

Best Practices for Developing Drafting Team Expertise: British Columbia – Legislation and Legislative Process Course

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I.	DEVELOPMENT AND HISTORY	2
II.	PARTICIPANTS	3
III.	COURSE CONTENT.....	4
A.	SESSION 1 – LEGISLATIVE PROCESS	4
B.	SESSION 2 – STATUTORY INTERPRETATION (HOW TO READ AN ACT).....	5
C.	SESSION 3 – DRAFTING THE LEGISLATION.....	6
D.	SESSION 4 – SUBORDINATE LEGISLATION, REVISION AND CORRECTIONS	6
IV.	COURSE PRESENTATION	7
V.	EVALUATION OF THE COURSE	8

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The focus of this session is techniques used in drafting offices to develop the expertise of those participating in the legislative process. In this paper I will be describing one of the main techniques used by the Office of Legislative Counsel in British Columbia—our course *Legislation and Legislative Process in British Columbia* (the “course”).

The course covers the following topics:

- the process by which a legislative proposal becomes legislation;
- the process by which regulations are developed and made;
- how to read legislation;
- best practices for drafting instructions and the drafting process.

On the following pages I will review the development of the course, who participates in the course, the course content and the course presentation. The paper will conclude with an evaluation of the course and outline possible future developments for the course.

I. DEVELOPMENT AND HISTORY

The course was developed in the spring of 2005. The course was initiated out of a general dissatisfaction with the quality of drafting instructions that we were receiving and with the lack of knowledge about the drafting and legislative process of those with whom we were working during the drafting process. We were working with more individuals who were new to government or new to the role of policy analyst. In hindsight, the wave of employee succession was only beginning. In addition to the feeling of dissatisfaction, before developing the course some of the legislative counsel in our office had the opportunity to attend a multi-day seminar hosted by a ministry that had brought in a speaker to talk about statutory interpretation. While the seminar was interesting, we were of the view that we could provide a presentation that was more relevant to ministry staff and that could address our dissatisfaction.

We had a head start in developing the course. Our office had previously produced a base of material in the form of a guide—*A Guide to Legislation and Legislative Process in British Columbia*. The most recent

version (April 2006) of that guide is available from the following locations:

- www.llbc.leg.bc.ca/public/PubDocs/bcdocs/408512/index.htm;
- www.publications.gov.bc.ca/pubdetail.aspx?nato=7665005851.

Although we believed that we had identified a need, we were not expecting the response we received from the announcement of the course. We initially announced one date for the course with a capacity for 25 persons and kept secret a second date in reserve. The announcement of the course was sent out at 4:30 p.m. by email to the legislation contact for each ministry. By 10:30 the next morning, our two dates were full and we were starting a waitlist. After adding two more course dates, bringing the number of presentations to four, we still had a waitlist of 180 persons. We had found a need! With one email and subsequent word of mouth, we gave 12 presentations of the course and still had many on the waitlist.

We no longer allow for ongoing registration or maintain a waitlist. This has eliminated the associated administrative burden. The Chief Legislative Counsel sends out one announcement a year for the course presentations in that year. At the end of the course presentations for a year those on the waitlist are notified that they will need to register again the next year when the course announcement is sent.

From 2005 through 2007 we have presented our course on 19 occasions. A total of 463 individuals have attended one of our course presentations. We are preparing for four to seven presentations of the course this fall. We had a total of 144 participants at the seven presentations of the course in 2007. There were 79 individuals on our waitlist after our last presentation in 2007.

II. PARTICIPANTS

The course is directed at the following:

- policy analysts involved in legislation development;
- persons involved in a ministry's process for preparing regulations;

- persons who expect to be part of the development team for a major legislation project;
- (e.g. program area staff);
- persons who are regularly called on to read and give effect to the legislation or regulations that apply to a program area.

Other participants include senior administrative and executive support staff who have some involvement with legislation. A few solicitors have attended the course. All articling students in Legal Services Branch attend the course as part of their professional development program. We also provide an opportunity for new administrative staff in the Office of Legislative Counsel to attend the course. In 2007, a modified version of the course was presented to new staff at Cabinet Operations.

III. COURSE CONTENT

The course is divided into four sessions. The sessions are arranged according to the time required for each session and to try and keep things interesting. We thought it was best to avoid having the statutory interpretation session after a hearty lunch as many would have a snooze during the session.

A. SESSION 1 – LEGISLATIVE PROCESS

Session 1 begins with an introduction to the Office of Legislative Counsel and the role of the Attorney General. The remainder of Session 1 is divided into two parts. In the first part of Session 1 we outline the policy development and approval process for a policy proposal (non-budget) that will likely result in legislation being included in a bill introduced in the Legislative Assembly.

We discuss the formal Cabinet submission known as a “Request for Legislation” (the “RFL”) and the legal advice that we provide to Cabinet on the RFL that is known as “Comments of Legislative Counsel.” We suggest some best practices for the policy development and approval process.

Staff from the Cabinet Operations Secretariat (Office of the Premier) assist us in presenting the first part of Session 1. They discuss the review of RFLs by various Cabinet and caucus committees. In this session we skip over the drafting of the legislation—to be discussed in Session 3. The first part of Session 1 concludes with a review of the process for approving the draft legislation.

The second part of Session 1 reviews how a bill proceeds through the Legislative Assembly (from introduction to enactment). There are three main topics in this part of the session:

- what (or who) controls the process;
- types of Bills;
- the process for a government Bill.

In discussing the various types of Bills, we spend some time explaining our role and the ministry's role in relation to private bills. In explaining the process for a government bill, we use video clips from the Debates of the Legislative Assembly (provided by Hansard Services) to illustrate the various stages in the Legislative Assembly and to show how a house amendment is proposed.

B. SESSION 2 – STATUTORY INTERPRETATION (HOW TO READ AN ACT)

Session 2 is divided into 2 parts. In the first part of this session we review some key common law principles of statutory interpretation. In particular, we review “every word has meaning,” “different words mean different things” and the “modern approach” to statutory interpretation. In the second part of this session we provide a brief overview of the *Interpretation Act*. More specifically, we review the following:

- application of the *Interpretation Act*;
- definitions;
- forms of words;
- general interpretation rules;
- time;
- commencement and repeal.

C. SESSION 3 – DRAFTING THE LEGISLATION

In Session 3 we discuss the following:

- drafting instructions—what they do, the required content and the preferred format;
- the drafting process—how legislation is developed, the drafting team, drafting meetings and the distribution of drafts;
- some suggested best practices for the drafting process;
- consultations and confidentiality.

In this session a solicitor from Legal Services Branch, Ministry of Attorney General, participates in the presentation. During the presentation on the drafting team the solicitor discusses the solicitor's role in the legislative process and the benefits of early involvement of the solicitor.

(Each ministry has one or more solicitors assigned to advise the ministry and the solicitor is a member of the drafting team.)

D. SESSION 4 – SUBORDINATE LEGISLATION, REVISION AND CORRECTIONS

In Session 4 we talk about the authority to make subordinate legislation, the role and responsibilities of Legislative Counsel with respect to regulations and orders-in-council and the regulation-making process under the *Regulations Act*. We conclude this session with brief presentations on statute and regulation revision and our new (2006) statute correction power.¹

¹ The Lieutenant Governor in Council is authorized to make minor corrections to an Act by regulation. The corrections must be confirmed by the Legislature to having ongoing effect. See section 12 of the *Statute Revision Act*, R.S.B.C. 1996, c. 440).

IV. COURSE PRESENTATION

We present our course in the largest boardroom that is in our building. This gives us home-court advantage—or, more accurately, home-court help. We have staff from our computer helpdesk department on the same floor. We are somewhat prone to the technical glitch. The other advantage of using facilities in our building is that we can easily involve presenters and support staff for a short period of time without taking them too far away from their desks. On two occasions we presented the course at other facilities. On both occasions we concluded that the facilities were not as good as our own. These were also the only occasions in which we presented the course to participants entirely from one ministry.

There are generally 25 participants in a course (the maximum number that can be accommodated in our boardroom). Each course has individuals representing 15 to 20 different ministries and government organizations. It is this variety of experiences that provides a variety of questions, adds depth to the discussion and makes each course presentation unique. We provide lunch—which presents another opportunity for those attending to ask us questions. Currently we charge \$75 per person for the course, which allows us to recover our expenses (mainly binder materials and food).

Each participant is given a binder containing the course material and additional supplementary material. The binder contents include the following:

- PowerPoint slides;
- *A Guide to Legislation and Legislative Process in British Columbia*;
- other published resources developed by the Office of Legislative Counsel;
- legislation (*Interpretation Act*, *Regulations Act*, *Regulations Regulation* and *Statute Revision Act*);
- documents published by Cabinet Operations;
- a guide to additional resources and contacts.

The material is reviewed before the presentations for each year. The material for the year is printed and binders are assembled in one

batch. We are developing an acronym decoder (guide to alphabet soup) to add to the course binder for this fall.

The four to six presentations of the course that we do each year are presented over a two-month period.

We try to group the presentations and do two presentations in two or three days. This minimizes the time required for preparation. There are about six legislative counsel involved in presenting the course—three or four legislative counsel present on each day of the course.

V. EVALUATION OF THE COURSE

At the end of each course the participants are given an opportunity to complete an evaluation form. The participants have been very satisfied with the course organization and contents.

Participants are almost unanimous in recommending the course to others. A small percentage of participants would like to see the course lengthened to more than one day. One of the more surprising pieces of feedback has been the many requests for more instruction on statutory interpretation. (Although there is the occasional suggestion to eliminate that part of the course.)

In general, the feedback from the course is that participants want to receive more information and more examples.

In my view, the course has had a positive impact in addressing some of the general dissatisfaction that led to the development of the course. There is a better understanding of the drafting and legislative process. In relation to improving the quality of the drafting instructions, the course may not have achieved as much of a positive impact as initially hoped. We realize that the lecture style of the course does not lend itself to the level of improvement that may result from a workshop experience. However, other factors beyond our control, and beyond the scope of this paper, did not help our attempts through the course and may have been counter-productive to our efforts to improve the quality of drafting instructions. The course is very popular and is meeting a need—demand is still high and our office receives queries throughout the year.

Although at the time of developing the course we knew we were dealing with an increasing number of inexperienced policy analysts, in my view we did not fully anticipate or appreciate the pending succession,

recruitment and retention issues facing policy branches throughout government. As the information in the following table demonstrates, the majority of course participants who are policy or legislative analysts have less than four years experience in that role.

The changes in the percentages between 2005 and 2007, a relatively short period of time, indicate an influx of many new policy analysts. The information in the table also indicates that individuals who have been in government for some time have not been in policy or legislative positions for a significant period of their time in government. (Compare the data for “more than 12 years” between experience in government and as a policy or legislative analyst.)

Experience of Participants

	<u>2005</u>	<u>2007</u>
<u>in government</u>	21%	50%
less than 4 years	48%	25%
more than 12 years		
 <u>as a policy or legislative analyst</u>		
less than 4 years	61%	75%
more than 12 years	11%	6%

For many drafting projects there continues to be a general dissatisfaction with the quality of drafting instructions. With this in mind, after our presentations of the course this fall we intend to review the content and manner of delivery of the course. This is intended to be a more thorough review than that undertaken each year when we are preparing to present the course.

Consideration will be given to our resources and to other training for policy analysts that appears to be in development. Options that I expect we will be considering include moving the course to a larger venue, splitting the course into two or three courses that will be a ½ day or less and developing an advanced course or workshop on providing

drafting instructions. While we are pleased with what the course has achieved, we need to consider whether we can use our limited resources more effectively.

If you have any questions about the course or want further information about it, please contact me at (250) 356-5752 or Rodney.Fehr@gov.bc.ca.