

Bibliographic Notes on Pre-Confederation “Laws” in British Columbia

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Differences are found between one collection and another of pre-Confederation acts for what is now the province of British Columbia, and all collections are incomplete. To identify the differences, the University of Victoria Law Library undertook a collation of collections of laws held in libraries in Victoria and Vancouver. The results are published here to assist researchers.

Few hard-copy collections of pre-Confederation ordinances survive. In Victoria, four collections¹ are at the Provincial Archives (which holds pre-1900 material from the Legislative Library), and one at the Attorney-General's office. The McPherson Library at the University of Victoria does not have the material in hard copy. In Vancouver, one set is at the Law Library at the University of British Columbia, and one badly arranged and incomplete set is at the Vancouver Public Library.² The British Columbia Courthouse Library, Vancouver, and the University of British Columbia Library hold photocopied sets which were not examined. City archives do not, by definition, collect provincial material.

Hard-copy collections are out of print, but fortunately two collections are available in microfilm. These were filmed from holdings of libraries outside the province. The University of Victoria Law Library, lacking hard copy, has the microfilmed collections. The collation originally was undertaken to see if every act on a list of colonial laws (to be described in

¹ These are described in Barbara J. Lowther's *A Bibliography of British Columbia: laying the Foundations 1849-1899*, Victoria, Social Services Research Centre, University of Victoria (1968), in entries 58, 223, and 352. The bibliography describes the holdings in the Provincial Archives. Two entries in this holdings list are for acts (or draft acts) published as separates and not referred to in other sources mentioned in this article. Entry 105 is for "Act of Incorporation of the British Columbia and Victoria Steam Navigation Company, Limited," incorporated February 1860 (Victoria, printed at *British Colonist* Office, 1860). A note in the *Bibliography*, p. 14, says that "because of a troublesome Vancouver Island House of Assembly, the company was incorporated in British Columbia." Entry 352 is for "An act respecting The Methodist Church of Canada" (Victoria: Standard Printing, 1870).

² Colony of Vancouver Island is out of order and bound in at the end of the set, Colonial acts for 1871 are missing, and some acts are photocopies.

detail later) could be found in full text, and also to check that the filmed collections were not missing material held in collections in local libraries. For the collation, all the titles in the hard-copy sets mentioned and both the filmed sets were checked against the list of laws.

All the titles in the list of laws were found in full text. But, compared to the list of laws, it was discovered that every collection of acts is missing one or more documents and includes from one to three unlisted documents. One film includes a number of items apparently not found elsewhere. Also, it shows sealed documents probably written or typeset at the time of enactment, while most hard-copy collections for the period of 1863 are reprints published between 1863 and 1866.

The purpose of this article is to assist the user needing access to this material by describing the list of laws and its use as an overall guide to pre-Confederation laws; the contents of the two films, since they are not uniform and together they contain more documents, and perhaps more authoritative documents, than most hard-copy collections; and a note on early publishing. The short titles of acts not included on the list of laws will be found in footnotes.

The differences between the two microfilmed collections are evident in even the briefest description. From collections held at York and Harvard University Law Libraries, Micromedia of Toronto have issued a collection of pre-Confederation documents for several jurisdictions under the general title of *Pre-Confederation statutes*. For the Colonies of Vancouver Island, British Columbia, and the United Colony, the Micromedia set includes one reel with pre-Confederation acts and ordinances 1858-1871, and a second reel with the post-Confederation 1871 *Consolidation* and its *Appendix*.³ The second microfilm set of pre-Confederation material was obtained from the Public Archives of Canada, and it is a film of Colonial Office documents held in the Public Record Office in England. Its five reels include one for Vancouver Island ordinances 1853-1863 and the *Vancouver Island Government Gazette* 1864-66; one for British Columbia ordinances 1858-69, and three for British Columbia Government *Gazettes* 1863-64, 1865, 1866-68, and 1869-71.⁴

³ There is a third reel with *R.S.B.C. 1896* first draft and *R.S.B.C. 1897* second report draft.

⁴ The Vancouver Island reel includes Colonial Office files 306 and 308 for acts and *Gazettes* as noted above. The British Columbia reels include Colonial Office file 61 for proclamations and ordinances, and Colonial Office file 63, the *Gazettes* specified above. The Public Archives of Canada reel numbers are B-984, B-1487, and B-1488-1490 respectively.

The Micromedia film for acts, ordinances, and proclamations does not have an overall contents guide. Therefore, the inclusion of the 1871 *Consolidation* and *Appendix*⁵ volumes on the second reel is extremely useful because of the "Table of Laws of the formerly separate . . . [colonies]" at the beginning of the Consolidation volume. The "Table of laws . . ." is not, as it might appear, the contents list for the Consolidation volume (which is for acts in force at Confederation). The "Table" is a list of colonial laws.⁶ Used as a checklist for the collation, it will be referred to here as the 1871 Table. The fact that the Table includes only "laws" should be emphasized because it explains why all the collections include from one to three unlisted documents. With these exceptions, the 1871 Table is an overall guide to all but the Colonial Office collection.

The Table is divided into three sections, which reflects the fact that until 1867 the Colonies had separate legislative systems. The first section, including the numbers 1-124, is headed "Laws of the formerly separate Colony of Vancouver Island, showing those repealed and those now in force"; the second section, including the numbers 125-259, is headed "Laws of the formerly separate Colony of British Columbia, showing those repealed and those now in force"; and the third section, including the numbers 260-380, is headed "Laws of the Colony of British Columbia since the Union of the two formerly separate Colonies of Vancouver Island and British Columbia, showing those repealed and those now in force."

As well as being a guide to scope, the 1871 Table is invaluable as a location guide because (except for the Colonial Office film) the collections have the same material arranged in the same order, i.e., jurisdictionally and then chronologically.⁷ The early acts do not, of course, have the numbers 1-380 used for the Table produced in 1871. Therefore, having identified a required act, the user must first find the correct jurisdiction and then proceed to find the act in the chronological arrangement for that jurisdiction.

There is no subject index to colonial laws, so once again the 1871 Table

⁵ The full bibliographic title of the Consolidation is *The Laws of British Columbia, consisting of the acts, ordinances and proclamations of the formerly separate colonies of Vancouver Island and British Columbia, and of the United Colony of British Columbia with Table of Acts, Alphabetical index and Appendix*. The title of its *Appendix* volume is *Appendix to the Revised Statutes of British Columbia 1871, containing certain repealed Colonial laws useful for reference, Imperial Statutes affecting British Columbia, Proclamations, etc.*

⁶ The 1871 Table is an early history and disposal table. Therefore the disposition of the acts in 1871 is shown on the Table.

⁷ In some hard copy sets, there are minor variations in the arrangement of acts with the same assent date.

comes into use. A researcher wishing to find, say, early school acts, must scan the Table's titles. There are school acts at numbers 102, 331, and 343. Before proceeding to the documents, the user should make notes of each jurisdiction, title, and date, i.e.: Colony of Vancouver Island, *An act respecting common schools*, May 15th, 1865; Colony of British Columbia, *An ordinance to establish Public Schools throughout the Colony of British Columbia*, March 13th, 1869; and United Colony, *An ordinance to amend the Common School ordinance, 1869*, April 20, 1870.⁸ (Note: the Consolidation's "alphabetical index" applies to laws in force at the time of union — the contents of the volume — and not to earlier laws. Thus it refers to only two of these acts.)

The arrangement of the 1871 Table, with acts of the Colony of Vancouver Island set out first and numbered 1-124, obscures the fact that the first act (1) listed for the Colony of Vancouver Island is dated August 1859, while the first proclamation (125) listed for the Colony of British Columbia is dated September 1858. These dates do not reflect the chronological history of the Colonies. The Colony of Vancouver Island was established in 1849,⁹ had an appointed Council in 1851, and finally an elected House of Assembly in 1856. Two years later, in November 1858, the Colony of British Columbia was officially established. This Colony was ruled by proclamations of the Governor until its first Legislative Council met in 1864. An explanation for the disparity between dates of the laws included on the Table and historical dates for the Colonies might, it was hoped, be found during the collation.

There is an enumeration of pre-Confederation acts on page 3 of *Canadian and British-American Colonial law*, v. 3 of Sweet and Maxwell's classic 1957 publication *A legal bibliography of the British Commonwealth of Nations*. It refers to acts "as listed in the laws of B.C. 1871," which include a total of 381 titles of proclamations and ordinances, numbered 1-380 because they include 163a.

The Sweet and Maxwell bibliographer, C. R. Brown, obviously had checked a hard-copy set of pre-Confederation materials. He noted that two more acts, which would fit in the jurisdictional/chronological arrangement of the Table as "155a" and "290a,"¹⁰ were included in pre-Confed-

⁸ There is no absolute standard for citation in Canada but citation to early acts need not refer to the 1871 Table. Acts should be cited by jurisdiction, title, and date.

⁹ Constitutional documents relating to the Province of British Columbia are found in the *Appendix* volume of the *Revised Statutes of British Columbia 1979*.

¹⁰ "155a," Colony of British Columbia, "Speedy Trial of Persons charged with offences," 23 April 1860. (This act is not found in all hard copy sets.) "290a," United Colony, "Mortgage ordinance, 1867," 12 April 1867 — (1867, no. 32).

eration statutes but “evidently omitted through error” from listing on the 1871 Table. The acts do exist, but they are not in the 1871 Table because they did not become “law.”

To become “law,” a Governor’s proclamation or an ordinance passed in the usual way by a Council or Assembly of an English colony required approval by the Colonial Office in London. There is an interesting section on reservation and disallowance of Colonial laws in *R.S.B.C. 1979*, v. 7, pp. 177-83. Both “115a” and “290a” are found here, one “disallowed” and the other “not sanctioned” in London. Dr. Gilbert D. Kennedy, in his introductory “Notes on reservation and disallowance,” pp. 177-78, offers no explanation but says that “the Governor apparently did not send to London all Acts for the Colony of Vancouver Island or Proclamations for mainland British Columbia.” (The omissions referred to may be those noted above in the description of the Colonial Office film.)

As well as being governed by their own (approved) enactments, English colonies were governed by Imperial statute. (See footnote 25.) Observations on the long-term effect of this interaction are found in R. G. Herbert’s “A brief history of the introduction of English law into British Columbia” (1954), 2 *U.B.C. Legal Notes*, 93-100.

All the pre-Confederation proclamations and ordinances on the 1871 Table are in the two films. Micromedia’s film is in the same order as the 1871 Table, which may be copied from reel 2 for use as a finding guide. There are a few discrepancies between the Table and the film. Using 1871 Table numbers, these are: in the film, 4, 29, 280, 284, and 286 are missing; 93 and 94 are in reverse order, 150 shows p. 1 only, and 151, p. 2 only. Number 29, no longer in force, is reprinted as No. 5 in the 1871 *Appendix*. Numbers 280 and 284, still in force in 1871, are c. 82 and c. 84 respectively in the 1871 *Consolidation*. Numbers 4, 280, 284, 286, and the missing pages are all in the Colonial Office film. The Micromedia film includes three items not in the 1871 Table: “115a” and “290a” already mentioned, and a Colony of British Columbia proclamation dated 31 January 1860.¹¹

Except that some different pages are missing, probably because of use, none of the hard-copy collections in local libraries showed variations from the Micromedia film. The most interesting publication difference in these collections lies in the fact that there are three different reprint editions of the Colony of Vancouver Island ordinances for the period 1859-63.

¹¹ This announces a £1 toll on “quadrupeds used as beasts of burden” while travelling “to or towards the mining regions.” This proclamation is not in all collections. It is not on the 1871 Table, probably because no action was taken on it in London (*R.S.B.C. 1979*, v. 7, p. 179).

A note on early publishing follows the description of the Colonial Office film.

The Colonial Office film (which will be referred to as the C.O. film) differs markedly from all the other collections. Almost all the documents on the C.O. film have seals and are signed by the Governor or certified by the Clerk of the Assembly.¹² It is reasonable to assume that these documents, many of which are in manuscript, are originals from the time of enactment, when they would have been sent to London for approval.

The C.O. film is arranged in jurisdictional segments but because it has different content, especially for the Colony of Vancouver Island segment, the 1871 Table is not good as a location or a contents guide. The C.O. film has its own guide in the form of a handwritten list at the beginning of the reels of acts. The numbers on this list are imposed on the documents and once a number is found it is easy to locate the item in the film. However, the list is for more material than is actually on the film, so it is wise to note the cut-off dates described below.

The first nine items on the Colony of Vancouver Island film are dated between 1853 and July 1859, so they pre-date the ordinances listed for the Colony of Vancouver Island on the 1871 Table.¹³ These may be some of the early ordinances referred to as "missing" in a footnote, p. 404, v. 1 of the *Journals of Colonial Legislatures of the Colonies of Vancouver Island and British Columbia, 1851-1871*, edited by James E. Hendrickson (Victoria, The Provincial Archives of British Columbia, 1980).¹⁴

For the period 1859-62 Colony of Vancouver Island, the C.O. film lacks 7 of the 66 ordinances listed for the same period on the 1871 Table. Using 1871 Table numbers, these are 2, 3, 9, 27, 29, 30, and 60. For the year 1863, the C.O. film only shows the manuscript copies of 73, 74, and 75, and there is nothing at all for the period 1864-66. However, for 1859-1862, the C.O. film includes seven documents not listed on the 1871 Table and not found elsewhere.¹⁵ All are sealed. The film also has three "resolutions" of the Assembly at the end of the 1862 acts.¹⁶

¹² See *Colonial Laws Validity Act*, 28 & 29 Vict., c. 63, s. 6.

¹³ Supreme Court of Civil Justice Act, 1853 (invalid); Prohibiting Gift or Sale of intoxicating liquors to Indians, 1854; Colonial Church Victoria, 1856 (invalid); Licensing of Inns, 1858; Bill of Supply, 1858; Amend law relating to Inns and Beer houses, 1858; Preservation of game, 1859; Macadamizing of certain streets, 1859 (sealed); Regulation of the Sale of Wines, spirits and liquors, 1859 (sealed).

¹⁴ Two documents signed by the first Governor, Richard Blanshard, are reproduced on pages xi and xii at the front of volume 1. One, dated 13 May 1850, is a proclamation that concerns the importation and sale of spirituous liquors. The second, dated 27 Aug. 1851, establishes the Council of Vancouver Island.

¹⁵ Victoria bridge removal act 1860; two supply bills dated 28 Aug. 1860; two supply

The Colony of British Columbia was ruled by proclamations made by the Governor in Victoria from 1858-1863. Proclamations on the C.O. film are in almost the same order as they are on the 1871 Table, but the C.O. film lacks a number of them dated up to 1863. Using numbers from the 1871 Table, the missing items are: 125, 126, 133, 134, 135, 137, 141, 144, 152, 176, and 191. No. 155 is shown twice, the first time with an incorrect second page. The same acts are included in both films from 1864 to 15 March 1869 (336), when the C.O. film ends. The C.O. film includes drafts of three ordinances — dated 1864, 1867, and 1868 — that were never enacted.¹⁷

During the course of the collation no explanation was found as to why 1859 is used as the starting date for the listing of Colony of Vancouver Island "laws" on the 1871 Table. The history of government publishing in the colonial period is, of course, closely tied to the growth of the population and to the introduction of the printing press.

The Colony of Vancouver Island, established in 1849, did not have a commercial printing press until 1858.¹⁸ In the mid-1850s, Fort Victoria's population was 300, Nanaimo's 175, and there were 1,700 native people in various settlements. When the Gold Rush started, 25,000 miners on their way to the gold fields are said to have arrived in Victoria in a single season. Seeing a commercial opportunity, in 1858 four journalists from San Francisco brought a press to Victoria. They started what turned out to be a short-lived newspaper in June 1858. Governor Douglas hired the press to print broadsides — one-sided sheets for posting — to spread information about the Colony's laws, both on the Island, where he had jurisdiction, and also on the mainland, where, at that time, he did not have jurisdiction.

Not surprisingly, the earliest typeset proclamations reflect the Gold Rush

bills dated 3 Feb. 1862, and a third 22 Dec. 1862; and Salaries Act, 22 Dec. 1862. (A number of supply bills are listed on the 1871 Table.)

¹⁶ Smallpox hospital resolution; Resolution relative to Cowichan Road and settlement of Indian title; Resolution of the House re Colonial Secretary's salary.

¹⁷ The C.O. film includes, at the end of 1864, "An ordinance for the regulation of Banks" dated 3 May 1864. Reserved for H.M. pleasure (*R.S.B.C. 1979*, v. 7, p. 180). With the 1867 group there is an undated Land Ordinance, 1867, which did not receive assent (*R.S.B.C. 1979*, v. 7, p. 181). At the end of 1868 there is "An ordinance to incorporate the Society of the Sisters of Saint Ann, of the City of Victoria, in the Colony of British Columbia, for educational purposes." This act was disallowed 2 Sept. 1868 (*R.S.B.C. 1979*, v. 7, p. 181).

¹⁸ "A small French hand-press [was] brought to Victoria by Bishop Demers, of the Roman Catholic Church, about 1856. . . . This press seems to have been used but seldom by the Bishop but . . . the first issues of the paper (*British Colonist*) were printed on the machine." Burt R. Campbell, "From hand-set type to lino type" (1946), 10 *British Columbia Historical Quarterly*, 266.

situation. The first,¹⁹ dated August 1858, is not on the 1871 Table. It concerns harbour rules and regulations in Victoria and Esquimalt, first port of call for the prospective miners. The next two printed proclamations, dated September 1858, are numbered 125 and 126 on the 1871 Table (i.e., they start off the list for the Colony of British Columbia²⁰). One announces heavy penalties for supplying Indians with intoxicating liquors, and the second warns the public against fraudulent land sales on the Fraser River.

For the first few years the publishing business in Victoria was chaotic, with the result that a series of job printers produced all the ordinances for the Colony of Vancouver Island until Union, and also, apparently, the proclamations for the Colony of British Columbia until 1863.²¹ The article by Madge Wolfenden (now Hamilton), "The early Government Gazettes" in (1943), 7 *British Columbia Historical Quarterly*, 171-90, gives a detailed history of *Gazette* publication and an overview of the history of government printing for the Colonies.

The scholar who wishes to work with original documents for the period before 1864 should see the sealed documents shown on the C.O. film. Undoubtedly these were written or typeset at the time of enactment, since that is when they would have been sent to London for approval. Without a textual comparison (beyond the scope of this project), it is not certain that any of the hard-copy collections contain original documents, though one collection at the Archives may do so.

Three separate reprints of Colony of Vancouver Island laws for the period 1859-1863 were published by three different Vancouver Island printers between 1863 and 1866. All the editions have the same title: *A collection of the Public General Statutes of the Colony of Vancouver Island for the years 1859, 1860, 1861, 1862 and 1863*. The Provincial Archives has all three reprint editions, including the only found copy of

¹⁹ The proclamation, at the (B.C.) Archives, is entry No. 80 in the *Bibliography of B.C.*, infra. It was printed at the Victoria Gazette Office. See Douglas Crawford McMurtrie, *The first printing in B.C.*, Chicago, private printing, 1929; and *The earliest B.C. imprint*, Chicago, private printing, 1931. A limited special edition of this proclamation was published by The Haunted Bookshop, Victoria, to celebrate the centennial of the Union of the Colonies. Although this proclamation is not on the 1871 Table, subsequent ordinances (20, 56, 124) deal with the same topic.

²⁰ These proclamations were made before British Columbia was officially a colony. The proclamation numbered 129 indemnifies the Governor for acts "done before the establishment of any legitimate authority in British Columbia." (Numbers 125 and 126 are not on the Colonial Office film.)

²¹ For the Colony of B.C. until the beginning of 1864, the C.O. film shows only two proclamations "signed" by printers. One, dated Number 1858, has the imprint of the Victoria Gazette Office, and the other, dated 16 July 1860, has the imprint "George E. Nias . . . in the Colony of Vancouver Island."

the *Daily Evening Express* reprint edition of 1863. The other two reprint editions are also at other libraries: the *Evening Express* edition of 1864 is at the University of British Columbia Law Library, and the *British Colonist* imprint of 1866 is at the Attorney-General's office. The latter is the edition shown on the Micromedia film. Beginning with No. 8 of 1864, the Island Colony's acts are numbered and also signed by the printers. Typically, three different printers' names are found on the Island ordinances between 1864 and 1866, the last year before union.²²

Publication information is even less clear for the various hard-copy collections of proclamations for 1858-63 for the Colony of British Columbia. Some proclamations may have been reprinted at the same time as the reprints of Island Colony ordinances.²³ Several volumes have the title page *British Columbia list of proclamations for 1858, 1859, 1860, 1861, 1862, 1863 and 1864*, which implies that the contents were reprinted with a covering title page. (The U.B.C. Law Library copy may have original documents bound with a title page taken from another set.) Unfortunately the C.O. documents that correspond to 1871 Table numbers 127-153, November 1858 to January 1860, are not sealed. Numbering was put on the mainland Colony's proclamations beginning in 1861, three years before numbering started on the Island ordinances.

During the period before 1864 "some government printing" was being done at The Royal Engineers Press in New Westminster. Miss Wolfenden, in the article mentioned earlier, says that the press was requisitioned for government printing as early as 1860. By January 1863, the mainland Colony's *Gazette* was printed there and when The Corps disbanded in October 1863, Richard Wolfenden, who had been in charge of the press, stayed in the Colony as Superintendent of the Printing Office. In 1867 he moved to Victoria as Government Printer for the United Colony and subsequently he became Queen's Printer for the province.

His firm hand as Government Printer shows in the consistency of the publications from the Government Printing Office, New Westminster. From the first sitting of the Legislative Council in 1864, mainland Colony acts had numbers. Year/ordinance numbering was continued for the ordinances of the United Colony, 1867-71, issued from the Government Printing Office in Victoria. (It is unfortunate that the year/ordinance numbers were not on the 1871 Table as they would be in a modern history

²² Harries and Co., Printers, is the imprint on the first act to be numbered, No. 8 of 1864, until No. 3 of 1866; McLure and Company shows on No. 4 and No. 5 of 1866, and Higgins, Long and Co. on the last six ordinances before Union.

²³ According to the *Bibliography of B.C.* . . . (item 218), the *Daily Evening Express* reprint included proclamations of Governor Douglas 1860-62.

and disposal Table.) All the examined post-1864 hard-copy collections for B.C. and for the United Colony were sessional volumes — that is, acts collected and reprinted at the end of a session.

In most libraries the first readings of bills and probably unenacted bills are disposed of when the sessional volume for the same period is issued. In B.C., no first readings of provincial bills were saved at any library until a century later, in 1958, when the Vancouver Courthouse started a collection, so much historical material is gone.

Other omissions may be accounted for by the fact that, in the new Colony, there were no written records. The *Government Gazette, Vancouver Island*, volume 3, 30 January 1866, has a letter to the Colonial Secretary from Governor Kennedy, who was attempting to improve the postal system. He complains that "it thus appears that Mr. Wootton, the present acting Postmaster, was appointed in 1861 without written Regulations, and without other than verbal instructions of the Colonial Secretary, the nature of which, in his absence, I cannot know, and for the issuing of which there does not appear to be any legal authority." The *Gazettes*²⁴ undoubtedly merit further research. Well-organized information about proclamations would save the scholar much time, and the "unimportant" proclamation²⁵ may be useful to the historian if not the lawyer.

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A concordance of the Micromedia and Colonial Office films of pre-Confederation acts of British Columbia with the "Table of laws of the formerly separate colonies . . ." (from the 1871 *Consolidation* of the law of British Columbia) is available from the University of Victoria Law Library. To obtain a copy, please send a cheque made payable to the UNIVERSITY OF VICTORIA in the amount of \$7.50 (copying and postage costs) to:

University of Victoria Law Library,
P.O. Box 2300,
Victoria, B.C. v8w 3b1

Attention: Mrs. Joy Sauter.

²⁴ *Government Gazette for the Colonies of Vancouver Island and British Columbia*, Nos. 1-51, 10 Sept. 1859-28 Aug. 1860; Victoria and New Westminster newspapers 1860-1863, and later *Gazettes* as found on the C.O. film.

²⁵ See W. Kaye Lamb, "Record of the early proceedings of the Legislature in British Columbia" (1940), 21 *Canadian Historical Review*, 394-400. The article describes, on p. 396, a brief and unsuccessful attempt by Douglas to restrain attacks in the press by means of "a proclamation declaring in force on Vancouver Island the various Imperial statutes which required sureties for good behavior from newspaper proprietors."