Book Reviews

Chronique bibliographique

Droit international privé québécois. Par JEAN-GABRIEL CASTEL. Toronto: Butterworth & Co (Canada) Ltd. 1980. Pp. xii, 1008. ($75.00 relié, $42.95 broché)

On ne sait ce qu'il faut admirer le plus chez le professeur Jean-Gabriel Castel, de son extraordinaire puissance de travail qui lui permet, en l'espace de cinq ans, de rédiger en trois volumes englobant plus de 2500 pages un traité complet de droit international privé du Canada, ou de ses remarquables connaissances linguistiques qui l'autorisent à écrire indifféremment en anglais ou en français, selon les différents courants juridiques qu'il analyse. A cet égard, le fait d'avoir rédigé en francais le dernier volet de son traité, celui consacré au Québec, constitue non seulement un hommage rendu à l'héritage culturel de cette province, mais consacre aussi la reconnaissance d'une exigence scientifique qui veut que, en droit comme dans d'autres matières, on ne peut séparer raisonnablement les problèmes de fond de ceux de la forme.

Si ce dernier ouvrage du professeur Castel vient compléter heureusement son traité général intitulé *Canadian Conflict of Laws,* il n'en constitue pas moins une oeuvre formant un tout à elle seule et qui sera d'une grande utilité pour l'étudiant et le praticien du Québec. En effet, l'ouvrage reprend pour le Québec et analyse en détail toutes les différentes catégories classiques connues en droit international privé, et cela dans deux parties distinctes, l'une consacrée aux conflits de lois, l'autre aux conflits de juridictions. La deuxième partie de l'ouvrage, consacrée aux conflits de lois, analyse successivement les règles en vigueur au Québec portant sur le *statut personnel* (dans lequel l'auteur englobe d'une manière quelque peu élargie aussi bien la loi personnelle, la capacité des personnes et la filiation, que le mariage, le divorce et la séparation de corps, la garde des enfants, les obligations alimentaires et les personnes

morales étrangères du droit privé), sur le *statut réel* et sur le *statut des faits et des actes juridiques* (dans lequel on trouve non seulement les problèmes de conflits de lois relatifs aux contrats, aux effets de commerce et à l'arbitrage civil et commercial international, mais aussi ceux relatifs aux régimes matrimoniaux).

Dans la troisième partie, M. Castel étudie les conflits de juridictions, examinant d'une part la compétence des tribunaux québécois et la procédure, d'autre part la reconnaissance au Québec des jugements étrangers.

L'introduction et la première partie du volume consacré au Québec retracent l'histoire du droit international privé de cette province et portent sur les principes généraux de cette matière, vus plus spécialement sous l'angle du droit québécois. C'est ainsi que dans son aperçu historique, M. Castel remonte à l'antiquité et, passant de l'influence des invasions barbares au Moyen age, puis aux statutaires français et hollandais, il en arrive à l'époque moderne, laquelle n'est pas sans avoir subi l'influence de Story et de la doctrine anglo-américaine. S'il était indiqué, par cet aperçu historique, de montrer les différentes sources qui ont forgé le caractère national du droit international privé québécois, si l'auteur a eu raison de traiter, dans la partie générale, de certains principes généraux qui prennent une coloration différente au Québec par rapport aux provinces soeurs du Canada, on peut s'étonner que M. Castel ait cru devoir reprendre ce qu'il avait dit dans le volume I de son traité à propos des qualifications, du renvoi ou de la question préalable. Sans doute cette répétition se justifie-t-elle par le souci de présenter aux lecteurs uniquement francophones une synthèse complète.

Enfin, le traité se termine par une bibliographie, une table de la jurisprudence québécoise extrêmement complète, une table alphabétique des matières, mais surtout, innovation originale et remarquable dans un ouvrage de ce genre, une liste d'expressions et maximes de droit international privé, liste qui semble devoir se justifier hélas de plus en plus à une époque où les étudiants en droit abordent leurs études sans aucune connaissance du latin.

Cet ouvrage, d'une lecture extrêmement agréable, ne se contente pas de faire la somme de l'état actuel du droit international privé au Québec, mais il s'efforce au contraire de ménager constamment une ouverture sur l'avenir. En cela, M. Castel fait véritablement oeuvre de pionnier et donne à son traité une dimension que l'on ne rencontre pas généralement dans des ouvrages similaires. En effet, après chaque matière traitée, l'auteur consacre un chapitre, souvent extrêmement élaboré, à ce qu'il appelle le *droit de l'avenir*. Dans ces chapitres, M. Castel analyse les projets proposés par l'Office de révision du Code civil dans son *Rapport sur le Code civil du Québec*. Il faut rappeler ici que l'auteur a été président du Comité

de droit international privé de l'Office de révision du Code civil et qu'à ce titre il était bien placé pour présenter et commenter ce qui au Québec constituera le droit de l'avenir.

Mais il y a plus. M. Castel ne se limite pas uniquement au droit du Québec, mais il entreprend également un remarquable survol, et cela pour chaque matière, du droit des autres provinces du Canada, du droit étranger et des Conventions internationales qui ont tenté d'unifier les différentes matières du droit international privé. C'est ainsi que l'auteur analyse longuement les Conventions de La Haye relatives au mariage, au divorce et la séparation de corps, aux accidents de la circulation routière, aux contrats d'intermédiaires, à la protection des mineurs, etc., cela bien que le Canada ne soit Partie à aucun de ces traités. Certes, l'auteur avait déjà entrepris une telle analyse dans le volume premier de son triptyque consacré au droit international privé du Canada; mais dans son dernier ouvrage, il insiste davantage sur ces Conventions et donne de plus amples commentaires, comme s'il voulait attirer l'attention des juristes de son pays sur les efforts d'unification qui sont entrepris sur le plan international et inciter peut-être le Gouvernement de son pays à ratifier l'une ou l'autre de ces Conventions. A cet égard, il est intéressant de noter que le Canada, le 25 octobre 1980, à la clôture de la Quatorzième session de la Conférence de La Haye qui l'avait élaborée, a signé la *Convention sur les aspects civils de l'enlèvement international d'enfants*. Ainsi, pour la première fois depuis que le Canada est Membre de la Conférence de La Haye, son nom figurera sur la liste des signatures et ratifications des Conventions élaborées sous l'égide de cette Organisation.

En bref, le *Droit international privé québécois* est un ouvrage capital et indispensable pour le praticien canadien, car il y trouvera non seulement l'état actuel du droit de cette province, mais une ouverture sur l'avenir et sur les différents courants venant de l'étranger et qui ne sont pas sans avoir de l'influence sur l'élaboration du droit québécois.

Mais le nouveau traité de M. Castel n'est pas seulement indispensable pour le praticien québécois, il est également une source inappréciable pour le juriste étranger, et notamment celui appartenant à la famille du droit civil écrit. En effet, la position particulière du Québec, province au système juridique codifié, influencée par le droit civil, mais insérée dans un pays à prédominance de *common law*, a eu pour résultat que des interpénétrations entre les deux grands courants juridiques se sont réalisées et que des accommodements ont été nécessaires pour que des institutions inconnues du droit civil, mais de pratique courante dans les provinces de *common law*, puissent être reconnues au Québec. A cet égard, je citerai un exemple particulièrement remarquable analysé en

détail par M. Castel: il s'agit de son chapitre consacré à la *fiducie*. Le titre même de ce chapitre éveille déjà l'intérêt, puisqu'il est censé, dans l'esprit de M. Castel, et bien que l'auteur reconnaisse immédiatement que les deux institutions ne se recouvrent pas, traduire un des nombreux aspects que peut prendre l'institution du *trust* de la *common law*.

On sait que le *trust*, institution extrêmement courante dans les pays de droit anglo-américain, n'est pas connue des pays de droit civil qui, lorsqu'ils ont eu à reconnaître de telles institutions, ont dû tenter de les assimiler à des notions de leur propre droit; c'est le plus souvent à la notion de contrat mixte que se sont référées ces tentatives, contrat se décomposant en un mandat, un transfert fiduciaire de propriété, une stipulation pour autrui etc., toutes notions qui ne correspondent jamais exactement à celle du *trust*. Aussi est-il extrêmement intéressant de voir comment le Québec, qui a dû résoudre dans son droit le problème du *trust*, a assimilé cette institution. Encore une fois, la fiducie, qui a son équivalent en Europe dans la *Treuhand* du droit liechtensteinois, ne saurait être assimilée au *trust*, mais du moins a-t-on estimé au Québec que cette construction se rapprochait le plus des *trusts* du droit anglo-américain. Il sera intéressant de suivre les travaux de la Conférence de La Haye en cette matière, puisque la Quatorzième session a inscrit à l'ordre du jour de ses travaux futurs la validité et la reconnaissance des *trusts*.

En résumé donc, l'ouvrage de M. Castel, par l'état complet qu'il donne du droit international privé québécois, par son ouverture au droit étranger et son ouverture à l'avenir, est un traité remarquable et original, qui devrait se trouver dans la bibliothèque de tout juriste intéressé par le droit comparé.

MICHEL PELICHET*

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How to Handle your Own Contracts. A Layman's Guide to Contracts, Leases, Wills and Other Legal Agreements. By CHRISTOPHER NEUBERT and JACK WITHIAM, JR. New York: Sterling Publishing Co. Inc. 1980. Pp. 240. ($6.95 U.S.)

This is a do-it-yourself guide to the law with a difference; it is quite good! Moreover, it actually tells its readers when they should consult a lawyer. The authors' expressed aim is to provide the intelligent

* Michel Pelichet, secrétaire général adjoint, Conférence de La Haye de droit international privé, La Haye, Pays-Bas.

layperson with a modest outline of the basic principles of a number of areas of law which are based on the law of contract, together with precedents and illuminated with practical (and sometimes humorous) examples. Once the legal framework of a particular topic has been sketched, the authors present precedents in every-day use and explain the legal theory behind the key clauses and legal traps which the unwary could fall into. The explanations are clear, and on the whole well written, apart from the use of some annoying words such as "decedents" for deceased persons. A good collection of current precedents is provided.

Among the topics covered are contracts, leases, conveyances, mortgages, partnership agreements, wills, buy-sell agreements, sale of goods and credit purchases. Although the unifying factor in all these topics is their contractual basis, it is unfortunate that some other topics were omitted, such as advice about consumer protection advisory groups and consumer protection generally, cohabitation agreements and selected aspects of law relating to small businesses. With the addition of these topics the book would have been complete. While there is little to complain about in any of the chapters, one chapter, in particular is noteworthy, that is, chapter nine, "Buying on Credit", which contains an excellent exposition about credit transactions, credit cards and retail instalment contracts. Notably absent, however, are instructions as to such procedural practicalities as filing documents, registration, searches, and so on.

No member of an over-crowded profession has cause to complain about this book; in both spirit and execution it advocates the co-operation of the lawyer and the legally informed citizen. A Canadian equivalent would be an undoubted improvement on the various self-counsel law guides now available.

M. H. OGILVIE*

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Byles on Bills of Exchange. Twenty-fourth Edition. By MAURICE MEGRAH and FRANK R. RYDER. London: Sweet and Maxwell. 1979. Pp. lxxxiii, 509. ($89.75)

Sir John Barnard Byles published his First Edition of this work in 1829. In 1882, the British House of Parliament passed Sir Mackenzie Chalmers' Bills of Exchange Act 1882,[1] which is still the law in the United Kingdom today. The Fourteenth Edition of *Byles on Bills of Exchange* appeared three years later under the joint editorship of

*M.H. Ogilvie, of the Department of Law, Carleton University, Ottawa.

[1] 45 & 46 Vict., c. 61.

M. Bernard Byles and A. K. Lloyd. Now we have the Twenty-fourth Edition. The law has changed very little since 1882, which means that very little changes from one edition to the next of this bible on the British law of bills of exchange.

With this edition the editors are beginning the preparation for closer banking ties in Europe by including the Geneva Convention on Bills of Exchange of 1932.[2] The text makes scant reference to the Convention or its relevance, but there it is in the Appendices so that it is at least mentioned in the leading British textbook on bills of exchange.

For the Canadian lawyer, this book is still a standard reference where our law is the same as it is in the United Kingdom—and most of it is. However, the very significant changes made in Canada with respect to "consumer bills and notes" in 1970,[3] are not echoed in the United Kingdom. Therefore, this work is not useful for a wide range of practical problems which face Canadian lawyers.

This new edition "tidies the work somewhat". For the next edition it would be desirable if the editors tried a complete rewrite of the chapters concerned with the "liabilities of Parties and the Rights of Parties". It is just not easy to fully understand the law which comes out of the existing thicket of rules and explanations. The fundamental problem is that the Act alludes to defences available to the payor and endorsers, but most of the defences themselves are found in the cases. And the catalogue of defences available to the defendant depends on the type of holder he faces. *Byles'* presentation could be much clearer. There seems to be little ryhme or reason in the rules as they are developed in this text. The confused reader would be well off turning first to the outline of the law of bills of exchange in Smyth and Soberman, *The Law and Business Administration in Canada.*[4]

J. W. SAMUELS*

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Essential Business Law. Agency in Commerce. By MAURICE KAY. London: Sweet & Maxwell. 1979. Pp. vi, 90. (No Price Given)

Agency is a common and important aspect of commercial transactions, and in his book Professor Kay seeks to make the law of agency

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[2] (1933), 143 L.N.T.S. 257.

[3] R.S.C., 1970 (1st supp.), c. 4, s. 1.

[4] (3rd ed., 1976)

*J.W. Samuels, of the Faculty of Law, University of Western Ontario, London, Ont.

accessible to the layman who is engaged in commerce. Parts of the book succeed in this objective. Professor Kay gives a good definition of an agent, sensibly preferring Professor Fridman's comprehensive statement of the agency relationship[1] which includes the concept of non-consensual agency, to the more limited consensual definition offered in Treitel's *The Law of Contract.*[2] The chapters on the relationship of the parties to each other (principal, agent and third party) are concise and clear. More specifically, Professor Kay's discussions of the retroactive effect of ratification and of the action for breach of warranty of authority are particularly excellent.

Before turning to the book's shortcomings a *caveat* is in order. From a Canadian point of view *Agency in Commerce* illustrates the danger of relying on English textbooks. Although agency is essentially rooted in Anglo-Canadian common law Professor Kay makes frequent references to British statutes that have no application in Canada. In particular he mentions the European Communities Act, 1972,[3] thereby underlining the increasing divergence between Canadian and English law that British membership of the E.E.C. is bound to bring about. Clearly the author cannot be faulted for faithfully recording the state of English law, but a Canadian businessman should be aware that Professor Kay is doing just that. The days of imperial legal harmony are over.

Unfortunately the book's shortcomings vitiate much of its usefulness. The first complaint that can be made concerns the scope of the book. Although he is writing for businessmen and managers, Professor Kay more or less passes over corporate agency. He deals briefly with corporate capacity and the problem of *ultra vires,* using legal language that, one suspects, will leave the layman none the wiser. As for the authority of an agent to bind his corporate principal, Professor Kay contents himself with listing Lord Denning's four conditions for its establishment from *Freeman & Lockyer.*[4] There is no discussion of constructive notice or the rule in *Turquand's Case.*[5] Certainly one can argue that commerce is to do with commercial rather than company law, but this is a very narrow approach. Incorporated entities are a major fact of commercial life, and it is precisely within the corporate sphere that agency principles are most complex and most in need of elucidation.

The book's second major shortcoming is its presentation, which is more likely to confuse than instruct the layman. There is too often

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[1] G.H.L. Fridman, The Law of Agency (4th ed., 1976), p. 8.

[2] (5th ed., 1979), p. 530.

[3] 1972, c. 68.

[4] [1964] 2 Q.B. 480.

[5] (1856), 6 El. & Bl. 327, 119 E.R. 886.

recourse to legal language without any attempt to explain its meaning in lay terms. Words like estoppel, tort, collateral contract are used as if their meaning were self-evident. Even where everyday language is used to expose legal principles there is often a lack of concrete examples to illustrate their ramifications. Most serious of all, however, is the muddled presentation of the agency relationship itself. Firstly, Professor Kay departs from the normal practice of treating the creation of the agency relationship and the type of authority enjoyed by the agent as a conceptual whole. He discusses these two topics separately, and the result is duplication and confusion. For example, when the author introduces the idea of implied actual authority he postpones giving examples of this authority, such as incidental and customary authority, to the following chapter. As a result, his initial definition of the term is extremely nebulous. When it comes to a discussion on agency based on apparent authority, the confusion is even greater. The author gives an account of the legal basis of such authority and the prerequisites required for a third party to rely on it before he even defines what apparent authority is. When he finally does define it in the succeeding chapter, he is forced to duplicate much of what he has already written. Professor Kay also chooses to categorize the various agency relationships somewhat esoterically. He rejects the division into consensual and non-consensual agency, which does not, however, prevent him from comparing the two concepts without explaining their meaning, and refers instead to agency relationships based on agreement, ratification, estoppel and necessity. The problem is that such a division leaves no place for the relationship between an agent and an undisclosed principal, which is based on what is normally called usual authority. Here confusion is compounded by inadequacy.

This brings us to the book's third failing, namely its treatment of the substantive law regarding usual authority, which Professor Kay treats as merely a sub-element of implied actual authority. In fairness to Professor Kay it is true that usual authority is a rather controversial concept and not susceptible of a precise definition. Powell[6] seems to consider any authority as "usual" where a person would normally possess it in certain circumstances. So defined, it can form the basis of *implied actual authority* in the form of incidental or customary authority or the authority inherent in a certain position; or it can give rise to *apparent authority* where the third party is not aware that the incidental authority or the authority inherent in a certain position has been revoked or was never actually given; or it can constitute the authority upon which a third party must

[6] Raphael Powell, The Law of Agency (2nd ed., 1961), pp. 41-53.

rely to enforce a contract against an undisclosed principal, on the grounds that a person who places another in a position where that other person normally has the power to do certain acts must accept responsibility for those acts. Treitel[7] pursues a slightly more limited approach and excludes any authority that can effectively be negatived even as against a third party by agreement between the principal and his agent, such as customary authority. This makes sense as the essence of usual authority is that circumstances and not the consent of the principal give rise to it. Indeed these circumstances can and often do exist independently of any actual authority, and this is why Professor Kay's relegation of usual authority to a sub-element of implied actual authority is unacceptable. If usual authority is to be restricted to one instance, it would seem that it should be reserved solely for the undisclosed principal situation, namely where the third party cannot rely on actual or apparent authority. This approach would establish a clear distinction between actual, apparent and usual authority which might, for the sake of clarity, be desirable.

In conclusion, it must be said that this book is a disappointment. It is confusing in essential matters, and it does not really cater well for the layman. A businessman would be better advised to turn to the excellent summary of agency law in Treitel's *The Law of Contract*.[8]

PHILIP RAWORTH*

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Credit Marketing and Consumer Protection. By TERENCE G. ISON. London: Croomhelm. 1979. Pp. iv, 522. (£29.50)

Knowledge of consumer behaviour and problem solving in the marketplace is relatively limited. Few studies have been attempted of the relationship between the formal and informal norms and institutions of consumer dispute resolution. Although certain Law Reform Commissions have undertaken preliminary investigations into this corner of social reality,[1] there has been in Canada little empirical study of this area. The result is that while there have been many arguments and proposals for reform, there is still a dearth of

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[7] *Op. cit.*, footnote 2, pp. 541-543.

[8] *Ibid.*

*Philip Raworth, of the Faculty of Law (Common Law Section), University of Ottawa.

[1] For example, The Ontario Law Reform Commission Report on Consumer Warranties and Guarantees in the Sale of Goods (1972).

knowledge concerning important policy choices.[2] Indeed, reforms are sometimes proposed in almost complete ignorance of the significance or insignificance of the effect of changes in the official legal system on the rest of the iceberg of consumer problem solving. Michael Trebilcock's comments in 1975 seem still to be particularly appropriate: "Without hard, empirically unassailable facts, policy making in the regulation of the consumer credit market will remain what it has always been—at best an exercise in accidental wisdom."[3]

In the light of these comments Professor Ison's book is to be welcomed. It is a book brimming with information and argument. Although it does not fill the void in Canadian studies, since the empirical part of the study was conducted in the United Kingdom, it ought to provide a model for stimulating further empirical research in Canada.

The focus of the study is on abuses of credit marketing and the purpose is to contribute information, ideas and argument and "an argumentative background to the law and a perspective on the significance of law".[4] The book is roughly divided into two parts. The first part presents the results of a consumer survey and other inquiries carried out by the author into consumer experiences with the purchase and use of major durables: the second presents arguments and ideas for reform of regulatory techniques and the control of abuses in credit marketing. Many of these ideas are stimulating and original, although there is at times no necessary connection between the argument of the second part and the data of the first part.

The survey of consumer experiences records data on selling methods, use of credit, channels of distribution, complaints, payment patterns and interest charged. There is much of interest for policy makers in these chapters. For example, the data confirm the hypotheses that door-to-door sales create more problems for consumers than sales made at retail premises: that complaints received by advisory agencies are only a small fraction of the total volume of consumer grievances; that consumers have greatest difficulty in resolving judgmental problems with goods and services and that higher income individuals are more liable to notice these

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[2] A number of studies are being conducted in the U.S. and Europe which promise to provide us with greater information. In the U.S. the Disputes Processing Research Project at the University of Wisconsin is conducting a study of consumer disputing and in Europe co-ordinated research is being conducted into law and dispute treatment. Consumer problems are included in the research.

[3] M.J. Trebilcock and A. Shulman, The Pathology of Credit Breakdown (1975), 22 McGill L. J. 415.

[4] P. 1.

problems. One interesting finding is that problems with motor vehicles are no greater than with other goods or services but that consumers are more liable to complain about this expensive item.

There are a number of minor criticisms which might be made of the presentation of these data. Firstly, the author ought to have attempted a greater synthesis of recurring themes. For example, there is the important distinction between the repeat player (consumer or business) and the "one-shotter". Although the distinction is alluded to on a number of occasions its importance for policy making might have been developed. Second, the author ought to have made more references to the limited number of related studies (which often confirm his data), for example, Best and Andreasen's study of consumer responses to unsatisfactory purchases.[5] It is also unfortunate that there has been such a long gestation period between the gathering of the data in 1969 and the publication of the book in 1979. This may make some of the conclusions outdated. For example, there is only one case of a multi-purpose credit card in the sample.

I have mentioned that Part II of the book has many stimulating and original ideas. Its importance for the future reformer is the demonstration, again and again, of the "trained incapacity" of many reformers to question existing structures, institutions, practices or perspectives. The author is quite justifiably impatient with legal reforms which conceptualize consumer problems as individual problems to be solved by case-by-case adjudication,[6] and with those who think in legal rather than functional categories.[7] One of his most intriguing arguments concerns the issue of consumer debt claims. The author argues for the abolition of judicial enforcement of retail debt claims arising out of consumer transactions. He views this as one method of controlling abuses in credit marketing. His arguments on this issue deserve close attention notwithstanding the fact that he may underestimate the symbolic importance of law in representing and reinforcing the public value that debts ought to be repaid. It is of course difficult to empirically trace this connection and there is little in sociological literature concerning the extent to which "a vague sense of threat keeps everyone reasonably reliable".[8]

The general impression left after reading this work is that there are significant inadequacies in the pattern of thinking embedded in

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[5] A. Best and A. Andreasen, Consumer Response to Unsatisfactory Purchases: a Survey of Perceiving Defects, Voicing Complaints and Obtaining Redress (1977), 11 Law & Soc. Rev. 701.

[6] Pp. 17-18.

[7] *Ibid.*

[8] S. Macaulay, Elegant Models, Empirical Pictures, and the Complexities of Contract (1977), 11 Law & Soc. Rev. 507, at p. 520.

much of existing consumer legislation, and that further empirical study is necessary of a consumer marketplace which is far from perfect in protecting the consumer's interest. The book drives home the point made by other studies that existing data gathered by government agencies reflect only a small fraction of the reality of consumer grievances.

My main criticism would be that the two parts of the book hang together rather loosely with policy reforms at times appearing to be pasted on data. However, it must be regarded as a welcome and innovative contribution to the literature in this area.

Two final points. Firstly, the data are occasionally presented in such small print that I almost reached for my *Oxford English Dictionary* magnifying glass. Second, it is stated that the book is designed for "those concerned with the marketing of consumer durables, with consumer finance, with consumer protection and with law reform in these areas".[9] I hope that these individuals have deep pockets. At £29.50 this book would unfortunately be beyond the income of many students and teachers.

IAIN RAMSAY*

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Secured Transactions in Personal Property in Canada. Two Volumes. By R. H. MCLAREN. Toronto: The Carswell Co. Ltd. 1979. Pp. xxii, 1000. ($80.00)

A Canadian textbook on chattel security is an event. Little has been published since Barron's early works.[1] Thus, it is with some enthusiasm that Richard McLaren's book must be greeted.

However, one important caution must be given a prospective purchaser of the book. The title is misleading. The book is not about secured transactions but rather the new Personal Property Security legislation in Canada (PPSA). The legislation of course deals with all security in chattels in those provinces where it is in force. However, the PPSA is in effect only in a minority of Canadian provinces[2] and only the areas of the law covered by the PPSA are

[9] P. i.

*Iain Ramsay, of the Institute of Law Research and Reform, Edmonton, Alberta.

[1] J.A. Barron, The Conditional Sales Act (2nd ed., 1907); and J.A. Barron and O'Brien, Chattel Mortgages and Bills of Sale (3rd ed., 1927). See also: R.M. Goode and J.S. Ziegel, Hire-Purchase and Conditional Sale (1965).

[2] S.O., 1967, c. 73, 1972, c. 102; S.M., 1973, c. 5; the PPSA has also been adopted in Saskatchewan: Bill 42, passed June 16th, 1980.

dealt with in the book. Further, the security devices *per se*, are not discussed. There is a section in the text on transactional documents, wherein the author provides several useful precedents for different types of financing agreements, but this is the closest the book comes to discussing transactions themselves.

Once one accepts that the text only deals with the PPSA, the de-emphasis of the security devices is understandable. The PPSA was designed to create a uniform system of registration and priority for chattel security. Therefore, issues of title and many of the old distinctions between the devices no longer hold. However, the PPSA is also designed to allow the old forms of agreement to be effective according to their terms, unless expressly contradicted by the Act. Further, the commercial community will continue to carry on business drawing up the same agreements to protect the same interests that existed before the PPSA.

The book, then, is a detailed analysis of the PPSA. Author McLaren is well qualified to write on the subject, having been a member of the Ontario Advisory Committee on the PPSA since its inception in 1975. Although he has some involvement with the Ontario Act, the author is not loathe to criticize its provisions.[3] These criticisms are often aimed at the changes made to the original proposal by the Ontario Law Reform Commission.[4]

The book is published in two volumes and in binder form. Comparisons with the two leading American texts on the subject immediately spring to mind. The great work of Grant Gilmore[5] is in two volumes and is a complete description of the various means of chattel security financing together with an historical analysis and a discussion of article 9 of the Uniform Commercial Code. The work of Coogan, Hogan and Vagts[6] is in 3 volumes and binder form and contains a number of articles by various contributors on specific issues under article 9. McLaren's book is a half step between each of the American works. While it is in binder form and divided into rather distinct sections, it is largely continuous text and has much of the comprehensiveness of Gilmore's work.

The organization of the book is of particular interest. Volume 1 contains a large section entitled, "Introductory Analysis" which is an explanation of most of the workings of the PPSA. This part is not an introduction to the book, but to the PPSA, and is really the heart of the book. In this section the basic principles of attachment and

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[3] See pp. 3-9, 8-14, 8-16.

[4] See pp. 8-17, 20-22.

[5] *Security Interests in Personal Property* (1965).

[6] Secured Transactions Under the Uniform Commercial Code (1977).

perfection are discussed in a manner which will allow the neophyte to become familiar with the basis of the PPSA. All of the other principles are described: proceeds, future advances, after-acquired property, the conflict rules, the disposition of collateral and the rights and duties of the secured party and debtor. The Act's solution of priority rules is also analyzed in some detail. This section of the text should provide most readers with a good understanding of the PPSA and also a ready reference to most questions likely to arise under the Act. While the section is comprehensive, readers would be well advised to consult Coogan, Gilmore or others for more detailed discussion of certain specific issues under article 9, or the nature of certain security agreements.

Smaller sections on registration procedures, searches and secured party remedies follow. These sections will be of particular interest to the practitioner as the author takes pains to go through those subjects in practical terms. The reader will note a significant change in emphasis here, as the author obviously has the practitioner in mind in these areas, as compared to the discussion in the Introductory Analysis which dealt with principles. For example, the author describes procedure for searches[7] and closing.[8]

A section on precedent documents then follows. Again, this area is of practical interest. Each of the clauses in the documents is explained and related to the Act, which should be of valuable assistance to those wishing to tailor the precedents to particular agreements. One suspects the author is taking up the challenge of the new legislation and drafting some financial agreements which escape the limitations of the old chattel security law and take advantage of the flexibility of the PPSA. It will be interesting to see what new documentation develops as a result of the PPSA. Already, some banks have prepared new forms (''general security agreements'') to be used where a debenture, or a number of agreements, might have been used in the past.

The second volume is non-textual. It contains copies of the Ontario and Manitoba legislation and the various forms under the legislation. This volume also contains a number of judgments under the PPSA legislation. It even goes so far as to create a citation reference (''1 P.P.S.A.C.''). Presumably, a subscriber will receive regular supplements to the section on case law.

The textual discussion in volume 1 makes reference only to Ontario and Manitoba legislation. While it is sensible to concentrate on legislation that is in force, it is regrettable that more comment was

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[7] P. 21-5.

[8] P. 21-12.

not made on the way in which the Model Act (largely followed in Manitoba) was drafted partially to overcome problems which were discovered in the Ontario Act. It might have been useful to point out more forcefully the significant differences between the Ontario and Manitoba Acts. Further, some use could have been made of the British Columbia[9] and Saskatchewan[10] Law Reform Commission reports.

A set format is adopted throughout the introductory analysis, registration, searches and remedies sections. Under each topic the Ontario Act is first discussed in detail with some discussion of general principles. The Manitoba legislation is then analyzed. The author has obviously made a decision to create two separate analyses for ease of reference to each of the Acts. This does have a practical advantage for quick reference and does allow the addition of text on subsequent legislation at a later date. While it is stated that the discussion of the Manitoba Act will not repeat identical points under the Ontario Act (and the reader is often referred back to the Ontario analysis), there is some repetition. One wonders what will happen if five or six Acts must be discussed in subsequent editions.

This repetition did create problems. For example, the case of *Re Robert Sist Development Corporation Ltd*[11] is discussed both under the Ontario section[12] and the Manitoba section.[13] The author advises under the Manitoba section that "personal property registry has a threefold purpose",[14] while he states under the Ontario section that the "personal property security registration system has a dual purpose".[15] In the section on transactional documents, the author abandons this dual discussion which seems to make for easier reading.

A concern has been expressed that Canadian judges will not take advantage of American jurisprudence under article 9 of the Uniform Commercial Code.[16] Conversely, one might worry that the old case law will needlessly be set aside when interpreting old agreements still valid under the PPSA. McLaren reveals a nice mix of Canadian authority prior to the PPSA, and American law under article 9 of the

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[9] Report on Debtor-Creditor Relations, Part 5—Personal Property Security (1975).

[10] Proposals for a Saskatchewan Personal Property Security Act (1977).

[11] (1978), 17 O.R. (2d) 305 (H.C.).

[12] P. 20-17.

[13] P. 20-42.

[14] P. 20-27.

[15] P. 20-25.

[16] See J.S. Ziegel, The Quickening Pace of Jurisprudence Under the Ontario Personal Property Security (1979), 4 C.B.L.J. 54.

Code, to be used in the interpretation of the PPSA.[17] Hopefully, his lead will be taken by the Canadian bench and bar.

The author notes in his preface that this book was intended to be a more comprehensive analysis of the PPSA than that made by the Catzman committee.[18] The latter text was to be an editorial comment on the Ontario Act. McLaren's book covers all most readers would want to know about the PPSA. It is thus a perfect complement to the PPSA. Both the Act and this text are intended to be comprehensive. The two volume set provides the reader with a library of information on this new legislation and appears to be well worth the effort the author no doubt put into its creation.

DOUGLAS R. JOHNSON*

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Russell on the Law of Arbitration, Nineteenth Edition. By ANTHONY WALTON. London: Stevens & Sons. 1979. Pp. lxi, 650, and Supplement. ($90.00)

The most significant change in this Nineteenth Edition of the standard reference on the law of arbitration is its treatment of the liability of an arbitrator for negligence. During the decade since the Eighteenth Edition appeared, the House of Lords has had two occasions on which the question of an arbitrator's liability was discussed, though no definitive answer was given. In *Sutcliffe* v. *Thackrah,*[1] and *Arenson* v. *Arenson,*[2] their Lordships accepted the immunity of an arbitrator from liability in negligence, when he is exercising his powers in a judicial manner. However, in *Arenson,* Lord Kilbrandon suggested that an arbitrator is:[3]

> . . . selected by the parties for his expertise, whether technical or intellectual, that he pledges skill in the exercise thereof and that if he is negligent in that exercise he will be liable in damages.

An argument which is impeccable in its reasoning, but will send a shiver up the spine of any arbitrator.

But why should arbitrators not be liable for negligence? And if arbitrators are liable, why not judges? Horrors! Even Lord Kilbran-

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[17] See, for example, p. 10-10, footnote 21.

[18] F.M. Catzman et al., Personal Property Security Law in Ontario (1976).

*Douglas R. Johnson, of the Faculty of Law, University of Victoria, Victoria, B.C.

[1] [1974] A.C. 727.

[2] [1977] A.C. 405.

[3] *Ibid.,* at p. 431.

don would hold that with judges "one is in a different region to which different principles apply".[4] The layman cannot understand why he can be liable for negligence, so can the doctor, engineer or lawyer, yet the judge or arbitrator can be negligent with impunity. The poor litigants must suffer without recourse. We should all be accountable to those who depend on our activity. It is not too much to ask for reasonable care from the judge or arbitrator.

Russell has been the standard reference on the law of arbitration for well over a century. It does not tell us about the law developed by arbitrators in any particular field—labour or commercial. The text confines itself to the arbitration process—how does one get to arbitration? Who can be an arbitrator? What power does the court have over the arbitrator? On the whole, the Nineteenth Edition is old wine in a new bottle, and it is still good.

One small quibble. *Russell* accepts without question and without adequate authority, that deafness, dumbness and blindness incapacitate a person from being an arbitrator.[5] Clearly this is wrong. It may be that, where the particular matter in dispute requires the capacity to hear, speak, or see in order to decide the issue, then these physical disabilities would incapacitate the person from being an arbitrator in that dispute. But as a general proposition, the statement is an insult to some very capable people, some of them able lawyers, who could serve well as arbitrators.

J. W. SAMUELS*

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The Scope and Interpretation of the Civil Code of Lower Canada. By F. P. WALTON, with an Introduction by MAURICE TANCELIN. Toronto: Butterworth's. 1980. Pp. xxiv, 138. ($16.75)

In the Foreword to this edition of Walton's renowned monograph, the present editor asks, "Why republish, in 1980, in its original form a judicial work published in 1907?" and answers, "Because it is one of the very few works of its kind in its field: a central component of the general theory of Quebec and private law, a general theory which has yet to be worked out fully".[1] This assessment of Walton's text is surely correct. The work has been, and continues to be a major

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[4] *Ibid.*

[5] P. 112.

*J.W. Samuels, of the Faculty of Law, University of Western Ontario, London, Ont.

[1] P. iii.

doctrinal source with respect to the questions it seeks to address.[2] A further reason for the present republication flows from the fact that in the past the monograph has been available only in English. The current edition overcomes this deficiency, presenting in separate volumes both a French and an English version of Walton's study. As now issued the book consists of the original 1907 text, a thirty-four page Introduction by the editor, Professor Maurice Tancelin, and a bibliography of Walton's other legal writings. In this form it certainly deserves a place in the personal library of all civilian lawyers and law students. It will also, although in a much less direct way, be of some value as a reference source for the common lawyer interested in problems of codification, an increasing preoccupation of many Law Reform Commissions.[3]

Because Walton's monograph is generally well known (and its reputation is established), no more than a brief overview of its contents will be offered here. Part I, entitled The Scope of the Civil Code, is devoted to an examination of two topics: the history and sources of the Civil Code, and the private law of Quebec falling outside the Code. The opening chapter, on the antecedents and sources of the Code, continues to present a relatively accurate account of the juridical foundations of the Quebec legal system. Notwithstanding certain deficiencies in the treatment which have been revealed by recent work,[4] this exposition remains a comprehensive elucidation of the origins and development of the law which utlimately entered the Code. Walton's second theme is addressed through a summary enumeration of federal jurisdiction under section 91 of the British North America Act, 1867[5] as well as through a

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[2] Other works which address this problem, although ever so briefly and only in the context of larger studies, are L. Baudouin, Les aspects généraux du droit privé dans la province de Québec (1967), pp. 9-98; L. Baudouin, Le droit civil de la province de Québec (1953), pp. 33-113; Azard and Bisson, Droit Civil Québécois (1971), pp. 1-50; Clarence-Smith and Kerby, Private Law in Canada (1975), *passim*.

[3] Many of Walton's observations on the relationship of codal and pre-codal law, on the integration of codal and extra-codal law, on the nature of a code in a common law politico-legal system and on the role of *stare decisis* in codal interpretation are, subject to minor modification, equally applicable to common law codifications. Those who are perplexed by quasi-codes such as Ontario's Personal Property Security Act, R.S.O., 1970, c. 344, as am.; Family Law Reform Act, 1978, S.O., 1978, c. 2, as am.; and Succession Law Reform Act, S.O., 1977, c. 40, would do well to carefully consider Walton's Part II, as well as the editor's Introduction. Of course, it is not being suggested that the above statutes are "civil codes" or that underlying principles of civilian legal thinking should be incorporated into their interpretation and application. The point is simply that this edition of Walton's text contains many valuable insights into the codification process.

[4] Notably J. Brierley, Quebec's Civil Law Codification Viewed and Reviewed (1968), 14 McGill L.J. 521; J.-G. Castel, The Civil Law System of the Province of Quebec (1962), Part I.

[5] 30 & 31 Vict., c. 3, as am. (U.K.).

discussion of public law and those parts of insurance, railway and company law which, although within provincial legislative competence, are not treated in the Code. Here the author is making a fundamental point: namely, private law in Quebec is by no means to be found exclusively in the Civil Code. Unfortunately, however, much of this section of the monograph is dated. Continual evolution in constitutional jurisprudence, amendments to the British North America Act, 1867, and frequent extra-codal initiatives by the Quebec National Assembly have rendered many of Walton's observations obsolete. Nevertheless, this second chapter retains its value as an historical and bibliographic document.

Part II of the monograph, entitled The Rules of Interpretation, remains the definitive treatment of this subject even today. However, as is to be expected in any work seventy-five years old, there are certain gaps and misleading emphases in the treatment. I shall highlight several of these in the next few sentences. First, for obvious reasons Walton was concerned with the relation of pre-Code and codal law. As a result, much of his discussion in early sections is directed to what must now be viewed primarily as an historical problem. Second, his *Rule Four*, "Conditions and qualifications are not to be imported into the Code by reference to other sources", an observation highlighting the codal nature of the document, is challenged by cases such as *Town of Montreal West* v. *Hough*[6] which affirm the "statutory character" of the Code.[7] Third, *Rule Five*, "The English and French versions of the Code are of equal authority, and the one may be used to interpret the other"[8] must be read in light of *La charte de la langue française*.[9] Fourth, subsequent judicial opinions such as *Despatie* v. *Tremblay*[10] would seem to have modified the practice of looking at the codifiers' *Report*,[11] as expressed in *Rule Eight*: "If by collating the articles of the Code the interpretation of the article under discussion is still uncertain the most reliable guide will be the reports of the Commissioners."[12] Fifth, his *Rule Nine*, "When the question is not concluded by reference to other articles of the Code, or to the explanations of the Codifiers, the next best guide will be the decided cases upon the point"[13] must be considered as an understatement in view of the

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[6] [1931] S.C.R. 113.

[7] P. 90.

[8] P. 96.

[9] L.R.Q., 1977, c. C-11.

[10] [1921] 1 A.C. 702 (P.C.).

[11] (1866), 3 vols.

[12] P. 101.

[13] P. 104.

Supreme Court decision in *Daoust* v. *Ferland,*[14] incorporating a variant of the theory of *stare decisis* into codal interpretation. Finally, it must be remembered that the monograph was written in 1907. Consequently, it was the product of the intellectual climate of that period. The views of Geny, Kantorowicz and the "free law movement" in no way show their impression on this work.[15] All in all, however, this part of the text remains a remarkable work on the interpretation of the Civil Code.

Because of the systematic unity of Walton's work, yet the severe dating of several sections, the present editor has chosen to provide a seventy-five year update on the monograph in an introduction, rather than to rewrite the entire text. This update is designed "to define the main problems with which Walton was concerned, that is, the interpretation in particular, and, in general, the way in which the Quebec judge conceives of the judicial process. . . . [and to] search for the backgrounds of a general theory of Quebec private law".[16] In the remainder of this review I shall consider the editor's observations, speculating with him on the contours of the general theory which Walton was a pioneer in elucidating.

Professor Tancelin begins his analysis with the observation that Quebec is possessed of a mixed legal system which reveals aspects of both the common law and *droit civil*. In the first part of his essay he attempts "to identify the essential characteristics of Quebec private law from the standpoints of the sources of law and the interpretation of the rules of law".[17] The complexity of the formal sources of Quebec law is noted: these include articles of the Civil Code (which themselves may be a reproduction of pre-Code statute, may be borrowed from French law, may be incorporated from English law, or be a result of the integration of French and English sources); Quebec statutes; and federal law, be it statutory or precedential. The editor makes the important point that this diversity of sources has tended to reduce the significance of the Code as a fundamental juridical document in Quebec, and may have contributed to the judicial attitude that the Code is no more than an ordinary statute.[18] Professor Tancelin also notes that in the organizational structure of

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[14] [1932] S.C.R. 343.

[15] See the editor's observations at pp. 14-18.

[16] P. iii.

[17] P. 3.

[18] This judicial attitude may be contrasted with the "idolatrous" point of view apparently taken by the legislature. See J.-L. Baudouin, Le Code civil québécois: crise de croissance ou crise de vieillesse (1966), 44 Can. Bar Rev. 391, esp. at p. 400.

its courts, in the manner of appointment and status of its judges, and in its political processes (the enactment of legislation, the adversary system, the function of appellate review, and so on) the private law system in Quebec is dominated by common law conceptions.

In a second section, the editor attempts to isolate and rank the justificatory bases of legal decisions in Quebec, as well as to elucidate the process of interpretation as practiced by the courts. In other words, he demonstrates conclusively that the mixed nature of the Quebec legal system extends not only to substance and institutions, but also to underlying philosophy and methodology. Professor Tancelin restricts his remarks about the former to an elaboration of three major points relating to sources of law. First, he surveys the relation between federal statutes and the Code and concludes that under the British North America Act, 1867 the Code must cede to federal law whenever conflicts arise. Second, he examines whether the Code has a special significance as a juridical document and suggests that, at present, it is of no different pedigree than a statute. Third, he wonders whether jurisprudence (cases) may be a source of law in Quebec, and speculates that there is indeed an operative doctrine of *stare decisis* in Quebec courts.

The editor also briefly considers the methodological problem of interpretation. He raises, but does not answer, the question of whether the Code should be interpreted differently than ordinary statutes. After noting that even when courts state that a legal text is clear they are engaged in an interpretive exercise, he then points to an excessive reliance on literal, as opposed to historical and teleological methods of Code interpretation.[19] Finally, he notes a resurgence of resort to the codifiers' report and views this as the sign of a break from the overly legalistic and restrictive process heretofore followed by the Quebec judiciary. Throughout these first two sections Professors Tancelin is engaged essentially in a descriptive update of Walton's original text.

The concluding fifteen pages of the introductory essay are, however, evaluative in orientation. Here the editor sets out a critique of the traditional modes of analysis of Quebec private law. These he finds to be two-fold: among English language writers (Walton excepted) the current is unitary and assimilationist; among French language writers it is separationist and resistant. Professor Tancelin rejects both of these positions in favour of an integrationist perspective. Drawing on recent work in comparative law and legal

[19] There is evidence that the tendency is on the wane. It is paradoxical that Quebec courts have often taken an excessively teleological approach to ordinary statutes such as the Labour Code, L.R.Q., 1977, c. C-27.

sociology,[20] he suggests that the distinctive feature of Quebec law is the fact that it involves "two wholesale receptions which have partially cancelled each other out, so that it is difficult to determine which of the two legal systems is the receiving system and which is the received system".[21] Three projections for the future are sketched: increasing insularity and separation, assimilation, and the creation of an eclectic theory of Canadian private law (in which perhaps even the common law jurisdictions will participate). The editor sees an evolution in the common law away from a narrow doctrine of precedent, coupled with a movement towards the drafting of statutes more resembling Codes; at the same time he sees a move to greater specificity of the legal rule in the legal system in Quebec, accompanied by an evolution away from literal interpretation of the Code. In coping with the future he suggests a new approach to drafting, to the judicial process and to interpretation; that is, he envisions the creation of a new theory of Quebec private law which will serve to "harmonize Anglo-American judicial thinking with continental thinking, to create a common juridical ground".[22]

In the above thoughts the editor is likely to offend many who preach the "purity" of the civil law (the dominant French language theme)[23] as well as those who laud the imperialistic tendencies of the "superior" common law (a not uncommon shibboleth of English language writing). Yet, he has chosen his ground well, and modern defenders of ancient mythologies will be hard pressed to call in jurisprudential theories capable of sustaining an attack on the position advocated. In view of its iconoclasm, Professor Tancelin's essay must be seen as an audacious attempt to generate speculation about the elements comprising a legal theory of Quebec private law. While he purposely refrains from answering most of the questions he raises, he does suggest the broad outlines of future inquiry and theorizing. In these last paragraphs, with temerity, certain additional aspects to this inquiry will be suggested. Two main themes will be addressed: first, sources of law and processes of interpretation; second, the general theory of law and state which must be antecedent to the project proposed by Professor Tancelin.

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[20] Most notably Kahn-Freund, On Uses and Misuses of Comparative Law (1974), 37 Mod. L. Rev. 1: Watson, Legal Transplants and Law Reform (1976), 92 L.Q. Rev. 79; Stein, Uses, Misuses and Non-uses of Comparative Law (1977), 72 Nw. U.L. Rev. 198; Smith, Law Reform in a Mixed "Civil Law" and "Common Law" Jurisdiction (1975), 35 La L. Rev. 927; Papachristos, La réception des droits privés étrangers comme phénomène de sociologie juridique (1975).

[21] P. 25.

[22] P. 34.

[23] *Cf.* Azard, le problème des sources du droit civil dans la province de Québec (1966), 44 Can. Bar Rev. 417, at p. 441.

It is often said, by way of comment on sources of the civil law, that primary sources are legislation and custom, and secondary sources are doctrine, jurisprudence and supereminent principles. In my view this taxonomy is defective, in that it does not focus sufficiently on sources of law as sources of justification for legal decisions. If one asks "what does the legal rule mean?" rather than "where does the legal rule come from?" it becomes apparent that investigation of sources of law should focus on determining "what are good reasons for a legal decision?". From this perspective, a taxonomy of sources of law would not distinguish primary and secondary sources: rather it would encompass a wide variety of principles of justification, including items such as contract, prerogative, values, comparison and context, as well as enactment, precedent, custom and doctrine. Each of these would then be possessed of the same epistemological weight. I believe that the general theory of Quebec private law must elucidate "meaning" rather than "form". Such an elucidation would reveal that all legal decision-making involves interpretation: under such a conception, finding that a legal rule is clear simply means that all, or at least the majority of justificatory tools presented to the decision-maker are thought to point in the same direction. In the absence of widespread adherence to a theory of meaning and language which explains law in terms other than those involving the logical fallacy of affirming the consequence, the comprehensive legal theory sought by Professor Tancelin will never be fully achieved.

The second aspect of the editor's suggested inquiry which I highlight relates to exploring the theory of law and state which must underlie a theory of private law. Jurists cannot talk merely of the law in books and the judicial process; they must identify why some matters are *not* dealt with by the law, but left to private ordering; they must explain why some matters are *not* assigned to courts but are subjected to administrative regulation; they must determine the role of adjudication as a legal ordering device. In other words, a theory of private law which assumes the existence of written legal rules, which presupposes only a judicial system for applying law, and which is predicated uniquely on an adjudicative model of dispute resolution is incomplete. The theory sought by Professor Tancelin must proceed from a more catholic view of the forms and processes of the law: it must recognize and account for the legal nature of private ordering and various types of public ordering; it must acknowledge the diversity of legal ordering processes such as adjudication, custom, mediation, managerial direction, contract and elections, as well as explain their respective provinces. Thus, while Professor Tancelin's Introduction makes the case for a new theory of Quebec private law, in my view his ultimate conception of what the legal enterprise involves is far too narrow.

The preceding two paragraphs should not be taken as a major criticism of the editor's work. Rather, they are offered as supplementary considerations with which the badly needed general theory must deal. Modestly, Professor Tancelin intimates that he is not the man to accomplish the task of elaborating this general theory. The scope of his Introduction, as well as his initiative in bringing Walton's text again to prominence, tends to suggest the opposite. While awaiting the editor's own contribution, the reader can savour this excellent republication of Walton's important monograph.

R. A. MACDONALD*

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Aspects juridiques du règlement de zonage au Québec. Par LORNE GIROUX. Québec: Presses de l'Université Laval. 1979. Pp. 543. ($27.50)

L'ouvrage du professeur Lorne Giroux ne s'est pas accompli sans que des papillons ne lui aient virevolté dans l'estomac. Le sujet lui était "devenu obsédant".[1] Après avoir puisé à tant de sources étrangères—anglaise, américaine, anglo-canadienne et, à l'occasion, française—, il a dû, jusqu'à la enième fois peut-être, scruter les idées, soupeser les concepts, avant de livrer son texte à des lecteurs attentifs sans doute mais peu rompus aux règles de l'art nommé "zonage". "Les Québécois ne bénéficient pas du même niveau d'expérience que leurs voisins ontariens en matière d'aménagement du territoire."[2] Non seulement lui fallait-il percer les secrets juridiques du règlement de zonage au Québec, mais encore devait-il, pour cela, en sonder les assises extérieures.

Le mérite de l'auteur consiste donc à avoir pénétré son sujet au-delà du recensement exhaustif et de l'analyse des textes québécois, jusqu'à la comparaison des solutions voisines, l'échange de vues divergentes et l'intégration osmotique d'attitudes jurisprudentielles de prime abord inconciliables. Dès le chapitre préliminaire circonscrivant la notion de zonage, le lecteur est invité à ouvrir ses horizons sur le droit américain géniteur du droit québécois. L'auteur dissipe également tout malentendu sur la prétendue consanguinité des servitudes du Code civil et du zonage: "inutile et non pertinente".[3] Au premier chapitre, "Le pouvoir de

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*R.A. Macdonald, of the Faculty of Law, McGill University, Montreal.

[1] P. viii, Avant-propos.

[2] P. 365.

[3] P. 39.

zoner'', le professeur Giroux nous entraîne parmi les deux lois générales et le dédale des lois organiques spéciales constituant une ''énumération plus ou moins logique''[4] de règlementations variant d'une municipalité à l'autre. On peut s'étonner, dans ce contexte, que les tribunaux aient maintenu une relative consistance dans le contrôle de la légalité des règlements. Ils ont habilement réussi à conserver un certain équilibre entre la tentation absolutiste de la propriété privée et l'aménagement par expropriation déguisée ou par décision administrative plutôt que réglementaire. Devant la dissonance des dispositions statutaires, le second chapitre fait d'abord l'étude de lois particulières, lois spéciales d'aménagement, puis d'un effort d'harmonisation, le Projet de loi sur l'urbanisme et l'aménagement du territoire municipal[5] et, enfin, de deux techniques de zonage, l'une, de type R-X, de légalité douteuse, l'autre, ''holding by-laws'', utile malgré ses imperfections.

Traitant chacun de difficultés rencontrées en droit du zonage québécois, les trois chapitres[6] subséquents ébauchent des solutions et culminent respectivement dans l'épluchage des arrêts anglo-canadiens *Scarborough* v. *Bondi*,[7] *City of Ottawa* v. *Boyd Builders*[8] et *Wiswell* v. *Metropolitan Corporation of Greater Winnipeg*.[9] Ici, notamment, la contribution du professeur Giroux bénéficie autant aux juristes des provinces ayant donné lieu à ces litiges qu'à ceux du Québec, à l'intention de qui est titré l'ouvrage. Les premiers pourront en effet tirer grand profit des observations formulées par un critique averti. Les obstacles auxquels se heurtent les tribunaux canadiens en cette matière confrontent également leurs homologues québécois. En voulant livrer fidèlement à son auditoire provincial tout le fruit d'une précieuse excursion pan-canadienne, l'auteur a si bien réussi qu'il a articulé et systématisé des notions jusque là obscures à tous.

Le sixième chapitre, sur les droits acquis, constitute à lui seul une performance en ce qu'il ordonne une jurisprudence quasi-anarchique et soumet, après les avoir abondamment discutées, des

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[4] P. 99.

[5] Qui donna naissance à la Loi sur l'aménagement et l'urbanisme, 1979, Projet de loi 125.

[6] Chap. 3: Le ''spot zoning'', la discrimination et l'intérêt public; chap. 4: Le pouvoir d'amender et ses limites; chap. 5: La procédure d'amendement.

[7] [1959] R.C.S. 444, (1959), 18 D.L.R. (2d) 161, conf. [1957] O.R. 643, (1958), 11 D.L.R. (2d) 358 (C.A.), inf. [1957] O.W.N. 257, (1957), 7 D.L.R. (2d) 733 (H.C.).

[8] [1965] R.C.S. 408, (1965), 50 D.L.R. (2d) 704, conf. [1964] 2 O.R. 269, (1964), 45 D.L.R. (2d) 211 (Ont. C.A.).

[9] [1965] R.C.S. 512, (1965), 51 W.W.R. 513, (1965), 51 D.L.R. (2d) 754, inf. (1964), 48 W.W.R. 193, (1964), 45 D.L.R. (2d) 348 (Man. C.A.).

solutions modestes mais praticables. Ayant sagement franchi le champ piégé des droits acquis, l'auteur parcourt le chapitre septième, plus bref, sur la sanction des règlements de zonage, particulièrement les poursuites pénales, l'injonction et l'action en démolition. Quant à la conclusion, elle exhale l'esprit constamment manifesté par l'auteur. On y trouvera un juste dosage d'audace,[10] d'engagement[11] et de rigueur scientifique.

En somme, nous voilà en présence d'un important jalon, le seul véritable en droit québécois, sur le chemin menant à la maîtrise du règlement de zonage. Les tribunaux ne peuvent plus prononcer d'opinion sur le sujet sans, tout au moins, avoir pris connaissance de cet ouvrage d'envergure nationale. A lire et relire.

JEAN-DENIS ARCHAMBAULT*

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Natural Justice. By PAUL JACKSON. London: Sweet and Maxwell Ltd. 1979. Pp. 223. ($19.35 paper, $34.65 hardbound)

Development Control. By JOHN ALDER. London: Sweet and Maxwell Ltd. 1979. Pp. 194. ($18.15 paper, $33.00 hardbound)

Both of these books are published as part of the *Modern Legal Studies Series*, which is intended primarily for English law students. The aims of the series include providing students, within a comparatively short book, with new perspectives upon and a deeper understanding of topics that are less fully treated in standard texts. If met, these aims should also give to Canadian students and practitioners at a still reasonable price, a good introduction to interesting English legal developments in the areas covered. These books are both about administrative law; Professor Jackson takes the generalist's approach by emphasizing doctrine, while Mr. Alder starts from a particular aspect of the public control of land use, and places it within the wider context of the general principles of administrative law.

Natural Justice is a second, and much expanded, edition of Professor Jackson's book which was published in the *Modern Legal*

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[10] Le professeur Giroux n'hésite pas à stigmatiser certains arrêts égarés en les qualifiant de "jugements isolés".

[11] Au passage, par exemple, l'auteur dénonce les prises de décision en sacristie (p. 367).

*Jean-Denis Archambault, professeur à la Faculté de droit, Section de droit civil, Université d'Ottawa.

Studies Series in 1973. The author has confined himself, in the main, to a discussion of English authorities. As a work on procedural fairness before administrative tribunals, the book may thus have a rather limited interest in Canada, especially as Canadian law over the last few years has developed so rapidly, not least in respect of procedures before quasi-autonomous regulatory agencies. On these and other topics (such as procedures before rule-making), English law and Professor Jackson have little to tell us.

In addition, Professor Jackson has chosen to concentrate on detail[1] rather than to present an analysis of the reasons why particular procedural models are (or should be) used to make particular types of decision, or to argue about the proper roles of the courts and of other bodies in the development of procedures, or to speculate about future developments. Professor Jackson's amibitions are rather limited, and the fact that this book is intended for first degree law students is only a partial justification. English textbooks on administrative law already cover much of the area of this book, and there are surely more imaginative ways to stir the student than by serving up more of the same.

The author has not written a preface explaining the scope and objectives of his book; he may, thereby, have done himself a disservice, because in some ways the book is not only about the procedural obligations of fairness to which administrative bodies are subject. For instance, in Chapter 1 the author notes that the phrase "natural justice" has been used by judges in both a substantive and a procedural sense, and in contexts far removed from administrative law. Some reference to the roller-coaster career of "substantive due process" in the United States might usefully have been added to this interesting discussion. When Professor Jackson comes (in Chapter 7) to discuss four contexts in which natural justice (in its procedural sense) has been applied, he selects two (arbitration and the recognition and enforcement of foreign judgments) that would not normally be chosen in a book dealing with an aspect of English administrative law. Throughout the book the author draws freely upon curial procedure to illustrate his points. On the other hand, the book is not an exposition of the essential elements of civil and criminal procedures.

By and large, however, the material included in this book contains few surprises; nor are old friends shown in any new light. The author gives a clear and straightforward account of the law in a style that is well suited to this purpose, albeit that frequent resort to the particulars of cases and snippets from judgments militate against a broad development of ideas and lines of argument. There are some

[1] See the 14 double-column pages of the table of cases for a short book!

points at which a student reader will need some further explanation. For instance, *Malloch* v. *Aberdeen Corporation*[2] is said to throw no doubt upon the common law rule that the rules of natural justice will not be implied into a "pure master and servant" case,[3] and yet we are also told that Lord Wilberforce stated that this was not so in cases of public employment. Further on,[4] the reader is told that that decision may apply where "something akin to a status" is involved. The alert reader may also be puzzled by the juxtaposition of the proposition[5] that "It is not contrary to natural justice . . . for a tribunal to receive hearsay evidence" and the author's listing[6] of judicial statements supporting the view that the right to cross-examine is an ingredient of natural justice. The tension between these propositions has recently been explored by the Divisional Court of the Queen's Bench Division in *R.* v. *Hull Prison Board of Visitors, ex. p. St. Germain (No. 2).*[7] The author's statement[8] that "only in exceptional circumstances does natural justice require an oral hearing" is a little stark if intended to be a general truth. His handling of the relationship between the question of *locus standi* to be heard before the agency and *locus standi* to challenge agency decisions in a court[9] is apt to obscure rather than to enlighten.

A comment should also be made about Professor Jackson's decision to delay until half way through his book the beginning of his discussion of the circumstances in which the rules of natural justice will and will not apply.[10] Meanwhile, the reader will have been told what the contents of both limbs of the rules of natural justice are. It can be conceded that there are indeed difficulties for the beginner in trying to understand when a person has a right to a hearing without having much notion of what a "hearing" is. But this can readily be cured by a brief statement of the essentials of a trial-type hearing and the assertion that not all hearings considered in the cases may be so elaborate. To start by explaining when a hearing is due raises the basic issues of why a hearing is or should be given; questions about the contents of particular kinds of hearings and their appropriateness can then be considered within a clearer analytical framework. On the other hand, the author's decision to include a chapter entitled

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[2] [1971] 1 W.L.R. 1578.

[3] P. 107.

[4] P. 138.

[5] P. 73.

[6] Pp. 73-74.

[7] [1979] 3 All E.R. 545.

[8] P. 165.

[9] P. 108-109, 200-201.

[10] Chs 5 and 6 respectively.

"Justice Must be Seen to be Done" was a good one, for it enabled him to collect a number of situations in which judges have recognized that both of the rules of natural justice, and some rules that do not normally come within this rubric, serve the important purpose of maintaining public confidence in the integrity of the institutions of government. The book is well produced; typographical errors are few, although the name of the plaintiff in *Stininato* v. *Auckland Boxing Association*[11] is consistently misspelled, and the spelling of the applicant's name in *R.* v. *Kent Police Authority, ex. p. Godden*[12] and of Willis J.[13] has gone awry.

For the reasons outlined above, this book cannot be described to a Canadian readership as being any more than useful. G.A. Flick's *Natural Justice*,[14] an eclectic selection of problems and jurisdictions is more likely to provide new insights, ideas and authorities.

Land use planning programmes vary from country to country in their overall design, philosophy and administration, as well, of course, as in their detail. Nonetheless, those interested in planning law in Canada will find that in *Development Control,* Mr. Alder has provided a lucid account of the general scheme of English town and country planning, and a particularly helpful explanation of that part of planning with which lawyers are especially concerned, the direct effect of land use controls upon the individual. Of course, it is no more possible to discuss planning law than tax law without an analysis of a fair amount of statutory detail. But by judicious selection and dexterous weaving of detail and principle Mr. Alder has succeeded in producing a readable, informative and interesting book for those without prior familiarity with English planning law.

This book is primarily concerned with the "lawyer's law" of planning, drawing heavily upon those parts of the law that are contained in statutes and decisions of the courts, although reference is made, from time to time, to the "jurisprudence" of the Secretary of State for the Environment, who exercises a crucial central administrative appellate jurisdiction over refusals by local planning authorities to grant unconditional permission. Nor does the author overlook the importance of departmental circulars in planning decisions. In view of the rather narrow focus of the rest of the book, the author was undoubtedly right to start with a lengthy introductory chapter (which occupies more than a fifth of the book's total number of pages), in which a number of more general issues are discussed.

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[11] [1978] 1 N.Z.R.1.

[12] [1971] 2 Q.B. 662, cited p. 106.

[13] P. 165.

[14] (1979).

These include definitions of the subject-matter of planning, which range from directing a country's social and economic development, to protecting individuals' sensitivities about the use to which neighbours put their land. Much the same law and decision-making processes apply in England to the siting of a nuclear power station as to changing the use of a building from a house to an office. Of special interest to readers with little prior knowledge of the English planning system will be Mr. Alder's brief account of the principal features of planning legislation since 1947 (particularly the differing attitudes taken by governments to the public "capture" of increases in land value that are attributable to permission to develop), the role of the development plan and the spheres of responsibility of local and central government for developing and applying planning policies.

The author then explains the types of activity that trigger the statutory control mechanisms; the section in which he describes what may amount to "a material change in the use of land" is particularly helpful. The reader is guided through the somewhat tortuous case law by the bright light of the purposes of planning law. Succeeding chapters deal with applications for planning permission and with the discretion exercisable by the planning authorities over the disposition of applications. Of the latter, Mr. Alder concludes that the courts have, in the main, taken a broad view of the considerations that may legally be brought to bear by local planning authorities and by the Minister. Apart from some dubious decisions in which the courts may have employed too zealously the standard of unreasonableness, they have not been astute to discern questions of law in the exercise of discretion on matters of substance. We are not, however, surprised to learn that matters of procedure have excited a much closer judicial attention. One might have liked to see a little more discussion of the appropriate roles of rule and discretion in planning.

Chapter 6 contains a short account of planning agreements, to which planning authorities have turned in recent years in an attempt to avoid some of the rigidities of the normal planning powers and procedures. Most of the discussion is taken up with an examination of the technical limitations of the statutory powers under which planning agreements are made, and although the broader issues are adverted to in the first few pages of the chapter, this is a point at which the author might have tipped the balance towards wider implications, at the expense, if necessary, of technical detail.

The last two chapters explain enforcement procedures and planning appeals (both to the Minister and to the courts). Appeals are conducted by means of a local public inquiry held by an official of the Ministry, who, when he does not have final decision-making power, reports to the Secretary of State. The author outlines clearly, if briefly, the principal features of the inquiry—a widely used device

in British public administrative practice—and its procedural attributes and problems.

Despite the very considerable differences between the institutional arrangements within which land use planning is conducted in Canada, readers will encounter a number of very familiar problems. Are public authorities whose officials give erroneous advice upon which developers rely to their detriment estopped from asserting *ultra vires?* Despite some recent forays by Lord Denning, the answer seems to be, generally, no. The rights of third parties to appear at administrative hearings and their *locus standi* to challenge decisions in the courts are also familiar issues in the Canadian context. Incidentally, Mr. Alder's suggestion[15] that the status amenity groups should be given formal recognition at inquiries is evocative of Le Dain J.'s recent judgment in the *Canadian Broadcasting League* case.[16] Similarly, the author's discussion of the legal issues surrounding the implementation of policy (fettering, disclosure and cross-examination), will remind readers of the solutions recently attempted by our courts.

A general feature of Mr. Alder's book is the success with which he has located the courts' role in the law relating to the control of the development of land, within the wider framework of the grounds upon which courts intervene in the administrative process. The book will be of interest both to the generalist administrative lawyer and to the specialist planning lawyer.

Turning to matters more particular, some of Mr. Alder's statements should not pass without comment. For example, the author may too flatly state[17] that a neighbour has no *locus standi* to enjoin an unauthorized development. It may well be arguable that such a person is adversely affected by the illegality to an extent over and beyond the public at large. The House of Lords in *Gouriet*[18] probably did not confine standing for injunctive relief to those whose legal rights (in a narrow sense) are at stake. Indeed, the Court of Appeal has subsequently held, in another context, that notwithstanding the absence of a legal right capable of being vindicated by an action for damages, special loss or injury to an interest that is within the protection of the legislation concerned, can suffice for an injunction.[19] Nor is it so clear that a neighbour could not obtain *mandamus* to require a corrupt or sleepy local authority lawfully to consider whether to take enforcement proceedings against an

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[15] P. 178.

[16] (1979), 101 D.L.R. (3d) 669.

[17] P. 4.

[18] [1978] A.C. 435.

[19] *Ex parte Island Records Ltd*, [1978] Ch. 122.

infringer of the planning laws. The author's discussion of standing[20] fails to mention the series of cases to which Mr. Blackburn has been party, where the *locus standi* of a local resident to challenge a local authority was not explained by the unhelpful analogy between a *cestui que trust* and trustee.

Mr. Alder's attempt[21] to reconcile the conflicting judicial decisions on the relevance of estoppel in public law is not totally convincing. If, as he alleges, *Wells*[22] and *Lever Finance*[23] can be explained as cases in which the failure by the local authority to comply with the formal statutory requirements before decision-making power could be delegated did not render the subsequent decision *ultra vires*, why was estoppel relevant at all? The truth of the matter is that there is a fundamental, and as yet unresolved conflict, between Lord Denning (and some other members of the Court of Appeal) and the views expressed in *obiter* dicta by certain members of the House of Lords in the *Falmouth Boat Construction* case.[24] Incidentally, the question posed[25] about whether a person who has applied for planning permission is estopped from denying that he ever needed it has been clearly answered in the negative by the House of Lords in the *Newbury* case.[26] One might also doubt whether Mr. Alder succeeds[27] of disposing of the argument that the judicialisation of the procedure on planning appeals causes delay, simply by his assertion that if "useful", procedure does not, by definition, cause "delay". The issue of "utility" is, of course, more complex than this aphorism would suggest. Finally, the discussion[28] about "void" decisions and appeals might have been helped by reference to the pragmatic approach to aspects of this problem in *Calvin* v. *Carr*.[29]

Again, the general standard of production of this book is good; misprints are few although the name of the author of *The Politics of the Judiciary* erroneously appears in the plural,[30] and the name of the applicant in *Ostreicher* v. *Secretary of State for the Environment*[31] is

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[20] P. 32.

[21] Pp. 38-40.

[22] [1967] 1 W.L.R. 1000.

[23] [1971] 1 Q.B. 222.

[24] [1951] A.C. 837.

[25] P. 71, n. 1.

[26] [1980] 1All E.R. 731.

[27] P. 166.

[28] Pp. 149 *et seq.*

[29] [1979] 2 W.L.R. 755.

[30] P. 110.

[31] [1978] 1 W.L.R. 810, cited p. 185.

spelled incorrectly, if phonetically. Lines at the top of pages 119 and 120 seem to have been omitted or transposed, or both.

In short, both of these books are worthwhile additions to the growing English literature on administrative law. Despite its more specialist focus, Mr. Alder's book is the more likely of the two to be of real interest to Canadian public lawyers.

J.M. EVANS*

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Using a Law Library. Third Edition. By MARGARET A. BANKS. Toronto: The Carswell Co. Ltd. 1980. Pp. ix, 212. ($10.95)

As a former court law librarian, I am well aware how little law students learn about legal research while in law school. This is particularly true of the larger law schools where about all that the students are taught is where the library is and what the card catalogue looks like. That is why a book such as the one written by Margaret Banks impresses me as much as it does. Whenever I see such a book, particularly one written as well as this one, I feel that there is hope for the young law student who is about to go out into the world confident that the legal universe will soon be at his or her feet, only to retreat in horror at the first confrontation with a problem that requires any amount of legal research.

The thing that impresses me the most about Miss Banks' book is how readable and well organized it is. At the outset, in chapter 1 she covers the law reports, both English and Canadian, official and unofficial. As she does this she explains what each law report contains and the period it covers. The thoroughness with which she discusses these reports is probably best illustrated on page 22 of her book where, with meticulous care, she explains how helpful the table of cases and the annotation service of the *Dominion Law Reports* can be. Also, although on the title page it is stated that *Using a Law Library* is "A Guide for Students and Lawyers in the Common Law Provinces of Canada", it is refreshing to find that she has included the principal law reports for the Province of Quebec. This part of the book is made complete with a discussion of subject reports and loose-leaf services.

Chapter 2 of the book is devoted to statutes, both English and Canadian. At the start of the chapter Miss Banks is careful to point out the difference between Britain, the unitary state, and Canada, the

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*J.M. Evans, of Osgoode Hall Law School, York University, Toronto.

Confederation that has both a Parliament and provincial legislatures. She is also careful to point out that English statutes are important to the study and practice of Canadian law because some of them are still in force in Canada. Both English and Canadian statutes are treated very much the same way with the various compilations, official and unofficial, not only named in bold type but also explained. Such things as finding aids to statutes, Halsbury's *Statutes of England,* the *Current Law Statute Citator,* and *Statutory Instruments* are fully explained in the part of the chapter devoted to English statutes. The Canadian statutes part of the chapter starts off with a general discussion of sessional and revised statutes. This is followed by discussions of the *Revised Statutes of Canada* and the revised statutes of the various Provinces, as well as of the various Canadian citators and finding aids. Indeed, everything relating to statutes is included — Proclamations, Regulations, the Canada and provincial gazettes, and so on.

Chapter 3 of the book is particularly interesting. Entitled "Legal Encyclopaedias and Digests", it is divided into two parts: one to "Finding Case Citations," and the other to "Solving a Legal Problem". In the former, the standard search tools such as the *Canadian Abridgment, Canadian Current Law* and others are discussed; in the latter, the various methods of solving legal problems with these search tools are explained. Even *l'Index Gagnon* which is commonly used in the Province of Quebec is included.

The fourth chapter of the book covers "Reference Books, Treatises, and Periodicals". Included are discussions of dictionaries, both English and American, with the mention that there has now been published *The Canadian Law Dictionary*. There is also a two-page discussion of legal treatises and six pages devoted to legal periodicals and indexes to legal periodicals, both Canadian and American.

The last chapter of the book entitled "Automated Legal Research" is by far the most interesting of the five chapters. Perhaps the reason why this chapter was found to be so interesting is because Miss Banks has succeeded in presenting in twenty-one pages an excellent discussion of what automated legal research is all about, how it works, and what it amounts to in Canada. Not only does she discuss the various systems available, but she also gives examples of how automated research techniques can be used to solve legal problems. Altogether too many of us know too little about, and even resist, this type of research.

Perhaps the outstanding feature of Miss Banks' book is the effective use that she makes throughout the book of sample pages

from court reports, digests, indexes, and so on, to illustrate the matter discussed. This has been done elsewhere, but not as well as it is here. The book is attractively printed, well organized, and well indexed. Perhaps the only suggestion about the book that can be made, and it is a suggestion and not a criticism, is that Denis Lemay's, *Méthode de recherche en droit québécois et canadien*[1] and Ernest Caparros and Jean Goulet's, *La Documentation juridique, références et abréviations,*[2] might have been included in the "Suggestions for Further Reading" in the Appendix.

Miss Banks has made another valuable contribution to legal research from which the legal profession will profit immensely. Once more, her book should be useful to lawyer and law student alike. Indeed, it is difficult to imagine how either can fail to take note of it and not have it within easy reach. It is a book that will be indispensable to any library, in Canada or elsewhere, that has Canadian legal materials on its shelves.

EDWARD G. HUDON*

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A History of Dalhousie Law School. By JOHN WILLIS. Toronto: University of Toronto Press. 1979. Pp. 302. ($20.00)

This is an intimate history of a law school. That a *law school* could have a "history" at all, immediately signals that it is a very special kind of institution. That its history would be written "intimately" tells us something about the author, and his relationship to his subject.

To speak first of John Willis, many of his devoted admirers know him as Canada's consummate, peripatetic pedagogue (he taught memorably in four law schools), a redoubtable foe of cant and conceptualism in administrative law (from the Donoughmore Committee to the McRuer Commission), a picaresque practitioner (his firm's motto: "we know everything, we do anything, we stop at nothing"), and public servant in war and peace (the International Monetary Fund and the Ontario Securities Commission, respectively). But the writer of a history? An intimate history? This begs for speculation, of a type more common in "lit-crit" than legal circles.

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[1] (1974).

[2] (1973).

*Edward G. Hudon, former Librarian, Supreme Court of the United States, and former Professor, Faculté de Droit, Université Laval, now Adjunct Professor, University of Maine Law School.

Dalhousie law school witnessed both the dawn and sunset of John Willis' teaching careers, where it began in 1933 and ended in 1975, with a gap of thirty years or so in the middle. A man must get a sense of place over forty years, an instinct about what is really happening which transcends what (in Willis' phrase) a school "says about itself when it's on parade". And, if one is naturally endowed with a skeptic's tendencies, and allowed the perspective of time and distance between one's first and last observations, one's instincts are likely to be pretty sound. Willis, in other words, was the logical man to write this history.

There is, moreover, another aspect of Willis which must help to explain his obvious affection for Dalhousie. As he said in another context, "the principle of 'uniqueness' is the principle for me". Dalhousie is nothing if not unique, at least amongst Canadian law schools. Of this topic, more in a moment; let it only be noted that a man who respects the distinctive qualities of institutions, and appreciates their source and implications, is in a sense a natural-born historian. After all, Willis' early study on *Canadian Boards and Commissions at Work* was very much in the same vein.[1]

Finally, anyone who has read Willis or listened to Willis will want to know if the Willis style has survived intact in this "intimate" context. To an extent, it has. The history is written simply, with an occasional salty phrase, and just the right mixture of irreverence and kindness. Some flavour of this is caught by Willis' reference in the preface to the important preliminary work on this history which had been begun by the late Dean Horace Read:[2]

> Had Horace Read lived to finish what he began, the book would probably have been long, detailed, and, if I may dare say so, a shade too boastful about the achievements of the school.

But he gives Read his due, and states that he has merely tried to finish what Read began.

So much for Willis. What of Dalhousie Law School?

The story of the law school, as Willis tells it, from its inception in 1883, is largely a story of its dominant personalities. Foremost amongst these was its founding dean, Richard Weldon, whose thirty years in office understandably loom large in Dalhousie folklore. Weldon, a most unusual man, was a political scientist and mathematician, trained in the United States and Germany, and a prominent, practising politician. He has come to personify two virtues which historically have been associated with the law school: humane and civilized relationships amongst all of its members, and a

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[1] (1939).

[2] Pp. v-vi.

commitment to public service. And Weldon also personified a third virtue which, in the long run, may well explain his law school's rise and reputation: through his close working relationship with Benjamin Russell, a local practitioner and part-time teacher, he was able to preserve the goodwill and support of the legal profession for full-time legal education which then existed neither in England nor elsewhere in Canada.

Weldon's successor, D.A. MacRae made explicit, and institutionalized, the bonds of trust which obviously must have existed between Weldon and the legal profession. MacRae, strengthened the professional sector of the law school curriculum, and ultimately succeeded in persuading the new Canadian Bar Association to adopt the Dalhousie curriculum as the basis for a standard Canadian common law curriculum. Elements of MacRae's handiwork are to be seen in the curriculum of every modern Canadian law school. And what has disappeared from view—the compulsory aspects of some of the MacRae curriculum—remains a ghostly presence haunting the relationship between Canadian law schools and the legal profession they serve.

A "golden age" dawned for Dalhousie, according to Willis, in the period 1920 to 1933. Two distinguished deans, John Read and Sidney Smith, respectively to become a judge of the International Court of Justice and president of the University of Toronto (and briefly Secretary of State for External Affairs), were to preside over the school's fortunes during this period. ("Fortunes" is used euphemistically: the school was impoverished then, and became more so later). Here again, prominent personalities come to the fore: the faculty included a future premier of Nova Scotia, Angus L. Macdonald, a future judge of the Nova Scotia Supreme Court, Vincent C. MacDonald, and Horace Read, a future dean. Students at the school included N.A.M. MacKenzie, a future president of the University of British Columbia, J. Keiller Mackay, a future Ontario Court of Appeal judge and Lieutenant Governor, and a future chief justice of Newfoundland, A.J. Walsh. And, in this period, students of an earlier age reached positions of great prominence, not least of whom was R.B. Bennett, prime minister of Canada. This was a period when the school began to impinge on the national consciousness, being closely involved in the founding of *The Canadian Bar Review*, embarking upon a series of exchange lectures with other Canadian law schools, and holding several important public events, including the fiftieth anniversary of the law school in 1933. And the school lived, as well, in the consciousness of its graduates. Two of these, R.B. Bennett himself, and Sir James Dunn, became major private benefactors of the school, while Angus Macdonald, nearly twenty years premier of Nova Scotia, contrived a variety of public benefactions in its support.

Through the depression period and the Second World War, the school's significant accomplishment was survival. It was at this time that Willis himself taught at Dalhousie, a fact characteristically recorded in the third person, as did George Curtis, subsequently founding dean of the Faculty of Law in British Columbia. They were the first non-Maritimers to join the faculty. At the end of the war, both Willis and Curtis had left; they were replaced by two other subsequently-famous law teachers—J.B. Milner and Moffatt Hancock of Toronto and Stanford. A period of post-war adjustment ensued, with large enrolments of veterans, a tiny and unstable faculty complement, and chronic financial problems. Once again, Dalhousie was sustained by its tradition, and by the personal qualities of its faculty—which was enlarged twenty-five per cent in numbers and, ultimately, even more in repute by the appointment of W.R. Lederman in 1949.

On Dean MacDonald's appointment to the bench in 1950 (the first such appointment for a Canadian academic) he was succeeded by Horace Read who presided over the school until 1964. It was during this period, one might say, that Dalhousie and the rest of Canadian legal education began to draw together. On the one side, despite inadequate, though improved, facilities and lilliputian library and salary budgets, the Dalhousie law school grew, its curriculum developed and a graduate programme was launched, and new teaching methods were introduced. On the other, the three year LL.B. became universal across the country, curricula acquired a suspicious resemblance to the one Dalhousie had pioneered forty years earlier, and the newly established Association of Canadian Law Teachers provided all Canadian legal scholars with the possibility of participation in a national academic community.

In a sense, at this point in time, Dalhousie's story becomes less interesting to anyone who is neither an alumnus nor an afficionado of Canadian legal education. In 1966, the law school finally acquired a suitable building—appropriately named in honour of Weldon—and began to develop its much-neglected library. It continued an earlier tradition of recruiting students from across the country and enjoyed a favourable balance-of-payments in the export of its graduates.

Recitation of its recent deans and faculty members, a listing of new courses and conferences, or celebration of the accomplishments of its modern graduates would undoubtedly lead to invidious omissions and burden the editor of the *Review* with wrathful protests. It will suffice to mention two facts which will serve to record the undiminished load-bearing capacity of the twin pillars of the so-called "Weldon Tradition". The first of these is the remarkable presence of no less than four Dalhousie law graduates at

one particular moment amongst the ten provincial premiers, eloquent testimony to the school's commitment to public service. The second "fact" is perhaps not capable of scientific verification, but as a visitor to the law school, in 1976, I can testify that relationships between faculty and students indeed seemed to be—and were believed to be—warmer and more civilized than might be expected from a school which had recently been visited by the four horsemen of the academic apocalypse: the sixties, physical expansion, democratization and curriculum reform.

Willis' book must be read by anyone who wishes to know the history of Canadian legal education. But it is not, ultimately, satisfying for those who wish to understand its causes and assess its results. Willis himself raises some of the unanswered question in his Epilogue: why would a giant like Weldon immerse himself in an obscure, little law school? what influences formed its many remarkable graduates? and was the law school, at any time, a "great" law school, however greatness might be measured? But the questions which interest me most are those implied by Willis' confession, in his Preface, that he would have preferred to have written an essay in social history.

Osgoode Hall Law School, the one I know best, is only six years younger than Dalhousie Law School. It began its life as well under visionary leadership, although William Reeve, its first principal, died within a few years of taking office. It too nestled securely, perhaps too securely, in the bosom of the profession, while enduring the character-forming travails of poor facilities, a tiny overworked faculty, and an inadequate library. And, if vicarious immodesty may be excused, its graduates also sit in seried ranks in the seats of legal, political, and financial power.

But no one speaks of a "Reeve Tradition" or a "Falconbridge Tradition". No one writes maudlin memoirs of Osgoode of the sort Willis quotes frequently. And no one would think to ask, as Willis does of Dalhousie, whether Osgoode was ever (in ancient times; I cannot speak of today) a "great" law school. Why not?

Can the differences in the development of these two schools be traced merely to the personalities which animated them? Presumably not, for Osgoode did not become Dalhousie by the simple expedient of hiring MacRae and Smith in the 1920's or Willis in the 1940's. Was the mutually respectful relationship between the Dalhousie law school and its legal constituency possible only in the small and stable society of the Maritimes, and incapable of imitation in the more turbulent circumstances of Upper Canada? Perhaps so, because Ontario had to cope with the growth of population, ethnic diversity, industrialization, and changes in legal professionalism which

arrived, if at all, much later in Atlantic Canada. Or, paradoxically, was Dalhousie's evolution a normal and natural one, with the onus of explanation for deviant development falling on Osgoode? Dalhousie, after all, looked much like many other North American law schools at most moments in its history, while Osgoode was a distinct anomaly until the late 1950's.

I have deliberately refrained from asking the most difficult question, the question that Willis often asked himself and all of us, sometimes in despair, and sometimes in defiance: what difference does it all make in the end? Can a law school make its graduates more self-fulfilled or successful, their clients better served, its community more humanely governed and its legal system more just than they otherwise would be? Or do we law teachers, like mediaeval monks, simply record, transcribe and illuminate the songs of more eloquent poets, the mysteries of ancient traditions and modern catastrophies, or the mythic achievements of the men of action in the world around us?

Perhaps Willis would say that such questions are only meant to be asked and not answered. If so, it is nonetheless characteristic of his life-long scholarly impact that they should be implanted in the mind of the reader, even after reading this uncharacteristically benign and affectionate book.

H. W. ARTHURS*

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Pollution, Politics, and International Law: Tankers at Sea. By R. MICHAEL M'GONIGLE and MARK W. ZACHER. Los Angeles: University of California Press. 1979. Pp. xviii, 394. ($15.95 U.S.)

This is an extremely disheartening book. It is disheartening both because it reveals the pervasiveness and seriousness of ecological damage to our planet, and because it exposes the reasons for the failure of the nations of the world to take effective action against pollution.

The subject of oil pollution by tankers at sea is an excellent one for illustrating the complexities of international trade, the increasing interdependence of the world community, and the necessity of joint, collaborative efforts to solve the many pressing problems which currently threaten all of mankind. To begin with, nature knows no boundaries. Oil spilled off the coast of one country or even on the high

*H.W. Arthurs, of Osgoode Hall Law School, York University, Toronto.

seas may, by the inevitable action of winds and currents, reach the shores of several different jurisdictions. Secondly, in the course of international trade it is quite often the case that a ship is registered in one state, owned by nationals of another, chartered by nationals of a third, carrying a cargo from a fourth to a port in a fifth and so forth. Consequently, if pollution from such vessels is to be prevented, or to be cleaned up, all the states involved must be willing to co-operate.

In the past ten or fifteen years, the danger of oil pollution by ships has been brought to the forefront of public consciousness by a number of spectacular accidental spills such as those of the Torrey Canyon, the Argo Merchant and the Amoco Cadiz. Although these disasters wrought great physical destruction on both the oceans and the coasts, they were paradoxically beneficial for they shocked the nations of the world into taking action on a problem of which they had long been aware. In fact, such accidents account for only a very small proportion of oil pollution by ships at sea. By far the greatest damage is done by "operational discharges", the deliberate depositing of oil into the water as part of the ships' normal functioning.

The authors state that in analyzing the specific issue of oil pollution from ships at sea, their larger purpose is to explain the many factors underlying the difficulties of international negotiations and to interpret the interaction of states as they attempt to resolve transnational problems. In that aim, they have succeeded admirably. The influences upon states and the conflict between them as they move towards the formulation and the implementation of an international legal régime for environmental control are clearly analogous to those which inhere in any international joint endeavour. Through the running commentary on a long series of conferences and treaties, M'Gonigle and Zacher trace the shifting interests and alliances and the continuing struggle to have adapted effective means of dealing with the pollution of the marine environment.

The actors in this story are the states themselves, a variety of non-governmental international organizations, and, very importantly, transnational shipping, maritime and oil corporations. The international governmental organizations (mainly United Nations agencies) do little more than provide a stage for the national and industrial players. The drama played out is terse and heavy with tragic potential. Unfortunately, it seems inevitable that the short term economic interests of states and industries serve to blind them to their own long term interest and to the fact that cumulative pollution threatens the very survival of life on this planet. In other words, the problems in international politics are the same as those in domestic politics: a lack of will to act due to short-sightedness and selfish preoccupation with one's own immediate interests.

Simply put, "coastal" states favour greater environmental control to protect shores which are vulnerable because of heavy tanker traffic, while the "maritime" states, with considerable shipping interests, resist expensive improvements to the vessels themselves and to their mode of operation. The latter also oppose giving greater jurisdictional power to coastal states to act against polluting ships, for fear of having their freedom of movement impeded. The recent emergence of many new states without any particular interests except the assertion of their power, plus certain constant group loyalties related more to ideology than to either environmental or economics concerns have both served to complicate negotiations even further.

Nonetheless, despite all the obstacles on the road to consensus, the nations of the world have recently agreed to a number of treaties within the context of the Intergovernmental Maritime Consultative Organization (I.M.C.O.). These treaties deal with such matters as rules to prevent operational or accidental discharges of oil; remedies after a spill, including the right to clean up and the right to compensation for damages; and finally, the jurisdiction of states to prescribe standards and procedures and to enforce them. Ironically, the maritime and oil industries, which initially fought against tighter pollution control because of the costs it would impose, when finally forced to accept the inevitable, developed better and cheaper technical innovations and more effective compensation agreements than those put forward by national governments. Similarly, insurance companies which had insisted that certain risks were uninsurable, when the insurance became required, found that what they had claimed was impossible was in fact not so difficult. It would seem that necessity is indeed the mother of invention.

However, in spite of all the international conventions and private agreements concluded in the past two decades, on the practical level relatively little has been achieved. This is partly because states often take several years to ratify the treaties and partly because they are reluctant to enforce the measures to which they have agreed. This procrastination and hesitation is particularly deplorable as even in the short time since this book was written, the pollution problem has become more critical and the need to find a solution more immediate. Operational discharges continue and accumulate; daily, we hear of tankers sinking or running aground; the United States has approved a plan to transport oil from Alaska which will involve tankers moving down the coast of British Columbia; a scheme has been propounded to move arctic oil by ship through the Northwest Passage; Japan has proposed building a new Panama Canal large enough for supertankers; the public has been shocked by experiments on the effects of oil spills particularly on polar bears; a new cold war has arisen between the United States and the Soviet Union thereby reducing the possibil-

ity of international agreement on many issues; and finally, but very importantly, Canada is planning to import large quantities of oil from Mexico, and a number of industry spokesmen have suggested that Canada build a merchant fleet in order to do so.

This last development could be of crucial importance for the future of environmental control of the oceans. Heretofore Canada has acted as a coastal state, being I.M.C.O.'s most vehement proponent of the protection of our natural heritage. It will be interesting to see whether she alters her stance on pollution issues once she finds her economic interests lying in a maritime direction. Along with Canada, the most environmentally-minded nation in the past few years has been the United States. That the United States has been able to get a great many of her proposals accepted has been due in some part to the support of the Soviet Union and its allies. Since the Soviets have only a small merchant fleet used mainly for domestic purposes, they have been content to go along with the American suggestions in the interests of détente. If, as it now seems, détente has been abandoned in the wake of the Afghanistan crisis, the environment may find that the number of its friends has diminished.

Of course, the authors of *Pollution, Politics, and International Law* could not have anticipated the events of the past few months. However, in their book they analyze in both specific and general terms the many factors determining the development of both international legal régimes and of the wider context of the constantly changing global political structure. Although the exposition is quite detailed, it is also very clear, and exceedingly well documented. There are copious footnotes and references to both primary and secondary sources. A number of charts and tables summarize in a graphic manner the intricate web of facts narrated in the text. Finally, the entire work is very excitingly written, with a compelling sense of urgency and of purpose. In fact, despite its technical data and its political and economic analyses, the book reads as a thriller. It is a complex story racing towards a conclusion which has yet to be written and which may possibly be fatal.

The authors have helped us to understand one of the many transnational problems which threatens human survival. In doing so, they have indicated the dismal prospects for future international collaboration. The great challenge of today's world is for the international community to realize that truly, no man is an island, and that we must all work together to solve our common problems. It is now up to us to meet that challenge.

PATRICIA LOUISE VASSIL*

* Patricia Louise Vassil, M.A. L.L. B., Toronto.