Equality and Judicial Neutrality.
Edited by SHEILAH L. MARTIN and KATHLEEN E. MAHONEY.
Toronto: Carswell. 1987. Pp. xxvii, 430. ($67.00)

Reviewed by Morris Manning*

I approach any legal "text" based on papers delivered at a conference with some skepticism. Having participated in many such conferences, I find that seldom is more than fifty per cent of the material worth rereading, seldom does it form the basis for further discussion and/or research. On occasion, I am pleasantly surprised. The reading of this text was such an occasion. For not only have the editors performed a useful service in pulling together material from a conference which I wish I had been invited to (a test, of course, of the interest of the subject matter!) but they have also given us a book which is a major contribution to our legal literature.

Not since Shimon Shetreet's classic study, Judges on Trial,[1] have I read a work as important to our lives as this one. Those who have read my own texts and papers know that I view the way in which judges carry out their functions as being of critical importance to our very way of life. This book marks a first step in the important process of analyzing how judges decide important social issues, such as equality. It allows us, indeed calls on us, to continue the process of critical analysis of the issues raised in order that we may achieve that true equality promised by both the language and spirit of the Charter.

Unfortunately, most Canadian legal writers fail to examine critically what the judiciary has done when faced with particular issues. While they regurgitate the language used in judgments and they comment on the consistency or lack of it with prior decision, they seldom provide an in-depth analysis which helps us to understand the underly-

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[1] S. Shetreet, Judges on Trial (1976).

ing values and motives and, indeed, biases that lead to the decision. This book consists of a collection of papers written, for the most part, by those who are not afraid to state that a decision or line of decisions can only be explained by looking at the built-in bias of the judges. How very different and very refreshing to find constructive criticism expressed in this fashion.

When taken as a whole, and without attribution to any one author, the book reveals a judicial bias which has occurred in the past over a wide range of legal areas. The problem being identified, the solution can be worked at. The authors claim the book is "a start, a cause for concern and call for action".[2] They are quite correct.

The book is 430 pages long and must be considered to be a text rather than a mere compilation of papers, as most of the authors have obviously spent a proper amount of time in analyzing the issue they discuss. It is divided into two main parts: Part I, "Judicial Neutrality: The Issue", and Part II, "Judicial Bias: The Reality". Part I contains a discussion of three major areas broken into three chapters: Biased Thinking and the Process of Judicial Decision Making, Philosophies of Equality, and Constitutionally Protected Equality Rights. Part II is broken into eight major areas, each a chapter which identifies specific areas of law and subject matters within each. These include the Impact of Judicial Bias on Family Law, Unequal Treatment in Torts and Loss Compensation, and Judicial Insensitivity to Native Culture, to name but three. By way of introduction to each of the eleven chapters the editors have given us a helpful overview of the subject of the chapter and the approach taken by each contributor.

The material represents an informative cross representation of experiences of the thirty-eight contributors, approximately one quarter of whom are male, and who include judges, practising lawyers, and Canadian and American law professors. The list is quite impressive.

Some of the strong points lie in materials which examine the problem of non-neutral judicial behaviour from a multi-dimensional and multi-disciplinary perspective and give us insight into what is happening and how to correct it. As examples only, Norma Wikler, an American sociologist, and Lynn Schafran, director of a project in New York designed to educate the judiciary in order to provide equality, demonstrate how Americans have attempted both to identify and to correct judicial gender bias. Dale Gibson (as we have grown to expect) provides us with an insightful analysis of the working of section 15 of the Charter in its first year of operation, as does Mary Eberts (although briefly) in dealing with risks of equality litigation. One hopes that both the courts and counsel will give careful consideration to the weaknesses pointed out in the approach

[2] P. v.

taken by some courts, and the strengths in the approaches suggested. Gibson's approach to protection for individuals without regard to their group affiliations should be adopted by the Supreme Court of Canada.

Sheilah Martin takes us back to the rightly criticized case of *Bliss* v. *Attorney General of Canada*[3] to point out the dangers which lie ahead should judges continue to reach back into the dark days of that case in order to find an interpretation of section 15. Some of the most disturbing issues in the book are raised by Joan Ryan, Bernard Ominayak and Louise Mandell in their two papers dealing with native rights and judicial bias. Both pieces are, I think, too kind to the decisions of the past. They do, however, point out that true equality cannot be achieved until judicial biases are revealed and removed. They show dramatically how failure to understand the nature of the society which is before the court, and its differences from that whence the judiciary come, causes injustice. We have much to learn. Margery Brown's paper helps us by providing a different perspective of judicial guidelines in dealing with native people's rights.

I would like to have seen more judges commenting on some of the issues raised by the other contributors. Perhaps that is for another conference. Mark MacGuigan's paper contributes to our understanding of how judges decide. More material from judges (the group identified as being non-neutral) can only benefit all. It would also have been appropriate to have government input in order to see whether section 15(2) is really alive and well in Canada.

I found Donna Greschner's paper, which interweaves judicial approaches to equality with the Critical Legal Studies movement, out of place in the book. I wish that Kathleen Lahey's "Feminist Theories of (In)Equality" had referred more to the Canadian legislative fight. Her concentration on American materials is valuable, as it underscores why Canadian judges would be wrong to apply American law. The message is clear—the American courts have not used the Fourteenth Amendment in any meaningful way to achieve real equality, and Canadian courts would be wrong to apply that unduly narrow analysis to our broadly worded section 15(1).

Lahey also gives us a most useful one page listing of those who have begun to formulate a coherent viewpoint of equality. Those articles, as well as others, formulate a theory of equality which recognizes biological differences and builds a constructive, positive position from those differences. These materials should form the basis for a future article which will help courts to find a theory of interpretation of section 15(1) which will not extra-burden the disadvantaged because they are different, either biologically or otherwise. This would be a proper retort

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[3] [1979] 1 S.C.R. 183, (1978), 92 D.L.R. (3d) 417.

to incorrect approaches like that taken by Chief Justice Nemetz (his "biological justification analysis") referred to by Eberts.

A better table of contents and an index of some kind should have been provided. My own experience reveals that many Canadian law publishers really do authors of legal texts a great disservice by failing to provide a proper index.

The book becomes even more interesting when one compares the approaches of various authors. Note, for example, MacGuigan's call for a principled approach grounded in a socially responsible (and responsive) judiciary. To achieve this goal counsel have an important role to fulfil, namely to present evidence of social justification for their interpretation. Here is a judge pointing out what he expects from counsel. What then are we to make of Lahey's analysis of the Ontario Court of Appeal decision in *Blainey*,[4] where the court refused to look at social justification factors? Instead the court took what it viewed as a "principled approach to equality", applying what I have elsewhere termed "constitutional notice" (a term I coined to refer to taking notice of facts which really are not notorious and cannot be called "judicial notice"). I agree with Lahey's criticism and hope she will expand it in the future.

It is still too early to determine whether the Canadian judiciary will take an approach to equality issues which will be true to the meaning of the term. It is not too early to study judicial bias in the equality field. Indeed, if this book teaches one major lesson, it is that we must begin a similar study in all fields of judicial action. The book should be required reading for every judge in Canada and for every practitioner who hopes to have a fair, unbiased and judicially neutral hearing for her or his client.

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Sentencing. 3e édition.
By C. RUBY.
Toronto: Butterworths. 1987. Pp. xcvii, 609. ($95.00)

Compte-rendu de A. Manganas*

J'ai lu l'ouvrage de C. Ruby après le Rapport sur les sentences préparé pour le gouvernment canadien.[1] Certes, le Comité pour la rédaction de

[4] *Re Blainey and Ontario Hockey Assn.* (1986), 26 D.L.R. (4th) 720, 54 O.R. (2d) 513 (C.A.), leave to appeal refused, [1986] 1 S.C.R. xii.

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[1] Commission canadienne sur la détermination de la peine, Réformer la sentence: une approche canadienne, Rapport, Ottawa, Ministère des Approvisionnements et Services, 1987.

ce Rapport avait à sa disposition un budget considérable et s'appuyait sur une solide équipe de recherche sous la direction de P. Landreville. Il y a eu comme résultat un ouvrage cohérent avec un plan bien structuré, même si parfois le texte a été lourd à suivre. En somme un très bon Rapport pour les théoriciens des sciences sociales.

Par contre, C. Ruby présente un ouvrage certainement utile pour les praticiens du droit et des sciences sociales, mais où la cohérence interne n'existe pas à cause d'une absence de plan. Nous retrouvons donc encore une fois l'approche anglo-saxonne: beaucoup d'information utile, mais absence de plan, absence de colonne vertébrale. L'exemple le plus frappant de cette absence de cohérence est démontré par le fait suivant: les dix-huit premiers chapitres du livre, équivalant à 387 pages, sont consacrés aux principes, à l'imposition d'une sentence et aux diverses sanctions tandis qu'un seul chapitre, d'une longueur de 210 pages, donne les sentences pour les différentes infractions.

L'auteur commence par une déclaration démontrant la difficulté existant à traiter des sentences: "Sentencing is more often dealt with inadequately by counsel than by any other recurring aspect of a criminal trial. There is little of the excitement that characterizes much of criminal law and much is discretionary."[2]

Son objectif consiste "to set out and analyze principles, so that more effective submissions can be made with a view to assisting the sentencing judge".[3]

Le droit criminel devrait évoluer en matière de sentence en s'adaptant aux "maux" d'aujourd'hui. Cependant la sanction pénale a toujours sa raison d'être étant donné qu'elle se fonde principalement sur la réprobation sociale. Quant à l'objectif de la sentence, il devrait consister "to take the minimum action which offers an adequate prospect of preventing future offences".[4]

L'auteur, après avoir passé en revue les principes régissant une sentence, aborde la procédure concernant son imposition, le fardeau de la preuve à la lumière des décisions importantes telles que *La Reine* c. *Gardiner*,[5] ainsi que les implications de la Charte canadienne des droits et libertés. Ces trois chapitres sont bien exposés, démontrant que l'auteur de cet ouvrage est un bon procédurier. Le contenu et la préparation du rapport pré-sentenciel sont aussi discutés de façon satisfaisante avec beaucoup de références au droit britannique. L'auteur souligne la pratique intéressante répandue surtout en Australie et en Grande-Bretagne à

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[2] P. vii.

[3] *Ibid.*

[4] P. 4.

[5] [1982] 2 R.C.S. 368.

l'effet que l'accusé puisse demander au juge de tenir compte d'autres infractions commises par lui, évitant ainsi des arrestations et mises en accusation subséquentes.

Le chapitre 4 est consacré au casier judiciaire, facteur déterminant pour l'imposition d'une sentence. L'auteur est très sceptique face à l'idée qui veut que celui qui a un passé "criminel" chargé, constitue un ennemi de la société: ". . . we focus on the poor, on those who commit crimes that are easy and cheap to detect and prosecute and ignore many more harmful crimes, committed by the wealthy and the corporate offender."[6] La vraie question devrait porter sur la dangerosité réelle de l'individu et le casier pourrait seulement aider dans ce sens. Cependant la jurisprudence a toujours donné beaucoup de poids à ce facteur.

Le sixième chapitre est consacré aux facteurs qui peuvent influencer une sentence. Nous pouvons en énumérer quelques-uns: la planification et délibération, l'impact de l'infraction, le motif, le rôle de la victime, et enfin certaines défenses qui n'ont pas été considérées au niveau de la déclaration de culpabilité, telles que la provocation et l'erreur de droit.

L'auteur aborde par la suite certains facteurs qui ne devraient pas être pris en considération, tels que la commission d'autres infractions établie par la preuve, la façon dont s'est comportée la défense lors du procès, la possibilité de recourir au civil et autres.

Les dix prochains chapitres qui suivent appartiennent à la procédure pénale et constituent une analyse plus ou moins détaillée des articles du Code criminel traitant des diverses sanctions et ordonnances de la cour. L'auteur parle peu des sentences alternatives (par exemple, des travaux communautaires). Même si l'expérience dans ce domaine ne date pas de très longtemps il aurait pu citer, par exemple, le cas du Québec avec la loi sur le recouvrement des amendes.

Le chapitre dix-neuf qui suit est certes celui qui est le plus intéressant puisque dans ses 210 pages nous trouvons le quantum des sentences pour les divers types d'infraction. Il y a une abondante information à jour jusqu'en 1985. Cette partie peut être très utile pour le juriste et le praticien. L'auteur traite dans l'ordre du meurtre au deuxième degré,[7] de la tentative de meurtre, de l'homicide involontaire coupable (en mettant l'accent sur la violence familiale) et d'autres infractions contre la personne. En matière d'infractions sexuelles nous apercevons la difficulté à comparer les sentences en vertu de l'ancienne loi sur le viol avec celles qui touchent l'agression sexuelle. Viennent par la suite les sentences

[6] P. 95.

[7] L'auteur, p. 393, se demande, à juste titre, comment l'art. 672 C.cr. touchant la demande de révision sera interprété.

concernant les autres infractions contre la personne, la conduite dangereuse, l'administration de la justice et les infractions relatives aux armes à feu et aux drogues.

Quant aux autres critiques spécifiques, nous pouvons mentionner qu'il y a trop de citations qui coupent le texte et qu'il y a parfois certaines affirmations générales appuyées par peu de doctrine ou de jurisprudence. Enfin certaines sections semblent parachutées à l'intérieur d'un chapitre sans logique interne.[8]

Nous ne rendrions pas cependant justice à l'ouvrage et à son auteur qui a mis beaucoup d'énergie pour le préparer si nous ne mentionnions pas la difficulté qui existe d'écrire quelque chose avec une cohérence parfaite en matière de sentence. Le domaine est extrêmement vaste, les principes directeurs sont absents.

En guise de conclusion, il s'agit d'un ouvrage utile pour le praticien, qui inclut beaucoup d'informations intéressantes pouvant donner matière à réflexion dans ce domaine. Et, qui sait, en multipliant les ouvrages de cette sorte, on pourra peut-être espérer d'esquisser un jour une politique plus cohérente dans le chapitre de l'imposition d'une sentence.

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A Guide to the Investment Canada Act.
By JAMES M. SPENCE and GABOR G.S. TAKACH.
Toronto and Vancouver: Butterworths. 1986. Pp. xix, 153. ($45.00)

Reviewed by Robert K. Paterson*

This book constitutes a companion volume to Spence and Rosenfeld, Foreign Investment Review Law in Canada,[1] which dealt with The Foreign Investment Review Act[2] but had a short useful life, as that Act was repealed and replaced with the Investment Canada Act,[3] which came into force in June 1986.

The new volume is well organized, with the needs of the practitioner in mind. It begins with two introductory chapters about the new law by

[8] Nous pouvons citer le cas du chapitre 12 sur le "Corporate Crime" qui se trouve parmi les diverses sanctions.

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[1] J.M. Spence and W.P. Rosenfeld (eds.), Foreign Investment Review Law in Canada (1984).

[2] S.C. 1973-74, c. 46.

[3] S.C. 1985, c. 20.

the two authors respectively. The bulk of the following text consists of a detailed analysis of each section of the Act. This discussion is clearly organized and its usefulness is enhanced by statements of the policy rationales of each provision and a table of concordance linking similar provisions of both investment statutes. The volume ends with a collection of statutory and administrative material related to the new law.

The Investment Canada Act established a new federal agency—Investment Canada—with a fresh mandate to encourage investment in Canada, by foreigners and Canadians alike, as well as to continue the review of certain foreign investments in this country. With the exception of culturally sensitive areas, like film production and book publishing, the new legislation no longer controls the establishment of new businesses by foreign investors. Only major acquisitions of Canadian businesses by non-Canadians are generally reviewable under the Investment Canada Act.

As the authors state, the new law softens various aspects of foreign investment review such as the categories of acquisitions subject to review, the legal presumptions as to acquisition of control, and transactions which are exempt. The timing of the review process itself has also been shortened. Administrative delays under the Foreign Investment Review Act were the subject of well publicized criticism from American sources. Other countries seemed more accepting of the former Canadian investment regime—perhaps because many themselves had similar review mechanisms (like Italy, Japan, Australia and New Zealand). It is perhaps a reflection of recessionary world economic conditions, rather than a major change in regulatory philosophy, that has led many of these countries to reduce their investment controls along with Canada.

Despite the adoption of less stringent legislation the new Canadian review system will continue to engage legal advisers in difficult questions of interpretation. This book will provide them with valuable assistance. It is not, however, as readable or detailed about specific issues as the earlier book by Spence and Rosenfeld, which contained a collection of chapters by specialists on separate topics. The authors of the present work are not to be criticized for changing format, but the result has been a lack of depth in the treatment of certain areas, such as the analysis of factors pursuant to the ministerial test of "net benefit to Canada". There are some other aggravations as well, such as the omission of a table of cases on both statutes.

While mostly seen by Canadian lawyers as a domestic legal issue, regulation of foreign investment is increasingly being examined from an international perspective. The international legal ramifications of Canadian investment law were first manifested by the findings of a GATT (General Agreement on Tariffs and Trade) Panel in 1984 that undertakings as to purchasing obtained from foreign investors under the Foreign Investment Review Act violated the standard of national treatment contained in Article

III:4 of the GATT. Canada and the United States (the United States brought the complaint) agreed, however, that both had the right to review foreign investment, and the Foreign Investment Review Agency immediately followed the GATT panel findings by amending its practices in seeking undertakings as to Canadian purchasing.

The most significant future impact on the Investment Canada Act is now likely to arise out of provisions of the Canada-United States Free Trade Agreement. Since international law provides little basis for American concerns about Canadian investment controls, a bilateral agreement offered the best hope for change. The provisions of Chapter 16 of the Free Trade Agreement affect investment measures by either country and are in two parts. First, there are provisions that establish general and specific obligations as to the treatment of United States or Canadian investment. These include the principle of national treatment set out in Article 1602 and the rule against expropriation without compensation in Article 1605. Second, there are a series of provisions set out as Annex 1607.3 that will be required as amendments to the Investment Canada Act, its guidelines and regulations. Most significantly, these amendments will increase, in four annual steps, the minimum reviewable direct acquisition from the current $5 million to $150 million and eliminate entirely in three annual steps the review of indirect acquisitions. One major difference between these two types of provisions is that the latter formulates fairly precisely the language of statutory implementation, whereas the former will provide legislators in both countries with some level of discretion. The version of the Agreement published by the Department of External Affairs contains an introduction to Chapter 16 of the Agreement that suggests research and development or technology transfer requirements will not be precluded by the prohibition on various performance requirements under Article 1603. It remains to be seen, however, whether such requirements would be compatible with the principle of national treatment set out in Article 1602.

A recurrent aspect of American criticism of Canadian foreign investment controls has been their functional immunity from Canadian judicial review. Article 1608 seemingly represents a Canadian victory in negotiating an express exemption for Investment Canada decisions from the umbrella dispute settlement provisions contained in the Agreement. There is no requirement under Canadian law that the minister provide reasons for a decision on an investment proposal and judicial review has consequently been virtually impossible. What is unclear under Article 1608 is the scope of the dispute settlement mechanism that it provides. There is express preservation of GATT and other international fora but these avenues are unavailable to private investors. This provision does mean, however, that GATT panel rulings could still be sought by either country to invalidate investment measures not prohibited by the Agreement but contrary to the GATT. It would seem that while ministerial rulings

on "net benefit" to Canada will not be amenable to review under Article 1806 or 1807 procedures, an approval subject to undertakings in violation of Article 1603 (performance requirements) would be reviewable under Chapter 18 procedures as being a breach of the Agreement.

While Chapter 16 of the Free Trade Agreement represents a comprehensive attempt to solve some longstanding difficulties over investment policy between two neighbours, it also represents a testing ground for rules the United States will argue should be adopted in the context of the Uruguay Round of Multilateral Trade Negotiations. These negotiations will present the first opportunity for a comprehensive review of existing GATT articles dealing with trade-related investment issues. Some policies, such as performance requirements, fall within the "trade-related" limitation but other issues, such as national treatment and right of establishment, may elude any new GATT multilateral rules.

Until GATT rules concerning trade-related investment measures are in place most source countries have few rights regarding Canadian investment controls apart from those contained in bilateral trade agreements between themselves and Canada. An immediate issue is whether these countries can allege that the preferential treatment received by the United States under the agreement violates their bilateral treaty rights with Canada. To the extent that the Agreement is a free-trade area within the meaning of Article XXIV of the GATT it is a valid preference insofar as investment measures connected to trade in goods are concerned. If the source country is not a member of the GATT it may be able to argue a bilateral treaty violation. The issue is highly academic, however, since few likely source countries are not GATT signatories and few bilateral trade treaty rights have been made part of Canadian domestic law. Nevertheless, the possibility of such arguments may enhance the claims of Canadian trade and investment partners for the negotiation of benefits similar to those recently accorded the United States. These pressures may be in abeyance for the duration of the Uruguay Round but they are not likely to disappear.

Spence and Takach's book provides a useful guide to Canada's new investment legislation and it is to be hoped that others will soon explore the wider international law and policy problems of Canadian regulation of foreign investment.

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Marine Insurance Law of Canada.
By RUI M. FERNANDES.
Toronto and Vancouver: Butterworths. Pp. xxxvi, 206. ($65.00)

Reviewed by J.R. Cunningham, Q.C.*

Mr. Fernandes has done excellent work in preparing this text on the law of marine insurance as dealt with by the Canadian courts. It will serve as a good handbook for lawyers whose practice involves them in marine insurance law problems, and provide an introductory source of information on the various principles of marine insurance law as codified in the English Marine Insurance Act, 1906,[1] the statute which has served as a closely followed model for those Provinces of Canada which have enacted Marine Insurance Acts.

The Ontario Marine Insurance Act[2] is used as the basis for the structure of the text and a table of concordance is provided setting out the equivalent sections of the English Act and the Acts in British Columbia, Manitoba, New Brunswick and Nova Scotia. In Quebec the legislation dealing specifically with marine insurance is contained in the Civil Code, articles 2606-2692, and in Saskatchewan, Alberta and Prince Edward Island, marine insurance contracts fall under legislation dealing with insurance generally.

After the Introduction, each chapter of the book commences with a section or sections of the Ontario Act dealing with a specific principle of marine insurance, followed by an explanation and discussion of the principle, and references to the Canadian decisions, as well as some English decisions which have been considered by the Canadian courts, or which illustrate the English common law background for the codified principle.

An example of this technique is chapter 4—Insurable Interest. The text first sets out sections 5 to 16 of the Ontario Act, followed by a brief summary of the principle, and a reference to *Clark* v. *Scottish Imperial Insurance Co.*,[3] where the Supreme Court of Canada discusses the factors involved in establishing an insurable interest. The author then sets out specific insurable interests: "For whom it may concern", "Mortgagees", "Shippers and Consignees of Goods", and "Freight", and in each of these sections of the chapter there is a statement confirming the insurable interest, and summarizing the Canadian cases where that interest has been in issue, and where statements from the judges in those cases have established what is required of an assured in order to benefit from a marine insurance contract in each specified category.

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[1] 6 Ed. 7, c. 41.

[2] R.S.O. 1980, c. 255.

[3] (1879), 4 S.C.R. 192.

Another chapter which deals with an important principle is chapter 26—Perils Insured Against. In this chapter the author reviews the authorities establishing the "Onus of Proof" on the assured to establish that the loss arose from a peril covered by the policy, and lists the Canadian authorities establishing that principle. In dealing with "Proximate Cause" the facts in the Privy Council case of *Canada Rice Mills Limited* v. *Union Marine and General Insurance Co.*[4] are summarized, and the subsequent Canadian decisions dealing with proximate cause are discussed. In dealing with the term "perils of the sea" the British decisions which have been considered by Canadian courts are first reported and discussed, including references to the leading decisions—*Thames and Mersey Marine Insurance Co. Ltd.* v. *Hamilton, Fraser & Co. (The Inchmaree)*,[5] *The Xantho*,[6] *Hamilton, Fraser & Co.* v. *Pandorf & Co.*,[7] *Samuel (P.) & Co. Ltd.* v. *Dumas*,[8] *Cohen, Sons & Co.* v. *National Benefit Assurance Co. Ltd.*,[9] and the *Canada Rice Mills* decision. In this chapter, and in many other parts of the book, the "*Bamcell II* " case (*Century Insurance Co. of Canada* v. *Existological Laboratories and Foremost Insurance Co.*[10]) is discussed in some detail. This case, in which the Supreme Court of Canada in 1983 affirmed the judgment of the British Columbia Court of Appeal, dealt with several major defences often available to underwriters, none of which succeeded, however, in the case itself. The vessel which was insured was somewhat unusual. The "Bamcell II" was a converted barge, to a large extent "bottomless", and kept afloat by compressed air. The vessel sank when a member of her crew intentionally opened valves to let out the compressed air so that the stern would settle, but negligently failed to close the valves so that all the air keeping the vessel afloat was expelled. As pointed out by the Supreme Court of Canada and the majority judgment in the Court of Appeal, a sinking due to the fortuitous entry of seawater caused by negligence is a standard example of a loss from a peril of the sea, and coverage in such circumstances is amply supported by prior authorities, including the ones listed above. This reviewer cannot agree with the editorial comment made by the author that "[f]uture cases will have to determine if the "Bamcell II" decision is restricted to the negligence of the master or crew or whether the negligence of the assured is also covered".[11] There do not appear to be any grounds for suggesting, based on this case, or any other authorities, Canadian or British, that the negli-

[4] [1941] A.C. 55 (P.C.).

[5] (1887), 12 App. Cas. 484 (H.L.).

[6] (1887), 12 App. Cas. 503 (H.L.).

[7] (1887), 12 App. Cas. 518 (H.L.).

[8] [1924] A.C. 431 (H.L.).

[9] (1924), 18 Ll. L. Rep. 199 (K.B.D.).

[10] [1983] 2 S.C.R. 47.

[11] P. 84.

gence of the assured would affect the assured's right to recover for a peril of the sea, in the case of the *Bamcell II* or any similar circumstances, unless such a loss was held to be attributable to the wilful misconduct of the assured.

The chapters dealing with "Warranties" contain an excellent and comprehensive review of all the major relevant Canadian decisions, including a decision of the findings of the Supreme Court of Canada in the "Bamcell II" case, and the other Canadian decisions both before and after "Bamcell II" where the use of the word "warranted" in a policy of marine insurance have been held not to relieve the underwriter from liability when the matter warranted was not, in fact, performed or complied with. The policy in the "Bamcell II" case contained the following clause:

> Warranted that a watchman is stationed on board the "Bamcell II" each night from 2200 hours to 0600 hours with instructions for shutting down all equipment in an emergency.

There was no watchman stationed on board the vessel during the hours prescribed in the clause, but the Supreme Court held that this had absolutely no bearing whatever on the loss of the vessel, which occurred outside those hours. The British Columbia Court of Appeal concluded that the parties to the contract of insurance intended to create a "suspensive condition" and not a true warranty which if breached would discharge the insurer. The Supreme Court of Canada concurred, Ritchie J. speaking for the court, stating: ". . . the condition contained in the clause constituted a limitation of the risk insured against but it was not a warranty."[12]

After completing the ninety sections of the Ontario Act, and setting out the schedule thereto which contains the historical form of a marine insurance policy (The Lloyd's S.G. Policy) and the Rules for construction of the policy, there is a chapter discussing the Canadian "Institute Clauses" and the Canadian decisions which consider the Inchmaree Clause and the Institute Cargo Clauses.

An interesting chapter is included on the nature of the role of agents and brokers, parties involved in the marine insurance contract process who are increasingly finding themselves co-defendants with underwriters in actions involving coverage problems. Illustrations are given in this chapter of circumstances where an agent or broker may be found liable to the assured for negligence or breach of contract in the carrying out of his duties in connection with the placing of marine insurance.

There is a report on the "New Clauses" which have been introduced to the London marine insurance market, but which are not in

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[12] *Supra*, footnote 10, at p. 56.

widespread use in Canada, and specimen copies of the clauses, for cargo and hull, are contained in the Appendix.

The Canadian Institute Clauses—Cargo, All Risks and Hulls—are also in the Appendix, together with The York-Antwerp Rules 1974, which deal with the adjustment of general average.

Finally the book concludes with a report on the proposed Federal Marine Insurance Act. Interest in a federal marine Insurance statute has been stimulated by the 1983 Supreme Court of Canada judgment in the case of *Triglav* v. *Terrasses Jewellers Inc.*,[13] which established the federal Parliament's jurisdiction over marine insurance as being contained within the power of Parliament over navigation and shipping.

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Union Security and the Charter.
By M.G. MITCHNICK.
Toronto: Butterworths. 1987. Pp. xv, 193. ($50.00)

Reviewed by Michael J. MacNeil*

Canadian labour relation boards and courts are being called upon to answer challenges that existing union security arrangements infringe section 2(d) of the Charter of Rights and Freedoms, which guarantees freedom of association. It will be necessary to decide both on the content of the freedom of association and, if there is an infringement, on whether the infringement is a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society. This book attempts to assist decisions on the latter issue. It identifies arrangements in other free and democratic societies to which our courts can look in determining the reasonableness of Canadian law. The author accepts the challenge, as he puts it, of avoiding "lapsing into vacuous description"[1] while providing a minimum base for meaningful comparison.

The author gives a country by country overview of union security arrangements. Britain and the United States each get a chapter of their own, while Australia and New Zealand share a chapter, as do ten Western European countries (Sweden, Norway, Denmark, West Germany, Italy, Spain, France, Belgium, Ireland and Switzerland). The countries were chosen to minimize the risk of challenges that a particular country does not meet the criteria of a "free and democratic" society. After the

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[13] [1983] 1 S.C.R. 283.

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[1] P. 9, quoting R. Bean, Comparative Industrial Relations (1985), p. 13.

country surveys, the text also examines international instruments applicable to union security (I.L.O. Conventions, the International Declaration of Human Rights, the International Covenant on Economic, Cultural and Social Rights, the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the European Social Charter). Finally, there is an appendix containing statutory provisions from most of the countries surveyed.

The discussion of each country commences with a background section on the nature of union organizations, bargaining structures, extent of government involvement in industrial relations, and the status of collective agreements. This is followed by a description of the status of union security arrangements in that country. The clear and succinct description of the legal regulation of union security arrangements is a major strength of the book. The overview of the industrial relations system within which the various union security arrangements operate is, however, necessarily very sketchy in a book covering so many countries in a mere 158 pages of text. (For example, the ten Western European countries are covered in a mere forty pages). More detail is provided for countries like the United States and Great Britain. The justification is that they have had a much more extensive record of legislative and judicial intervention in the regulation of union security arrangements.

The survey reveals diverse approaches to the operation of union security provisions. Countries such as Denmark treat the use of such clauses as an entirely private matter, to be agreed upon by the unions and the employers with whom they negotiate. Other countries completely ban any requirement compelling an individual to join a union against his or her wishes. These prohibitions may be contained in statutes (as in Switzerland) or may be the result of a constitutionally guaranteed right not to associate (as in Ireland and France). Other nations impose constraints. These may be procedural, such as requiring the holding of a ballot before compulsory membership can be required (Britain). They may permit only some forms of union security provisions, as for instance allowing the union to collect a fee for service but not permitting compulsory membership (United States). Further restrictions may include limits on the expenditure of union funds for political purposes (Britain and United States) and allowing an individual to opt out of union membership for reasons of religion, conscience or merely for any good reason.

These diverse approaches obviously raise difficult questions about the utility of such a comparative survey to Canadian courts. It is clear that merely comparing with a single country is fraught with danger, because of the inherent difficulty in factoring out a range of elements that might explain the difference of approaches, such as the success of a particular political party, and the economic, social and cultural traditions

of the country.[2] Nor would it be appropriate for Canadian courts to decide merely by keeping a box score and basing their decision on which approach is favoured by a majority or a plurality of countries.[3] It is quite possible that a number of different union security arrangements may all be compatible with free and democratic institutions.

The author suggests that what must be done is to seek out trends to the extent that they may exist in any given case.[4] Trends are to be found, says the author, through national surveys and a careful scrutiny of international treaties and Conventions. The author fails to go beyond the descriptive to analyze the evidence and to suggest trends and lines of reasoning that might be adopted by Canadian courts in determining the reasonableness of union security arrangements.

Although the author purports to see value in taking cognizance of the laws of other countries even when no clear message can be obtained, there is also a danger. In the absence of a clear and comprehensive analysis of the evidence, courts may fail to recognize the influence of political, social, economic and cultural differences that determine the acceptability of a particular institutional arrangement. For example, the willingness of many of our courts to adopt and apply the concept of freedom of association as developed by the Privy Council in interpreting the constitution of Trinidad makes one less than sanguine about the courts' ability to carry out this exercise in an appropriate fashion.[5] Decisions such as these illustrate that those who seek to promote the use of the comparative approach should provide the needed analysis. The addition of such an analysis could have made this book much more useful and thought-provoking.

Nevertheless, the compilation of legislative, judicial and international precedents affecting union security, along with the succinct descriptions of each country's industrial relations regime within which the legal approaches to union security operate, make this a useful research tool in undertaking a comparative analysis.

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[2] Pp. 153-154.

[3] P. 156.

[4] P. 156.

[5] A number of courts of appeal attached significant weight to the decision of the Privy Council in *Collymore* v. *Attorney-General*, [1970] A.C. 538, without undertaking much comparative contextual analysis. See: *Dolphin Delivery Ltd.* v. *Retail, Wholesale & Department Store Union, Local 580* (1984), 10 D.L.R. (4th) 198 (B.C.C.A.), aff'd [1986] 2 S.C.R. 573, 33 D.L.R. (4th) 174; *Public Service Alliance of Canada* v. *Canada*, [1984] 2 F.C. 889, (1984), 11 D.L.R. (4th) 387 (C.A.), appeal dismissed, [1987] 1 S.C.R. 424, (1987), 38 D.L.R. (4th) 249.

Introduction to the Study of Law. Third Edition.
By S.M. WADDAMS.
Toronto: Carswell. 1987. Pp. xvi, 220. ($11.95)

Reviewed by Roger Bilodeau*

Professor Norman gave the first edition of Professor Waddams' book (1979) a most favourable review[1] and quite rightly pointed out the uniqueness of this "little book". This assessment is still correct because the book provides a concise and complete picture of how Canada's legal system operates, as well as of the place and role of its major players and institutions. It is a valuable introductory text for whoever is contemplating the study of law. In fact, Canadian law schools should seriously consider putting it on the list of required reading for all first year law students.

Most law professors who have taught or are currently teaching an introductory course on Canada's legal system and its operation will no doubt attest to the fact that there are very few Canadian materials in this area. Most law schools have an introductory course of some kind, usually a general overview of the legal system, its process, institutions and methodology. On the other hand, many law school graduates have bad memories of this type of introductory course, for reasons ranging from boring materials to, worse yet, a boring lecturer. Yet it is most often after graduating from law school that many lawyers realize the importance of that infamous introductory course.

Seen in this light, the importance of a law school's first year introductory courses and of Professor Waddams' book becomes even clearer. Moreover, the book serves many purposes, as a valuable course manual for entering law students, as a handy reference work for law professors, as a refresher for busy practitioners who want a quick review of a particular component of the law and its process, and, last but not least, as a useful introduction for the layman wanting a better grasp of institutions and the inner workings of Canada's legal system.

It can fairly be said that Professor Waddams has not made any major changes in the two revisions of his book to date. Since I am in agreement with Professor Norman's initial review of the book, I propose to review this third and latest revision in terms of minor changes which could be made in future editions to make a good, solid product even better.

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[1] K. Norman, Book Review (1980-81), 45 Sask. L.R. 171.

As a starting point, the book could include a few references to the Canadian Bar Association (CBA) and some of its reports during the last few years. Although the CBA is not a regulatory body of the legal profession, there should be at least some mention of its existence in the section entitled "Organization of the Legal Profession".

On a related topic, the following section on specialization in the legal profession makes no mention of the CBA's report entitled The Unknown Experts: Legal Specialists in Canada Today.[2] Although Professor Waddams' discussion on that subject is relevant and to the point, it does not seem to take into account the contents of one quite recent report on the matter at hand.

On a different note, the section on judicial appointments may be too brief in light of the importance of these nominations since the advent of the Canadian Charter of Rights and Freedoms. As in the sections on specialization and the organization of the legal profession, the judicial appointments section makes no reference to the CBA's 1985 reports, respectively titled The Appointment of Judges in Canada,[3] and The Independence of the Judiciary in Canada.[4] Without going into the details of each report, there could have been some mention of each, either in the text itself or in a bibliography. It is also worthwhile to point out the CBA's very recent report on the Supreme Court of Canada,[5] which contains a wealth of information on our highest court.

Most will agree that Professor Waddams is to be congratulated for the conciseness of his work. His effort to keep the number of pages to a minimum is worthy because thick volumes often turn potential readers away. On the other hand, one must acknowledge that there have been a few significant developments in legal circles during the last few years, such as computerization and methods of alternative dispute resolution. No one can ignore the growing use of computers in the legal profession, whether it be for word processing, research or communications. The recent implementation of the CBANET communications network[6] and the growing use of QUIK/LAW's[7] legal research facilities are further

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[2] Canadian Bar Association, Report of the Special Committee on Specialization in the Legal Profession (1983).

[3] Canadian Bar Association, Report of the Committee on the Appointment of Judges in Canada (1985).

[4] Canadian Bar Association, Report of the Committee on the Independence of the Judiciary in Canada (1985).

[5] Canadian Bar Association, Report of the Committee on the Supreme Court of Canada (1987).

[6] This network was set up and is operated by the Canadian Bar Association.

[7] This facility is owned and operated by QL Systems Ltd. in Kingston, Ontario.

evidence of the growing impact of computerization in the law. Closely linked to the use of computers is the question of electronic distribution of court judgments.[8] Many believe that this new phenomenon will soon be widespread. In future editions, entering law students and other readers could be made aware of this new era of access to legal documents.

In discussing the adversarial system and the legal process, it would also be advantageous to throw in a few remarks on the growing use of alternative methods of dispute resolution. Much attention has been drawn in recent years to the advantages of mediation, arbitration and negotiation. Since they will no doubt continue to have an impact on the legal profession, a future edition of this introductory book should at least make note of these methods, which propose to alleviate some of the least desirable consequences of the adversarial system.

Another possibility would be to include a short presentation of issues facing the legal profession in future years. For example, the current question regarding the use of cameras in the courts could be raised, with a short summary of the arguments for and against such a practice. Whatever the issue being raised, the main idea would be to provide a brief survey of questions and issues likely to dominate legal circles in the years ahead.

As a final suggestion, some thought should be given to including at least a few bibliographical references. These are often useful to enable the reader to pursue research or study on a particular point. Professor Waddams' already excellent book would be enhanced by the inclusion of such a section.

To conclude, one could properly say about this book that "if it ain't broke, don't fix it". On the other hand, a little "fixing" would be appropriate, simply by making minor changes and adding a few brief sections to bring this leading introductory manual in step with all components of Canadian law as they stand at the close of the twentieth century.

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[8] The proceedings of a forum on the electronic distribution of judgments held in Ottawa on November 20-21, 1987, will soon be published by the Canadian Law Information Council.

Mental Disability and the Law in Canada.
By GERALD B. ROBERTSON.
Toronto, Calgary, Vancouver: The Carswell Company Limited. 1987. Pp. xciii, 423. ($72.00)

Reviewed by Gerrit W. Clements*

In writing this book, Professor Robertson set himself an ambitious task which, to a large extent, he has successfully completed. Although the introduction states that "[t]his book does not attempt the impossible" and only "concentrates on those areas in which mental disability can have a significant impact on an individual's legal rights and obligations", since it "attempts to analyze the relevant law of every common law jurisdiction in Canada" and "much of [this] law. . . is statutory and varies significantly across Canada",[1] the author clearly has undertaken a project of no mean proportions. Compared with the only other recent book dealing with mental health and the law, Mental Health Law in Canada,[2] by Harvey Savage and Carla McKague, which is written from an unabashed patients' advocacy point of view and deals largely with the law of involuntary committal of psychiatric patients, the approach of Mental Disability and the Law in Canada is more balanced and its scope broader. Surprisingly, only the last 100 pages of the book are concerned with patients in mental health facilities.

Part I details first the law of committeeship or trusteeship of the estates of the mentally disabled, including the little-discussed area of statutory committees of estate under which the Public Trustee or equivalent becomes the committee of the estate of a person either upon that person being certified as mentally incapable of looking after his or her estate or automatically by virtue of the person becoming an involuntary patient in a mental institution. After a very useful section on the powers and duties of a committee of estate follows a description of the law of guardianship of the person and the powers and duties of such guardians. The latter, also often referred to as "committees", have the power and duty to make decisions respecting "the person" where someone is declared to be mentally incapable to make such decisions himself or herself. The author is justifiably critical of almost all existing legislation, particularly

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[1] P. 1.

[2] (1987), reviewed, *supra*, p. 190. There is also a lengthy chapter on "Law and Psychiatry" in G. Sharpe, The Law & Medicine in Canada (2nd ed., 1986), pp. 357-446. This is also mainly concerned with the law of involuntary committal of psychiatric patients.

with respect to the lack of "clear and well reasoned criteria",[3] "effective procedural safeguards" and delineation of "[t]he powers and duties of a guardian"[4] stating that it "fails miserably" in this respect and "requires radical reform".[5] Other similar statements from the Saskatchewan Law Reform Commission[6] regarding that province's legislation are quoted, as well as a comment about guardianship legislation cited by the Supreme Court of Canada in *Re Eve*[7] to the effect that it is "pitifully unclear with respect to some basic issues".[8]

Professor Robertson predicts that the Alberta guardianship legislation, the Dependent Adults Act,[9] ". . . will serve as the model for future reform in Canada"[10] since it has overcome many of the problems enumerated above, particularly in the manner in which it provides a way to clothe a guardian with such limited powers as are necessary and leave the dependent adult with the remainder. Reportedly, this prediction either has recently or will soon come true for the Province of Ontario.

A point on which one would have welcomed comment concerns the author's mentioning of alternative ways of providing for the management of the mentally incompetent person.[11] One of these ways is for payments under the Canada Pension Plan to be made to a trustee.[12] The book does not mention that a form entitled "Certificate of Incapability—Old Age Security—Canada Pension Plan" of the Department of National Health and Welfare is used to declare a person mentally incapable personally to receive O.A.S. and C.P.P. payments, which then instead go to a trustee, usually the Public Trustee, who administers the funds on the person's behalf. The certificate may be signed by a "qualified physician who knows the beneficiary personally". If this is not "practicable", "a lawyer who has been handling the affairs of the beneficiary" or "a professional social worker" may sign. The author's comments in this

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[3] P. 100.

[4] P. 101.

[5] *Ibid.*

[6] Tentative proposals for a Guardianship Act, Part I: Personal Guardianship (1981), p. 3.

[7] (1986), 31 D.L.R. (4th) 1, at p. 16 (S.C.C.).

[8] P. 101, citing P. McLaughlin, Guardianship of the Person (1979), p. 35. Another study, as yet unpublished, has reached comparable conclusions. See R.M. Gordon, S.M. Verdun-Jones and D.J. MacDougall, Standing in their Shoes—Guardian and Trusteeship and the Elderly Canadian (to be published by Carswell in a condensed version under the title, Adult Guardianship in Canada).

[9] R.S.A. 1980, c. D-32.

[10] P. 103.

[11] P. 9, pp. 170-171.

[12] Pp. 170-171, n. 116.

connection would have been instructive, particularly in view of his recurring emphasis on proper procedural safeguards.[13]

This part of the book also contains a discussion of two cases which are of crucial importance for the rights of the mentally incompetent. The Ontario case of *Clark* v. *Clark*[14] was significant in clarifying the sometimes difficult-to-draw distinction between mental incompetence and physical disability. The more controversial decision of the Supreme Court of Canada in *Re Eve,*[15] which originated in Prince Edward Island, was to the effect that no one, including a court, can authorize a non-therapeutic sexual sterilization procedure on a mentally incompetent person because "it can never safely be determined that such a procedure is for the benefit of that person".[16] Professor Robertson rightly points out that *Re Eve* did "not resolve the important question of what constitutes 'therapeutic' sterilization".[17]

Part II of the book, together with the earlier referred to discussion of appointments of committees of estate, will likely prove to be the most useful part for practitioners. It encompasses an apparently comprehensive survey of the various areas in which mental disability affects the rights of people to enter into contracts, appoint agents, execute powers of attorney and convey property. Also, this part sets out the law with respect to succession, including the thorny area of testamentary capacity and the solicitor's duty in this regard. The confusing law of tort liability of the mentally disabled is subjected to incisive analysis as is the effect of mental disability in the area of family law, elections and litigation. Wedged in between is a too brief chapter on discrimination against the mentally disabled.

Part III, as already mentioned, deals with the law regarding patients in mental health facilities. Although the topics of admission of voluntary psychiatric patients and of persons pursuant to the Criminal Code are touched on, the major portion by far is devoted to commitment and treatment of involuntary patients. Those unfamiliar with this area of the law will find here an excellent introduction, whereas those who are will probably find several points of which they were not aware, as did this reviewer.

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[13] The Public Trustee for the Province of British Columbia only accepts forms which have been signed by a physician.

[14] (1982), 40 O.R. (2d) 383 (Ont. Co. Ct.).

[15] *Supra*, footnote 7.

[16] *Ibid.*, at p. 32.

[17] P. 137.

Professor Robertson gives a succinct yet clear overview of the bewildering variety of civil commitment laws which currently exist in the provinces and territories. From the point of view of this reviewer, who was a member of the Uniform Law Conference of Canada Committee responsible for the drafting of the Uniform Mental Health Act, it is regrettable that the author did not at least sketch the general approach of this Uniform Act rather than making only a few fleeting references to the existence of a draft.[18] From one who so skilfully and tersely detailed the often radically divergent pieces of legislation which after all are intended to deal with similar patients, this is an unfortunate omission. Since the main touchstone used by the author is the Canadian Charter of Rights and Freedoms, which was the *raison d'être* for the creation of the Uniform Law Reform Conference Committee and its main task, it would have been helpful to see how the draft fared. In particular, it is odd that what is possibly the most controversial part of the Uniform Mental Health Act, containing provisions dealing with compulsory outpatient treatment after initial committal and upon conditional discharge from hospital which at present in a rudimentary form apparently only exist in British Columbia, is not mentioned. A criticism that can be made more generally is that, in the attempt to discuss an impressive range of issues in the law with respect to mental disability, the reader is not always made adequately aware of the variety of views that exist about these issues, from a legal, ethical and a medical point of view. No reference could be found, for example, to the apparent come-back in some of the states in the United States of some form of the "welfare test" as ground for involuntary committal. Some of the topics discussed, such as consent to treatment which was easily the second most controversial area dealt with by the Uniform Mental Health Act Committee, merit only a few pages, of which, in turn, the problems surrounding electroconvulsive therapy occupy about one page.[19] More accurately, there is no real discussion of those problems, although there is a valuable mention of some of the recent articles which do discuss them.[20] Also, the author states that the issue of "informed" consent is not discussed in the book.[21] It would have been helpful if there had been, at least, a sketch of the outline of the debate concerning the information to be given to patients with respect to the risk of tardive dyskinesia resulting from neuroleptic drugs.[22]

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[18] Pp. 310, 312, 328, 335, n. 168. Harvey and McKague, *op. cit.*, footnote 2, include the text of the U.M.H.A., Sept. 3, 1986, discussion draft as an appendix to their book.

[19] Pp. 401-402.

[20] P. 401, n. 200.

[21] P. 409, n. 248.

with respect to the risk of tardive dyskinesia resulting from neuroleptic drugs.[22]

Perhaps one is almost bound to fail to some extent in an attempt to cover so many issues in such detail in view of the many peculiarities of the law of a given jurisdiction. Two examples may be given. Footnote 218 on page 32 states that a certificate of incapability under section 1(a) of the Patients Property Act[23] of British Columbia is issued by a physician.[24] In fact, since the power to issue these certificates belongs to directors of provincial mental health facilities or officers-in-charge of psychiatric units, the certificates are most frequently issued by professionals other than physicians, since only two or three of approximately forty-five provincial mental health facilities (not counting sub-offices) have directors who are physicians. Although sometimes the director delegates this responsibility to a physician, in the community mental health centres the certificate is almost invariably issued by a non-physician, albeit normally only after having obtained the advice of a physician. This points to another inaccuracy since the author assumes[25] that in British Columbia, as in most other provinces, only patients in psychiatric or other mental health institutions are certified as mentally incapable to look after their affairs with the Public Trustee becoming the statutory committee of the estate. In fact, most of the certificates are issued with respect to people who are outpatients at community mental health centres,[26] or who may be seen by someone from the centre on only one occasion simply for the purpose of an examination to determine whether a certificate should be issued.

These are obviously minor flaws in an excellent work and pointing them out may seem to be carping. It is submitted that in a book which attempts to be so comprehensive in scope, such minor inaccuracies are unavoidable. What is important for practitioners to remember is that, as mentioned, each jurisdiction has its own peculiarities which are not always readily apparent even from reading the legislation. Although Professor Robertson's work shows the results of the combination of a vast amount of research with an obvious gift for succinct description and interpretation, in some cases the book, inevitably, only points to sources which

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[22] In addition to the two articles cited, an excellent, balanced discussion can be found in S.Taub, Tardive dyskinesia: Medical Facts and Legal Fictions (1985-86), 30 St. Louis U.L.J. 833.

[23] R.S.B.C. 1979, c. 313.

[24] Footnote 20, on p. 56, is less definite.

[25] P. 55.

[26] Which are provincial mental health facilities so designated by order of the minister under section 3 of the Mental Health Act, R.S.B.C. 1979, c. 256, in addition to those institutions caring for people on an in-patient basis.

must be consulted before any answers can be found, whereas in others the "fine print" of the legislation or the finer points of practice will have to be checked.

It should be obvious from this review that Mental Disability and the Law in Canada is indispensable to any practitioner who in some area of his or her practice may come in contact with people with a possible mental disability.