

# LAW REFORM COMMISSION OF BRITISH COLUMBIA

c/o British Columbia Law Institute  
1822 East Mall, University of British Columbia  
Vancouver, British Columbia V6T 1Z1  
Voice: (604) 822 0142 Fax: (604) 822 0144 E-mail: [bcli@bcli.org](mailto:bcli@bcli.org)  
Website: [www.bcli.org](http://www.bcli.org)

## Backgrounder

### LRC 105—Report on Severance of Unconstitutional Enactments

Date: May 1989

When legislation is held by a court to infringe the *Constitution Act 1867* or the *Canadian Charter of Rights and Freedoms*, the court has the authority to strike down either the offending section or the legislation in its entirety. Generally, courts will opt for the latter option unless the provision in question is at the periphery of the legislative scheme. This can be problematic for legislators who have a difficult time determining if and how legislation will be struck down.

In the United States severance clauses are inserted into legislation to guide the courts in that context, although this can create certain problems. For example, a severance clause might signal potential weaknesses in legislation to potential litigants. Furthermore, this may create a presumption that statutes without the severance clause should be struck down in their entirety.

The Commission recommends that a severance clause be inserted into British Columbia's *Interpretation Act*. This would make severance the default without requiring specific provisions to be inserted in every enactment.

### Further Developments

This report's recommendations have not been implemented by legislation.