

UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

MODEL INTERPRETATION ACT

**REPORT OF THE WORKING GROUP
WITH MODEL ACT AND COMMENTARIES**

Readers are cautioned that the ideas or conclusions set forth in this paper, including any proposed statutory language and any comments or recommendations, may not have been adopted by the Uniform Law Conference of Canada. They may not necessarily reflect the views of the Conference and its Delegates. Please consult the Resolutions on this topic as adopted by the Conference at the Annual meeting.

**Yellowknife, NWT
August, 2015**

MODEL INTERPRETATION ACT

Working Group

- [1] The Current Working Group is comprised of Peter Pagano (Alberta)(chair), Dawn Leroy (British Columbia)(English Version Drafter), Jean-Paul Chapdelaine (Federal Government)(French Version Drafter), Sandra Petersson (Alberta Law Reform Institute), Ian Brown and Jane Chapco (Saskatchewan), Tamara Kuzyk and John Gregory (Ontario), Myriam Anctil (Quebec), Elizabeth Strange and Michael Hall (New Brunswick). Assisting with the Minutes and the preparation of the report were 2 summer law students from Alberta: Christine Wilson and Kevin Gillespie.

Previous Work (2013-2014)

- [2] In 2013-2014, the Working Group started reviewing the first draft (by teleconference). A second draft was prepared. In April of 2014 a number of the members of the Working Group met in Edmonton to discuss the second draft. A further draft was prepared. While the draft was substantially completed, there were still a few outstanding matters to sort out.
- [3] For the ULCC meeting in 2014 instead of a draft of the proposed Model Act, a Table was prepared which set out
- recommendations as to whether the existing provisions of the current Uniform Interpretation Act should be retained (with or without changes)
 - specific questions for the delegates of the Civil Section
 - other provisions from the Ontario Act being recommended for the new Model Interpretation Act.
- [4] The Table provided an opportunity for the Civil Section to comment on the Working Group's recommendations.

Work in 2014-15

- [5] After last year's ULCC meeting, the Working Group continued to meet by conference call. As mentioned last year, the Working Group had prepared a good working draft. The goal for 2014-2015 was to continue working on the draft to ensure that it reflected our discussions and to make any changes based on feedback from the Conference. During that process we did revisit some of our previous decisions.
- [6] Once the draft was completed, we sent the draft to the various drafting offices in Canada for their general comments but also to get some comments on a few specific areas. These included:
- When a repeal of an enactment is to occur;
 - Whether Driedger's modern principle should be included;

- Whether specific provisions were necessary to deal with when appointments begin and expire;
- Using the term “statutory instrument” instead of “regulation” ;
- Whether the computation of time provisions were adequate.

[7] We received a number of substantive comments on the draft and particularly on the areas listed above.

[8] Based on the comments received, a final draft and commentaries has been prepared.

Recommendation:

[9] The Working Group recommends the adoption of the Model Interpretation Act.

MODEL INTERPRETATION ACT

Part 1 - General

Interpretation

1(1) In this Act:

“enact” includes issue, make, establish or prescribe;

“repeal” includes revoke, cancel or rescind.

(2) An enactment that has expired, is no longer authorized or has otherwise ceased to have effect, except as provided under section 7 or subsection 12(4), is deemed repealed for the purposes of this Act.

COMMENTARY – In this Model Act (MA) “enact” and “repeal” are only intended to apply to the Model Act (MA). Section 34 of the MA contains definitions that are applicable to all Acts and statutory instruments.

COMMENTARY – The following may be a useful provision to authorize the express repeal of enactments referred to in the proposed subsection (2). If the provision is only to apply to “regulations” then this provision should be included in the Act that deals with the filing and publishing of regulations.

Consider: – (x) The Lieutenant Governor in Council [Governor in Council] may repeal a statutory instrument that has expired, is no longer authorized or has otherwise ceased to have effect even though the statutory instrument being repealed was made by a member of the Executive Council or some other body or person.

Application

2 Every provision of this Act applies to every enactment, whenever enacted, unless a contrary intention appears in this Act or in an enactment.

COMMENTARY – In most jurisdictions in Canada and Australia, only “contrary intention” is referred to. In other jurisdictions, including Ontario, similar provisions also include “its application would give to a term or provision a meaning that is inconsistent with the context” or similar wording. The Working Group determined that it was not necessary to include “context”, as contrary intention can be determined by context.

Part 2 – Commencement and Repeal of Enactments

Date of commencement of Acts

3(1) An Act or portion of an Act comes into force on the date or in the manner specified in the Act.

(2) If an Act is silent as to the date or manner of the commencement of the Act or a portion of the Act, the Act or portion comes into force on the date the Act receives Royal Assent.

(3) If a provision of an Act states that the Act or a portion of it is to come into force by order of the Lieutenant Governor in Council [Governor in Council], on a specified date or in a specified manner, that provision comes into force on the date the Act receives Royal Assent.

(4) If an Act or a portion of an Act is to come into force by order of the Lieutenant Governor in Council,

(a) an order may apply to the coming into force of any provision of the Act or portion,
and

(b) orders may be issued at different times for different provisions of the Act or portion.

COMMENTARY

1- Instead of referring to an Act or a provision coming into force on Proclamation, the Working Group is recommending that an Order in Council be used. BC brings their legislation into force by Regulation. A Proclamation requires 2 steps. 1- an OC to authorize the Proclamation and 2- the issuance of the Proclamation.

2- Saskatchewan and Alberta have separate provisions for repealing an Act on Proclamation. There are at least 2 instances where repealing an Act (or provision of an Act) on

Proclamation may be useful:

A- Where it is known that a piece of legislation will only be in effect for a short period, but the exact date is uncertain, then the Act can be repealed without going back to the House.

B- To phase-in a new Act. This approach could be useful so that portions of an Act to be replaced can still remain in force before similar provisions in the new enactment are to come into force. However situations like this are better dealt with by “transitional” provisions.

Date of commencement of statutory instruments

4(1) A statutory instrument or a portion of a statutory instrument comes into force on the date or in the manner specified in the statutory instrument.

(2) If a statutory instrument is silent as to the date or manner of the commencement of the statutory instrument or a portion of the statutory instrument, the statutory instrument or portion comes into force on the date the statutory instrument is enacted.

(3) Subsections (1) and (2) apply to a regulation only if the regulation is exempt from [filing] [deposit] [registration] under [the *Regulations Act/ Statutory Instruments Act, etc.*].

COMMENTARY – Depending on the scope of a revised “Model Regulations Act”, section 4 could be included in that Act.

Effective time of commencement and repeal

5 Unless otherwise provided,

(a) an Act comes into force at the beginning of the day on which it comes into force, and

(b) the repeal of an Act takes effect at the beginning of the day of the repeal.

COMMENTARY – The current Uniform Interpretation Act (**UIA**) provision provides as follows:

“5 An enactment takes effect on the first moment of the day on which it comes into force.”

While it does not expressly deal with when a repeal takes effect, it was likely intended to be at the beginning of the day.

In previous versions of the UIA and currently in many jurisdictions the Act comes into force at the beginning of the day but the repeal takes effect at the end of the day.

The advantage of the proposed rule is that the rules for commencement and repeal are the same. In those jurisdictions where the repeal is at the end of the day a third rule was necessary to deal with when an enactment is repealed and replaced. Is it the beginning of the day or is it the end of the day.

However, with respect to the proposed rule, it seems strange that something would “end” at the beginning of the day.

Exercise of delegated power before commencement

6 A power in an enactment to enact a statutory instrument, or to do any other thing, may be exercised before the enactment comes into force but, except as is necessary to make the enactment effective when it comes into force, the statutory instrument enacted or other thing done has no effect until the enactment comes into force.

Effect of repeal of enactment

7(1) The repeal of an enactment does not

COMMENTARY- the current UIA (s30(a) reads as follows:

(a) revive an enactment **or thing** not in force or existing immediately before the time when the repeal takes effect,

“or thing” has been replaced with “or a law”.

(a) revive an enactment that is not in force, or a law that no longer exists, immediately before the time the repeal takes effect,

(b) affect the previous operation of the repealed enactment,

(c) affect a right, privilege, obligation or liability that came into existence under the repealed enactment and exists immediately before the time the repeal takes effect,

(d) affect a contravention of the repealed enactment or any penalty, forfeiture or punishment incurred in connection with the contravention, or

(e) affect an investigation, proceeding or remedy in respect of

(i) a right, privilege, obligation or liability described in paragraph (c), or

(ii) a penalty, forfeiture or punishment referred to paragraph (d).

(2) An investigation or proceeding described in paragraph (1)(e) may be commenced or continued and a remedy described in that paragraph may be enforced as if the enactment had not been repealed.

(3) Subject to subsection 8(5), a penalty, forfeiture or punishment referred to in paragraph (1)(d) of this section may be imposed as if the enactment had not been repealed.

COMMENTARY – Subsection (3) is not in the current UIA. It makes it clear that a penalty, forfeiture or punishment may still be imposed even if the enactment has been repealed.

Effect of repeal and substitution

8(1) In this section,

“former enactment” means an enactment that has been

(a) repealed and replaced with a new enactment, or

(b) substantially amended;

“new enactment” means an enactment that replaces a former enactment, and includes a substantial amendment to a former enactment.

(2) A person authorized to act under a former enactment may continue to act under the new enactment until another person is authorized to do so.

(3) A proceeding commenced under a former enactment must be continued under the new enactment in conformity with the procedures established by the new enactment, so far as is practicable.

(4) Procedures established by a new enactment must be followed, with the necessary modifications, in relation to a matter that arose under the former enactment, including, without limiting this,

(a) procedures for the recovery or enforcement of penalties and forfeitures incurred under the former enactment,

(b) procedures for the enforcement of a right or privilege that exists when the new enactment comes into force, or

(c) proceedings relating to matters that arose under the former enactment that are commenced after the repeal of the former enactment.

(5) If a penalty, forfeiture or punishment authorized under a former enactment is reduced or mitigated by the new enactment, the new enactment applies to any sanction imposed after the new enactment comes into force in respect of a matter that occurred under the former enactment.

(6) A statutory instrument enacted under a former enactment remains in force and is deemed to have been enacted under the new enactment insofar as it is authorized by and not inconsistent with the new enactment.

(7) If

(a) a former enactment conferred a power on a person or body to enact a statutory instrument, and

(b) the power or substantially the same power is conferred by the new enactment on a different person or body,

the person or body referred to in paragraph (b) has the power to repeal, amend or replace the statutory instrument made by the person or body referred to in paragraph (a).

Included powers – statutory instruments

9 A power to enact a statutory instrument includes the power, exercisable in the same manner and subject to the same conditions, if any, to repeal or amend the statutory instrument.

Part 3 – Interpretation of Enactments

Enactment remedial

10(1) The words of an Act and regulations authorized under an Act are to be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.

(2) Acts and regulations are to be construed as being remedial and are to be given such fair, large and liberal interpretation as best ensures the attainment of their objects.

COMMENTARY – It was decided that both subsections (1) and (2) be included. Currently only subsection (2) appears in the current UIA. Concerns were also raised that the modern principle would evolve and be reworded, or replaced by some other principle.

Enactments apply in the present

11 An enactment is to be construed as applying to circumstances as they arise.

Rolling incorporation of domestic enactments

12 (1) In this section,

“amended”, in respect of an enactment, includes the repeal and replacement of the enactment;

“domestic enactment” means an enactment of the Province, Canada, a Territory or another province of Canada.

(2) A reference in an enactment to a domestic enactment is a reference to the domestic enactment as amended.

(3) Subsection (2) applies whether the domestic enactment is amended before or after the coming into force of the enactment in which the reference to the domestic enactment appears.

(4) If a domestic enactment that is referred to in an enactment is repealed and not replaced, the reference in the enactment is to the repealed domestic enactment as it read immediately before its repeal.

Static incorporation of foreign enactment

13(1) In this section, “foreign enactment” means an enactment of a jurisdiction outside Canada.

(2) A reference in an enactment to a foreign enactment is a reference to the foreign enactment as it read on the date the enactment containing the reference to that foreign enactment was enacted.

COMMENTARY – Section 62 of the Ontario Act deals with the incorporation by reference of non- legislative documents. The provision is not an interpretive provision. It authorizes under certain conditions the ability of regulations to incorporate these types of documents.

Amending enactment part of enactment amended

14 An amending enactment is to be construed as part of the enactment that it amends.

No implication from repeal, amendment, etc.

15(1) The repeal of an enactment, the repeal and replacement of an enactment or the amendment of an enactment is not to be construed to be or to involve

- (a) a declaration that the enactment was or was considered by the Legislature or other body or person by whom it was enacted to have been previously in force, or
- (b) a declaration as to the previous state of the law.

(2) The amendment of an enactment is not to be construed to be or to involve a declaration that the law under the enactment prior to the amendment was or was considered by the Legislature or other body or person who enacted it to be different from the law under the enactment as amended.

(3) A re-enactment in the same words, revision, consolidation or amendment of an enactment is not to be construed to be or to involve an adoption of the construction that has by judicial decision or otherwise been placed on the language used in the enactment or on similar language.

References to statutory instruments

16 A reference in an enactment to a statutory instrument is a reference to a statutory instrument made under the enactment.

Common names

17 If the name commonly applied to a country, place, body, corporation, society, officer, functionary, person, party or thing is used in an enactment, that name means the country, place, body, corporation, society, officer, functionary, person, party or thing to which the name is commonly applied, even though that name is not the formal or extended designation of it.

Bilingual texts

18 The English and French versions of an enactment that is enacted in both languages are equally authoritative.

COMMENTARY – If the jurisdiction has an Act that deals with “languages”, this section likely belongs there. Note that the NWT *Official Languages Act* allows for the possibility of First Nation’s language translations of statutes and instruments. Nunavut’s *Official Languages Act* makes an Inuktitut dialect translation a prerequisite to the introduction of bills and allows for the possibility of authoritative Inuit language versions of statutes and instruments.

Preambles and reference aids

19(1) In this section, “section heading” means a heading that appears in an enactment immediately above or beside a section or a provision of a section.

(2) The following are part of an enactment:

- (a) a preamble;
- (b) headings other than section headings.

(3) The following are not part of an enactment and are to be considered to have been included editorially and for convenience of reference only:

- (a) section headings;
- (b) tables of contents;
- (c) information notes providing legislative history;
- (d) information notes providing text as an alternative for non-text content.

COMMENTARY – Paragraph (3)(c) is only recommended if historical notes are in the bill when enacted or are in the official version.

Paragraph (3)(d) may be necessary where text is provided to identify and describe non-text content (such as diagrams and maps) to assist people who use screen readers. Such alternative text is required under the Web Content Accessibility Guidelines (WCAG) to improve accessibility for people with disabilities.

Each jurisdiction may have different terminology for types of headings.

The courts are already looking at reference aids. The intention here is not to try to tell the Courts what they can consider in interpreting the Act but simply to state what does and does not

constitute part of the Act. Arguably, if it's not part of the Act, it can be amended editorially; but the provision does not preclude the courts from looking at them. It's for this reason that "section headings (marginal notes)" fall into the category of not being part of the Act.

Government bound by enactments - exception

20(1) An enactment is binding on the Crown.

(2) Exceptions....

COMMENTARY – Under the current UIA and in most of the jurisdictions (except PEI and BC), the Crown is not bound unless the enactment states that the Crown is bound. The Working Group has recommended the reversal of the presumption (with the ability to make exceptions).

BC has included an exception as follows:

Despite subsection (1), an enactment that would bind or affect the government in the use or development of land, or in the planning, construction, alteration, servicing, maintenance or use of improvements, as defined in the Assessment Act does not bind or affect the government.

In PEI there weren't any exceptions however the provision only applied to new legislation.

In 1989 the Ontario Law Reform Commission of Ontario recommended a reversal of the presumption. More recently both the Alberta Law Reform Institute and the Law Reform Commission of Saskatchewan have also recommended the reversal of the presumption, with possible exceptions. For example: the Crown as creditor; planning legislation; Crown as witness.

Succession

21 A change of reigning sovereign does not affect anything done or begun under the previous reigning sovereign and all matters continue as if no succession had occurred.

COMMENTARY – Some jurisdictions may have this provision in another Act – Demise of the Crown Act, Judicature Act, etc.

Appointments

22(1) Authority under an enactment to appoint a person to an office includes the authority to

- (a) appoint the person either for a fixed term or during pleasure,
- (b) provide for the appointee's remuneration,
- (c) provide for payment of the appointee's expenses,
- (d) remove or suspend the appointee,
- (e) reappoint or reinstate the person as appointee,
- (f) appoint a deputy who has the same powers as the appointee
 - (i) subject to the conditions, or
 - (ii) with the limitation of powers as may be specified in the appointment, and

- (g) temporarily appoint another person to act in the office if
 - (i) the office is vacant,
 - (ii) the appointee is absent or unable to act for any reason, including, without limitation, illness or incapacity or a conflict of interest in respect of a matter, or
 - (iii) the appointee gives prior notice of a temporary absence or resignation, such appointment to take effect on the office becoming vacant.
- (2) An appointment during pleasure may be revoked at any time without cause or notice.
- (3) An appointment is effective at the beginning of the day on which the appointment is to take effect.
- (4) Subject to subsection (5), an appointment for a term that is to conclude, expire or otherwise come to an end on a specified day includes that day.
- (5) An appointment that is terminated, revoked or rescinded effective on a specified day is effective at the beginning of the specified day.

COMMENTARY –Not all jurisdictions have specific provisions like section 22(3) to (5), which deal with when appointments expire and when they take effect. Some jurisdictions rely on the computation of time provisions or the date of commencement of enactments provisions.

In BC, for example, all appointments commence at the beginning of the day and also expire/terminate at the beginning of the day.

The current UIA, and most jurisdictions that currently have similar provisions, provide that the appointment expires at the end of the day. In addition though, a further provision is needed to deal with what happens when an appointment is terminated before it expires. In Alberta, for example, if an appointment is terminated before it expires, it expires at the beginning of the day [see proposed 22(5)].

Corporations – included powers

- 23(1)** An enactment establishing or continuing a corporation is to be construed as vesting in the corporation the authority to
- (a) have perpetual succession,
 - (b) sue and be sued in its corporate name,
 - (c) contract and be contracted with in its corporate name,
 - (d) have a common seal and alter or change it, and
 - (e) acquire, hold and dispose of personal property for its purposes.
- (2) An enactment establishing or continuing a corporation is to be construed as

- (a) vesting in the majority of its members the ability to bind the others, and
 - (b) exempting its individual members from personal liability for the corporation's debts, obligations or acts who do not contravene the enactment.
- (3)** This section applies to an enactment only if the enactment is in force on the date this section comes into force.

COMMENTARY – The Working Group recommends that section 16 of the UIA not be retained. While it is written as an interpretive provision, it is substantive in nature. Statutory corporations that are now being established are more complex than they used to be. This provision has been carried forward since at least 1859. Jurisdictions shouldn't continue relying on this provision. It is recommended that the Ontario Act (section 92) be followed where their equivalent section 16 only applies to corporations established before the new Interpretation Act came into force. BC and NS Interpretation Acts seem to cover all corporations while others only apply to corporations established by an enactment.

Included powers – generally

- 24(1)** If an enactment confers a power, all the powers that are necessary to exercise the power are also conferred.
- (2)** If in an enactment the performance of an authorized action is dependent on the Lieutenant Governor in Council or a person performing another action, the Lieutenant Governor in Council or the person has the power to perform that other action.

Gender specific references

- 25** In an enactment, gender-specific words refer to any gender and include corporations.

Number specific references

- 26** In an enactment, words in the singular include the plural and words in the plural include the singular.

Delegation

- 27(1)** If an enactment authorizes the holder of an office or position to delegate a power granted or a duty imposed on the office or position by the enactment, the holder, despite any delegation made, may exercise the power or perform the duty.
- (2)** A delegation made under the authority of an enactment remains valid and in effect until the delegation is revoked or expires unless
- (a) the enactment providing the delegated power or duty is repealed or so changed in substance that the power or duty is not substantially the same, or
 - (b) the enactment authorizing the delegation is repealed or so changed in substance that the delegation is no longer authorized.

(3) An authority conferred by an Act to delegate a power or duty does not include the power to delegate a power to make regulations unless specifically authorized.

Acting minister or other statutory officer

28(1) Words in an enactment directing or empowering a minister include

- (a) a minister acting for the minister,
- (b) the minister's deputy or associate deputy, and
- (c) a person employed in the minister's department in an appropriate capacity.

(2) Words in an enactment directing or empowering the holder of a position or an office, other than a judicial office, referred to in the enactment include

- (a) a person appointed to act for the holder,
- (b) the holder's deputy, and
- (c) a person employed in the holder's organization in an appropriate capacity.

(3) For certainty, if a power or duty referred to in subsection (1) or (2) is delegated under a statutory power of delegation, those subsections do not apply in respect of the power or duty.

(4) Subsections (1) and (2) apply whether or not the office or position is vacant.

(5) Subsections (1) and (2) apply whether the power or duty is administrative, judicial or legislative or involves the holding of an opinion or the reaching of a conclusion.

(6) Despite this section, a power to make regulations conferred by an Act may be exercised only by the minister or other person upon whom the power is conferred by the Act.

COMMENTARY –

The Model Act follows the Saskatchewan provision, which further clarifies and expands the Carltona Doctrine and the implied devolution of power. The Federal Interpretation Act, which has a similar provision, does not extend beyond the ministerial level.

While delegation provisions provide significantly more certainty, Carltona could be relied on in the absence of a delegation in writing.

Under this common law exception, the statutory power is not exercised by the subordinate in his or her own right. Rather, the subordinate is deemed to exercise the power for and on behalf of the person or body in whom the power was originally vested. The original power holder remains responsible and accountable.

Power to differentiate

29 A power to make a statutory instrument includes the power to make statutory instruments that

- (a) are general or particular in application,
- (b) are different for different classes, and
- (c) establish classes for the purposes of paragraph (b).

COMMENTARY –Jurisdictions may want to restrict the operation of the provision to regulations, rather than statutory instruments.

Deviations from required form

30 If an enactment requires the use of a specified form, deviations from the form do not invalidate a form used if

- (a) the deviations do not affect the substance,
- (b) the deviations are not likely to mislead, and
- (c) the form used is organized in the same way or substantially the same way as the form the use of which is required.

COMMENTARY – this provision will have to ensure that it works with forms that are required to be submitted in electronic form.

Defined terms

31 If a word or expression is defined in an enactment, other parts of speech and grammatical forms of the same word or expression have corresponding meanings.

COMMENTARY – Section 14 of the UIA has been omitted as no longer being necessary.

14 Definitions or interpretation provisions in an enactment shall be construed as being applicable to the whole enactment including the section containing the definitions or interpretation provision

Terms used in statutory instruments

32 A word or expression used in a statutory instrument has the same meaning as in the enactment authorizing the statutory instrument, whether or not the word or expression is defined in the authorizing enactment.

Computation of time

33(1) A period of time expressed in days and described as beginning or ending on, at or with a specified day includes the specified day.

(2) A period of time expressed in days and described as beginning before, after or from a specified day excludes the specified day.

(3) A period of time described by reference to a number of days between two events excludes the day on which the first event happens and includes the day on which the second event happens

(4) Subsections (1), (2) and (3) apply even if the period is expressed as “at least” or “not less than” a number of days or as requiring clear days.

(5) Time limits that would otherwise expire on a holiday are extended to include the next day that is not a holiday.

(6) Time limits, for registering or filing documents or for doing anything else, that expire on a day on which the place for doing so is not open during its regular hours of business are extended to include the next day the place is open during its regular hours of business.

(7) A period of time expressed as one or more consecutive months beginning or ending on, at, with, before, after or from a specified day, is counted to the date numerically corresponding to the date of the specified day in the last or first month of the period, as the case requires.

(8) A period of time expressed as one or more consecutive years beginning or ending on, at, with, before, after or from a specified day, is counted to the same date as the specified day in the last or first year of the period, as the case requires.

(9) If a period of time would end on a date in a month that has no date numerically corresponding to the first date in the period, the period ends on the first day of the next month.

(10) A person reaches a particular age expressed in years at the beginning of the relevant anniversary of his or her birth date.

COMMENTARIES – The distinction between “clear days” and “at least” has been eliminated. In current legislation the term “clear days” is rarely used and the distinction in using or not using “at least” is likely lost on most readers.

Definitions

34 In an enactment:

“Act” means an Act of the Legislature [Parliament] and includes an ordinance of...–
each jurisdiction would include different things here;

COMMENTARY – In some jurisdictions the term “statute” is used but isn’t defined and as a result could be interpreted in certain contexts as including an Act of another jurisdiction. In fact in Yukon, “statute” is defined to mean an Act of Canada or a province, including an Ordinance of the NWT and Nunavut. Each jurisdiction will need to decide if “statute” needs to be defined. Those Provinces that were carved out of the Territories currently refer to ordinances in their definition of “Act”, in the event that some ordinances still apply. Yukon, defines an Act as being an Ordinance of Yukon.

“bank” means “bank” as defined in the *Bank Act* (Canada);

“enactment” means an Act or a statutory instrument or a portion of an Act or a statutory instrument;

COMMENTARY –The reference to “regulation” has been changed to “statutory instrument”. Currently the definition of “regulation” is drafted very broadly and in fact the term “regulation” is actually one of the listed instruments in the definition. In order to remedy that drafting problem, it was felt that a more “neutral” term should be used. Each jurisdiction can determine how broad they want the definition to be.

If a jurisdiction decides to use a more neutral term, this could lead to extensive amendments to their body of Acts and regulations.

“Governor”, “Governor of Canada” or “Governor General” means the Governor General of Canada and includes the Administrator of Canada;

“Governor in Council” or “Governor General in Council” means the Governor-General acting on the advice and with the consent of the Queen’s Privy Council for Canada;

COMMENTARY –The definitions may need to be treated differently for federal versus provincial/territorial legislation. See, for example, the definition of “Lieutenant Governor”. Also, the Territories have a Commissioner” and not a Lieutenant Governor.

“Her Majesty”, “His Majesty”, “the Queen”, “the King”, “the Crown” or “the Sovereign” means the Sovereign of the United Kingdom, Canada and Her other realms and territories, and Head of the Commonwealth;

“holiday” means ...

COMMENTARY – Each jurisdiction should fill in the days appropriate to its own jurisdiction.

“Legislative Assembly” means the Legislative Assembly of [Province];

“Lieutenant Governor” means the Lieutenant Governor for [Province] and includes the Administrator of [Province];

“Lieutenant Governor in Council” means the Lieutenant Governor acting on the advice and with the consent of the Executive Council;

“person” includes a corporation;

“proclamation” means a proclamation of the Lieutenant Governor issued under the Great Seal by order of the Lieutenant Governor in Council [a proclamation under the Great Seal (Can.)];

“Province” means the Province of [];

“province”, when used to refer to a part of Canada, includes the Territories;

COMMENTARY – May not need to include the definition if jurisdiction usually refers to both provinces and territories in its enactments.

“regulation” means a statutory instrument to which the *Regulations Act* [other Act that defines this category of regulation] applies;

COMMENTARY – Each jurisdiction will have to tailor the definition to its circumstances and law. The term “regulation” would only be used when it is meant to be an instrument that is required to be filed under the Regulations Act or similar law. “Statutory instrument” would be used when the reference is to all forms of statutory instruments, including a “regulation”.

Those jurisdictions that use a key word test may need to change the wording of the definition.

“statutory declaration” or “solemn declaration” means a sworn declaration referred to in section X [69] of the *Evidence Act* (B.C.) or section 14 [or 15?] of the *Evidence Act* (Canada);

COMMENTARY – This definition may not be needed in the Interpretation Act, as it may be better placed in the Evidence Act.

“statutory instrument” means a regulation, order, rule, form, tariff of costs or fees, proclamation, letters patent, commission, bylaw, or other instrument enacted

- (a) in execution of a power conferred under an Act, or
- (b) by or under the authority of the Lieutenant Governor in Council,
but, for certainty, does not include an order of a court or an order made with respect to the resolution of a dispute between 2 or more persons;

“swear” includes solemnly affirm or declare;

COMMENTARY – This provision may have implications in BC and other like jurisdictions. For example BC includes a reference to “appointment”. It was decided to add 22(3), (4) and (5) instead of adding “appointment” in this definition.

As drafted, “statutory instrument” would be used to include all types of “statutory instruments”, including law-making regulations. (See definition above “Regulation”).

If a jurisdiction decides to use the term “statutory instrument” instead of “regulation”, existing legislation may need to be amended to reflect the change in terminology.

“Territories” means the Northwest Territories, Nunavut and Yukon.

COMMENTARY – the Working Group recommended that the following terms not be retained in the definition section:

“commencement”

“Great Seal”

“herein” and “hereafter”

“may” and “shall”

“now” and “next”

“oath”

“prescribed”

“public officer”

COMMENTARY –Transitional Provisions

Jurisdictions that adopt the Model Act or portions of it will need to consider whether any transitional provisions will be necessary. Some of the proposed provisions may be a complete reversal of the jurisdictions current Act.