

British Columbia's Experience with the *Administrative Tribunals Act**

By Robin Junger**

This article reviews the case law to date involving the Administrative Tribunals Act of British Columbia, which came into force during 2004. Since that time, there have been over one hundred reported decisions dealing with various aspects of the statute. The article assesses the extent to which the Act has provided clarity and guidance — particularly in respect of standard of review — as well as the challenges that the courts have faced in interpreting and applying it. The author notes that although this Act has been largely successful, there is still work to be done by counsel and courts to ensure that clarity is not lost and that the full promise of the statute is realized. The article concludes with some comments and recommendations of potential interest to other jurisdictions that may be considering similar statutory reforms.

Dans le présent article, l'auteur étudie la jurisprudence existante à ce jour qui traite de la loi sur les tribunaux administratifs de la Colombie-Britannique, entrée en vigueur au cours de l'année 2004. Depuis lors, plus d'une centaine de décisions touchant divers aspects de la loi ont été publiées. L'auteur examine dans quelle mesure la loi a clarifié le domaine et a fourni des lignes directrices, particulièrement en ce qui concerne la norme de contrôle. Il aborde également les défis auxquels ont fait face les tribunaux dans l'interprétation et l'application de la loi. L'auteur note que, bien que la loi soit efficace, les avocats et les tribunaux ont encore du travail à faire pour garantir le maintien de la clarté et pour s'assurer que le but de la loi est entièrement atteint. Il termine avec certains commentaires et recommandations d'intérêt pour d'autres provinces et territoires pouvant chercher à mettre en place une telle réforme législative.

* This article is a revised and updated version of a paper originally presented at the Continuing Legal Education Society of BC's Administrative Law Conference, 2006 (Vancouver, BC, November 23, 2006).

** Associate Deputy Minister, BC Environment Assessment Office. The analysis and views expressed in this article are the author's and should not necessarily be taken as representing the Province of British Columbia.

1. INTRODUCTION

The *Administrative Tribunals Act*¹ (the “ATA”) came into force on June 30, 2004.² As of September 2, 2007 it has been considered, or at least, mentioned in over one hundred reported decisions.

While relatively early in the life of the statute, initial indications are that the ATA is being well received by the courts, particularly in respect of the reforms concerning standard of review. As noted by the B.C. Supreme Court in *McIntyre v. British Columbia (Employment & Assistance Appeal Tribunal)*:

Determining the applicable standard of review has historically involved a complicated and labyrinthine analysis aimed at discovering the legislative intent of the statute creating the tribunal whose decision is being reviewed. Fortunately, in British Columbia, the *Administrative Tribunals Act* has removed the need for this analysis. . . .³

Similarly, the Court in *Victoria Tours Ltd. v. British Columbia (Passenger Transport Board)*⁴ at paragraph 6, noted “happily” that the ATA had specified the standard of review to apply to the board in question.

At the same time, there are a number of important issues concerning interpretation and application of the ATA that appear to be presenting some challenge to the courts, and which must be addressed if the ATA is to achieve its full promise. This relates mainly (but not only) to the statutory reforms respecting standard of review.

This article reviews the case law to date, with a view to assessing to what extent it provides clarity and guidance in the interpretation and application of the ATA, and the degree to which further work remains.⁵

2. TO WHICH TRIBUNALS DOES THE ATA APPLY?

The ATA applies only to “tribunals” as defined in that act. That term is defined to mean a tribunal to which some or all provisions of the

¹ S.B.C. 2004, c. 45.

² Some provisions of the Act dealing with consequential amendments to other legislation did not come into force on that day, but sections 1-62, which are the substance of the Act, did.

³ 2005 CarswellBC 1930, [2005] B.C.J. No. 1808, 2005 BCSC 1179 (B.C. S.C.) at para. 15.

⁴ [2005] B.C.J. No. 2642 (S.C.).

⁵ For an ongoing and up-to-date summary of case law involving the ATA, please refer to the Administrative Justice Office’s website at www.gov.bc.ca/ajo/download/case_law_summary.pdf.