



## RECENT PUBLICATIONS AND DOCUMENTS

### CONSTRUING BILINGUAL LEGISLATION IN CANADA, by Rémi Michael Beaupré, Toronto, Butterworth, 1981, 161 p. incl. Bibliography+ Index+ Table of cases

This book is the result of a comprehensive effort to synthesize legal materials on the interpretation of bilingual legislation in Canada. In the first two chapters the author, who is Assistant Parliamentary Counsel to the House of Commons, examines those rules of construction as applied by Canadian courts before and after their partial codification in section 8 of the *Official Languages Act*. His survey of the case law leads to the conclusion that, "the only dogma to be retained in the interpretation of bilingual legislation [is that once] a construction is found that is common to both the English and French versions, that construction must be related back to and tested against the entire context of the provision before being settled upon".

This approach is an eminently reasonable one and, as the author illustrates, will successfully resolve most apparent conflicts and discrepancies between two versions of a statute. Whether it is still useful in cases of true conflict between versions is not so obvious. Applied in a case such as *Food Machinery Corp. v. Registrar of Trade Marks*, [1946] 2 D.L.R. 258, it led to the adoption of a construction having "no possible analogue in the other language version". In light of the basic principle of equal authenticity, a principle assigned constitutional value by the courts in *A.G. of Quebec v. Blaikie*, the author's statement that this result is "an important refinement of the rule of equal authenticity" is somewhat problematic.

Except for this point, Mr. Beaupré convincingly shows that Boulton's [R. Boulton, "Le bilinguisme des lois dans la jurisprudence de la Cour suprême du Canada", (1968) 3 Ott. L.R. 323] concept of two distinct and hierarchical systems of rules of construction (one for *interprétation simple*, the other for *interprétation croisée*), evaporates when applied to concrete problems of bilingual construction.

The second chapter is devoted specifically to an assessment of the effect of section 8 of the *Official Languages Act* on the, by now, traditional rules of bilingual construction. After reviewing the jurisprudence, the author's conclusions point to the relatively minor impact this codification has had. This assessment is confirmed by the finding that "a number of decisions have been rendered since the passage of the *Official Languages Act* in 1969, where traditional bilingual approaches are employed, without so much as a passing reference to the specific requirements of that Act."

The third chapter, on Quebec jurisprudence, is the most important of the book and perhaps the most interesting. Any discussion of interpretation of bilingual statutes is bound to be thrown into sharper focus when related to a jurisdiction whose courts have long had to resolve bilingual conflicts with respect to both federal legislation and the Civil Code with its specific rules on the interpretative value to be assigned French and English provisions of the Code. Here, the legislative universe is not only bilingual but "bijural" as well. In this context, application of the principle of equal authenticity takes on new

dimensions and becomes, as aptly put by the author, a "fundamental problem of Canadian federalism." While Mr. Beaupré offers no authoritative solution, he very ably sets out the parameters of the problem as he isolates and defines the intertwined issues it presents.

In the fourth and concluding chapter, the author states his conclusions and closes with some personal impressions on collateral issues that he acknowledges are "somewhat provocative in nature". His conclusions may be briefly summarized as follows: 1) the "Maxwellian" rules of interpretation are of limited usefulness in dealing with problems posed by bilingual legislation and Professor Driedger's "context" approach is best suited to a correct application of the rule of equal authenticity; 2) the current rules offer no satisfactory solution to the problem of "bijural" aspects of federal legislation, and in this respect, a legislated solution may be desirable; 3) "while s. 8 of the *Official Languages Act* purports to be an exhaustive code of the rules and approaches applicable to the construction of federal bilingual legislation, it is patently incomplete, and so fails as a code." The author's preference is to retain only ss. 8(1), embodying the rule of equal authenticity, and to leave its application to courts who have shown they are capable of doing so "in a pragmatic way according to the legislative problems they [are] faced with."

Finishing the book, the reader is inevitably reminded of the author's introductory warning that "...in the last analysis, there are no magical recipes for harmonizing French and English in our statute books, outside of

fundamental reforms to Canadian drafting and legislative processes." A study such as that of Mr. Beaupré should prove a useful contribution to any such reform.

On the editorial side, one only regrets the decision not to include full case citations in the footnotes, forcing the reader who wants to keep some chronological perspective to constantly refer back to the table of cases.

*Construing Bilingual Legislation in Canada* is a needed addition to Canadian legal literature. It is well written and in its detailed review of the case law, comes as a first rate reference tool on the subject.

**François R. Bernier**  
Law and Government Division  
Research Branch  
Library of Parliament

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**PARLIAMENTARY PRACTICE IN BRITISH COLUMBIA**, by E. George MacMinn, Victoria, Queen's Printer for British Columbia, 1981, 254 p.

The Legislative Assembly of British Columbia has now joined the ranks of the few legislative bodies in Canada which have compiled detailed commentaries of speakers' rulings and procedural practices and have not left their procedure simply to "contemporary work and corporate memory".

This attractive book, with a sturdy cover in navy blue and red with gold printing, is the result of much detailed study, not only of the standing orders of the Legislative Assembly of British Columbia, but also of the practices of the Parliament and state legislatures of Australia, the eminent British authority on Parliamentary practice — Sir Erskine May — and of the principal text used by the Canadian House of Commons, *Beauchesne's Parliamentary Rules and Forms*.

The format employed by the author of this commentary, Mr. George MacMinn, the Deputy Clerk, British Columbia Legislature, is somewhat different from that generally applied in

books on this subject-matter. The book focuses on each standing order of the House, which is listed in bold print, followed by an exhaustive commentary. The author then asks questions which might arise with regard to the interpretation of this standing order. After listing his queries, Mr. MacMinn proceeds to find adequate responses to each situation posed. The standard method of presentation is simply to list the situations which have occurred in the application of a standing order without attempting to analyse or editorialize the effect on future disputes. Each standing order is analysed in relation to similar references in other legislative bodies which employ the same standing order. Under each standing order, there are extensive quotations from texts of various *Debates* and *Journals* which cover each topic very fully and succinctly. The author even goes so far as to suggest that certain standing orders should be changed in view of present practices. However, as Mr. MacMinn stated in his preface, "after careful scrutiny and comparison with other jurisdictions, I have concluded that our standing orders could be usefully amended in many areas ... Until such changes take place, this book will assist the House in finding and applying the appropriate parliamentary law".

At the end of this text are several appendices listing the standing orders not referred to earlier, various amendments to standing orders since 1930, acts affecting the legislature and its members, matters that were ruled breaches of privilege, closure of debate citations from New Zealand and forms that are used in the House for various items of business.

This publication is well organized and, because of varying type set and adequate spacing, is easily readable. Although the standing orders of the Legislative Assembly of British Columbia are somewhat similar to those of the Canadian House of Commons, there are several interesting differences between the two.

One striking variance concerns the procedure for closing off debate. When closure of debate is moved, the Speaker

of the British Columbia Legislature, under the terms of standing order 46, does not put the motion "that the question be now put" if he believes such a question is an abuse of the rules of the House or an infringement of the rights of the minority. The standing order places the responsibility for weighing the propriety of a closure motion squarely on the Chair. In the Canadian House of Commons, standing order 33 allows only for any minister of the Crown to move that the question be now put. The Speaker does not intervene or become involved in the propriety of this motion; responsibility is clearly that of the government.

Another interesting difference between the two jurisdictions lies in the seconding of motions. Motions, except for those pertaining to the Address in Reply to the Speech for the Throne and that the Speaker do now leave the Chair, do not require a seconder in the British Columbia Legislature. However, the opposite is true in Ottawa; all motions require seconders in the House of Commons. However, in committees, this requirement has been eliminated.

The publication of Mr. MacMinn's book is no doubt a long awaited and welcome event not only for the British Columbia Legislature, but also for serious students of parliamentary procedure. He has advanced an interesting approach to this important subject matter by the use of extensive responses to pertinent queries concerning each standing order. Instead of listing summaries of speaker's rulings, he has inserted elaborate extracts of the parliamentary proceedings from which the precedents were established, thereby relieving the reader from the burden of determining what the exact situation was at that earlier time. In general, this is an interesting, easily digestible reference book for parliamentarians and for those who practice this fascinating art.

**G.A. (Sandy) Birch**  
Clerk of Committees  
House of Commons  
Ottawa