

**CANADIAN INSTITUTE FOR  
THE ADMINISTRATION OF JUSTICE**

**National Conference**  
September 9 and 10, 2004

**Legislative Drafting in Perspective**

**TIPS AND TECHNIQUES  
FOR DRAFTING COMPLEX LAW**

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# INTRODUCTION

## *Who we are:*

**Janet Erasmus** has been a drafter in the British Columbia Office of Legislative Counsel for the past 16 years, with one break in 2003 for a work exchange with a drafter from the Australian Office of Parliamentary Counsel. She is currently on the board of the Commonwealth Association of Legislative Counsel.

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## *What this paper is about:*

We live in a complex world and the laws required to address its issues are often likewise complex—even when a general rule is straightforward, it may be qualified by conditions, exceptions, requirements, alternatives and more.

Effective communication of complex law is a real challenge for drafters. The following are some tips and techniques for dealing with that challenge offered by two drafters with drafting experience in Canada and overseas.

As you read our ideas, you will see common themes:

- create a framework
- tell readers what is coming
- tell them how things fit together
- give them context

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# TIPS AND TECHNIQUES FOR DRAFTING COMPLEX LAW

## I DRAFTING INSTRUCTIONS

Thirty years ago, Elmer Driedger wrote in the preface to *The Composition of Legislation* (at p. xv)

A statute is the formal expression of a legislative policy, and it follows that before a statute can be drafted the policy sought to be implemented by it must be determined.

His statement is as true now as it was then, but these days drafting instructions seem to arrive in a myriad of ways other than the now “old-fashioned” written instructions:

- from charts and diagrams
- from “high-level” policy documents
- from gleaning intentions while sitting in on concept level discussions and other meetings.

In the absence of good instructions, a good deal of a drafter’s time is spent figuring out and then sorting out exactly what the policy is, or else settling on the best questions to ask to elicit the policy.

Good instructions will be more than a simple statement of the intended general rule and its purpose. They will take the complexity of proposed legislation into account, organizing the elements (the conditions, exceptions, variations), indicating how they are related and explaining why the complexity is needed. In other words, they will be complex themselves.

Leaving aside projects that involve the drafter in helping to create policy (but recognizing that every element of drafting involves some form of micro-policy decision), we offer the following suggestions from our time chipping away at the coal face of complex drafting instructions.

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## II WAYS OF ORGANIZING LEGISLATION

All drafters have their own unique way of making meaning. We draw on life experience and professional experience. Here are a few ways of sorting complex drafting instructions into a coherent organization and then into coherent legislative statements.

### *A basic framework for the legislation*

After gaining a sense of the scope, purpose and most common readers of the legislation, settle on the overall organization, keeping in mind that

- if the legislation is a series of procedures, prefer a chronological order
- if different rules apply to different groups of readers consider a “topic by topic” organization.

Try picturing yourself as each of your audiences and think about what organization of provisions would be most helpful for each group of readers.

For those drafters who like to get a sense of the whole picture before moving to deal with detail, mapping out the overall skeleton of the legislation can be helpful, perhaps by a series of topic headings, or by creating preliminary “Parts”. Once the skeleton is structured, even if it is missing some bones, there is a place to put issues, make notes and comments, and as the policy becomes clearer in legislative terms, to start the drafting.

### *Logic trees, tables, charts and scissors*

An excellent way of both checking your own logic, working through a legislative scheme and ensuring instructing officers direct their minds to gaps and policy questions, is to create a *logic tree*. The logic tree does not need to be enacted, although on occasion they are.

If one is considering including a logic tree in the enactment, a particularly helpful form (from the perspective of improving readability) is an *algorithm*. An algorithm provides a set of procedures to determine the answer to an issue. They are usually in the form of a series of questions, with yes or no answers establishing the path of the determination. An example is provided on the following page.

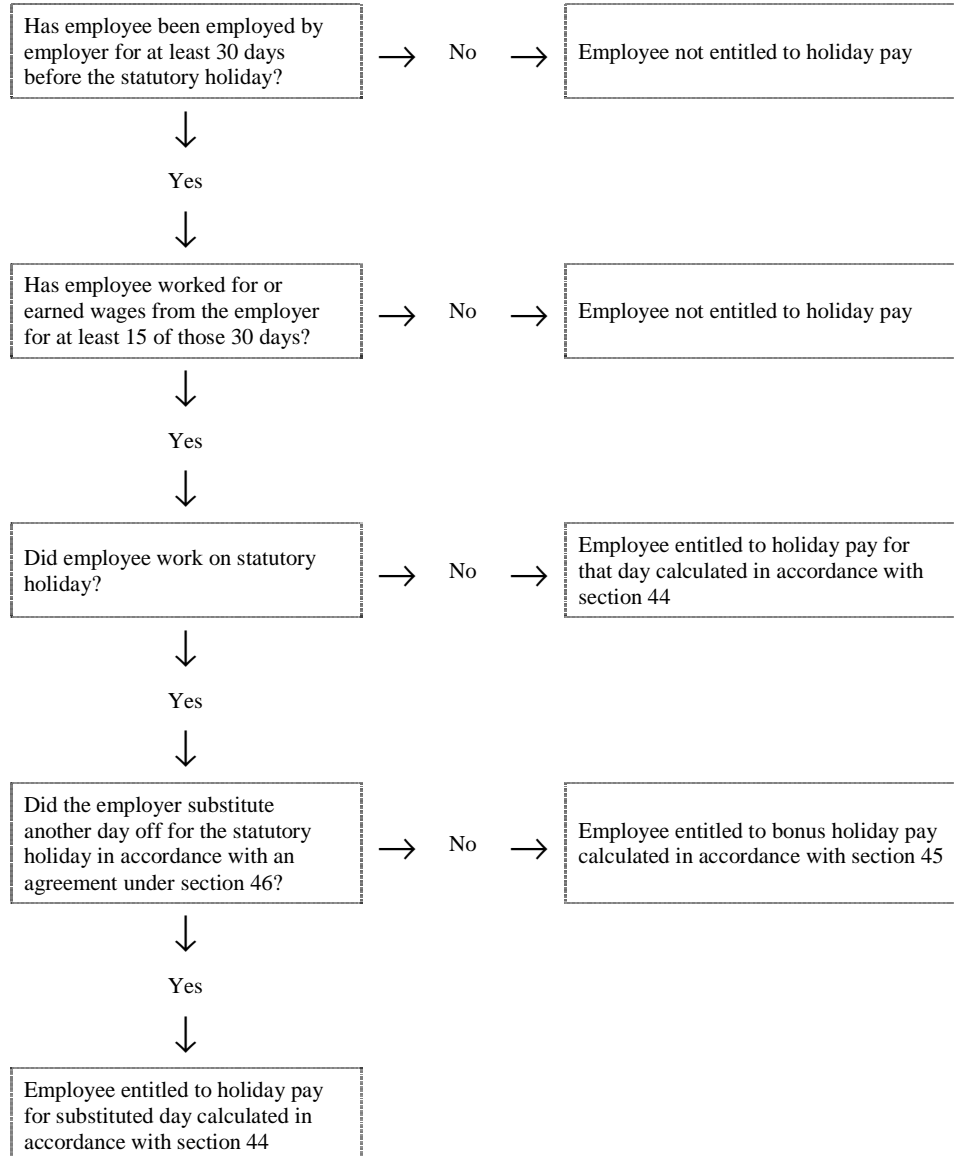
*Tables and charts* are another form of working through complex issues. For, example, the Australian Office of Parliamentary Counsel uses tables (that they call “blueprints”) for the development of almost all legislation. Columns will usually have headers like: Issue, Instructions, Questions. In many cases, actual Bill drafting will not commence until the Instructions column is sufficiently complete that it reads much like legislation.

And *scissors* still have a role in drafting. Having difficulty working through how sections relate to one another? Cut up the draft, spread out the sections on a large table, and work on the jigsaw puzzle. (But beware windblasts from doors or windows being opened at critical moments . . .)

Example of a logic tree in the form of an algorithm:

### Statutory Holiday Pay

- 43 An employer must pay an employee holiday pay for a statutory holiday in accordance with the following:



### ***Purpose statements***

It can sometimes be helpful to create, at least for drafting purposes, a purpose statement for a particular part of the draft: what, fundamentally, is the legislation in this part intended to do? This kind of statement can be a useful “drafting touchstone”, helping the draft to stay on track, or requiring the statement to be modified.

After the drafting is advanced, thought can be given to including the statement as a substantive provision, or not.

### ***WHIB – a sorting hat for complex instructions***

This sorting hat is offered as a structured approach to help penetrate particularly difficult or overly vague drafting instructions.

<b>W</b>	<i>Who</i>	Who is the main subject of the provisions?
	<i>What</i>	What is the general rule?
	<i>Where</i>	Are there location components?
	<i>When</i>	Are there time components?
	<i>Why</i>	Is there an express purpose component?
<b>H</b>	<i>How</i>	Are there procedure rules?
	<i>How much</i>	Are there monetary value components?
<b>I</b>	<i>If</i>	Are there restrictions on the application of a rule?
	<i>If not</i>	What are the consequences for non-compliance?
<b>B</b>	<i>But</i>	Are there exceptions to the rules?

(This is also a good check list for everything from identifying outstanding issues to designing community theatre posters to planning school field trips.)

### ***Organizing at the section level***

For each section, identify the key general rule and conceptually classify the other rules (for which the WHIB list can be helpful).

State the general rule as early as possible in a section.

The general rule should be separated from the associated rules unless all are very straightforward.

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One effective model for organizing the most common rule forms is this:

- Application: If (a), (b) or (c)/A person who (a), (b) or (c) ...
- General rule: A person must/may ....
- Restrictions: The authority under subsection (1) may only be exercised after ...
- Exceptions: As an exception to subsection (1) ....  
Despite subsection (1), ....  
Subsection (#) [*general rule*] does not apply to/if ....
- Process rules: Where, When, How, How Much

A consistent approach to organization throughout the draft provides a framework for incorporating refinements to the draft as they are received.



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### III TELL THE READER HOW IT FITS TOGETHER

The more complex your legislation, the more important it is to assist readers in understanding how the provisions relate to one another.

Three techniques you may consider in providing this assistance:

- In cases of complex provisions on a single issue, consider including a *context statement* in the opening section or subsection on the issue.
- In cases where complexity arises from the interaction between the general rule and other rules, or among other rules, consider a *relationship statement* to clarify the nature of these interactions.
- If the legislation establishes a scheme by the operation of a number of interrelated sections, consider a *descriptor statement* to provide an overview for the provisions that follow it.

#### *Context statements*

Context statements indicate the general scope of a section.

Common context statements are:

- application context statements, and
- framework context statements.

#### **Application context statements**

These assist when the section is limited in the persons to whom it applies or the circumstances in which it applies

In complex provisions, application statements may effectively be put at the start of the section, to be followed by the general rule. This tells readers immediately about whether the provision is relevant to their circumstances.

Examples:

- (1) This section applies to a person who ....
- (1) This section applies to a person who (a)...., (b) ..., or (c)....
- (1) This section applies in any of the following circumstances: ....

#### **Framework context statements**

These assist where the section has multiple process rules related to the general rule, or where the section is a collection of process rules. In the former case, the framework statement can be combined with the general rule. In the latter case, it becomes an opening context statement (admittedly of limited legal effect, but of considerable benefit to readers).

Examples:

- (1) A person subject to a stop work order may appeal to the building standards tribunal in accordance with this section.
- (1) A license application must be made in accordance with the section.

See Schedule 1 for other examples of context statements.

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## ***Relationship statements***

When one provision qualifies another, reader comprehension can be helped by a statement that indicates the relationship between these provisions.

Common relationship statements:

Despite ....  
As an exception to ...  
Notwithstanding ....  
Subject to ....  
... in accordance with ...

### **Where to put the relationship statement**

The options are:

- in the general rule: “Subject to subsection (2),...”
- in the exception/restriction: “As an exception to subsection (1), ...”

Many plain language proponents will advise against the first option, on the basis that it clutters up the general rule. However, from the perspective of effective communication, it may be more important for readers to be immediately warned that the general rule is qualified.

Use the nature of the provisions to determine whether it is better to include the relationship statement in the general rule or the qualifying rule:

- If the qualifying rule applies in all or many cases, it may be better to put the relationship statement in the general rule so that readers are not misled (particularly if the rule confers a power, establishes an entitlement or creates a prohibition).  
“Subject to” and “in accordance with” are common statements for this purpose.
- If the qualifying rule is more limited, the relationship statement is more appropriate in the qualifying rule.  
“As an exception to”, “Despite” and “In addition to” are common statements for this purpose.  
“Notwithstanding” should be avoided as unnecessary legaleze (unless you are working within an older Act that uses this term).

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### Exceptions to a general rule

In the case of provisions that are exceptions to a the general rule, the exception should either

- be clearly separated and indicated by a relationship statement, or
- if the exception is particularly significant, be made part of the general rule.

Not Recommended:

- Tagging them on at the end of the general rule as a proviso (as in: “[general rule], except that ....”
- For exceptions by regulation or other subordinate instrument, being silent in the general rule and simply providing (hiding) the exception authority elsewhere.

See Schedule 2 for examples of relationship statements.

### *Descriptor statements*

These are used where the legislation establishes a scheme by the operation of a number of interrelated sections. They are intended as a guide to readers, providing an overview for the provisions that follow. This gives readers a picture of the whole, before delving into the detail.

They may be minimalist, as in:

- 5** The licence levels under this Part are as follows:
- (a) brokerage;
  - (b) managing broker;
  - (c) associate broker;
  - (d) representative.

Or they may provide a greater description, as in:

- 5** The licence levels under this Part are as follows:
- (a) brokerage, being a licensee on behalf of which other licensees must provide real estate services;
  - (b) managing broker, being a licensee responsible for a brokerage and the supervision of other licensees of the brokerage;
  - (c) associate broker, being a licensee who meets educational and experience requirements to be a managing broker, but is providing real estate services under the supervision of a managing broker;
  - (d) representative, being a licensee providing real estate services under the supervision of a managing broker.

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## IV CROSS REFERENCES AND REFERENCE DESCRIPTORS

### *The Jekyll and Hyde of cross references*

Cross references can be used for at least 3 purpose:

- to provide certainty in relation to the matter being referenced
- to allow shorter legislation by incorporating another provision by reference
- to provide readers with pointers to related provisions

They also can create barriers to understanding, particularly for lay readers who are unfamiliar with the naming conventions for statutory provisions.

As with so much of legislative drafting, one must balance the positive benefits from legal and format perspectives with the goal of effective communication.

### *Cross references within a section*

Are to be avoided where possible.

Sections should be kept short enough that internal cross references are unnecessary in almost all cases. One relies on the interpretation principle of “meaning in context” to give effect to the intention.

But this general rule of avoidance gives way to the need for legal certainty.

Consider, as an example:

#### **Notice of discipline hearing**

- 14**
- (1) The council may issue a notice to a licensee advising that a discipline hearing is to be held to determine whether the licensee has committed professional misconduct.
  - (2) The notice must
    - (a) describe the nature of the complaint or other matter that is to be the subject of the discipline hearing, and
    - (b) specify the time and place set for the start of the discipline hearing.
  - (3) The notice must be given to the licensee, at least 21 days before the time set for the discipline hearing, as follows:
    - (a) in the case of notice to a current licensee, by personal service or by delivery in accordance with the rules;
    - (b) in the case of notice to a former licensee, by personal service;

- 
- (c) as an alternative in any case, in accordance with a court order for substituted service.
- (4) If notice is given in accordance with subsections (2) and (3), the discipline committee assigned to deal with the matter may proceed with the discipline hearing at the time set whether or not the licensee or a representative of the licensee is present.

In subsections (2) and (3), the nature of the notice is clear in context – there is no need to say “The notice under subsection (1)”. In subsection (4), the cross references have legal effect, operating to make compliance a condition precedent to the authority provided in the subsection.

### ***Cross references between sections***

Are often necessary. Improving communication, in this case, means providing readers with sufficient information that they will understand the intention of the cross reference.

Using the notice of discipline hearing provision above, consider how to deal with another provision that will require notice to be given in the same way.

See Schedule 3 for an exercise to reorganize and eliminate cross references.

### ***Approaches to cross references and reference descriptors***

#### **1. A bare cross reference**

- (3) The notice must be given in accordance with section 14.

With this approach there is no context for a reader. This is less of a problem if the sections are near each other. However, many readers are now accessing legislation electronically and many of the systems used do not allow easy access between sections (often one must click back to the table of contents, scroll to identify the referenced provision, click again to access that section, then repeat the process to return to the original provision that is relevant to your concern. Hypertext links could avoid this but mostly we are not there yet).

#### **2. Provide context without a cross reference**

- (3) The notice must be given in the same manner as a notice of discipline hearing.

If the provisions are near each other, a contextual approach may permit this with nothing further. In many cases, this approach is better supported by a definition:

“notice of discipline hearing” means a notice under section 14.

The definition approach is useful if the term is used a number of times in the legislation.

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### 3. Provide context and the cross reference

- (3) The notice must be given in the same manner as a notice of discipline hearing under section 14.

This approach provides information and certainty.

### 4. Use a “reference descriptor”

- (3) The notice must be given in accordance with section 14 [*notice of discipline hearing*].

There are Canadian examples of this approach used with specific legislative authority and without such authority. The provisions which establish the authority are designed to limit the interpretive effect of the descriptors.

For example, section 3 of the *Criminal Code* establishes an interpretive rule for that Act:

3. Where, in any provision of this Act, a reference to another provision of this Act or a provision of any other Act is followed by words in parenthesis that are or purport to be descriptive of the subject-matter of the provision referred to, the words in parenthesis form no part of the provision in which they occur but shall be deemed to have been inserted for convenience of reference only.

And section 11 of the British Columbia *Interpretation Act* establishes an interpretive rule for all BC legislation:

- 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.

Such an approach is particularly useful for references to provisions in other Acts or between provisions in large Acts (which electronically are often split into subunits that make it a challenge to move between provisions).

## V DEFINITIONS (HAVE YOUR CAKE AND EAT IT, TOO)

Using definitions is one of the simplest techniques for providing both legal certainty and easy reading.

From the legal certainty perspective, definitions are used to

- avoid repetition of a series of words that would otherwise be required to be repeated
- to expand the meaning that a word or phrase would otherwise have as a result of its dictionary meaning
- to limit the meaning that a word or phrase would otherwise have as a result of its dictionary meaning
- to both limit and expand the meaning a word or phrase would otherwise have (by use of “means . . . and includes . . .”)
- to avoid ambiguity
- to act as a signpost to another provision.

To combine this with improved readability, one simply chooses a defined term that is contextually understandable.

By “contextually understandable” we mean understandable without reference to the definition—which means the definition must not include matters that would not be understood without the definition. (One should resist including substantive provisions within definitions in any case.)

### Choosing the defined term

The defined term should be one that a reader would immediately understand in context.

Avoid using a general term and then defining it to be something more restrictive than the usual meaning. Instead, include a descriptor to indicate the limited intention.

Examples:

<i>Don't use</i>	<i>Do use</i>
notice	tax notice, notice of discipline hearing
approval	local authority approval
committee	special compensation committee
borrowing	long term borrowing

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## VI LIST FORMATS FOR PARAGRAPHING

### What is meant by a “list format”

The suggestions here are for dealing with provisions that have a number of paragraphed components. In this,

- the term *non-list form* is used to describe paragraphing where, in our Canadian drafting style, the relationship between paragraphs is not indicated until the applicable “and/or” conjunction at the end of the penultimate paragraph  
— as in: “A person must not ... (a), (b), or (c).”
- the term *list form* is used to describe paragraphing where the opening statement eliminates the need for a penultimate conjunction  
— as in: “A person must not any of the following: (a); (b); (c).”

### The recommendation

If a provision has a number of paragraphed components, prefer a list format to a non-list format and use an opening statement that indicates whether the following paragraphs operate conjunctively or disjunctively.

A list format with an operation indicator:

- gives readers information about the relationship between provisions without having to search down to the penultimate paragraph, and
- avoids future amendments of the tedious “*by striking out “and” at the end of paragraph (f), by adding “and” at the end of paragraph (g) and by adding the following paragraph:...*” form

Examples of operation indicators:

all the following  
 one of the following:  
 each of the following:  
 either or both of the following:  
 one or more of the following:  
 any or all of the following:  
 the following, as applicable and to the extent possible:

### Paragraphing examples

*Not recommended:* A non-list format:

- (1) The minister may make regulations
  - (a) prescribing forms that must be used to make a licence application,
  - (b) establishing information that must be included in a licence application,
  - (c) establishing records that must be submitted with a licence application, and



- 
- (d) authorizing the director to require an applicant to provide additional information and records.

*Not recommended:* A list format, but without an indication of operation:

- (1) The minister may make regulations as follows:
  - (a) to (d)

*Recommended:* A list format, with an indication of operation:

- (1) The minister may make regulations doing any or all of the following:
  - (a) to (d)

## VII FORMULAS

### Formulas and equations

A formula is the expression of a mathematical calculation. It may be entirely textual, or it may be a combination of algebraic statement and text.

The Canadian Style Guide makes a distinction between a formula and an equation:

- a *formula* is the calculation process on one side of an equation (as in:  $Y + Z$ )
- an *equation* is a complete one-thing-equals-another statement (as in:  $X = Y + Z$ )

The term “formula” is used here to refer to both forms of statement (and the equation form is preferred).

### Textual formulas and algebraic formulas

A *textual formula* is a description of the mathematical calculation solely in words. In this case, the formula is usually written as a description of the calculation process (the *formula* meaning above).

As in:

- (3) The tax payable is calculated by multiplying the purchase price of the tangible personal property by the applicable tax rate under section 6.

An *algebraic formula* is presented using

- mathematical operators (as in:  $+$ ,  $-$ ,  $\times$ ,  $\div$ ),
- mathematical syntax (such as brackets to indicate operation order), and
- defined terms (variables) to indicate components that are different from one application of the formula to its next application

As in:

- (3) The tax payable is to be determined as follows:

$$\textit{Tax} = \textit{purchase price} \times \textit{tax rate}$$

where

purchase price = the purchase price of the tangible personal property;

tax rate = the applicable tax rate under section 6.

---

### Textual formulas should only be used in limited circumstances

Textual formulas are generally not preferred unless:

- the calculation is simple
- and
- the terms used in the formula are common to provisions of the enactment other than formulas (that is, they are generally defined terms)

If you are using a textual formula, readability may be improved by paragraphing to indicate the mathematical relationships, replacing the standard conjunctions (and/or ) with mathematical connectors (plus, less, minus, multiplied by, divided by).

For example:

#### *Without paragraphing*

- (4) A construction bylaw must not be adopted if the total amount proposed to be borrowed under the bylaw exceeds the total amount of borrowing approved by the inspector for local improvements less the amount already borrowed under that authority.

#### *With paragraphing*

- (4) A construction bylaw must not be adopted if the total amount proposed to be borrowed under the bylaw exceeds
- (a) the total amount of borrowing approved by the inspector for local improvements
- minus
- (b) the amount already borrowed under that authority.

### Algebraic formulas are generally to be preferred

Algebraic formulas should be used unless the calculation involves a very limited number of components and an entirely straightforward calculation.

Algebraic forms should be considered in any case, particularly if the public will in fact be using the provision to make the established calculation (be it on paper, with a calculator or by computer).

There are a number of approaches in presenting algebraic formulas:

- using *meaningful labels* (such as “property value”) which are then defined if necessary
- using *meaningful letters* (such as “PV” for property value) which are then defined
- using *arbitrary letters* (such as “A, B, C”) which are then defined

In using algebraic formulas

- A full equation (as in:  $tax = price \times tax\ rate$ ) should be used, rather than an expression that only include the calculation process (as in:  $price \times tax\ rate$ )
- The equation should fit on a single line
- Meaningful labels should be used unless there is a specific reason for using letters
- If letters are to be used, these should be meaningful letters rather than arbitrary single-letter variables.

### Meaningful label formulas

Using meaningful labels to describe the variables provides general readers with an immediate indication of intention.

For example:

$$\text{recapture charge} = (\text{fair market value} - \text{forest land value}) \times \text{recapture rate}$$

where

fair market value = the fair market value determined under section 22 (3) (a);

forest land value = the forest land value determined under 22 (3) (b);

recapture rate = the prescribed recapture rate.

### Meaningful letter formulas

Meaningful letter formulas may be appropriate if:

- the usual audience is already using abbreviations to refer to terms (for example, the forestry sector referring to “annual allowable cut” as AAC)
- the usual audience will be limited to accountants or similar professionals
- the formulas is complex and lengthy (and so unlikely to fit on a single line)

For example:

$$RC = (FMV - FLV) \times RR$$

where

RC = recapture charge

FMV = the fair market value determined under section 22 (3) (a);

FLV = the forest land value determined under 22 (3) (b);

RR = the prescribed recapture rate.

---

**Arbitrary letter formulas**

Arbitrary letter formulas should be avoided because they require the reader to go through the exercise of reading the definitions back into the formula before they can understand what it related to and what it does.

For example:

$$A = (B - C) \times D$$

where

- |   |   |  |
|---|---|--|
| A | = | recapture charge   |
| B | = | the fair market value determined under section 22 (3) (a); |
| C | = | the forest land value determined under 22 (3) (b);         |
| D | = | the prescribed recapture rate.                             |

## VIII USE OF EXAMPLES

Examples illustrate ideas. The texts we write have ideas behind them – ideas about how the text will or should be interpreted. If those ideas are not conveyed or are inadequately conveyed to readers, there is a lack of communication. One way of making sure we get our ideas across is to help readers with examples. Examples then can be seen as some of the thoughts that the legislator has for interpreting the text. Examples are not common in Canadian legislation, but are used extensively in Australian drafting.

An excellent article on examples can be found in the June 2004 issue of *The Loophole* (the journal of the Commonwealth Association of Legislative Counsel): “Shining Examples” by Jeffrey Barnes of the La Trobe University, Victoria, Australia.

Examples may be used to:

- provide a simple illustration of the coverage of a definition
- illustrate how a complicated section works
- explain what a particular section means
- indicate the manner in which a regulation-making or bylaw-making power is to be interpreted.

### A couple of examples of examples

A simple illustration of the coverage of a definition:

- (x) “writing” includes printing, typewriting, or any other intentional reduction of language into legible form, or to a form which can be converted into legible form by a machine or a device, such as language
- (i) on microfilm,
  - (ii) in electronic, mechanical or magnetic storage, or
  - (iii) in electronic data transmission signals;

(Extract from a Model *Land Recording and Registration Act*  
prepared by a Joint Land Titles Committee representing all  
Provinces and Territories, except Quebec, July, 1990.)

An indication of the manner in which a bylaw-making power is to be interpreted:

- (8) As examples, the powers to regulate, prohibit and impose requirements under this section include the following powers:
- (a) to provide that persons may engage in a regulated activity only in accordance with the rules established by bylaw;
  - (b) to prohibit persons from doing things with their property;
  - (c) to require persons to do things with their property, to do things at their expense and to provide security for fulfilling a requirement.

*Community Charter*, S.B.C. 2003, c. 26, s. 8

## CONCLUSION

People read rules to get information. As drafters, we have the dual role of creating a text that is legally sound and that is also functionally efficient in providing the information readers seek.

We conclude as we started, with a quote from Dr. Elmer Driedger (in this case, from *A Manual of Instructions for Legislative and Legal Writing*, Book 1, p. 4):

My philosophy is simply that a writer of laws must have the freedom of an artist, freedom to use to the fullest extent everything that language permits, and he must not be shackled by artificial rules or forms; and further, laws should be written in modern language and not in ancient, archaic or obsolete terms or forms.

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## Schedule 1 Context Statements

### Context statements – exercise 1

#### *Instructions:*

A person subject to a remediation order may appeal the order to the Review Board within 21 days after the order was made. It must be made by a written notice of appeal, which must identify the order being appealed, state the basis on which it is made and the outcome sought, and also include any information required by the Review Board. The person making the appeal must serve a copy of the notice on the local protection officer who made the remediation order.

### An approach

*Make the right of appeal the general rule, with a context statement indicating that the rest of the section qualifies the right*

### Appeal of remediation order

- # (1) A person subject to a remediation order may appeal the order to the review board in accordance with this section.
- (2) An appeal
  - [must be made within]
  - [may not be made later than]
  - 21 days after the date on which the remediation order was made.
  - [depends on whether you intend to limit any discretion for time extension]**
- (3) The appeal must be made by a written notice of appeal that
  - (a) identifies the remediation order being appealed,
  - (b) states the basis on which the appeal is made,
  - (c) states the outcome requested, and
  - (d) includes any other information required by the review board.
- (4) The person making the appeal must serve a copy of the notice of appeal on the local protection officer who made the remediation order. **[any time requirement?]**



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**Context statements – exercise 2***Instructions:*

An individual or organization that wishes to become an advertising sponsor must file an application with the director that includes the full name of the applicant and, in the case of an organization, the usual name of the applicant if this is different from the full name, the address of the applicant, an address where notices and other communications under the Act will be accepted for service or other delivery (delivery to this address is to be effective as delivery to the applicant), a telephone number at which the applicant can be contacted and, if the applicant is an organization, the names and addresses of the principal officers of the organization. Other information may be required by regulation and the director may require the application to be in a form specified by the director. An application must be signed, in the case of an application by an individual, by that individual or, in the case of an application by an organization, by at least 2 principal officers of the organization, and it must be accompanied by a solemn declaration of a such a signatory that the applicant is not disqualified from being registered as a sponsor.

**An approach**

*Open with a context statement that establishes the legal effect of the rules.*

**Application for registration as a sponsor**

- (1) An individual or organization who wishes to become a registered sponsor must file an application in accordance with this section with the director.
- (2) An application must include the following:
  - (a) the full name of the applicant and, in the case of an applicant organization that has a different usual name, this usual name;
  - (b) the full address of the applicant;
  - (c) in the case of an applicant organization, the names of the principal officers of the organization;
  - (d) an address at which notices and communications under this Act and other communications will be accepted as served on or otherwise delivered to the individual or organization;
  - (e) a telephone number at which the applicant can be contacted;
  - (f) any other information required by regulation to be included.
- (3) An application must
  - (a) be signed, as applicable,
    - (i) by the individual applicant, or
    - (ii) in the case of an applicant organization, by 2 principal officers of the organization, and
  - (b) be accompanied by a solemn declaration of an individual who signed the application under paragraph (a) that the applicant is not disqualified by this Act from being registered.
- (4) The director may require applications to be in a specified form.

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## Schedule 2 Relationship Statements

### Relationship statements – exercise 1

*Instructions:*

Unlicensed persons are to be prohibited from providing real estate services for or in expectation of payment (although the regulations will provide exemptions from this), and a licensee may only provide the services for which they are licensed.

### Some approaches

#### *What not to do—exception hidden and general rule stated without qualification*

- 2 A person must not provide real estate services for or in expectation of remuneration unless the person is licensed under this Act to provide those services.
- 116 The Lieutenant Governor in Council may make regulations as follows:
  - (d) establishing exemptions from the application of section 2;

#### *Provide a pointer to the exemption authority*

- 2 Unless exempted by the regulations, a person must not provide real estate services for or in expectation of remuneration unless the person is licensed under this Act to provide those services.

#### *Use a relationship statement*

- 2 (1) Subject to subsection (2), a person must not provide real estate services for or in expectation of remuneration unless the person is licensed under this Act to provide those real estate services.
- (2) Subsection (1) does not apply to a person who is exempted by the regulations in relation to the provision of those real estate services.

#### *Include the exception in the general rule as an alternative*

- 2 (1) A person must not provide real estate services for or in expectation of remuneration, unless the person is
  - (a) licensed under this Act to provide those real estate services, or
  - (b) exempted by the regulations from the requirement to be licensed under this Act in relation to the provision of those real estate services.

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## Relationship statements – exercise 2

### *Instructions:*

An inspector is entitled to enter any place regulated under the Act for the purpose of determining compliance with the Act and regulations. This authority may be exercised without the consent of the owner or occupier but, unless there is an emergency, the entry may only be done at a reasonable time and in a reasonable manner and the inspector must attempt to advise the owner or occupier before entering. In the case of a private dwelling, the inspector may only enter without the consent of the occupier if the entry is done under the authority of a warrant, the inspector has given at least one day's notice or the inspector has reasonable grounds to believe that failure to enter may result in a health or safety risk.

### *Suggested approach:*

Use a “subject to” relationship statement in the general rule — on the reasoning that, because this is such a significant entry power, it is better to let readers know immediately that the power is restricted.

## Inspector authority to enter property

- (1) Subject to this section, an inspector may enter on and into property, without the consent of the owner or occupier, for the purpose of determining compliance with the Act and regulations. **[style: or purpose at start?]**
- (2) Except in the case of an emergency, an inspector
  - (a) may only exercise the entry authority at reasonable times and in a reasonable manner, and
  - (b) must take reasonable steps to advise the owner or occupier before entering the property.
- (3) In addition to the restrictions under subsection (2), the entry authority may only be used to enter into a place that is occupied as a private dwelling if one or more of the following applies:
  - (a) the occupier consents;
  - (b) the entry is made under the authority of a warrant under this or another Act;
  - (b) the inspector has given the occupier at least 24 hours' written notice of the entry and the reasons for it;
  - (d) the inspector has reasonable grounds for believing that failure to enter may result in a significant risk to the health or safety of the occupier or other persons.

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### Schedule 3

## Organization and Elimination of Cross References

#### Cross references – exercise 1

*Instructions:*

Reorganize and eliminate the cross references where appropriate

#### 4 Establishment of Tribunals

- (1) The Minister may from time to time, by notice in the Gazette, establish such number of tribunals as the Minister thinks fit to exercise the jurisdiction created by this Act.
- (2) The tribunals established under subsection (1) of this section shall be known as Disputes tribunals.
- (3) Each Disputes Tribunal shall be a division of a District Court.
- (4) A notice under subsection (1) of this section establishing a Disputes Tribunal shall specify the District Court of which the Tribunal is to be a division.
- (5) The Minister may at any time, by notice in the Gazette,
  - (a) disestablish a Disputes Tribunal, and
  - (b) direct how the records of that Tribunal shall be dealt with.

#### An approach

#### 4 Establishment of Tribunals

- (1) The Minister may establish tribunals as divisions of a District Court by
  - (a) publishing a notice in the Gazette, and
  - (b) specifying in the notice the District Court of which each tribunal is to be a division.
- (2) Each tribunal shall be known as a Disputes Tribunal and may exercise the jurisdiction created by this Act.
- (3) The Minister may disestablish a Disputes Tribunal and direct how its records are to be dealt with by publishing a notice in the Gazette.