DEPARTMENT OF JUSTICE

Case law of possible interest to legislative drafters

January 1, 2010 to July 1, 2012
Trends

- Increased reliance on administrative interpretation
- Evolution of transitional law
- Reformulations of Driedger’s modern principle
Administrative interpretation

Post-enactment interpretation by those who administer legislation

- Guidelines issued to regulatees
- Directives issued to those who apply the law
- Administrative practice
- Regulations
Evolution of Canadian transitional law

1. Indiscriminate use of “retrospective”/ “retroactive”/ “interference with vested rights”

2. Distinction between “retrospective/ retroactive” and “interference with vested rights” (Gustavson Drilling)

3. Distinction between “retroactive” and “retrospective” (Driedger article)

4. Distinction between “retroactive” and “immediate” (Expropriation Tribunal)

5. Attempt to integrate these multiple distinctions (Épiciers)
Questions

• What is a retrospective application?

• Does Driedger’s distinction add anything of value to transitional law?

• Does the Épiciers case establish a clear and coherent framework?

• Is there a way out of the morass?