

THE ORIGIN OF LAW IN CANADA

Making New Laws: Legislation, Statutes and Acts

Democratic countries usually have what is called a "legislature" or "parliament", which has the power to make new laws or change old laws. In its political structure, Canada is a federation: a union of several provinces, with a central government. So, it has both a parliament in Ottawa to make laws for all of Canada, and a legislature in each province and territory to deal with local matters. Laws created at either level are called "statutes", "legislation", or "acts". When Parliament or a provincial legislature passes a statute, that statute takes the place of common law dealing with the same subject. In Quebec, much legislation exists to deal with specific problems not dealt with in the Civil Code.

Making laws through legislation can be a complicated process. Suppose, for example, the federal government wanted to create a law that would help control pollution. First, government ministers or senior public servants would be asked to examine the problem carefully and suggest ways in which, under federal jurisdiction, a law could deal with pollution. Next, a draft of the proposed law would be made. This text would then have to be approved by the Cabinet, which is composed of members of Parliament chosen by the Prime Minister. This version would then be presented to Parliament as a "bill", and would be studied and debated by members. Bills only become laws if they are approved by a majority in both the House of Commons and the Senate, and assented to by the Governor General in the name of the Queen.

A similar process is used in every province to make laws. Laws enacted by provincial legislatures are assented to by the Lieutenant Governor.

Because of the complexity of modern society, more laws are made today than ever before. If our lawmakers had to deal with all details of all laws, the task would be nearly impossible. To solve this problem, Parliament and provincial legislatures often pass general laws called "acts" delegating authority to make more specific laws called "regulations". Regulations serve to carry out the purposes of or expand on the general laws but are limited in scope by such laws.

Editorial

This area is called Administrative Law and covers the regulations that govern the activities of administrative bodies set up by the various levels of government for much of the day to day running of policy. These regulating bodies (as detailed below) are quasi-judicial and resolve the problems that arise. Their decisions are of some importance and affect much of every day life.

Administrative Boards and Tribunals

There are many administrative rules and regulations that are often dealt with outside the formal trial procedures. Disputes concerning such matters as broadcasting licenses, unemployment insurance, occupational safety standards or health regulations, may be placed in the hands of federal or provincial government departments or left with special administrative boards. These include such institutions as the Unemployment Insurance Commission, the Canadian Radio-television and Telecommunications Commission, labour relations boards and refugee tribunals.

The procedure before these administrative bodies is usually simpler and less formal than in the courts. However, to ensure that such bodies exercise only the authority conferred upon them by law and that their procedures are fair, their decisions and proceedings may be reviewed by the courts. In the case of federal boards, this review is done by the Federal Court of Canada.

How to Read Law

Reading law need not be complicated. It is generally understandable by laymen or non-lawyers. A legal document may look intimidating but if you follow some relatively simple guidelines then the exercise can be very informative.

1. Once you decide to tackle a law (regulation, statute, or act) you need to set aside enough time per sitting to follow the “loops.”
2. You should be generally free of distractions. This is to assist you in concentrating on the task at hand.
3. Have all applicable laws on hand (the internet is a good resource for this) to assist in following “loops.” For laws of Ontario go to web site:
[e-Laws](#)
For the Laws of Canada go to:
[Federal e-Laws](#)
4. Have on hand, a pencil, paper, highlighter, and something to hold your place amongst the piles of pages.
5. Start by perusing the “definitions” list at the beginning of the piece of legislation. What that particular piece of legislation may define something as may be different than your definition.
6. Start reading. I define the complexity of a piece of legislation by the amount of “loops” I must follow. By-Laws, Guidelines, Protocols (which are a type of law) usually have very little loops where as a Federal or Provincial Acts or Regulations may have many. The more advanced the law or the longer a particular Act. has been on the “books” has a bearing on the complexity and amount of loops. For instance, as the water industry continues to become more regulated, the legislation becomes more and more complex making each successive law more difficult to understand and interpret.

The Loops and how to handle them:

Excerpt from O.Reg 128/04

7(12) An individual may apply to the Director to have his or her operator's licence that is continued as a certificate pursuant to subsection 12 (3) of the Act renewed and the Director shall renew the certificate if,

- (a) the applicant pays the required fee;
- (b) the applicable requirements set out in section 1 of Schedule 4 are met; and
- (c) there is no basis under subsection (8) for the Director to refuse to renew the certificate.

Excerpt from SDWA

Operator's certificate

12. (3) For the purposes of subsection (1), a valid operator's licence issued under section 7 or 8 of Ontario Regulation 435/93 under the *Ontario Water Resources Act* shall be deemed to be an operator's certificate until the earlier of,

- (a) the day the operator's licence is cancelled or suspended; and
- (b) the day that is the second anniversary of the day of filing of a regulation made under this Act governing the application and issue of operator's certificates. 2002, c. 32, s. 12 (3).

Excerpt from O.Reg 435/93

7. (1) A person who was certified as an operator before July 1, 1993 under the Water and Wastewater Utility Operator Certification Program administered by the Ministry and the Municipal Engineers Association shall be deemed to have been licensed under section 6. O. Reg. 435/93, s. 7 (1).

(2) Subject to section 8, a person to whom subsection (1) applies shall be deemed to have the class of licence equivalent to the class of certification held by the person under the Water and Wastewater Utility Operator Certification Program on June 30, 1993. O. Reg. 435/93, s. 7 (2).

(3) The licence of a person to whom subsection (1) applies expires three years after the person was last certified under the Water and Wastewater Utility Operator Certification Program but may be reissued in accordance with section 6. O. Reg. 435/93, s. 7 (3).

8. (1) A person who was employed as an operator on June 30, 1993 in a facility that was classified under the Water and Wastewater Utility Operator Certification Program administered by the Ministry and the Municipal Engineers Association may, not later than February 1, 1994, apply to the Director for the issuance to the applicant of an operator's licence for that type of facility equivalent to the class of the facility. (For example, a person who was employed as an operator on June 30, 1993 in a facility that was classified as a Class IV water distribution facility under the Water and Wastewater Utility Operator Certification Program may apply for a Class IV water distribution facility operator's licence). O. Reg. 435/93, s. 8 (1).

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The Loops and how to handle them - Continued

In this case were reading O.Reg 128/04 and we've gotten to section 7(12) regarding operator certification. We find that we can renew if our licence is detailed under 12(3) of the Act. (this always means the Act from which the regulation comes from, in this case SDWA). We need to refer to section 12(3) of the Act.

After we read 12(3) of the SDWA we find that conditions apply to that renewal if we meet the conditions under sections 7 and 8 of O.Reg. 435/93.

When we refer to sections 7 and 8 of O.Reg 435/93 we find the explanations or the original legal conditions for grandfathering.

Therefore what we get from this is that a licence obtained under section 12(3) of the Act. (Through following the loops we find this to be a grand fathered licence) is renewable under certain conditions. Within the loops we end up finding many more conditions than we first read in O.Reg. 128/93.

Sometimes loops will refer to other pieces of legislation (normally the act from which the regulation comes from) when this is the case, the Section where the excerpt can be found will always be listed. One must refer to the sited excerpt in order to fully understand that particular section.