

BOOK REVIEWS

ENFORCEMENT OF NATURAL RESOURCES LEGISLATION: A HANDBOOK. By E.C. Burton, Q.C. Carswell Company Ltd., 1984. Pp. 192. (\$32.50)

The author's intention in writing this manual was to "provide a convenient source of law-related information which the officer [of the various Ministries of Natural Resources throughout Canada] may require from time to time in the investigation of violations, the gathering of evidence and the preparation of cases for trial"¹ and "to assist the lawyer who may have to advise a client about a natural resource matter".² The organization of the volume is appropriate to the task of serving the needs of these two groups of individuals. Many aspects of the Canadian legal system have been ably discussed in a clear and concise manner which both the layperson new to the subject and the lawyer will find interesting and informative. Unfortunately, there are some sections of the book which do not explain the subject matter in a fashion which would be readily understandable to the layperson. Furthermore, there are statements made in the book which are inaccurate. The effect of the inaccuracies is mainly to detract from the academic authority of the book, although, in at least one instance, an officer or lawyer acting on the inaccurate information could make a serious error. On the whole, I think that the author has written a book which is accessible to the layperson but because of inaccuracies is lacking in authority.

The author gives a careful analysis of the concept of "reasonable doubt" but neglects to give adequate attention to an explanation of "balance of probabilities". He uses the term in a number of places but does not provide a definition of the term.³ Although the term may appear to be self explanatory, to the layperson it is no more self explanatory than is the term "reasonable doubt". In the interest of clarity, the concept of "balance of probabilities" should have been fully explained.

The concept of *mens rea* is difficult to explain in a few short paragraphs, but the discussion of it is needlessly convoluted.⁴ The problem is not fatal to an understanding of the concept, but more careful editing could have made the section more useful. To start with, rather than introduce the topic with a discussion of the use of words such as "wilfully" in statutes it would have been preferable to start from the principle that for a criminal offence proof of *mens rea* is always required. This is eventually mentioned at page 5. Discussion of the inference that a person always intends the

¹ P. iv.

² P. iii.

³ See pp. 2, 6 and 113.

⁴ See pp. 3-4.

consequences of his or her action would have been a more suitable means of stating the method of proving *mens rea* which is available to the prosecution. Instead the author gives an incomplete and obscure description of how state of mind is normally proved.⁵ The "over-loaded truck" example used by the author is misplaced.⁶ State of mind goes to the existence of an offence. The trucker in the example is pleading a due diligence *defence*.

In general, Chapter One is useful to the layperson. Although it is structurally awkward in places, it provides a good basis of understanding for the information given in the chapters which follow.

Chapter Two imparts information which would be of value to a conservation officer in the discharge of his or her duty. In particular, the section entitled "Conduct at Trial"⁷ is well written and gives information that would be very useful if an officer was acting as prosecutor or even as a witness. An understanding of the topics discussed in this chapter will take some of the mystery out of courtroom procedures.

The method used in Chapter Three of presenting the information on each offence is well suited to the task. By stating the elements of the offence which the prosecution must prove and discussing the judicial interpretations of the statutes as they affect these elements, the author presents the material in a clear and concise manner. The discussions of the basic principles of criminal law in Chapters One and Two provide the layperson with an adequate basis for understanding the material presented in Chapter Three.

I do have a number of criticisms of this chapter. The first two are relatively minor in nature, dealing with style and clarity. The remaining two comments are in regard to one major problem in the text which could be a source of confusion and an error in information which could allow one relying on the erroneous information to commit a serious error.

The sentence at the end of the first partial paragraph on page 39, referring to a solution adopted in Quebec, is completely out of context with the rest of the paragraph. The issue raised at the beginning of the paragraph relates to the definition of "hunting". The discussion in the paragraph involves consideration of the status of a person who tracks animals for the purpose of photographing them or one who scouts out an area for future hunting. The status of one's action in killing wildlife in self-defence is not relevant to the foregoing discussion.

When Acts are introduced, such as the *Fisheries Act* or *The Migratory Birds Convention Act*,⁸ there should be a greater distinction made between

⁵ See p. 3 where the author begins by correctly stating that state of mind must be proved but fails to explain the process. Instead, the author says "(normally by showing that the accused person, in the circumstances, *must* have been in that state of mind)".

⁶ See p. 4.

⁷ Pp. 20-5.

⁸ See p. 62 which includes a discussion of the *Fisheries Act*, R.S.C. 1970, c. F-14, and p. 83, the discussion of *The Migratory Birds Convention Act*, R.S.C. 1970, c. M-12.

the Acts and the previous text. The whole chapter seems to run together and the titles of the Acts become lost. The problem could be easily remedied either by using greater spacing around the names of the Acts or by using larger type size for the names of the Acts.

The short discussion of the constitutional authority of Parliament to regulate inland fisheries in Canada is confusing.⁹ The manual is intended for the use of provincially appointed officers and the source of their authority to enforce federal regulations should be explained clearly. The statement that it is not within the federal government's competence to delegate its constitutional regulatory power to the provinces is, although true, a potential source of confusion. It should have been pointed out to the reader that the federal government has jurisdiction over inland fisheries and has passed the *Fisheries Act* with Regulations particular to each province. The administration of the Regulations has been delegated to the provinces and provincial conservation officers have been designated as Fisheries Officers for the purposes of the *Fisheries Act* and the Regulations.

A similar explanation should be given of the origin and the extent of the authority of provincial officers to enforce the provisions of *The Migratory Birds Convention Act* and Regulations. When considering the role of provincial officers in the enforcement of federal Acts, a brief statement of the constitutional basis for their role would have been valuable.

In the course of the author's discussion of the applicability of game and fish-related offences to Treaty Indians, the author makes two statements which are incorrect. The author states that "Manitoba is really a special case because of the *Memorandum of Agreement* . . . which is a situation that does not exist in other provinces."¹⁰ The Memorandum referred to is Schedule (1) of the *Constitution Act, 1930*.¹¹ Clause 13 of Schedule (1) (Manitoba) states:

In order to secure to the Indians of the Province the continuance of the supply of game and fish for their support and subsistence, Canada agrees that the laws respecting game in force in the Province from time to time shall apply to the Indians within the boundaries thereof, provided, however, that the said Indians shall have the right, which the Province hereby assures to them, of hunting, trapping and fishing game and fish for food for all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians may have a right of access.

The other two prairie provinces have also entered into practically identical Memoranda of Agreement with the federal government. These Agreements are Schedules (2) (Alberta) and (3) (Saskatchewan) to the

⁹ P. 63.

¹⁰ P. 30.

¹¹ *Constitution Act, 1930*, (U.K.), 20-21 Geo. V., c. 26, Schedule (1) Manitoba, cl. 13, reprinted in R.S.C. 1970, App. II.

Constitution Act, 1930. A clause identical to that cited above is to be found in both of these Agreements.¹² Manitoba is clearly not unique in having entered into a Memorandum of Agreement of the form and content of Schedule (1) to the *Constitution Act, 1930*.

The Memorandum is referred to in the discussion of the applicability of provincial law governing safe hunting procedures to Indians when hunting for food. The author states that "Manitoba cases on the dangerous aspect of hunting activities by Indians are important inasmuch as, by Memorandum of Agreement scheduled to the *Manitoba Natural Resources Act*, the Indians have the right to hunt for food 'at such times of the year by such means or methods and with such contrivances as they wish'".¹³ Nowhere in the Memorandum will you find the words which the author has quoted. They are in fact the words of Dickson J. (as he then was) in his judgment in the case of *Myran v. R.*¹⁴ The quote is part of his affirmation of the interpretation by Hall J. of clause 13 of the Manitoba Agreement in the case of *Prince v. R.*¹⁵ Dickson J. (as he then was) went on to state that the acceptance of this interpretation does not mean that Indians have "the right to hunt dangerously and without regard to the safety of other persons in the vicinity".¹⁶ Because the law on this point, as stated in *Myran v. R.*, is based on an interpretation of clause 13 of the Manitoba Memorandum of Agreement, a court, in either of the other two provinces, interpreting the identical clause 12, would surely follow the interpretation in *Myran*. The law on this point is not unique to Manitoba.

Any subsequent editions of this manual should include, in the interests of clarity, a brief discussion of the constitutional framework of natural resource law. As well, a correction of the unfortunate error discussed above should be provided.

The last two chapters of the book are very interesting to read. The information presented would be valuable to a natural resources officer involved in a prosecution. By necessity, the material on evidence was kept short. The reference to standard texts¹⁷ allows the officer to obtain the basic points and use a reference for more detailed problems. This part of the handbook is excellent.

Overall this book will be of great value to the natural resource officer. I encourage the author to develop a second edition, spending more time on constitutional matters and correcting the errors noted. The handbook is of more limited value to the lawyer.

Donald R. Good*

¹² *Constitution Act, 1930*, (U.K.), 20-21 Geo. V., c. 26, Schedule (2) Alberta, cl. 12 and Schedule (3) Saskatchewan, cl. 12, reprinted in R.S.C. 1970, App. II.

¹³ P. 30.

¹⁴ (1976), [1976] 2 S.C.R. 137 at 141, 23 C.C.C. (2d) 73 at 76.

¹⁵ (1964), [1964] S.C.R. 81, (1964) 3 C.C.C. 2.

¹⁶ *Supra*, note 14 at 141-2, 23 C.C.C. (2d) at 76.

¹⁷ P. vi.

* Of the Bar of Ontario.