

Ordinary Meaning	(ss. 7, 8, 12) <i>Shaklee</i> (Food), <i>Riddell</i> (grader/rule of effectivity), <i>Mowat</i> (term of art)	Means, and, or, includes
<p>In identifying what the ordinary sense of a specific word is, if it is not defined in the statute, courts will ask what would a reasonable person of average intelligence and understanding take to be the usual meaning of the word? This is because it is presumed that the legislator wishes to be understood by the citizen, [thus] the law is deemed to have been drafted in accordance with rules of language in common use. This definition may be the one found in a dictionary. However, dictionary definitions do not take into account the specific context, and may be clinical or abstract in nature "Limited usefulness" (<i>Shaklee</i>). Maybe a first blush meaning would be better. "One must sometimes resort to the simple gesture of imagining the subject matter in a very ordinary situation." Another major exception are legal terms of art. (<i>Mowat</i> w/ costs). <i>Shaklee</i> - If someone asked for food and was given fibre products or a plate of vitamins, they would be confused and disappointed.</p>		
<p>Means = exhaustive Includes/does not include = non exhaustive.</p>		
<p>Presumption of uniformity of expression (<i>Schwartz</i>) Words have same meaning throughout the same statute. Ss. 12 and 13 BCIA</p>		
<p>Principle of associated meaning: <i>Noscitur a sochs</i> (<i>McDiarmid</i>) - A word takes its meaning from the surrounding words. "When two or more words are linked by "and" or "or" serve an analogous grammatical and logical function within a provision, they should be interpreted with a view to their common features." "A word is known by its associates." Conceals as a positive act of concealment in relation to remove and dispose, around them.</p>		
<p>Limited Class Rule, <i>Ejusdem Generis</i> (Basket Clause) – (<i>Katsikonouris</i>) When one finds a clause that sets out a list of specific words followed by a general term, it will normally be appropriate to limit the general term to the genus of the narrow enumeration that precedes it.</p>		

SCHEME		
Type of statute – Regulatory vs. Penal – Only in genuine ambiguity (<i>Bell</i>)		
Penal	Narrow - “ambiguity should be resolved in a manner most favourable to accused persons” (<i>Hasselwander</i> – Only in ambiguity)	<i>McIntosh</i>
	Liberal - “limited value when interpreting a regulatory statute”	<i>Merk</i>
Benefit - conferring	Typically granted a “large and liberal” interpretation to enable the legislation to fulfill its purpose	<i>Merk</i>
<p>Look to how other phrases and provisions of the act are used and constructed.</p> <p>Presumption against tautology (<i>McDiarmid</i>) "It is presumed that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain".</p> <p>Implied exclusion rule <i>Expressio Unius est Exclusio Alterius</i> (<i>Hamilton</i>) "When a provision specifically mentions one or more items, but is silent with respect to other items that are comparable, it is presumed that the silence is deliberate and reflects an intention to exclude the items that are not mentioned."</p> <p style="padding-left: 40px;">△ May have wished to provide emphasis, Express reference may be necessary in one area but unnecessary in another, or may be implied.</p> <p>Golden rule of literal construction (<i>McIntosh</i>) - Statute should be interpreted in a manner consistent with the plain meaning of its terms. Provides certainty for citizens, doesn't allow for judiciary legislating.</p> <p>Punctuation is often disregarded in the construction of statute, and this should be recognized in determining to what extent the legislation may deviate from what can be reasonably expected. (<i>Jaagusta</i>)</p> <p>Internal coherence (<i>Assessor of the Town of Sunny Brae</i>) – “A statute is to be construed, if at all possible, so that there may be no repugnancy or inconsistency between its portions or members.”</p> <p>Horizontal coherence (<i>Bell ExpressVu</i>) – “Presumes a harmony, coherence, and consistency between statutes dealing with the same subject matter.”</p>		
<p>Reading a revision into statute is permissible in Driedger's method when there is 1) manifest absurdity, 2) traceable error, 3) obvious correction. Policy consideration, absurdity/anomalous should be corrected if not clearly intended by Parliament.</p> <p>Parliament can act illogically, but shouldn't be presumed to. Lastly, unjust.</p>		

Purpose

△ **Title** (*Committee*) s. 9 - Two titles, one short, one long. Either can be used to assist in explaining the statute's meaning and object. "Integral part of the text and may validly be used by anyone interpreting them in order to clarify the meaning of other provisions of the regulation." "Though the short title of necessity sacrifices precision for concision."

△ **Preamble** (*Re Anti-Inflation*) s. 9 - Assists in suggesting context, resolving ambiguity. Not determinative.

△ **Purpose statement** (*Farmers*) - Important source of legislative values.

Specificity and coherence. Carries less weight than substantive provisions. If there is conflict and no ambiguity, provision holds out over intent of legislature.

△ **Marginal notes** (*Mcintosh*) S. 11 (1) – Supports intent. however, limited. "External" to the legislation, and therefore more likely to express the drafter's intent instead of the legislatures.

△ **Headings** (*Lohnes*) – Support intent but not determinative. Not in IA, so presumed greater weight.

△ **Hansard** (*Rizzo*) – Cannot represent the intent of legislature, however there is limited reliability of Hansard evidence as to background and purpose.

△ **Attempted Legislative History** (*CHRC* (proposed legislation, costs)) - in the sense of proposed legislation, parallel legislation, engagement w/ act prior.

△ **Prior understanding** (*CHRC*) – understanding of costs by CHRC. Most familiar.

△ **Historical Context** (*C3000*) – interpretation can rely on condition of things at the time of the enactment. What is remedial? Issues, house comte rprts, notes.

△ **Amendment** (*Re: SFU*) – "Any change in language is some indication of the change of intention on the part of the legislature." Housekeeping to polish?

Presumption against absurdity (*Rizzo*) - "an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment".

<p>Presumption against interference w/ rights → narrow interpret– only genuine ambiguity (<i>Bell</i>) Personal rights and freedoms, Charter. Property rights Taxation – “Residual presumption in favour of the taxpayer” <i>Placer</i></p>	
<p>Accrued Right</p>	<p><i>Scott</i>: inevitability and certainty is what determines whether a right is accrued or accruing. Process was moving inexorably towards realization of the right. Although payment had not occurred which would have led to an accrued right, the only reason why is that the amount had been (rightly) contested. To allow the appeal does not affect the general effectiveness of the appeal, but also would be objectively unfair. Concrete steps were taken, inevitability and certainty realized. Certain, and not conditional on future events</p>
<p>s. 35 (1) (c)</p>	<p>Repeal does not affect a right or obligation accrued, accruing, or incurred under the enactment (unless contrary intention expressed within act, as dictated by s. 2 of the BCIA).</p>
<p>s. 36 (1) (b)</p>	<p>Repeal and replacement - Proceedings continued under former enactment continued in conformity with new enactment.</p>
<p>LIBERAL CONSTRUCTION</p>	<p>Human rights legislation → quasi constitutional, interpret in a broad purposeful manner to achieve object (<i>Jubran</i>) Municipal Law → “read in a broad and purposive manner” – <i>United Taxi</i></p>

REGULATIONS	
Regulation	Have the same binding legal effect effect as statutory enactment, defined in s. 1 BCIA. Express authority is required, enabling clause found in enabling act. <ul style="list-style-type: none"> • s. 41(2) – regulation made under the authority of an enactment “has the force of law”.
Guidelines/directives	Do not have the binding force of law, failure to obey subject to administrative and non-judicial sanction. Uniformity, Transparency, Predictability <ul style="list-style-type: none"> • Power to direct granted to administrative bodies even if no enabling power (<i>Capital Cities</i>) • Ministerial directives okay, helpful to know how minister will apply regulation (<i>Maple Lodge</i>) • Not allowed to have effect of law (<i>Pezim</i>) Cannot incur Detrerieliance
<i>Oldman River</i> – Difference between law and policy	<ul style="list-style-type: none"> • Is there any indication the expression was intended to be a mere guideline/policy? <ul style="list-style-type: none"> ○ Saying it is a guideline is not informative, form more important. • Is there anything to indicate it is intended to have the force of regulation? <ul style="list-style-type: none"> ○ Repeated use of imperatives indicates that the expression is intended to be mandatory. ○ Required to be formally enacted by order ○ Authorized under enabling statute with approval of governor in council.
Henry VIII clauses	A provision which authorizes subordinate legislation that conflicts with or overrides primary legislation. (<i>Mullan</i>)
BCIA AND REGULATIONS - Most provisions will be worded to apply to “enactments”, and will apply to regulations.	
s. 13	Term used in subordinate legislation presumed to have same meaning as enabling legislation.
s. 41 (1)	If an enactment provides an individual with the authority to make regulations, that person may for the purpose of carrying out the enactment according to its intent <ol style="list-style-type: none"> Make regulations as are considered necessary and advisable, are ancillary to it, and are not inconsistent with it. Provide for administrative and procedural matters for which no express, or only partial, provision has been made. Limit application in time/space/both. /e/f – Create a fee for breach, constitutes an offence, not liable to more than offence act.
s. 36 (1) (e)	Survival of regulations/statute following the repeal and replacement of the enabling act.
BCRA - requires for effect	<ol style="list-style-type: none"> Submitted for examination by a person designated by the minister, check for authority/errors Deposit with the registrar of regulations to provide public access (comes into effect, unless otherwise specified) Publication in the gazette by registrar. <ul style="list-style-type: none"> • Material/regulations adopted by reference or • Regulation of a corporation, unless it is identified in the schedule.

Only captured by BCRA if	Word regulation(s) or prescribe(s)(d) used.
VALIDITY OF REGULATION	
Conflict with enabling authority – Neither express nor implied conflict allowed Regulatory power must be given by statute, either expressly or by necessary implication (<i>Federated</i>)	
Implied conflict	Implied exceeding of regulatory authority requires statutory interpretation to determine if regulation is accommodated or not.
Form	<ul style="list-style-type: none"> • Framework legislation, intended to confer wide regulatory power? <i>Guzman</i> • Legislation with specific purpose? Intent should be highly relevant <i>Federated</i>
Scheme v. purpose	The fact that specific groups are mentioned which cannot be discriminated against doesn't mean that others can be arbitrarily in frustration of purpose (<i>Federated</i>)
Language, broad?	Does the plain meaning indicate conferral of wide regulatory authority? <i>Guzman</i> <ul style="list-style-type: none"> • Plain meaning can also restrict regulatory authority. (<i>Gach</i>)
Trend	Trend of jurisprudence has been to allow for regulatory powers: courts exercise great caution before finding invalidity. <i>Guzman</i> <ul style="list-style-type: none"> • Weak presumption in favour of validity of regulation.
Approach	Both the regulation and the enabling statute should be interpreted using a "broad and purposive approach." (<i>Katz, s. 8</i>)
Constitutional challenges	
Division of powers	Must be irrelevant or completely unrelated to statutory purpose to be found ultra vires (<i>Katz</i>)
Charter	Violation of charter rights and freedoms
Implied constitutional limitations	Interference with parliamentary supremacy? <ul style="list-style-type: none"> • <i>Grey</i> – No, WMA can be repealed at any time, large and liberal construction required for times of emergency. • <i>Waddell</i> – No question of whether Parliament has the authority to delegate legislative powers to amend or modify principle legislation.

BCIA

s. 1	Regulation: A regulation, order, rule, form, tariff of costs or fees, proclamation, letters patent, commission, warrant, 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.
s. 2	BCIA applies to every enactment, unless otherwise indicated.
s. 3	Date of assent is date of commencement if no contrary indication.
s. 7	Always speaking clause – If a provision is expressed in the present tense, it applies to circumstances as they arise.
s. 8	Enactments are to be construed as remedial and must be given such fair, large, and liberal construction and interpretation as best ensures the attainment of its objects .
s. 9	Title and preamble of an enactment part of it and intended to assist in explaining its meaning and object.
s. 11	Reference aids and clarifications not part of the act (very limited value in interpretation.) (<i>McIntosh</i>) Marginal notes
s. 12	Definitions used in act apply throughout, unless otherwise specified.
s. 25	Calculation of time: General rule – First day excluded, last day included. △ Exception when words “clear”, “at least”, or “less than” are used. Then both first and last days are excluded. △ If a deadline falls on a holiday (includes Sundays) then requirement moves to next day not a holiday. △ Age is expressed in years at the start of the relevant anniversary of birth.
s. 28	If a form is prescribed under an enactment, deviations from it not affecting the substance or calculated to mislead, do not invalidate the form used. Gender specific terms include both genders and include corporations. Singular includes the plural Words defined in statute have the same meaning as their other parts of speech in relation to the statute.
s. 29	Important definitions: May: is to be construed as permissive and empowering. Month: means a period calculated from a day in one month to a day numerically corresponding to that day in the following month, less one day. Must: is to be construed as imperative. Now: must be construed as referring to the time of commencement of the enactment containing the word. Obligation: includes a duty and a liability Person: includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law.

	Prescribed: means prescribed by regulation. Shall: is to be construed as imperative.
Cont.	deliver, dispose, herein, holiday, insurance company, land, lawyer, mail, medical practitioner, minor, newspaper, peace officer, personal representative, property, Province, province, record, registered mail, right, rural area, savings institution, school district, security, Supreme Court, trust company, will, written, writing.
s. 29.1	Reference for definitions related to aboriginal legislation.
s. 37	The repeal or amendment of all or part of an enactment must not be construed as a declaration of intent as to the functioning of the previous legislation.

If two statutes are in *pari materia* - dealing with the same subject matter – one’s definitions will receive greater weight as an interpretive aid.

Vertical coherence –

Constitutional supremacy (s. 52) (Finish interpretation first, *Baker*)

Federal paramountcy (Common law)

Quasi-constitutional nature of human rights provisions (s. 4 of the human rights code)

Subordinate nature of delegated powers

Conflict with other legislation – If no direction internal to statute

1. Try to interpret in such a manner as to avoid finding of inconsistency. (presumption of one voice/*Bell Expressvu*)
2. More recent will prevail over older (more recent expression of intent).
3. Specific will prevail over general.
4. Earlier specific will prevail over older general. (*Lewis* – recent and specific succeeds)

Previous interpretations

Judicial decisions – binding and persuasive by *stare decisis*.

Administrative tribunals – legally binding, however not experts in stat. interp. Persuasive.

Public officials – Weight depends on circumstances, expertise, knowledge of the statute, awareness of breadth.

Textbooks – Clearly admissible for guidance, dependant upon how expert and notable the account is.

International Coherence – *Baker*- Interpretive aid unless implemented by Parliament. Cautious application in dissent. Only ratified by executive, not law. Vienna convention stipulates (article 31)-

- Treaty shall be interpreted in good faith in accordance with ordinary meaning of terms in context with object and purpose of agreement.

Referential incorporation - Pulling the provisions of one statute into another. Is done mutatis mutandis.

- Drafters can ensure that two statutes will have identical scope in regard to a specific word or phrase.
- Precedent will dictate how the new statute is interpreted, making application and execution of it easier for public servants.
 - If the provision in the referenced legislation is changed or repealed, one of two things can happen.
 1. If the definition is changed, then the change translates in the new provision as well. This is an ambulatory change.
 2. If the original is repealed and is not replaced with a new definition, the old definition survives.
- Schedules - Do not automatically have the force of law. For legal effect, must be incorporated into statute by express or implied reference.
- Bilingual Statutes - *Medovarski v. Canada* - Is there a common meaning between the French and English versions? Is the meaning consistent with parliament's intent?
- Bijural interpretation - Both civil and common law legislation equally authoritative. However, in interpretation, must be looked at in reference to the legal system existing in the province it is being considered in.

Presumption of Crown Immunity – Common law presumption unless implicated by statute or necessary implication.

s. 14 (1+2) of BCIA – Enactment presumed binding on gov + except use or development of land or planning/construction/maintenance as defined in the *Assessment Act*.

Presumption against extra-territoriality – Provinces cannot make legislation that applies extraterritorially (s. 92 of the CA, 1867).

Presumption against Canadian legislation applying outside Canada, however can be contravened by contrary intent. *Hammerbeck* – legislation applies if a substantial portion of the act happened in Canada.

Timing - BCIA

s. 4(1) – Enactment commences at beginning of the day it comes into force

s. 4(3) – Enactment ceases to have effect at end of day on the day it's repealed.

s. 4(2) – **Repeal and replacement** – Enactment repealed at same time replacement.

EXPIRY/CHANGE

s. 4(4) – Statute **expired** or otherwise ceased to have effect is deemed repealed.

- Or, can have a **sunset clause**.

s. 35(1)(a) – no doctrine of revival, presumption against common law revival.

s. 35(1)(b) - Lawful acts done under the act not affected.

s. 35(1)(d) – Offences still prosecutable after repeal.

Repeal and replacement –

s. 36(1)(a) – Personnel appointed under former enactment continue to serve.

s. 36(1)(c) – Same goes for procedures in enforcement of fines or penalties incurred/rights existing or accruing.

s. 36(1)(d) – if new enactment carries lesser penalty, new provisions apply. S. 11 of charter supports.

s. 36(1)(e) – Same for prior regulations, continue unchanged under new enactment.

s. 36(1)(f) – Referential incorporation in reference to act continues as amended. If particular definition not included in amended version, considered to still be present unless otherwise indicated!

Regulation

- **BCIA AND SUBORDINATE LEGISLATION**

s. 23(1) and 23(5) – No subdelegation of regulation making authority.

s. 27(4) – Power to make includes repealing or amending

s. 5 – Anticipatory regulations.

Vested and Accrued Rights	
Strong presumption against retroactivity	<p>Changing the past effects of a past event (<i>Mackenzie</i>)</p> <p><i>Mackenzie v. British Columbia</i> – pension plans, legislation changed afterwards for pensions to pay portion into joint life plan. Brought suit after death. Election for plan was event, not possession of plan.</p> <ul style="list-style-type: none"> • Importance of policy considerations, absurdity – fairness, respect for property, rule of law.
Presumption against Retrospectivity	Attaching new legal consequences to a past event.
Exceptions to presumption against retrospectivity	<ol style="list-style-type: none"> 1. Benefit conferring legislation 2. Protection of the public 3. Purely procedural legislation that doesn't affect substantive rights. – Right to appeal is substantial (<i>Puskas</i>)
Presumption against interference with vested rights (<i>Lavery</i>)	<p><i>Dikranian</i> two-step test</p> <ol style="list-style-type: none"> 1) Legal situation must be tangible and concrete rather than general and abstract 2) Must have been sufficiently constituted at the time of the new statute's announcement. <p>"The mere possibility of availing oneself of a specific statute is not a basis for arguing that a vested right exists" (<i>Gustavson</i>)</p>