

VALL TALK – Jan 20/05 (edited version)

Some recent challenges in indexing and researching BC legislation

In B.C., the past few legislative sessions have been extremely active with what seems to us to be an unprecedented amount of new legislation being passed. This volume of material plus some other recent trends in legislative practices have made our job of indexing this information difficult and much more time consuming. We think we're up to the task, however and are confident that the BC Legislative Digest continues to be a reliable, accurate resource when researching B.C. legislation.

Still, the world of statutes and regulations, which to many could already be characterized as oblique, does seem to be a little more confusing of late. What we'd like to do here is talk about some of the complicating factors you might encounter when doing statutory research.

First of all, there's the sheer volume of material. Last session, the government introduced 98 public bills; the session before: 78. For the past 3 years, sessions have been of consistent duration, lasting a year from February to February. Prior to that, sessions were of varying duration, but using a yearly measure we can still make comparisons. In the good old days, 50 bills per year signified a busy session, with the norm being more in the realm of 25 or 30.

This current session is no slouch. Although soon to be prorogued, the count stands at 74 public bills introduced. Besides being large in number, a number of these bills are large – at least in scope. Omnibus bills, whereby a number of disparate provisions are covered under the umbrella of one bill, are always a challenge to keep track of. This session, there are many. Bills such as:

The Miscellaneous Statutes Amendment Act, 2004

The Provincial Revenue Statutes Amendment Act, 2004

The Miscellaneous Statutes Amendment Act, No. 2, 2004

The Attorney General Statutes Amendment Act, 2004

The Justice Modernization Statutes Amendment Act, 2004

And last but not least,

The Miscellaneous Statutes Amendment Act, No.3, 2004

As an example of the variety and number of legislative provisions contained in an omnibus bill, let me read you a summary of the Miscellaneous Statutes Amendment Act, 2004 (Bill 18) from the BC Legislative Digest:

“Makes amendments regarding retroactive acts, jury duty, reporting requirements under the Business Corporations Act and the powers of chief review officers under the Workers Compensation Act. Repeals the Community Financial Services Act, R.S.B.C. 1996, c. 61.”

Or for Bill 54, Miscellaneous Statutes Amendment Act (*No.2*), 2004:

“Requires regional districts to prepare emergency plans. Increases filing fees under the Land Title Act. Repeals the Video Games Act, S.B.C. 2001, c. 22. Provides the City of Vancouver with the authority to enact a bylaw making street fighting a ticketable offence. Makes various amendments regarding: ·ratings for video games, ·small business investments, · gaming facilities, · the incorporation of railways and · the assets to be included in the calculation of probate fees.”

As you can see, these days it would be a mistake to think of omnibus bills as merely containing “housekeeping” or consequential amendments – many substantial provisions can be found under cover of a bill whose title gives no clue as to what may be found within.

For the legal researcher, 98 new bills is a lot of material to wade through, though presumably your research does not encompass all 98 bills at once. Complicating matters, though, is the recent practice of introducing what the government has termed “exposure” bills. Exposure bills are tabled in the legislature then some months later are withdrawn and replaced by a second bill, often with the exact same name but incorporating new provisions added as a result of consultation and response to the original bill. This procedure in many instances seems to have replaced the former practice of issuing a bill in draft form before officially tabling it in the legislature.

There have been a number of examples of this in the past few sessions. Last session, the Community Charter Transitional Provisions, Consequential Amendments and Other Amendments Act, 2003, was first introduced as Bill 67 in May 2003, withdrawn, and a new Bill 76 introduced in October 2003.

In the 2002 session, the Community Care Facility Act was introduced as Bill 16 in April 2002, withdrawn, and a new Bill 73 introduced in November 2002. The Workers Compensation Amendment Act (No.2), 2002 was introduced as Bill 56 in May 2002, withdrawn, and a new Bill 63 introduced in October 2002. The Human Rights Code Amendment Act, 2002, was introduced as Bill 53 in May 2002, withdrawn, and – well you get the picture....

Not only did this drive us crazy when creating entries for the Digest's title index, the problem of course, for legal researchers, is that you have to make sure that you're tracking the right bill. If for instance you were asked to check the legislative history of a particular bill – the Transportation Investment Act, for example – it would be easy to come across a listing for "Transportation Investment Act, Bill 57, and upon checking, report back that this act received only 1st reading and did not pass. Well, that is true for Bill 57, but the *other* Transportation Investment Act, Bill 67 from the same session, was passed and assented to. Kind of crucial information, but easy to miss.

We do try to alleviate this confusion by providing helpful information in our Digest. In this instance we added a note to the Digest bill page explaining that the original bill was replaced.

Another thing to watch out for is the practice of making amendments to acts before proclamation. Case in point: the Business Corporations Act (S.B.C. 2002, c. 57). In addition to the original act, there were two amending acts: the Business Corporations Amendment Act, 2003 (S.B.C. 2003, c. 70) and the Business Corporations Amendment Act (*No.2*) 2003 (S.B.C. 2003, c. 71). All three were brought into force at the same time. Many people interested in the new Business Corporations Act did not realize that they needed to look at an additional two amending acts in order to obtain a complete picture of the new legislation. At the time, the government had not produced a consolidation of the act. The result was a lot of confusion.

But if that isn't confusing enough for you, things get really tricky when there are amendments to amendments.

I've taken an example from this current session. A portion of Bill 39, the Financial Institutions Statutes Amendment Act, 2004, amends sections of the

Financial Institutions Act. Section 70, for example, amends section 141 of the Financial Institutions Act. You'd be forgiven if upon proclamation of this section, you assumed that the affected section of the Financial Institutions Act changed according to the text of this amending bill. In actual fact, at the same time this section was proclaimed, it was amended by another act: Bill 69, the Finance Statutes Amendment Act, 2004 . Sections 31 to 39 of *this* bill amend various sections of our first bill, the Financial Institutions Statutes Amendment Act, 2004. Let's look specifically at section 31. Section 31 of Bill 69 amends s. 70 of the Financial Institutions Statutes Amendment Act 2004 (Bill 39) which in turn amends s. 141 of the Financial Institutions Act. As shown on the corresponding bill pages from the B.C. Legislative Digest, the relevant sections from both of these bills were proclaimed on the same day. If you look at the in force information for Bill 39, you can see that the section in our example, s. 70, was brought into force effective December 31, 2004. And when we look at the in force information for Bill 69, we can see that the sections in question, sections 31 to 39, came into force on the same day. What's happened is that the Financial Institutions Act has been amended by Bill 39, but the text of that amendment has been changed, as per Bill 69.

It doesn't happen often, but to be absolutely certain when updating an act, you should make sure that any amending bill has *itself* not been amended before coming into force. Likewise, if you are looking at the text of an updated act that does not correspond to the text of the amending bill, and you can find no other amendments to the act that would account for the discrepancy, it could be that the text of the amending *bill*, rather than the act itself, was amended.

Still using our example, by checking the BC Legislative Digest Title Index under the title of the original amending bill (in this case the Financial Institutions Statutes Amendment Act, 2004) we can confirm that yes, in fact, this bill was amended and we should then check the amendment to the amendment for the final text.

Clear as mud? This seems like the perfect time to remind everyone of the services and assistance you can receive from the courthouse library. We have the resources and the experience so please take advantage of our legislative expertise and call us for help. We can compile complicated legislative histories for you or provide quick answers to questions like "Is section 41 of the Expropriation Amendment Act, 2004 in force?"

Increasingly, or so it seems, new acts are saddled with quite complicated commencement sections. Consider our question – is section 41 of the Expropriation Amendment Act, 2004 in force. If you look at the commencement section for that act you will see that most of the act comes into force by regulation. Sections 22 & 31 come into force on the date of Royal Assent. Commencement of section 41, however, carries the not so straightforward instruction that *if* section 35 of this Act has not yet been brought into force, section 41 comes into force on the date that section 104 of the Transportation Act comes into force.

This kind of convoluted commencement provision is not uncommon. Another example: -Per section 41 of the Miscellaneous Statutes Amendment Act (No.3), 2004 (Bill 74):

- sections 1 and 3 come into force on the date that section 45 of the Community Care and Assisted Living Act comes into force
- section 7 comes into force July 8, 2004
- sections 15 and 39 come into force on the date of Royal Assent and, on coming into force, section 15 is deemed retroactive in accordance with the provisions of section 39
- sections 16 and 17 come into force July 23, 2004
- section 19 comes into force May 20, 2004
- section 32(d) comes into force on a day to be named by regulation and
- section 37 comes into force on the date of Royal Assent and is retroactive to the extent necessary to give it full force and effect.

We do hope you turn to the Legislative Digest to sort through this kind of information. Generally speaking (and this is nothing new), even if the commencement section is relatively straightforward, the practice of bringing acts into force piece by piece can be frustrating and confusing for anyone doing legal research. With BC Legislative Digest we strive to provide a single resource upon which the user can rely to keep track of the current state of legislation.

Despite the availability of most legislative material on the internet and in other electronic sources, we always use the print version of the bills and debates to compile the Legislative Digest. If something is not yet available in print we will use the internet version and then check it against the print

product as soon as we can. Mistakes can occur and it bears remembering that the printed source is the official version.

One example of confusion between the internet and print version of a bill occurred with a bill we looked at earlier, the Financial Institutions Statutes Amendment Act, 2004 – Bill 39.

The printed “For Report” version shows that a section 10.1 was added in committee. After the bill was reported and received 3rd reading, all of the changes in the “For Report” version should have been incorporated into the 3rd reading version and the bill’s sections renumbered so that section 10.1 becomes section 11 in the 3rd reading bill. In the rush to load the third reading version of this bill on the web, however, no one renumbered the sections. Those section numbers were renumbered in the print version of the bill, however.

This caused confusion for anyone using our Legislative Digest and the web version of the 3rd reading bill because the section numbers from our title index did not match the bill they were looking at. We contacted Legislative Council and they corrected the 3rd reading bill on the web.

So although we all love the ease of access made possible by the vast improvement in online availability of legislative material in recent years, the existence of two formats can cause problems. Just remember that if there are any discrepancies between the web version and the print version, the print version is the one to use. It is the official version.

Now having just spent a good amount of time describing some of the current challenges and complications in conducting statutory research, I thought I would close with a few items that actually make researching older legislation easier!

The Courthouse Library has recently acquired a new microfilm collection: British Columbia Orders in Council. The collection provides the full text of orders in council from 1872 to 2000, including maps and plans.

The library has also received as a donation, two volumes of old B.C. acts. One is titled: “A Collection of the Public General Statutes of the Colony of Vancouver Island, Passed in the Years 1859, 1860, 1861, 1862 and 1863”. The other volume is a selection of acts and proclamations dating from 1860

to 1911, dealing with the City of Victoria. Both make for fascinating reading, especially of such acts as “An Act for the Protection of Wooden Bridges”, “An Act to Enable Aliens to Hold Real Estate”, “An Act to Remove Doubts as to the Interest of Money” and the “Swine and Goat Act” of 1861 prohibiting swine and goats from running at large in the town of Victoria.

I mention these two new volumes not only as new additions to our collection, but to remind everyone that the library holds quite an assortment of print and microfilm sources for pre-confederation acts, ordinances and proclamations of B.C. All are organized differently and vary in content. To improve access to this material, we have now created a checklist which describes each source and how to locate colonial legislation. The aptly named Checklist for Pre-Confederation Acts, Ordinances and Proclamations of British Columbia can be found on the Legislation page of our website and library staff are, as always, available to help with questions, photocopies or if you’re just plain curious about goats running amok in Victoria.

-maureen heeney
BC Courthouse Library Society