



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?

