Emmett Hall, Establishment Radical. By DENNIS GRUENDING. Toronto: Macmillan of Canada. 1985. Pp. ix, 246. ($27.95)

This is an excellent and interesting book which should be read by all lawyers—not for the purpose of learning legal rules or principles but for the more important purpose of appreciating the impact that one lawyer and judge can have on law and society. Dennis Gruending's warm, sympathetic but not totally uncritical portrait of Emmett Hall is a fascinating story about a father of medicare and a libertarian judge who insisted that law must be an instrument of justice and not simply a bulwark for the *status quo*.

We know so little about our judges.[1] This may be the result of the tenacity of the positivist tradition of English law and of a naive yearning for a government of laws and not of men. We know that the application of legal rules to the myriad vagaries of life cannot be done by an automaton but demands the utmost skill and sensitivity, and yet we often neglect the study of the personal element in the decision-making process. We need a perceptive journalist such as Dennis Gruending to emphasize the importance of this element in judging. Gruending states that it is in the contentious cases "that judges show their colors, a compendium of the accidents of birth, educational formation, life experience and gut values. The results clearly do vary, they can be described, and it is there that Emmett Hall's judicial reputation was created".[2]

Gruending's portrait of Emmett Hall is skilfully painted against a backdrop of prairie and national history. Emmett Hall, the fourth of eleven children of James and Alice Hall, was born on November 29, 1898 at Saint Colomban, a village north of Montreal. James Hall's Irish ancestors, originally Presbyterians, had adopted the Catholic faith of the majority in Quebec. Alice Hall was a strong matriarchal figure and fervent in her Catholic faith.

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[1] This book is only the second full length biography of a Supreme Court of Canada judge. The first was by David Ricardo Williams, Duff: A Life in the Law (1984).

[2] P. 133.

Emmett received his early education at Saint Canute and his was the sole English-speaking family in the school. Gruending notes that Emmett received "a French immersion education long before the term was invented".[3] Alice Hall passionately wanted the family to remain together and to avoid, through education, the dreary existence which had frequently been the fate of many Irish in Canada. But the Hall's dairy farm was situated on marginal agricultural land which could not support all the children.

In 1910, at the age of eleven, Emmett went west with his family who were attracted by the opportunities of the new boom city of Saskatoon and the provincial university to be built there. James Hall soon bought horses and wagons and went into business supplying sand and gravel for the new university buildings. The boom was succeeded by a severe economic bust in 1913 and one of the many casualties was James Hall's contracting business. He obtained employment with the Grand Trunk Pacific Railway and, after its failure, with the Canadian National as a clerk and freight stower.

Emmett Hall was thus not born into the Establishment but worked his way into it. Like many success stories, it depended on fortuitous happenstance, being in the right place at the right time, combined in Hall's case with prodigious energy and hard work. Even his selection of a profession was seemingly subject to chance. After graduating from high school in 1916, he took a summer job as a bilingual teacher but found at the end of the summer that his cheque from the school board had bounced. He recalls that it was for this very practical reason that he decided to enroll in law at the University of Saskatchewan. The law student body at that time never exceeded thirty-three and Hall's graduating class contained only seven members, but one of these was John G. Diefenbaker. Their relationship, forged at university, was to extend for many decades and was to enable Emmett Hall to become the compassionate conscience of the nation, a father of medicare and a Supreme Court of Canada judge. The unravelling of the Hall-Diefenbaker friendship is an interesting sub-plot.

The Halls were a staunchly Liberal family. Emmett's youngest brother was named Anthony Patrick Wilfrid in honour of Laurier. In the 1919 graduation edition of The Sheaf, Emmett Hall wrote the eulogy to Sir Wilfrid Laurier who had died earlier in the year. The timing and the reason for his transition to the Conservative party is a matter of some dispute. Gruending informs us that Hall found Jimmy Gardiner's brand of patronage politics to be distasteful, but Mackenzie King's stance on conscription was the last straw. However, Gruending provides the reader with another version of why Hall became a Conservative. In September of 1941, Adrien Doiron was appointed a judge of the Saskatchewan Court

[3] P. 3.

of King's Bench. Hall had desired a judicial appointment, and Dr. J. Francis Leddy, a former president of the University of Windsor and a long-time friend of Hall's from their Saskatoon days, claims that Doiron's appointment so annoyed Hall that he left the Liberal party. Hall rejects this version, saying he had never expected the appointment and that Doiron was his friend. In any case, sometime during the early 1940's Emmett Hall became a Conservative. In the 1949 general election, Hall spent three solid weeks campaigning for Diefenbaker in Lake Centre. In the 1953 general election, Hall attempted to woo the French-speaking voters of Saskatchewan to the Conservative party. He participated actively in two of Diefenbaker's leadership bids. In the 1948 provincial election Hall ran as a Conservative candidate, placed a distant third and lost his deposit. It was a bitter disappointment and dampened his enthusiasm for elective office, but not for politics. In 1957, he made a half-hearted attempt to secure the federal Conservative nomination for Saskatoon but Harry Jones had no trouble winning on the first ballot. Hall regards this defeat as good fortune as it would have stood in the way of judicial and royal commission appointments.

In 1957 Hall had all but abandoned his earlier ambition to go to the bench. He was by then a prosperous lawyer, a tough combative counsel who was noted for his meticulous preparation and his devastating skill in cross-examination. His immense energy and his public spirit were attested by his service on the Catholic school board, on the lay board of St. Paul's Hospital, on the university senate and as a part-time lecturer in criminal procedure at the college of law.

The June 10, 1957 general election, which gave Diefenbaker a narrow victory, was to alter the course of Hall's life. The Chief Justice of the Saskatchewan Court of Queen's Bench, J.T. Brown, had died prior to the 1957 election but the Liberals, confident of re-election, had not appointed his successor. The morning after the vote Hall recalls that Diefenbaker phoned and offered him the position of Chief Justice. There were to be other calls from Diefenbaker. A little more than three years later, Hall, in February 1961, became Chief Justice of the Saskatchewan Court of Appeal. But one month prior to this, Hall, while presiding over a criminal trial, had received perhaps his most significant call from Diefenbaker. Diefenbaker asked Hall to head a royal commission on health care.

The Canadian Medical Association had requested such an inquiry, but its objective was to head off the national adoption of the Saskatchewan plan. The Canadian Medical Association had not counted on Hall's determination to do the right thing and once Hall became convinced that the best way was a comprehensive public health program, "he built consensus by force of personality and a demand for intellectual rigor".[4]

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[4] P. 91.

Gruending's account of the health care commission is fascinating. Hall proudly holds that "Canada received medicare on the unanimous recommendation of a group of Establishment types, appointed by a Conservative prime minister".[5] But the author points out that this consensus was only achieved by deft footwork by Hall, supplemented by luck. One of the commissioners was Wallace McCutcheon, but the deteriorating political situation for the Conservatives in Toronto necessitated his appointment to the senate and the cabinet. Political exigencies thus greatly contributed to the consensus by removing one strong personality who would have opposed a greatly expanded state role in health care and might have influenced other commissioners.

During the early stages of the health care commission Mr. Justice Charles H. Locke of the Supreme Court of Canada reached the mandatory retirement age of seventy-five. This created a western vacancy on the Supreme Court of Canada and Emmett Hall received yet another call from Diefenbaker. Hall became a member of the Supreme Court of Canada on November 23, 1962 and this permitted him to be available daily at the commission offices in Ottawa. When the Royal Commission report, largely written by Hall, appeared in June 1964, Pearson was prime minister. The universal, compulsory, tax-financed health care plan was essentially the Saskatchewan mode on a national scale. Although there was considerable public support for the proposed plan, there was also considerable opposition. Hall decided to do the unprecedented—to proselytize on behalf of his report. The minister of health, Judy La Marsh, was not pleased with his controversial public speeches urging the speedy implementation of his report, but Gruending indicates that Pearson urged Hall to go public. A judicial colleague, Mr. Justice Ronald Martland, is quoted as saying: "Those [judges] to whom I talked thought it was unusual and did not regard it with a great deal of favor".[6] However, these were the days prior to the Canadian Judicial Council, a body of judges with the power to review the conduct of other judges. When Mr. Justice Berger spoke out against omitting from the Canadian Charter of Rights and Freedoms any protection of native rights and incurred Prime Minister Trudeau's displeasure, Hall offered to go public in Berger's defence but Berger declined the offer.

Gruending's book should cause us to reconsider the view that judges should be sanitized from political issues. The Canadian Bar Association Committee Report, The Independence of the Judiciary in Canada, recommends that: "Judges restrict their public comments to the law, the legal system and the administration of justice . . ."[7] and that: "Judges not be

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[5] Pp. 98-99.

[6] P. 98.

[7] Canadian Bar Association Special Committee Report, The Independence of the Judiciary in Canada (1985), p. 58.

asked to undertake commissions of inquiry, except in those cases where the nature of the matter under investigation makes the choice of a judge as a commissioner particularly appropriate''.[8] Emmett Hall is living proof that Canada would be a poorer place had the Bar Association Committee's recommendations for a squeaky clean, politically spotless judiciary been in place a quarter of a century ago. Nations possess few people such as Emmett Hall. It would be a grave mistake not to fully utilize their talents whether they are on the bench or not. Hall's sheer love of action and his strong sense of public duty would probably have chafed under a steady unremitting diet of judicial cases. It was surely more important for Hall to participate in reforming Canadian society than to write a few more judgments. Canada needed a forceful compassionate man to hammer home the message that health care was no longer a privilege but a right.

The *Truscott*[9] case perhaps exemplifies the proposition that an independent judiciary will only exist by force of an inner, independent, judicial spirit and not through rules intended to insulate the judiciary from politics. This case, discussed by the author in chapter eleven, was referred by the government to the Supreme Court to lay to rest the controversy surrounding the murder conviction of fourteen year old Steven Truscott. What the government wanted was a unanimous judgment. Yet Emmett Hall insisted that: ''A bad trial remains a bad trial. The only remedy for a bad trial is a new trial.''[10] The remaining eight judges indicated that they were satisfied that justice had been done and they may well have been satisfied, but Hall revealed his true independent spirit by not buckling under and giving the government what it wanted—a clean decision one way or the other—when he himself was not satisfied. Gruending's retelling of the *Truscott* case is interesting because Hall, Mr. Justice Martland and Mr. Justice Spence broke the usual silence surrounding the judicial conference. Mr. Justice Martland is quoted as saying: ''My best memory . . . was that we all initially agreed the appeal failed . . . Suddenly, without warning, Emmett, who had participated in the process, appeared with a complete dissent from the majority view.''[11] Hall maintains: ''That's not so . . . I never changed my mind'';[12] and that he had Mr. Justice Spence and Mr. Justice Cartwright with him before he left on a brief Easter weekend visit to the United States in 1967. Mr. Justice Spence conceded that he was ''much attracted to Hall's reasons but I couldn't be persuaded. It was a case where Emmett could not persuade us''.[13]

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[8] *Ibid.*, p. 59.

[9] *Reference re Stephen Murray Truscott*, [1967] S.C.R. 309, (1967), 62 D.L.R. (2d) 545.

[10] P. 141.

[11] P. 152.

[12] *Ibid.*

[13] *Ibid.*

The author has been assisted, and the book is enlivened by Hall's outspoken frankness even about his judicial colleagues. In the *Lavell*[14] and *Bédard*[15] case the Supreme Court was asked to strike down a discriminatory clause of the Indian Act[16] which deprived Indian women who married white men of their Indian status as contrary to the Canadian Bill of Rights.[17] Mr. Justice Ritchie, the author of the *Drybones*[18] decision, also wrote for the majority in the *Lavell* and *Bédard* case. Of this latter judgment Hall wrote "it is a bad judgment . . . the majority opinion as to what is meant by equality before the law is just plain nonsense".[19] Hall, because of the incompatibility of the two decisions, stated: "I cannot help but think of my erstwhile colleague Ritchie as coming within that qualification of those mammals who destroy and devour their young."[20]

Chapter thirteen is devoted to the *Calder* case which involved the issue of whether the aboriginal rights of the Nishga Indians of British Columbia had been extinguished. Gruending maintains that Hall's *Calder* decision is "his greatest single contribution as a jurist" and that "it is impressive in its historical sweep, sensitive, contemporary, and just".[21] Within his judgment he expressed his annoyance with Mr. Justice Pigeon for sitting on the fence and thus rendering his judgment a minority judgment because the three, three and one split meant that the British Columbia Court of Appeal decision was affirmed. Hall said: "It is much too late for the Courts to place obstructions in the path of citizens seeking redress against Government by resort to ancient judicial procedures."[22] Gruending writes that Hall "later told a friend that until late in the case he thought he had Pigeon with him and even made some changes in the wording to satisfy him".[23] Hall's powerful dissent in this case, concurred in by Mr. Justice Spence and Mr. Justice Laskin, was not only a moral victory for the Indian cause but caused Trudeau to modify his views on aboriginal title. Another significant consequence of the *Calder* case was the friendship which developed between Thomas Berger, one of the counsel for the Nishga Indians, and Hall. Gruending notes that Hall on his retirement recommended that Berger should be appointed to Hall's seat on the court

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[14] *Attorney General of Canada* v. *Lavell*, [1974] S.C.R. 1349, (1973), 38 D.L.R. (3d) 481.

[15] *Issac* v. *Bédard*, [1974] S.C.R. 1349, (1973), 38 D.L.R. (3d) 481.

[16] R.S.C. 1970, c. 1-6, s. 12(1)(b).

[17] R.S.C. 1970, Appendix III.

[18] *The Queen* v. *Drybones*, [1970] S.C.R. 282, (1969), 9 D.L.R. (3d) 473.

[19] P. 167.

[20] *Ibid.*

[21] P. 173.

[22] P. 175, quoted from *Calder* v. *Attorney General of British Columbia*, [1973] S.C.R. 313, at p. 420, (1973), 34 D.L.R. (3d) 145, at p. 221.

[23] P. 175.

but "the nod went instead to Brian Dickson from Manitoba".[24] Although Thomas Berger would have been a fine successor to Hall, it is now exceedingly difficult to conceive of the Supreme Court of Canada without Chief Justice Dickson.

After he left the bench, Hall wrote to Liberal senator Carl Goldenberg regarding the successor for Mr. Justice Judson. Hall indicated that it was important that the appointee should work in harmony with Laskin "who, as you know, is somewhat isolated at the moment".[25] Goldenberg promised to assist but neither Gruending nor Hall have commented on whether the actual successor for Judson, Mr. Justice Willard Estey, satisfied the perceived need.

Although more than a dozen years have elapsed since Hall retired from the Supreme Court bench, he is still remembered. This is partly due to his readiness to speak out on issues and also to his continued readiness to respond to the needs of the country. When the trains stopped running in 1973, John Munro, the minister of labour, asked him to act as arbitrator. Otto Lang called on him to head a commission on Grain Handling and Transportation, which involved tackling the "sacred Crow rate" and rail closures. Fellow commissioner Bob Cowan is reported as saying that Hall could handle witnesses "like a conductor handles an orchestra".[26] In 1979 David Crombie appointed Hall, then 81, to review medicare. By identifying extra billing as a problem, Hall, the elder statesman, legitimated federal action to stop it.

Gruending concludes his book by saying that Emmett Hall is "a justice seeker" who has "served his contemporaries well, in law and unselfish public service".[27] The book is a fine salute to a great prairie populist.

GORDON BALE*

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Canadian Constitutional Law Handbook. By L.B.Z. DAVIS. Aurora: Canada Law Book. 1985. Pp. cxxxvi, 1056. ($195.00)

The word "handbook" generally connotes a rather small and modest, but "handy" reference manual on a given topic, to which a student of that

[24] P. 180.

[25] Pp. 182-183.

[26] P. 198.

[27] P. 230.

* Gordon Bale, the Faculty of Law, Queen's University, Kingston, Ontario.

topic might often refer. A handbook might contain the "basics" of its chosen topic, or perhaps the "fundamental wisdom" in the subject area.

Davis is being modest indeed in referring to this ambitious work as a handbook. In this 1056-page bound volume, Davis has collected thousands of quotations from the highest Canadian judicial authority. These quotations contain basic principles and statements of Canadian constitutional law, arranged in alphabetical order by subject matter, from "Aboriginal and Treaty Rights" to "Ultra Vires Legislation"—some 156 main subject categories in all. All of the quotations are taken from judgments of the Supreme Court of Canada, or the Judicial Committee of the Privy Council, from 1949 up to April 23, 1985. The fields of constitutional law covered are the division of powers, the branches of government, human rights, principles relating to the Constitution Act 1867,[1] and constitutional law in its widest sense. Quotations on administrative law and statutory interpretation principles are also included where they arise in a constitutional law context.[2]

In his introduction, Davis clearly states his intended purpose in writing the book. Generally, it was meant to be "an additional organized reference to judicial authority" which could be used as a "teaching or study aid" or a "research tool for related academic or practical purposes".[3] Specifically, it was meant to assist judges, lawyers, and other students of Canadian constitutional law in "the formulation of legal opinions".[4]

Davis believes that one of the steps in forming a legal opinion, or in writing a judgment for that matter, is identifying and locating the legal principles which underly the decisions. Therefore, this book presents us with principles rather than precedents, and fulfills a different function from traditionally available research material. Digests or computer programs summarize the law, while textbooks analyze the cases. This collection, on the other hand, provides neither precedents nor analysis. The object rather is "to go to the horse's mouth" and tell the reader what has been said on the subject by the judges themselves.

The statements quoted are not necessarily the *ratio decidendi* of the case. Many come from dissenting judgments, and many are *obiter* or do not carry majority support. Rather than tell the reader the current state of the law on a given topic, the book attempts to catalogue basic principles which are "generally accepted or at least have been posited without being rejected",[5] while refraining from indicating what weight the statement carries in the context of the case. That latter task is left to the reader, with

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[1] 30 & 31 Victoria, (U.K.), c. 3.

[2] P. cxii.

[3] P. cvi.

[4] P. cvi.

[5] P. cxiv.

the exception that quotations from dissenting judgments are identified as such. In its devotion to principles rather than precedents, and in its quotation format, this work is unique in Canadian constitutional law literature.

A word about the actual format and organization of the book is in order. The Table of Contents divides the book into eight Parts, although the rationale for this division is not clear. The entire work contains 156 main subject areas, arranged alphabetically. Some of the Parts cover a range of topics, while others cover a single topic—for example, Part V is devoted to the Courts. Some topics have been placed under headings which do not always seem appropriate. "Separation of Powers", for instance, is found under the heading "Branches of Government". A comprehensive index at the back of the volume, however, can be used for cross-referencing. The author would have done well to have included some direction to the reader on how best to go about using the handbook.

Although Davis has inserted a few explanatory notes and has indicated where the reader should "see also" an additional subject heading, he does not attempt to include any other analysis. The quotations, generally listed in descending order of date, are allowed to speak for themselves. Davis has edited the material to some extent and put it into "quotable" condition, ready for insertion in a legal opinion, once the reader has done the necessary homework.

Davis makes no claim that this work will replace other research tools in the area. He hopes rather to give legal researchers an additional tool, and to that end, he has been quite successful. This volume will help the reader to *write* legal opinions by supplying him or her with "quotable quotes", although it will not necessarily help the writer to determine the state of the law in the area. For the latter purpose, digests and texts retain their importance. Users of this book will have to take seriously Davis' warning that the statements are not to be understood as "correct statements on their face" but rather as "correct statements in the context of the cases from which they are taken".[6] In addition, the reader will have to be familiar with Canadian constitutional law in general to draw usefully on the book. Legal novices who do not heed the author's caveats could be easily misled by the format of this book, where incontestable principles are placed side by side with interesting musings of a single judge.

Davis has many good reasons for using 1949 as a starting date, not the least of which is keeping the handbook to a reasonable size. He is quite correct in saying that most of the key principles from earlier than 1949 have been repeated and reapplied since 1949. Unfortunately, this necessitates using quotations within quotations to catch some of these early judicial gems, a construction which is sometimes awkward and

[6] P. cxxii.

artificial. This is a small criticism, however, which is minimized by the inclusion of a comprehensive table of cases at the front of the volume.

In justifying his concentration on modern cases, Davis says it is the "still developing" principles of constitutional law which need our attention now. No area of constitutional law is more in the developmental stages today than the area of civil liberties, as the barrage of challenges based on the Canadian Charter of Rights and Freedoms[7] hits the Canadian courts. Davis includes a section on "rights and freedoms" in the book, but expresses the caveat that most of the quotations used are pre-Charter and are based on the common law or the Canadian Bill of Rights.[8] Davis cannot be faulted for this, as at the time of printing probably only about eight Charter cases had reached the Supreme Court of Canada. Davis minimizes this problem by setting out, at the beginning of each right or freedom considered, the relevant section of the Charter and the Bill of Rights. Although the reader must take cognizance of the fact that the quotations which follow are pre-Charter and will have to be considered in the light of the Charter, the arrangement of the material chosen by Davis will be useful when arguing novel Charter cases. However, a major drawback is that, because the law in this area is developing so fast, the material will become quickly outmoded. This problem, of course, occurs in all instances where a bound format is chosen over a loose-leaf format, but it is in rapidly developing areas like the Charter where the problem becomes particularly acute.

In the final analysis, the only way to assess the usefulness of a book such as this is to use it. A reviewer cannot read the quotations in their entirety, check the accuracy of each quotation, and pronounce upon whether anything relevant has been left out, or anything irrelevant is needlessly taking up space. From the standpoint of a law teacher, this reviewer concludes that the book succeeds in leading one to cases where principles of constitutional law are well stated in terms of their modern application. However, the book does not provide a real historical sense of the development of the principles over time, in spite of the inclusion of earlier principles by means of quotations within quotations. Beginning law students with little knowledge of constitutional law might not find this handbook to be "fundamental" enough for their use.

In conclusion, this book will provide a welcome additional research tool for seasoned constitutional lawyers who are in possession of the degree of knowledge that the book presumes. It does not in any way replace the more traditional research tools such as digests and texts. In view of its limited use, which is readily acknowledged by the author, and

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[7] Part I, Constitution Act, 1982, as enacted by the Canada Act, 1982 (U.K.), c. 11.

[8] S.C. 1960, c. 44; R.S.C. 1970, Appendix III.

the fact that the chosen format is not easily updated, the $195.00 price tag may well place this volume well beyond the reach of many private libraries.

CLAUDIA HERBERT*

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Evidence in the Litigation Process. Second Edition. By STANLEY A. SCHIFF. Toronto: The Carswell Company Ltd. 1983. Two volumes, pp. xxxiv, 1211. ($97.00)

The extensive material in these two volumes—over 1240 pages including the index, table of contents, cases and statutes—has been designated for use by students in the basic course on Evidence at Dalhousie Law School for the past four years. It is significant that it continues at present to be used as the basic material in light of the recent appearance of a shorter text with questions and problems which appears much more manageable and comprehensible to students.[1] When this reviewer enquired why "Schiff" was used, the reply from one Faculty member was that he found new insights whenever he went through the materials with his students.

There is no doubt that the Second Edition of this work by Professor Schiff is still comprehensive in giving "much more overt direction to lines of analysis than has been common in law casebooks".[2] From the student perspective, the major complaint is that the work is insufficiently doctrinal. This, of course, is a common complaint made by students working through a coursebook of this nature. The answer here is that the role of the professor in pointing out, guiding and determining what should or should not be read, is crucial.

The initial part of the materials discusses the nature of evidence in the adversary trial process and evaluates the functions of counsel, judge, jury and appeal court therein.

The Second Part concentrates on what have been considered to be the major problem areas in the law of evidence. There is much material devoted to the Hearsay Rule and its so-called "exceptions". There are chapters on opinion evidence, "credibility" questions, judicial notice, real and demonstrative evidence, circumstantial evidence, confessions. There is also an interesting chapter which the author entitles "Exclusion

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* Claudia Herbert, Visiting Assistant Professor, 1985-86, Faculty of Law, University of Victoria, Victoria, British Columbia.

[1] R.J. Delisle, Evidence Principles and Problems (1984).

[2] Introduction, at p. 1.

of evidence under social policies unrelated to truth finding or protection of adversary interests at trial''. This chapter deals with such problems as the privilege against self-incrimination, illegally obtained evidence and evidence resulting from violation of a right or freedom protected by the Canadian Bill of Rights[3] or the Canadian Charter of Rights and Freedoms.[4] The scheme concludes with an exhaustive discussion of questions relating to burdens of proof and presumptions of fact and law.

Taken as a whole, this is a valuable work which will endure. The practitioner, however, may well be irritated by the fact that supporting references are omitted from these volumes. While the commentaries to the cases are very useful, a practitioner may well wish to have the benefit of further citations as opposed to questions. This, however, is not a criticism of Professor Schiff but rather a comment on the nature of the work as a ''student coursebook''. Indeed, it is probably well known that Professor Schiff has in contemplation the provision of such references in a future edition or as a supplement to the work as it exists at present.

PAUL THOMAS*

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Safeguarding The Worker: Job Hazards and the Role of Law. By NEIL GUNNINGHAM. Sydney, Australia: The Law Book Co. Ltd. 1984. Pp. xxiv, 426. ($42.00 Aust.)

Neil Gunningham is a 35-year-old Senior Lecturer in the Faculty of Law at the Australian National University, Canberra. Originally from England, with two years of a barrister's personal injury litigation experience there, he has been researching and teaching in the areas of employment law, sociology of law and commercial law in Canberra since 1977. Out of this background has emerged an evidently consuming interest in occupational health and safety. Gunningham offers a course in Employment Law at the Australian National University which is about fifty per cent given over to occupational health and safety. Of the thirteen law schools in Australia, two others now offer Occupational Health and Safety courses: Melbourne and the University of New South Wales in Sydney. In English Canada, similar law courses or seminars have been developed in such places as Windsor, Victoria, University of Toronto and at Osgoode Hall Law School,

[3] R.S.C. 1970, Appendix III.

[4] Part I, Constitution Act, 1982, as enacted by the Canada Act, 1982 (U.K.), c. 11.

* Paul Thomas, of Dalhousie Law School, Dalhousie University, Halifax, Nova Scotia.

where Eric Tucker has offered a course since 1983. I estimate that there are now well over one hundred academic or practising lawyers in Canada who devote a considerable and growing portion of their professional lives to occupational health and safety. The figure increases considerably if workers' compensation is included.

Occupational health and safety is a significant political issue in Australia today. Four of the six state governments are now led by the Labour party and statutory law reform is on the public agenda. Victoria apparently introduced quite a far-reaching reform package in late 1985. There is no doubt that Gunningham's book, its critique and arguments for change, has provided a considerable backdrop for Australian reform efforts. Besides this book, he has pamphleteered for the Australian Society of Labour Lawyers, primarily a social democratic group, on the same subject.[1]

Safeguarding the Worker is of some comparative use to business, labour and professional specialists and practitioners in industrial relations, business management, administrative regulation and labour law. It has no exact counterpart in Canada, although the efforts of Nash[2] and Reasons, Ross and Paterson[3] come closest. Australia and Canada have many similarities in this area: occupational health and safety lies primarily within state or provincial jurisdiction in both countries; we have both inherited the English factory-industry model of statutory regulation and government inspection; and in both countries there has emerged a recent political movement for significant legal reform as to the structure, substance and enforcement of this area of law. This source book will be chiefly useful to scholars and policy researchers and advocates.

My major complaints with the book (and these are clearly secondary) are its readability and humanity. Gunningham is obviously quite a caring person who writes with conviction to improve society, but I came away learning little about Australian workers, Australian workplaces, the exact dimensions of health and safety there or the major social realities of the country. A bit more sociology and literature would have leavened the legal mass.

But what a massive and dense piece of documentary research, collection, organization, bibliography and compilation! The text itself runs to 372 pages, divided into fifteen chapters. The footnotes come in at approximately 2200. There are two appendices, one of which runs to

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[1] Legislating for Job Safety: A Critique of Occupational Health and Safety Legislation in Australia and a Programme for Reform, A.S.L.L. Pub. #1. 1983. (52 pp., available from G.P.O. Box 736F, Melbourne 3001, Australia). See also, Workers' Health, a newspaper-type periodical covering current issues published by the Workers' Health Action Group, P.O. Box 271, Carlton South 3053, Australia.

[2] Michael Izumi Nash, Occupational Health and Safety Law (1983).

[3] C. Reasons. L. Ross and C. Paterson, Assault on the Worker: Occupational Health and Safety in Canada (1981).

sixteen pages, with a descriptive summary of all Australian occupational health and safety statute law. And there is a wonderful bibliography of approximately 325 separate entries: government reports, inquiries, books, monographs, periodicals, articles, unpublished theses and occasional papers—mostly from England and Australia—with some bits of material from the United States and Canada. More astonishing yet is the realization that Gunningham seems actually to have read much of this bibliographical material, to judge from the footnoting and referencing. He acknowledges the editorial assistance of eighteen people, some of whom read a number of drafts. Four women typed the drafts. The fact-checking, proofreading and typographical work alone must have consumed hundreds of hours. However, and unfortunately, like much of legal academic publishing, no literary copy editing seems to have been done. This too often results in an impenetrable thicket of assertion and qualification, with baroque refinements of exception and deviation. Granted, it is very difficult to make a legal discussion of machine guarding resemble an engaging literary work.

Thankfully, there is an extensive index and table of contents. Although it was not designed as an advocate's tactical source book, there is utility here for practitioners, for example, in the table of cases arranged alphabetically, about 300 in total. Almost all of them are post-World War II statutory interpretation cases of English and Australian origin. Many of them are commented upon in some way in the text. No Canadian or American case law is reviewed. But because many of the regulatory provisions and much of the relevant common law is similar between Canada and Australia, some fortification might be found for a Canadian lawyer's arguments in any quasi-criminal or civil proceeding where comparative research might be properly rewarded.

For the most part this effort is a straightforward descriptive history and summary of the development and application of the Australian statutory law and of the current Western industrial, economic, legal and public administration literature. Public commissions such as the English Robens Report[4] are critiqued, and from a largely negative perspective in the case of Robens, since it argued for a more "voluntarist" and permissive state regulatory framework. Workers' compensation, tort law, coroners' courts and international laws and conventions are not included for review here. Some grievance arbitration law and criminal law are reviewed.

But Gunningham helpfully tackles subjects which are not often examined in sufficient depth. The discussion contained in the last four chapters in Part IV, "Towards Reform", really makes the book. For instance, he is cautiously positive about the potential for workers' compensation assessments and penalties as a useful technique for traumatic (not disease)

[4] Report of the Committee on Health and Safety at Work, 1970-72 (London, H.M.S.O.).

accident prevention. His discussion is relevant to recent Canadian government initiatives to expand experience rating systems, such as those in Ontario and British Columbia.[5] He touches on the United States American Enterprise Institutes' performance regulation idea, and is rather more tepid on the subject than I. Such a development, which we have lately seen argued from Alberta[6] is, to my mind, a complete disaster for workplace health and safety. It gives even more discretion to the employer and is legally unenforceable. We need specification regulations which can always be departed from on application. He is adamantly opposed to any useful role for tort liability and even opposes tort law reform. These arguments are the usual social democratic ones so forcefully and consistently proclaimed by Terry Ison and others in Canada.[7] While I strongly and generally support the public administration model over private litigation on the issues of both compensation and prevention, too often its exponents are guilty of a slavish doctrinal adherence to the munificent and fairly administered state, the reality of which has so far eluded us all. For instance, why should we not use a properly reformed strict liability products' and manufacturers' tort law as an additive to a public, no-fault, comprehensive compensation, regulation and enforcement scheme? There has to be room for exceptional individual damages, more democratic citizen-generated legal initiatives, civil discovery opportunities, public exposure and education and proper cost allocations between industries. Why should an employers' insurance scheme, for example, pay for a manufacturer's errors? And an expeditious arbitration process can replace the courts.

Gunningham even reviews an injury tax scheme, but settles, predictably and necessarily by the time you come to it, upon statutory reform. What he fails to come solidly to grips with, in my view, is bureaucratic reform, including expeditious informal and legal measures both to ensure that workers can enforce the law and can also force the government superstructure to act properly. We should be devising duties to inspect and duties to enforce, not more discretion; and we should be opening up the routes of private prosecutions. Beyond the workers' rights to participate, to know of hazards and to refuse to work (which he properly supports), we have to devise positive workers' powers to enforce the law through self-help mechanisms on the job, including control over heretofore "management prerogatives" such as capital allocation and production methods. Readers will, however, be enticed by his section entitled

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[5] In British Columbia, see the 'Experience Rating Assessment Plan'—E.R.A. —commencing 1 January 1986 for forestry, metals mining, trucking, heavy manufacturing and construction; in 1987, all remaining industry classifications will be covered.

[6] George K. Bryce, Rationalizing Regulation (1984), 5:3, Policy Options/Options Politiques, pp. 41-44. For a critique, see Ken Hansen, Employer Deregulation Proposals, B.C. Workers' Health Newsletter, no. 10 (December 1984).

"Direct Action", a term which has recently come to more common and pungent use in the streets of Canada and France. His concluding chapters argue for certain well-known regulatory reform approaches, and he includes the demand that trade unions treat the issue more seriously. We have to do something to make law and lawyers treat the issue more seriously too, and Gunningham has certainly made his contribution here, to his great credit. He could be speaking of Canada when he says that ". . . law *could* do a great deal more than it does at present",[8] and "[e]ven the best legislation can only be effective if there exists the political will and alertness to ensure that the enforcement agencies perform their tasks diligently".[9]

Following a short stint at Oxford's Centre for Socio-Legal Studies, Gunningham was a Visiting Professor at Osgoode Hall Law School from January through May 1986, and will undoubtedly, through this book and his future writings, help cement the productive scholarship and law reform movement of occupational health and safety in the Western industrial world. Now, if we could only design a fool-proof system to make the state bureaucracy work predictably better in the best interest of occupational health and safety between elections and despite the political complexion of the party in power. Perhaps Australia will find a way in the coming years.

CRAIG PATERSON*

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Canadian Bibliography of International Law. By CHRISTIAN L. WIKTOR. Toronto: University of Toronto Press. 1984. Pp. xxiii, 767. ($95.00)

For the second time in two years Christian Wiktor, Professor of Law and Law Librarian at Dalhousie University, has given us a most valuable research instrument. In 1982, it was his Canadian Treaty Calendar in two volumes and now he has compiled this magnificent bibliography of international law. The only existing Canadian bibliography on the subject was that prepared by Micheline Langlois, covering the years 1967 to 1977 and

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[7] See, *e.g.*, the specific issue of products' liability reform, E.P. Belobaba, Products' Liability and Personal Injury Compensation in Canada: Towards Integration and Rationalization, Vol. I, Consumer and Corporate Affairs Canada, Ministry of Supply and Services (1983).

[8] P. 360.

[9] P. 371.

* Craig Paterson, of the British Columbia and Ontario Bars, Vancouver, British Columbia.

published as a special 53-page issue of the Bulletin of the Canadian Council on International Law in 1978. Professor Wiktor's work, therefore, is the first bibliography on international law and truly qualifies as "un travail de Bénédictin".

The Bibliography contains 9040 entries, 8708 of which represent individual publications: 2612 monographs (including theses), 5627 articles and 469 book contributions. Each book entry is accompanied by references to its reviews, if any. These publications have been compiled from a very wide range of sources, many of which would not be accessible even in the best of law libraries. The sources include collected files of Canadiana, legal and general bibliographies, library catalogues and indexes, catalogues of official documents and some of the more popular magazines. The Bibliography is "Canadian" in that it covers mainly writings published in Canada or by Canadians; however, it also includes a small number of non-Canadian publications relating to subjects of special interest to Canada, such as certain publications on the Commonwealth. The Bibliography is comprehensive in at least two ways: first, it goes back to the colonial period (the first listed publication having appeared in 1755 in London) and takes us to March 1, 1983; second, it covers publications in both English and French. To complete the Bibliography are two indexes, one for the authors and the other for corporate names, conferences and series.

The Bibliograhy is divided into two parts: the first on international law, the second on international relations. Part I, entitled "Public International Law: Doctrine and Institutions", covers the general field of international law (excluding private international law) and follows basically the classification adopted by the Council of Europe in 1968. After listing reference works and publications on international law in general, the first part groups the entries under the following main headings: Sources of International Law, Subjects of International Law, Individuals, Organs of the State, Law of Treaties, Jurisdiction of the State, State Territory, Polar Regions, Inland Waterways, Law of the Sea, Maritime Navigation and Transportation, Airspace and Outer Space, International Organizations, International Conferences, State Responsibility, Pacific Settlement of Disputes, Coercion and Use of Force, Control and Prevention of Conflict, Conduct of Armed Conflict (Law of War), Neutrality and International Criminal Law. The 6302 publications listed in this part cover 471 pages. As far as this reviewer has been able to determine by a number of spot checks under different headings, those publications are exhaustive.

Part II, entitled "International Relations: Legal Implications", is more selective as mentioned by Professor Wiktor himself in his Introduction. The entries are classified as follows: International Relations, International Economic Relations, International Transportation and Communication, International Scientific and Technological Affairs, International Environmental Cooperation, International Social Affairs, International

Cultural Relations, International Legal Cooperation. These entries total 2737, on 210 pages. Obviously, an effort was made to select publications with some international law relevance and import. At first blush, this part might appear to be too selective, since its number of entries is less than half that of the international law listings. However, one must remember that the selected publications in international relations constitute merely a complement to those in international law which form the core of the Bibliography.

With this Bibliography, Professor Wiktor has put a most useful tool at the disposal of researchers, scholars, students and practitioners of international law. In bringing together all this information and presenting it in his usual scholarly manner, Professor Wiktor has put the whole Canadian international law community in his debt. Indeed, it is difficult to imagine any international law research, related in some way to Canada, without consulting this Bibliography.

DONAT PHARAND*

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Securities Law and Practice. By VICTOR P. ALBOINI. Toronto: The Carswell Company Ltd. 1984. Looseleaf, 3 vols. ($195.00)

In 1980, following shortly upon major reforms in Ontario securities legislation,[1] Victor Alboini produced an extremely useful book entitled Ontario Securities Law.[2] This work was a careful annotation of the newly amended and consolidated legislation. It combined knowledgable commentary on how the law was being changed (and how those changes were likely to be interpreted) with a reasonably thorough compendium of Ontario Securities Commission decisions interpreting pre-existing parts of the Act and of decisions of Canadian courts interpreting that and similar legislation. It was, for the practitioner and for the student, an extremely useful work, no book approaching comprehensive treatment of the area having been published since David L. Johnston's Canadian Securities Regulation.[3]

While the fundamental principles and techniques of securities regulation in Canada have become relatively stable, at least since the early 1970's, the processes of refining mechanisms, of fleshing out details and

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* Donat Pharand, of the Faculty of Law, Civil Law Section, University of Ottawa, Ottawa, Ontario.

[1] The Securities Act, S.O. 1978, c. 47, now Securities Act, R.S.O. 1980, c. 466; referred to as the Securities Act or the Act.

[2] (1980).

[3] (1977, supplement 1983).

of mounting enforcement activities against undesirable developments in capital markets are all sufficiently fluid that no book bound between two covers can be expected to have a terribly long useful life. Consequently, and happily, Mr. Alboini has revised and updated his earlier work, and his new publisher has issued it in looseleaf form. Nine named contributors have joined the author to maintain the currency of the work.

Although these points will matter less to those readers already familiar with the regime of securities regulation in Canada than to those looking for an initial or occasional entrée to the law of this subject, it might be useful to begin with an indication of what this work is not. First of all, it is not a treatise. It does not represent, as did Johnston's work, a comprehensive taxonomy of the law of securities, with analysis developed along lines both externally and internally logical. None of this is to say the present work is not useful; but it is not ideally organized for users with only occasional need to understand the finer points of securities law. One must come to terms first with the organization of the Securities Act of Ontario in order to make use of this work.

Closely, but not exclusively, related to this point is the fact that the work is not indexed. An index to the Securities Act would double as an effective index to this work, but even that is not part of the service. Were an index to be developed, the usefulness of the service would be enormously enhanced for all those not thoroughly familiar with the organization of the legislation.

Implicit in the change in title from the previous Ontario Securities Law, is the suggestion that this work is national. With regret, and with some qualification, it must be stated that is not the case.

The regulation of securities is, in almost all important respects, regulation by the provincial level of government. However, uniformity and interprovincial co-operation are valued as highly in this area as in any area of provincial regulation in Canada. Accordingly, as the economic activity being regulated is in many of its manifestations national (or even international), it is fortunate—and perhaps inevitable—that this general instinct of the provincial regulators toward uniformity has manifested itself in a number of formal ways. Securities legislation, at least in its major outlines, is substantially similar across the country (the more so if we set aside the Atlantic provinces, where the regulators are relatively inactive). In the result, National Policy Statements, subscribed to by all provincial securities regulators, facilitate national compliance with provincial regulations. Over and above this, the provinces from Ontario west are generally (and somewhat generously) described as "uniform act" provinces; these jurisdictions have agreed on several more matters, expressions of that agreement being recorded in Uniform Act Policy Statements. The extensive regulations issued under most of the provincial acts track, to a slightly lesser extent, the standardization and uniformity of legisla-

tion. For matters peculiar to the wishes of a particular provincial regulator, local policy statements and "blanket orders" are issued by each of the provincial regulators.

Securities Law and Practice might be described as national insofar as it includes the following elements: (1) virtually exhaustive consideration of judicial decisions from all provinces interpreting specific provisions of securities law in Canada; (2) reproduction of both National Policy Statements and Uniform Act Policy Statements. Unfortunately, the service must be described as provincial with respect to the following features: (1) as noted above, the work is organized according to the structure of the Ontario legislation, which structure is not uniform even in the so-called uniform act provinces; (2) policy statements issued by securities commissions other than that of Ontario are neither provided nor referred to; (3) the legislation and regulations included and referred to in the work are those of Ontario only; (4) perhaps most importantly, apart from those from Ontario, the decisions of securities commissions (which far outnumber, and often exceed in practical importance, judicial decisions) are not referred to.

To the extent that the study and practice of securities law in Canada is national (and very much of it is), these limitations obviously lead the user to wish that Securities Law and Practice were more national. Perhaps it will become so. The loose-leaf format certainly lends itself to expansion. A suggested first priority for such expansion is the decisions of the securities commissions of other provinces; these are presently all but inaccessible, and their inclusion here would be a singular contribution to bibliographic control over them. Additionally, if the service is to be expanded, the acts, regulations and policy statements of the other provinces would be welcome additions.

Obviously, the work in its present state straddles the boundary between a supplemented book and a service. As between those alternatives, the intentions of the publisher are not obvious. The "Preface" refers to the work as a service and promises that it "will be updated from time to time as required". At the time of writing, the work has been out for approximately eighteen months and has been supplemented by three releases. These releases have contributed to the continuing timeliness of the work without broadening its scope or adding new features. It is to be hoped that future releases may include such additions.

Should the publisher decide to broaden this work, it will then invite comparison with the CCH Canadian Limited service, Canadian Securities Law Reporter, a loose-leaf service presently consisting of four volumes and supplemented monthly. The latter service certainly has its flaws; the most notable of them—explanations and annotations—may well have inspired Securities Law and Practice. However, it remains virtually indispensible to anyone working in the area by reason of the fact that it

includes (1) statutes, regulations and policy statements from all provinces; (2) basic documents (often having the force of law) of self-regulating players in the capital markets, notably the Investment Dealers Association and the various stock exchanges; and (3) reasonably effective indexes in various forms. For the present, therefore, Mr. Alboini's new work is an extremely valuable contribution. Depending on decisions presumably to be made by his publisher, it might become even more valuable.

To place the above criticism and suggestions in perspective, a few concluding words about what the work *is* are in order. The work *is* much more than an annotated Act with appended regulations and forms. Although it is that, and notwithstanding the earlier assertion that it is not a treatise, within the divisions of the work dictated by the organization of the Act, it *reads* like a treatise. Case law is not merely digested; it is set out clearly and critically. References to some secondary material are integrated into the text. The extensive professional experience of the author is well-applied, with the happy result that the reader can discover how things work whether there are decided cases on a particular point or not. What this all adds up to is an extremely useful work which, within the limitations described above, describes with clarity what the law is; in some important passages there are also sound suggestions as to what it is becoming. The writing is unfailingly clear and intelligent.

GAIL STARR*

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* Gail Starr, of the Faculty of Law, University of Calgary, Calgary, Alberta.