Dear Senator Runciman,

Further to my earlier email I am now providing an opinion I had completed and it is a summary of how Courts/Tribunals deal with drafting errors in legislation.

Generally, if there is an obvious drafting error in the legislation, and if the error is minor and obvious (as appears to be the case here) Courts will correct the legislation by reading in what must have been the actual intent of the legislature. We have found a very similar case in BC; Morishita v. Richmond (Township), 1990 CarswellBC 73. In Morishita, a provision in a municipal by-law made reference to another provision and was clearly incorrect. The Court corrected the mistake by substituting the correct provision in its decision.

If a note is attached, as has been done with others bills, this will further reinforce the above point.

Attached are cases, including from the Federal Court of Appeal and the Supreme Court of Canada which deal with this issue in the exact same way.

The following are additional quotes from commentary and case law:

· Pacific National Investments Ltd. v. Victoria (City), 2000 SCC 64 at para 40:

o Although there are statutes whose strict reading might make this more complicated, typographical errors in legislation should not ordinarily compel us to read statutes absurdly. As Côté, supra, notes at p. 390: Material errors may slip into a legislative text during the process of drafting or publication. The result may be absurd either in itself, in relation to other provisions of the enactment, or with respect to the aim of the legislation. The law should be interpreted in the light of its aims, passing over obviously defective written expression.

o Vorobyov v. Canada (Minister of Agriculture and Agri-Food), 2014 FCA 102 at para 29: Generally, courts will correct a drafting error if it can be shown that the error leads to a manifest absurdity, is traceable and is curable by an obvious correction.

o Halsbury's Laws of Canada-Legislation (HLG-76): When courts will correct drafting errors. Historically, the courts have presumed that the legislature is an ideal person that does not make mistakes. They have also presumed that the language adopted to express its intentions does so in an accurate way. Nonetheless, mistakes do occur — especially in the context of amending legislation and in drafting bilingual legislation. If the words of a text are contradictory or meaningless, or if the text obviously does not express what was intended, the courts correct the drafting error by creating a coherent rule or one that expresses what must have been the actual intent of the legislature. (emphasis added).

Thanks again the Committee for the privilege of testifying and I trust this additional submission will assist the Committee in moving this legislation forward.

Larry Seiferling, Q.C.