirmed by the Legislature, corrections made by a regulation under this section cease to have effect after the last day of the next session of the Legislative Assembly after the regulation is made.

Interpretation Act applies

11 The *Interpretation Act* applies to a revision as it applies to other enactments.

Statute corrections generally

- 12** (1) The Lieutenant Governor in Council may make regulations to correct the following in any Act:
- (a) errors of form;
 - (b) errors of style;
 - (c) numbering errors;
 - (d) typographical errors;
 - (e) reference errors.