

A Guide to
Legislation and Legislative Process
in British Columbia

PART 1

THE LEGISLATIVE PROCESS

PREPARED BY:

Office of Legislative Counsel

Ministry of Attorney General

Province of British Columbia

August 2003

PART 1 – THE LEGISLATIVE PROCESS

Contents

Stage 1 – The Creation of Legislative Policy

- Policy development
- The Request for Legislation (RFL)
- The “Three Column Document”
- Drafting Instructions
- Treasury Board Staff and Legislative Counsel comments
- Ministry solicitor should assist with RFL preparation
- RFL approval process
- Government Caucus Committee review

Stage 2 – Drafting the Legislation

- Instructing officers
- Ministry solicitor
- Legislative Counsel
- Final policy review
- Final review of the draft legislation
- Bill preparation
- Special budget legislation process

Stage 3 – Enactment of a Law

- Types of Bills
- Government Bills and legislative process
- Bill 1: a special case
- First Reading
- Second Reading
- Committee Stage
- A caution: courts may use House debate to interpret legislation
- Report Bill
- Third Reading
- Royal Assent
- Commencement: when an Act becomes effective law

PART 1

THE LEGISLATIVE PROCESS

The legislative process involves a number of different stages and a number of different people, all with a single goal — to create a piece of legislation that gives legal effect to government policy in a form that clearly communicates the policy to those who are required to obey it and to those who are required to administer it.

There are three requirements to meet that goal:

- a fully considered and formulated policy;
- a precisely and clearly worded text;
- a thorough review and assessment by the Legislative Assembly.

These three requirements form the framework for the stages through which a government proposal must go before it becomes law.

Stage 1 – Policy development: In this process, a problem or initiative is identified, issues are analysed and options reviewed. If legislation is a recommended option, this stage will produce a formal submission to Cabinet requesting approval of the legislative proposal. If this approval is given, the project will proceed to the next stage.

Stage 2 – Drafting the legislation: Legislative Counsel and instructing officials from the responsible ministry work together to prepare legislation that implements the policy reflected in the approved Cabinet submission. The drafting stage culminates in Cabinet approval of the draft legislation.

Stage 3 – Enacting a law: The proposed legislation is introduced as a government Bill for enactment by the Legislature. It is debated in the House and, if approved by the Legislative Assembly, becomes law when it receives Royal Assent from the Lieutenant Governor.

Each of these stages is described separately in the following pages.

Stage 1 – The Creation of Legislative Policy

Policy development

Before drafting pen is ever put to paper (or fingers to keyboard), an enormous amount of work must be done to refine the policy that the government wishes to pursue.

Policy development is usually done by the ministry that will be responsible for administering the legislation. The proposal may be in response to an issue identified by the ministry itself. In other cases, the issue will have been identified by another minister or by outside parties. In some cases, outside parties will have actively lobbied the minister or the ministry for the specific outcome that is being proposed.

A substantial amount of information must be gathered and assessed before the policy initiative can proceed to a proposal for legislation and the drafting stage. For example, ministry staff must determine:

- what specific outcome is required and why;
- whether legislation is in fact needed for that outcome;
- what legislation should be changed or created to give effect to that outcome;
- how the proposed policy will impact on other legislative schemes both inside and outside the ministry;
- what successes or failures other jurisdictions may have had with similar policies and what can be learned from their experiences;
- what impact the proposed policy will have on interests inside and outside of government, and how those interests might react to the changes.

The Request for Legislation (RFL)

If a ministry wishes to proceed with a legislative initiative, it will prepare a formal Cabinet submission known as a “Request for Legislation”. An RFL must provide a thorough analysis of the problem and demonstrate a clear understanding of the proposed legislative solution and its potential impacts. It is the key document in setting the parameters within which all legislative drafting for the proposal must be done.

The form and content requirements for an RFL are established by the Cabinet Operations Office. Under these requirements, an RFL must:

- provide a summary of the proposed legislation and the issue (or issues) it is intended to address;
- give a brief legislative history;
- explain any previous Cabinet decisions respecting the matter;
- describe the consultations that have already taken place, including the degree of agreement with the proposed initiative and dissenting views;
- indicate any further consultations that are required;
- provide comprehensive drafting instructions.

The “Three Column Document”: specifics of the proposal

After an RFL is submitted to the Cabinet approval process, Ministries must schedule a hearing at the appropriate Government Caucus Committee at which they present a document that deals with the specifics of the proposed legislative changes. As with the RFL, form and content requirements of this document are established by Cabinet Operations.

The document will:

- describe the current legislative situation in relation to the matter,
- describe the proposed change, and
- provide the ministry’s reasons for the change.

It does this in a three column format, hence the name.

A simple amendment will require a simple supporting document. A complex legislative proposal may require a much longer document. As an example of a simple supporting document, a proposed change to the composition of an advisory board might use the following:

Current	Proposed	Reasons
The maximum number of board members is 9, all of whom are appointed by the minister.	Increase the membership of the board from 9 to 12.	The increased membership will provide for better representation.

It is the combination of the RFL and the Three Column Document that sets the parameters within which all legislative drafting for an initiative must be done.

Drafting Instructions

Comprehensive drafting instructions are provided in the RFL.

[See [Part 3 of this Guide \(Guide to Preparing Drafting Instructions\)](#) for information on effective drafting instructions.]

Treasury Board Staff and Legislative Counsel comments

Comments of Treasury Board Staff and Legislative Counsel must be attached to each RFL when it is submitted to Cabinet.

Treasury Board is a committee of Cabinet that has statutory responsibility under the *Financial Administration Act* for government financial management. In addition to providing general support to this committee, Treasury Board Staff within the Ministry of Finance review RFLs to assess their anticipated impact on the financial position of the Province.

The Office of Legislative Counsel is part of the Ministry of Attorney General. It is responsible for drafting government Bills and regulations and for publication of enacted legislation. Legislative Counsel comments on an RFL will include consideration of the following:

- whether legislation is necessary to effect the proposed changes;
- whether the drafting instructions provided with the RFL are sufficiently detailed to allow drafting to begin;
- whether the proposed legislation is major or minor in nature;
- whether there are any conflicts with existing legislation, constitutional issues or other legal concerns;
- how much drafting time will likely be required;
- the recommended form of Bill for the legislation.

Ministry solicitor should assist with RFL preparation

RFLs should be prepared in consultation with the appropriate ministry solicitor.

Each ministry has available to it one or more of the solicitors within the Legal Services Branch of the Ministry of Attorney General, and those solicitors can provide to that ministry legal advice, contractual drafting, litigation support and support in the development of legislation.

Because these solicitors provide day-to-day legal advice to their client ministry, they have significant knowledge of both the business conducted and the legal issues faced by it. Their knowledge of the ministry and of the resources available in the Ministry of Attorney General is invaluable in the process of developing legislation.

Involving the ministry solicitor in the preparation of an RFL, or in developing policy for inclusion in an RFL, has numerous benefits.

The solicitor may be able to provide advice respecting the legal process and what it requires or, conversely, may be able to show that new legislation is not required to meet the policy objectives.

The solicitor is also able to provide advice respecting any additional legal analysis that may be necessary to determine the appropriate legislative solution to the problem.

Involvement of the ministry solicitor at this early stage allows the solicitor to become completely knowledgeable about the intentions of the ministry so that he or she will be better able to provide effective legal support in the drafting process and to provide effective advice to the client ministry after the legislation is enacted.

RFL approval process

When the RFL is completed, it must be signed by the sponsoring minister and submitted to Cabinet for review and approval. Cabinet Operations will review the RFLs to ensure that the required elements are included.

Cabinet will determine whether the RFL is approved to proceed in the upcoming legislative session, and what priority it should be given in the drafting process. Following this determination, a record of Cabinet's decision is sent to the minister, the deputy minister, the ministry's legislation contact and Chief Legislative Counsel.

Government Caucus Committee review

Legislative initiatives must also be reviewed by the appropriate Government Caucus Committee. There are currently five such committees:

- Health
- Education
- Communities and Safety
- Natural Resources
- Economy and Government Operations

The first review is based on the Three Column Document and will usually be conducted once drafting is underway. A second review is required before the Bill is finalized.

Stage 2 – Drafting the Legislation

The drafting process and the roles and responsibilities of the persons involved in that process do not vary greatly from one legislative initiative to another. However, there will be some differences depending on the individuals involved and the timelines for and the length and complexity of the project.

Generally, each project has a drafting team consisting of the ministry's instructing officer, the ministry solicitor and the Legislative Counsel assigned to draft the legislation.

Instructing officers

Instructing officers are the link between the sponsoring ministry and the drafter of the Bill. Ideally, there will be one instructing officer on any project, although in complex cases or in cases involving different bodies within the ministry or multiple ministries, more instructing officers may be required.

Instructing officers:

- distill the ministry's various goals and policy decisions into drafting instructions;
- provide those instructions to the drafter and convey to the appropriate ministry personnel any comments and queries of the drafter;

circulate drafts within the ministry and to other affected ministries and agencies;
 collate comments on the various drafts and funnel them to the drafter;
 instruct both the executive of the ministry and the minister respecting the content and effect of the Bill.

Experience has shown that the process works best if an instructing officer:
 is a senior level official in the client ministry and has ready access to the deputy minister and the minister;
 has the authority to make decisions or can obtain decisions quickly;
 was directly involved in the policy development that led to the legislative solution being proposed;
 has a good general knowledge of the subject matter of the proposal;
 is readily available to the drafter on an ongoing basis;
 has an aptitude for analysing legislation and ensuring that the draft accurately reflects the approved policy.

In addition to the instructing officer, a wide range of officials in the ministry may be involved behind the scenes in the preparation of a Bill to provide information to the instructing officials and to make policy decisions necessary for completion of the draft legislation.

Ministry solicitor

The ministry solicitor is a valuable member of the drafting team. Ministry solicitors bring the following expertise to the drafting process:

a thorough understanding of the business and operation of the client ministry;
 significant knowledge of the law as it relates to that ministry;
 knowledge of the legal background to the legislative initiative;
 the ability to interpret and analyze legislation in light of rules of statutory interpretation and relevant court cases.

Legislative Counsel

The third member of the drafting team is the Legislative Counsel assigned as drafter. Drafting involves transforming government policy into a legislative form, and so the drafter's primary objective is to prepare a Bill that will achieve government's goals. Legislative Counsel are also required to balance this objective with the need to maintain coherent and consistent Provincial legislation, fairness and the integrity of the legal system.

In addition to balancing these objectives, the drafter provides advice on a number of matters, such as:

- whether the proposed provisions achieve the intended goals;
- whether there are gaps in the proposal that need to be filled with additional details or whether it is better to leave matters to be dealt with through general provisions;
- the appropriate form of the provisions;
- the inclusion of certain types of provisions in the Bill.

Drafters also provide a sense of perspective. They bring a fresh eye to the issues involved, largely unencumbered by the policy analysis that has preceded the RFL, and thus can provide fresh insights into the solutions proposed.

Furthermore, drafters are attuned to the need for clarity and certainty in Acts. This need is addressed, in part, by the drafter's appropriate application of drafting conventions and attention to the rules and principles that have been applied by the courts in interpreting statutory language. The goals and challenges of legislative drafting are set out in more detail in Part 2 of this Guide (*Principles of Legislative Drafting*).

Legislative Counsel assess the legislative proposal from a legal perspective and, with specialists in the Ministry of Attorney General, are able to help ministry officials avoid provisions that might otherwise present legal problems, particularly as regards the Canadian constitution.

Legislative Counsel are assisted in their efforts by the legislative editors and other publications staff in the Office of Legislative Counsel. In addition to their many other duties, legislative editors:

- check draft Bills for grammar and spelling;
- review the content of draft Bills for clarity, precision, consistency of language and the logical expression of ideas;
- ensure that draft amendments correctly reflect the statute being amended;
- recommend required consequential amendments;
- ensure conformity with the rules and conventions governing the drafting and presentation of Bills.

Publications staff prepare the legislation that is ultimately published in the looseleaf edition of the statutes, the Annual Statutes and the Rules of Court and Related Enactments looseleaf.

Final policy review

Once an initiative is getting close to ready for introduction, the Ministry must prepare a second Three Column Document that provides an update on the initiative and, in particular, discloses the new policy issues that have arisen during the drafting process and how those issues have been resolved in the draft legislation. The Ministry must provide this new Three Column Document to the appropriate Government Caucus Committee and must schedule a hearing with that body at which time the new Three Column Document can be considered. Legislation must not proceed to Legislative Review Committee until after the Government Caucus Committee has had this last opportunity to consider and report out on this Three Column Document.

Final review of the draft legislation

After the Government Caucus Committee is satisfied with the policy direction taken in the draft Bill, and once the draft legislation is complete, the sponsoring minister or delegate must sign a Certificate of Readiness to indicate that the ministry is satisfied that the draft gives effect to the policy objectives reflected in the RFL. The signed certificate must be returned to Legislative Counsel before the draft is considered by Legislative Review Committee.

After receipt of the Certificate of Readiness, Legislative Counsel will provide the draft to Cabinet Operations, which will review the draft to:

- ensure consistency with the RFL, and
- ensure consistency with Cabinet, Caucus and Government Caucus Committee direction.

At the same time, the sponsoring ministry must provide Cabinet Operations with supporting materials, including:

- a briefing note that gives an overview of the legislation, including areas that may be controversial and the outcome of any consultations;
- section notes that describe each provision of the legislation and its purpose and effect (these notes will be used by the minister in debate on the Bill in the Legislative Assembly).

The draft will then be reviewed by the Legislative Review Committee, comprised of Cabinet ministers, the chairs of the five Government Caucus Committees and the Government Whip. Cabinet Operations staff and Legislative Counsel will assist in this review.

Bill preparation

If the draft legislation is approved for introduction in the Legislative Assembly, the Office of Legislative Counsel will prepare it in final Bill form. Depending on the content and size, the legislation will be prepared as:

- a separate Bill (all new Act are prepared in this way),
- a specific amending Bill,
- as part of a Ministry Statutes Amendment Act (amending a number of Acts that are the responsibility of a single minister), or
- as part of a Miscellaneous Statutes Amendment Act (which will be carried in the Legislative Assembly by the Attorney General).

The Bill will be signed by the Premier and the Lieutenant Governor, and printed by the Queen's Printer. Introduction of the Bill (First Reading) is coordinated by the Government House Leader in consultation with the Premier's Office and the sponsoring minister.

Special budget legislation process

Proposals for legislation to be introduced as part of the annual Budget (such as income tax, consumer taxes or tax credits or refunds) are initiated by the Minister of Finance. They are reviewed and finalized by the Treasury Board Staff and other officials in the ministry. These officials provide drafting instructions directly to Legislative Counsel without any RFL or other approval process.

When a draft is finalized, the Minister of Finance provides Legislative Counsel with a signed Certificate of Readiness. The draft is then reviewed at a meeting involving staff from the ministry, Cabinet Operations and Legislative Counsel. After a final Cabinet level review, Bills will be prepared as for other legislation.

Stage 3 – Enactment of a Law

Types of Bills

A proposed Act placed before the Legislative Assembly is known as a “Bill”. There are 3 types of Bills that may be presented

Government Bills

Content: These Bills implement government policy and are drafted by Legislative Counsel.

Introduction: They are presented to the Legislative Assembly by the responsible minister.

Numbering: They are numbered consecutively for each Legislative Session, beginning with “Bill 1”.

Members’ Bills

Content: These Bills are prepared by an individual Member of the Legislative Assembly or on an individual Member’s instruction. They are almost always proposals by Opposition Members and are drafted without assistance from Legislative Counsel. There is a constitutional restriction that Members’ Bills cannot include appropriations or impose taxes.

Introduction: They are presented to the Legislative Assembly by the sponsoring Member.

Numbering: They are numbered consecutively for each Legislative Session, beginning with “Bill M 201”.

Private Bills

Content: These Bills deal with matters of a private or local nature (for example, legislation establishing a charitable foundation).

Introduction: They are presented to the Legislative Assembly by an individual Member, usually a member of the government caucus. After introduction they proceed through a special committee process established under the Standing Orders of the Legislative Assembly, although final reading is given in the Legislative Assembly itself.

Numbering: They are numbered consecutively for each Legislative Session, beginning with “Bill Pr 401”.

Government Bills and legislative process

Government Bills are intended to implement policy that has been approved by Cabinet.

Generally, Government Bills are introduced with the expectation that they will be approved by the Legislative Assembly and become law. In relatively rare cases, a Government Bill may be introduced as an “Exposure Bill”. In this case, the Bill indicates proposed policy and is not intended for enactment in the current Session (in parliamentary terms, it is intended to “die on the Order Paper”). By introducing an Exposure Bill, the government is providing interested persons with an opportunity for input before a final Bill is re-introduced for enactment.

The process by which a Government Bill becomes law consists of the following steps:

- First Reading
- Second Reading
- Committee Stage
- Report Bill
- Third Reading
- Royal Assent
- Commencement.

More detailed information can be found in the Standing Orders of the Legislative Assembly. These Standing Orders are the parliamentary procedure rules established by the Assembly, and are available on the Internet through the Legislative Assembly’s homepage at:

<http://www.leg.bc.ca/37th4th/4-7-37-4.htm>

Bill 1 – a special case

Before describing the usual process by which a Bill is enacted, a special case deserves mention.

At the start of each Legislative Session, Bill 1 is introduced by the Attorney General. It is titled “*Act to Ensure the Supremacy of Parliament*”. The Act does not proceed past First Reading and its only content is a description of the historical importance of this Bill:

“This *Act to Ensure the Supremacy of Parliament* is an important part of our democratic process. The purpose of this Bill, and its introduction prior to consideration of the Throne Speech, is to perpetuate the established right of Parliament, through its elected representatives, to sit and act without leave from the Crown.

This Bill simply asserts the right of the Legislative Assembly to give precedence to matters other than those expressed by the Sovereign.

Introducing it at this point in the opening proceedings of this Legislative Assembly is a tradition that dates back to the reign of Elizabeth I when on March 22, 1603, Parliament first recorded this assertion of independence from the Crown for purposes of legislation.”

First Reading

A Government Bill will be presented to the Legislative Assembly by a minister, usually the minister responsible for the relevant subject matter. In the case of a *Miscellaneous Statutes Amendment Act*, the Bill will be presented by the Attorney General.

The Standing Orders of the Legislative Assembly require advance notice of First Reading unless the Bill is accompanied by a signed Message from the Lieutenant Governor. In addition, section 54 of the *Constitution Act, 1867* requires a Royal Message in any case if the Bill contains any appropriation of public revenue or of a tax or impost. The standard practice in British Columbia for the past many years has been for government Bills to be presented by such a Message.

Despite the title “First Reading”, there is no actual reading of the Bill. Instead, the minister is allowed a very brief (2 minute) general statement of intent respecting the Bill before making the motion “*That this Bill be now read a first time*”.

Second Reading

Second Reading is the “debate in principle” during which Members may speak for and against the general intent of the legislation. They may not debate the specifics of individual sections.

The Standing Orders establish rules respecting the length of time each Member may speak during Second Reading debate.

Committee Stage

The “committee” at this stage is the Committee of the Whole. That is, it is the full Assembly sitting without the Speaker. In Committee each Bill is debated on a section-by-section basis, concluding with a return to the beginning by a vote on the Bill’s title.

This is usually the longest part of debate on proposed legislation. Each section is subject to a separate debate and a separate vote, although sections may be combined in a single vote – as in “*Shall sections 5 to 12 pass?*”.

The usual procedure is to begin at section 1 and proceed through to the end. On occasion, the sponsoring minister may move “*that sections [# to #] be stood down.*” This has the effect of postponing debate on these sections. (For example, debate on the “definitions” section may be postponed until the major substantive provisions have been considered.)

It is at Committee stage that House Amendments to the Bill can be made. Any member is entitled to move an amendment and, although not required, advance notice of proposed amendments is often provided in the Assembly’s “Orders of the Day” publication.

Certain amendments may be ruled out of order. *Parliamentary Practice in British Columbia*, McMinn (3rd ed.) provides that an amendment is inadmissible if it:

- is irrelevant or beyond the scope of the Bill;
- alters the principle of the Bill as agreed on Second Reading;
- destroys effect of sections already agreed to by the Committee;
- purports to amend Acts not related to the Bill;
- renders the clause unintelligible;
- amounts to a direct negative of the section being amended;
- imposes a charge, extends its object or purposes or alters or qualifies the destination of grants (unless it is a government amendment that is accompanied by a Message from the Lieutenant Governor);
- purports to delete a section;
- amends the preamble in the absence of an amendment to a section in the Bill;
- is frivolous.

As with Second Reading, the Standing Orders establish rules respecting the speaking time for each section motion and, if applicable, each amending motion.

[\[See Part 2 of this Guide \(Principles of Legislative Drafting\) for further information on the form and process for House Amendments.\]](#)

A caution – courts may use House debate to interpret legislation

Recently, courts have shown an increasing willingness to use House debates in statutory interpretation. While primary attention is given to ministerial statements, courts have been known on occasion to use comments of Opposition Members in determining the scope and application of legislation.

By way of example, if a Bill is drafted broadly but the minister in debate focuses on only one aspect or application of the proposed legislation, a court may read the scope of the legislation as being limited to this aspect or application.

Report Bill

If a Bill is amended, the Law Clerk of the Legislative Assembly arranges for a Report Bill to be prepared by the Office of Legislative Counsel and the Queen’s Printer. A Report Bill shows the accepted amendments using a revision marking convention: deletions are indicated by strike through lines and additions are indicated by double underlining.

Third Reading

After Committee stage, the Assembly is called to order by the Speaker. The Chair of the Committee of the Whole reports the Bill “complete with amendment” or “complete without amendment”, as applicable, and a motion for Third Reading is made. The motion may be debated, but generally there is little discussion at this point.

If the Third Reading motion passes, the Speaker announces, “*Bill [X], it is an Act.*” It may be an Act, but it is not a statute until the next stage is complete.

Royal Assent

A Bill becomes part of B.C. law when it receives Royal Assent. Royal Assent is given by the Lieutenant Governor, who attends in the Legislative Assembly and sits in the Speaker’s Chair. (If the Lieutenant Governor is unable to attend, the Chief Justice of British Columbia, acting as “Administrator” under the *Constitution Act, 1867*, can give Royal Assent.)

The Law Clerk reads the names of the Acts that have passed Third Reading. The Lieutenant Governor nods. At that moment the Acts become law. (It is the Lieutenant Governor's nod that gives effect to the enacting clause of an Act: "Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:")

It is the Third Reading form of a Bill that becomes a statute.

***Commencement:
when an Act becomes effective law***

An Act that is law is not necessarily in force. And, until it is in force, the Act has no legal effect – that is, the obligations it establishes are not mandatory, its rights and prohibitions are not enforceable and its powers are not exercisable. Legal effect begins when the Act “commences”.

Direction as to when an Act comes into force will usually be found in the last section of an Act under the heading “Commencement”. If the Act is silent, it comes into force on Royal Assent.

If there is a commencement section, it will provide that all or some of the provisions of the Act come into force at another time. There are a number of possibilities here. Provisions may:

- come into force on a specified future date;
- come into force when a specific event occurs;
- be brought into force by regulation of the Lieutenant Governor in Council, with the regulation either effective immediately on deposit with the Registrar of Regulations or on a later date specified by the regulation.

A commencement section may also provide that one or more provisions are “deemed” to have come into force on an earlier date. This is known as “retroactive commencement”. A provision that is subject to such a provision operates to change the law as it applied in the past.

[\[Information on statute publication can be found in Part 5 of this Guide \(Statute Publication\).\]](#)