
BOOK REVIEWS

CHRONIQUE BIBLIOGRAPHIQUE

S. Stephenson, éd., *Youth, A Special Case, La discrimination sur la base de l'âge*. Montréal: Law & Youth Research Group, 1986. Pp. xiv, 200 [\$6]. Commenté par Renée Joyal.*

Comme son titre l'indique, cet ouvrage passe en revue les contraintes et limites imposées aux jeunes par la loi en raison précisément de leur âge, et remet en cause le bien-fondé des diverses dispositions législatives concernées. « The results of the study, we sincerely hope, will instigate change: change in attitude toward young people and age-limits; and change in law where age-limits are needless and arbitrary »,¹ peut-on lire dans l'introduction.

Il s'agit d'un ouvrage collectif et bilingue produit par un groupe indépendant de jeunes juristes, étudiants ou récemment diplômés, le Law & Youth Research Group. Les auteurs des différents textes sont Marc Beauchemin, Tom Brooker, Carole Robidoux, Gail Sinclair et Sandra Stephenson, cette dernière ayant de plus assuré la coordination et l'édition de l'ouvrage. Le projet a reçu l'appui du Secrétariat d'Etat fédéral, du Secrétariat à la Jeunesse du Québec et de la Faculté de droit de l'Université McGill. Plusieurs personnes ont contribué à sa réalisation.

Les différents thèmes sont abordés dans la perspective de la *Charte canadienne des droits et libertés*² et de la *Charte des droits et libertés de la personne*³ qui interdisent la discrimination sur la base de l'âge. Les limites de ces deux textes fondamentaux sont par ailleurs soulignées avec justesse : on y rappelle en particulier le tempérament apporté par l'article 1 de la *Charte canadienne* et le fait que la *Charte québécoise* n'interdise la discrimination fondée sur l'âge que dans la mesure où elle n'est pas prévue par la loi.

Afin d'atteindre leur objectif, les auteurs font un tour d'horizon des principales dispositions législatives intéressant les jeunes, en relatant plus en détail celles qui limitent leurs droits et leurs responsabilités, ou encore les placent dans des situations particulières à cause de leur âge.

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¹S. Stephenson, éd., *Youth, A Special Case, La discrimination sur la base de l'âge*, Montréal, Law & Youth Research Group, 1986 à la p. 1.

²Partie I de la *Loi constitutionnelle de 1982*, constituant l'annexe B de la *Loi de 1982 sur le Canada* (R.-U.), 1982, c. 11 [ci-après *Charte canadienne*].

³L.R.Q. c. C-12 [ci-après *Charte québécoise*].

Les divers textes législatifs étudiés sont regroupés en quatre chapitres, comportant chacun deux ou trois sous-thèmes. C'est ainsi qu'on examine successivement les activités sociales — accès au cinéma, consommation de tabac et d'alcool, sécurité routière, fréquentation scolaire ; le travail — accès à l'emploi, revenus et relations de travail, santé et sécurité ; la propriété et les contrats — personnes mineures émancipées et non émancipées, tutelle et curatelle ; certaines autres matières civiles — successions et donations, les transactions commerciales, lettres de change et effets bancaires, corporations et transferts d'actions, la citoyenneté et l'immigration ; les lois de bien-être social — soins de santé, aide sociale ; la protection de la jeunesse et finalement, la législation criminelle — jeunes contrevenants, infractions d'ordre sexuel et règles de preuve.

Ce rappel des divers sujets analysés témoigne amplement du fait que les principales questions intéressant les personnes mineures ont été couvertes par l'ouvrage. Les développements consacrés au travail, ainsi qu'à la propriété et aux contrats sont particulièrement bien étoffés. D'autres laissent le lecteur sur son appétit : c'est le cas, notamment, de ceux relatifs aux activités sociales, où d'autres éléments pertinents auraient pu être traités, et de ceux touchant la protection de la jeunesse et la législation criminelle, où le cadre législatif général a été escamoté. Il nous semble que le secteur scolaire, en raison de la place primordiale qu'il occupe dans la vie des jeunes et des nombreuses dispositions législatives qui le régissent, aurait mérité une attention particulière. Il est vrai que la *Loi sur l'instruction publique*⁴ est étudiée sous la rubrique « activités sociales », mais d'autres dimensions liées à l'école auraient pu être abordées avec profit.

Le survol des dispositions législatives pertinentes au propos central de l'ouvrage est parfois assez aride. Ce n'est pas une mince affaire que de présenter d'une façon vivante des textes de loi fixant des conditions d'âge pour l'exercice de certains droits ou de certaines activités. Les lecteurs ne doivent donc pas s'attendre à une lecture facile ou hilarante. Par ailleurs, ils peuvent légitimement espérer un exposé clair et conséquent : exception faite de certains courts passages, la plupart des chapitres répondent à cette exigence. Ceux consacrés à la protection de la jeunesse et aux jeunes contrevenants ne passent toutefois pas ce test. Il s'agit paradoxalement des domaines où se sont produits le plus de changements législatifs au cours des dernières années et cela, dans la perspective d'une perception renouvelée des jeunes et de leur place dans la société. Cette évolution est d'ailleurs très justement soulignée dans l'ouvrage. Ce qui fait obstacle à une bonne compréhension des développements portant sur ces questions, c'est l'absence de présentation du sens général et des principaux mécanismes des textes lé-

⁴L.R.Q. c. I-14.

gislatifs pertinents, soit la *Loi sur la protection de la jeunesse*⁵ et la *Loi sur les jeunes contrevenants*.⁶ On a extrait de ces deux lois les dispositions relatives à l'âge sans faire référence à leur cadre d'application. L'exposé demeure donc incomplet et laisse par le fait même les lecteurs dans la confusion. Quelques erreurs peuvent être relevées au fil de certain développements. Par exemple, lorsqu'il est question des conventions matrimoniales des personnes mineures,⁷ et dans un paragraphe introductif consacré à la protection de la jeunesse,⁸ on n'a pas tenu compte des modifications législatives récemment intervenues dans ces domaines. Faut-il rappeler, à la décharge des auteurs, que les sujets sur lesquels ils se sont penchés ont fait l'objet de nombreux amendements récemment ? Il est parfois difficile de s'y retrouver et l'exercice peut être périlleux, même pour des auteurs plus chevronnés. Les responsables de la publication ont d'ailleurs pris la précaution de décliner toute responsabilité résultant d'une erreur ou d'une omission quelconque dans le libellé du texte et ont insisté sur le fait que l'ouvrage n'est pas un manuel juridique, mais « a discussion paper ».⁹

Cette intention est très manifeste au niveau de l'introduction, qui situe d'emblée le propos dans la perspective des droits fondamentaux et de la non-discrimination, et qui annonce clairement la démarche retenue et les développements subséquents. Eu égard à l'objectif énoncé au départ, ceux-ci ne tiennent que partiellement leurs promesses. Bien sûr, on y met le doigt sur les dispositions législatives appropriées, on dénonce le caractère arbitraire de certaines règles juridiques, mais on discute peu de leurs fondements, des choix politiques ou fonctionnels qui les sous-tendent et des alternatives offertes au législateur en la matière. Ce n'est qu'en conclusion de l'ouvrage que ces questions sont débattues d'une manière un tant soit peu élaborée. Dans son approche et dans sa facture, ce texte final est remarquable. On y voit à l'oeuvre une capacité d'analyse et de synthèse peu commune. Toutefois, les réflexions qui y sont présentées auraient beaucoup plus d'impact si elles pouvaient être reliées à des observations déjà faites dans le cadre des divers thèmes étudiés.

Les solutions préconisées pour remédier à l'arbitraire des textes législatifs actuels sont intéressantes. Il est admis d'emblée qu'il ne sera pas possible dans tous les cas de remplacer les conditions d'âge par des critères moins arbitraires. On propose alors de fonder ces règles sur des études empiriques sérieuses plutôt que sur la seule force d'inertie des habitudes ou de la tradition. On suggère par ailleurs de remplacer le critère de l'âge par

⁵L.R.Q. c. P-34.

⁶S.C. 1980-81-82-83, c. 110.

⁷Stephenson, *supra*, note 1 à la p. 62.

⁸*Ibid.* à la p. 140.

⁹*Ibid.* à la p. ii.

celui de la « capacité » dans le plus grand nombre de cas possible et d'en vérifier l'existence au moyen de divers « tests ». Sans entrer dans une discussion qui pourrait être fort longue sur l'opportunité, la portée ou la fiabilité de tels tests, disons tout de suite que ce mécanisme nous semble pouvoir être envisagé dans certains contextes particuliers, comme, par exemple, lorsqu'il s'agit de déterminer l'aptitude d'une personne à exercer un emploi ou une fonction ou, encore, à utiliser un véhicule ou une pièce de machinerie ; par ailleurs, ce même mécanisme nous semble tout à fait impraticable dans d'autres situations, par exemple, lorsqu'il s'agit de déterminer la capacité d'une personne à voter ou à s'engager par contrat, l'application d'un tel système supposant alors la mise en place d'une affolante bureaucratie et la multiplication des recours administratifs ou judiciaires. L'ouvrage a toutefois l'immense mérite de remettre en cause l'opportunité et le bien-fondé de règles établies et de proposer des pistes de réflexion pour en réduire le caractère arbitraire.

La présentation du texte est agréable et les divers exposés sont bien structurés. On y trouve cependant quantité de fautes de grammaire et d'orthographe, qui auraient pu être corrigées, nous semble-t-il, avec l'aide de personnes-ressource.

L'ouvrage comporte des textes français et anglais. Les pages couverture et les pages préliminaires donnent des informations dans les deux langues, la qualité du français y laissant toutefois beaucoup à désirer. Il est dommage que l'introduction, la conclusion et les titres des chapitres aient été rédigés uniquement en langue anglaise. Les addenda intercalés entre les pages 11 et 13 auraient dû être intégrés au texte. Le procédé utilisé ici sent par trop l'amateurisme.

Pour conclure, *Youth, A Special Case, La discrimination sur la base de l'âge*, est un ouvrage d'un intérêt certain pour les juristes et toutes les personnes préoccupées par la place des jeunes dans la société. Il présente une masse d'informations utiles et soulève un débat important dont les multiples facettes n'avaient pas été explorées d'une façon systématique jusqu'ici. La publication d'un tel ouvrage suppose un énorme investissement de temps et d'énergie. L'initiative est d'autant plus admirable qu'elle est le fait de jeunes juristes qui se sont organisés sur une base autonome avec l'aide d'appuis externes. Les quelques faiblesses relevées ne compromettent pas la crédibilité et l'opportunité de cette démarche.

R. Crête, *The Proxy System in Canadian Corporations: A Critical Analysis*. Montréal: Wilson & Lafleur, 1986. Pp. xviii, 449 [\$49.50]. Reviewed by Calin Rovinescu.*

Any critical analysis of the Canadian proxy system should conclude, as has Professor Crête's study,¹ that legislative, regulatory and policy initiatives in this field to date have been inadequate both with respect to promoting disclosure of meaningful information and with respect to promoting shareholder participation in corporate governance. To recognize this inadequacy is to acknowledge that this field of law is still very much in its developmental phase in Canada. For this reason, many of the proposals for reform of Canadian law and the review of United States law contained in this book provide interesting insights.

Abuse of the confidence placed on the directors of a public corporation by the small shareholder has led to extensive but unclear requirements for disclosure of proxy solicitation. As a result, practitioners specializing in corporate and securities law must interpret a relatively new area of the law in which there are few specialized legal publications.

Professor Crête provides a thorough and up-to-date manual which, given its comparative nature and its constant reference to corporate and securities regulation at the federal and provincial levels and in the United States, can easily be used by practitioners throughout Canada. The work is equally sensitive to new trends in this field, such as the establishment of rules for communications to beneficial owners of shares held in "street-name" and nominee name, and the use of intermediaries within the proxy system, which are areas of constant concern to many public corporations.

The study has been divided into four basic and very comprehensive sections. The first deals with the role of management within the proxy system and disclosure requirements generally; the second, with the role of shareholders within the system; the third, with the role of intermediaries within the process of dissemination of proxy materials; and the fourth, with ancillary measures for ensuring adequate disclosure and shareholder participation.

From a practitioner's viewpoint, and notwithstanding Professor Crête's conclusions regarding the deficiencies in Canadian disclosure requirements, the strongest part of the book is the one dealing with the role of management and disclosure of information through the proxy system. It provides easy reference to Canadian and United States caselaw and authors in interpreting many of the disclosure requirements. Whether one is called upon to interpret

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¹R. Crête, *The Proxy System in Canadian Corporations: A Critical Analysis* (Montréal: Wilson & Lafleur, 1986).

such disclosure requirements under the *Canada Business Corporations Act*² or the substantially similar provisions of Ontario or Quebec securities legislation, one undoubtedly struggles with the applicability or pertinence of many of the disclosure requirements. The author's review of numerous cases involving interpretation of general and specific disclosure requirements should assist practitioners and reduce the research work required to evaluate the application of such requirements to the given circumstances.

This book presents more than a mere reiteration of existing principles and a paraphrasing of statutory and regulatory provisions. The author shares with the reader her own very strong views on the inadequacies of the current system and the inequities that exist between management and shareholders within the proxy solicitation process. While Professor Crête does not hide the fact that she is very much in favour of increasing the rights and access of shareholders in the proxy system at the expense of management, she nonetheless provides an objective summary of cases and an objective analysis of how the proxy system developed and how it should be construed. The author states in her introduction that the purpose of the study is to assess the adequacy of present Canadian proxy regulation in comparison to corresponding American regulation. It is my view that the author has accomplished much more than her stated purposes.

²S.C. 1974-75-76, c. 33.

D. Estrin, *Handle With Caution: Liability in the Production, Transportation and Disposal of Dangerous Substances*. Toronto: Carswell, 1986. Pp. 250 [532]. Reviewed by Doreen C. Henley.*

In *Handle With Caution*¹ David Estrin describes four laws which impose major new duties and liabilities on persons generating, transporting and handling dangerous goods of all descriptions including wastes. According to the author, these laws contain the most significant changes in federal and Ontario environmental laws to occur in two decades. Estrin's stated purpose for writing *Handle With Caution* is to contribute to the understanding of these new laws so that the legislation can achieve its widest utility. The legislation described in the book includes the federal *Transportation of Dangerous Goods Act*² and Regulations,³ the Ontario *Dangerous Goods Transportation Act, 1981*⁴ and Regulations,⁵ as well as the Ontario *Environmental Protection Act*⁶ and Regulations.⁷

In his introduction Estrin explains that the new laws differ from the environmental laws enacted in the 1970's. Whereas earlier laws were aimed at licensing stationary sources of pollution and authorizing government officials to take necessary abatement action, these new laws have a different objective. They are designed to prevent the escape or spillage of dangerous goods and pollutants in the course of their manufacture, transportation or handling, and to ensure that appropriate notification and remedial actions are taken at the earliest possible times; the intent of Ontario's "Spills Bill" is to provide new ways of assuring spill-victim compensation.

One need only examine the new laws in question to understand the challenge Estrin has undertaken in writing this book. The federal Act and Regulations could well be described as a lawyer's (or transporter's) nightmare given their volume and style of legal drafting. The Ontario "Spills Bill", embodying as it does the most significant changes in environmental legislation in a decade, presents several complex topics for analysis. Estrin also describes two Ontario legislative initiatives which fit into the context of the new regulatory regimes. The author accomplishes this task by organizing his information into a framework which outlines the new duties, government

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¹D. Estrin, *Handle with Caution: Liability in the Production, Transportation and Disposal of Dangerous Substances* (Toronto: Carswell, 1986) [hereinafter *Handle with Caution*].

²S.C. 1980, c. 36.

³SOR/85-77.

⁴S.O. 1981, c. 69.

⁵O. Reg. 363/85.

⁶R.S.O. 1980, c. 141.

⁷O. Reg. 618/85 and the General Waste Management Regulations, R.R.O. 1980, Reg. 309.

discretionary powers, newly created offences, penalties, liabilities and victim compensation provisions.

In the introductory chapter, Estrin presents an overview of the new laws and includes a brief discussion of the relationship between these laws and existing federal and provincial legislation which addresses remedial action for pollution spills and the recovery of compensation.

The federal and Ontario legislation concerning the handling and transporting of dangerous goods and wastes exempts many products and substances from the application of the new laws. These exemptions are described in Chapter Two. In the federal regulatory scheme there are both partial and complete exemptions; two important classes of exemptions which are described include "consumer commodities" and "limited quantity".

In Chapter Three the author explains the legal duties imposed by the new federal and Ontario laws, including requirements for registration, classification, documentation, manifesting, safety marking, labelling, placarding and safety in handling or offering dangerous goods for transport. Other duties included relate to personnel training, development of emergency response assistance plans, notification procedures and remedial action regarding spills and other occurrences involving dangerous goods.

Chapter Four is a description of the new government discretionary powers. Under the new laws federal and provincial officials are granted powers to restrict and prohibit the transportation and disposal of any type of dangerous goods and wastes, to demand product and technical information, and where appropriate to obtain evidence of financial viability from persons proposing to engage in certain activities. Provincial and municipal officials are granted authority to compel clean-up and remedial action, including broad powers to enter private property.

Chapter Five is devoted to a description of the newly-created offences and penalties. In addition, the author briefly discusses evidentiary issues and the defences available in some circumstances.

The concluding chapter of the book is a description of the liability and compensation provisions in Part IX of the Ontario *Environmental Protection Act* and Regulations. The author includes a brief overview of existing federal statutory liability and compensation schemes.

Handle With Caution will no doubt provide Canadian lawyers and other persons involved with handling and transporting of dangerous goods and wastes with an introduction to the new federal and Ontario laws. The duties, liabilities and compensation provisions under the Ontario "Spills Bill" form an integral part of the author's framework for describing the new legislation; however, one would have hoped for more from this book. In

the first place, the author paraphrases the content of the laws and fails to provide the reader with any analysis of these new laws in the context of existing legislation. Yet there are many issues raised by the principles underlying the newly created duties and liabilities, and the victim compensation, clean-up and restoration provisions. The author describes these new laws as having a different nature from environment laws enacted during the 70's. Unfortunately, the book does not raise or discuss the issues that are bound to arise in their application. For example, the "polluter pays" principle is embraced in both the federal and Ontario legislation. Should the polluter class be limited to the owner or the person in control of a pollutant? What is the appropriateness of the liability rules contained in the new laws in light of this principle? The new laws provide for clean-up and the restoration of the environment. To what extent are these provisions supplementary to those already existing in other federal and Ontario statutes and regulations? At what point does restoration of the environment become financially dysfunctional? Where victim compensation is to be provided, are there, or should there be, any limits to the scope or extent of victim recovery? In our complex society who are the polluters? What is the significance of the policy implicit in the new laws in relation to the prevailing polluter/victim dichotomy? Does Part IX of the Ontario *Environmental Protection Act* impose significant additional liabilities to those existing at common law?

Furthermore, even as a reference text for a description of these new laws, the book has certain limitations. A major omission is the content interface of the new legislation with existing federal and provincial statutes and regulations addressing the same subject matter. The author explains the rules provided by the new laws where there is an inconsistency. If, however, the federal *Transportation of Dangerous Goods Act* does not repeal provisions in other federal acts dealing with the transportation of dangerous goods, are there sections in those acts which may still apply in any given situation where dangerous goods are involved? Could a spill as defined in Part IX of the Ontario *Environmental Protection Act* give rise to duties under existing federal and Ontario statutes apart from the duties imposed under Part IX itself?

Additionally, there are paragraphs in the book describing the provisions of the federal *Transportation of Dangerous Goods Act* or the Regulations which cause confusion for the reader. For example, the author uses the term "limited quantities" to describe two classes of goods which may be exempted from the Regulations where they are transported in *small* quantities. The term "limited quantity" is specifically defined for purposes of the Act and Regulations and is set out in Schedule VIII. The use of the term "limited quantities" by the author when he wants to explain that small quantities of

waste and environmentally hazardous substances are exempted is confusing given that "limited quantity" is a concept which is specific and relevant to the federal scheme.⁸

In another case, Part III of the federal Regulations sets out the relevant procedures to be followed by consignors with goods to be classified. "Consignors" is specifically defined for purposes of Part III; manufacturers, formulators and importers are deemed "consignors". In the transport business manufacturers, formulators and importers are the persons who have the knowledge of such relevant matters as the physical and chemical properties of products and substances. The "consignor" for Part III is not a person who offers consignments for transport, the definition for "consignor" provided in the general definition section of Part I of the federal Regulations. In Chapter Three,⁹ Estrin describes classification procedures. He notes that the "consignor" has responsibility for classifying products or substances. Estrin further describes classification in terms of class, division and packing group, and advises the reader that the "shipper or manufacturer" is required to classify the goods into these categories. But in the next sentence, the author describes the product or substance knowledge required for classification purposes and explains that "shippers" need to have such information. Reference to "shippers" in both places is incorrect on the basis of the definition of "consignor" for Part III purposes. "Consignors" cannot generally know this information.

The author carries his confusion into another section of the book.¹⁰ There he argues that there is an implied duty on provincial "carriers" to classify dangerous goods since the Ontario *Dangerous Goods Transportation Act, 1981* makes it an offence to transport dangerous goods unless there is compliance with all safety requirements,¹¹ which are those requirements imposed by the federal Transportation of Dangerous Good Regulations.¹² This conclusion is erroneous. The duty on Ontario carriers to ensure compliance with applicable safety standards and safety marks follows from the classification of goods by the manufacturer, formulator or importer. Where a carrier may believe that the dangerous goods have been misclassified, his more reliable course of action is to refuse to transport the goods until satisfied as to their proper classification. Carriers do not have knowledge of major physical and chemical properties and other essential product information for classification purposes. Their responsibility lies only with en-

⁸Estrin, *supra*, note 1 at 18.

⁹*Ibid.* at 64.

¹⁰*Ibid.* at 70.

¹¹*Supra*, note 4, s. 3.

¹²*Supra*, note 3, ss 1-5.

surging compliance with applicable safety requirements for vehicles, containers, packaging, labelling and placarding.

With respect to the description of the classification process in the federal Transportation of Dangerous Goods Regulations, certain inconsistencies may be noted. The author introduces the subject in Chapter Two¹³ in his discussion about the definition of "dangerous goods". However, this description differs from a later discussion in the author's Guidelines for Classification¹⁴ and with the Guide to Classification Procedures published by Transport Canada.¹⁵ In Chapter Two the explanation would have been less confusing if the author had explained that classification procedures differ depending on whether the "consignor" is dealing with a "fully specified dangerous good" or a "not fully specified dangerous good". In the case of the former, the constituent properties of the product or substance to be classified remain constant and no testing is required before classification. The list of over three thousand dangerous goods included in the federal Regulations, Schedule II, List II, contains primarily "fully specified dangerous goods".¹⁶ All the necessary information for classification purposes is provided for the "consignor" in List II.

If the product or substance to be classified cannot be found in List II or for which only some of the classification information is available, then it is a "not fully specified dangerous good" and must be classified in accordance with Part III of the Regulations. "Not fully specified dangerous goods" are those products or substances whose properties vary and for which tests must be conducted by the "consignor" to verify the properties for classification purposes. Dangerous goods are classified by class, division and packing group.¹⁷

Additionally, there are certain editorial errors in the book which detract from its use as a reference text.¹⁸ For example, the Regulations to the federal *Transportation of Dangerous Goods Act* have been substantially amended by successive enactments. These amendments are included by the author when describing their content. However, the footnotes which provide the

¹³Estrin, *supra*, note 1 at 10.

¹⁴*Ibid.* at 64.

¹⁵*Ibid.* at 68.

¹⁶The list of 3000 substances has been developed from the United Nations list of recommended dangerous goods to achieve international compatibility in the handling and transporting of dangerous goods and waste.

¹⁷Generally the class and division describe the nature of the dangerous goods, while the packing group class indicates the relative degree of hazard.

¹⁸For *e.g.*, see Estrin, *supra*, note 1 at 10 (the Schedule in the federal *Transportation of Dangerous Goods Act* defining the nine classes follows section 32) and at 64 (the manufacturer is required to define a class, division, packing *group*, not ground).

reference to the amended law do not provide the correct citation for the relevant amendment making it very confusing for those who wish to refer to the statute.

A major portion of the book describes the substantive law in the federal regulatory scheme for the handling and transporting of dangerous goods. The dynamic feature of this scheme is undoubtedly the federal Regulations. It is also expected that these Regulations will evolve over several years. For example, amendments to Part VI of the Regulations for the manufacture and re-use of the packagings for the transportation of dangerous goods are imminent. In addition, in light of the intermodal nature of the federal regulatory scheme, the federal Regulations must reflect all technical changes made by the coordinating agencies, whether federal or international, so that national and international compatibility will be assured. The author himself points out in several chapters the need to keep abreast of all amendments to the federal Regulations.

Given that many future amendments will occur, this book, either as an introductory text or a reference source, will become more and more limited over time. The new federal laws will create a national, intermodal scheme for the handling and transporting of dangerous goods and waste, as well as for dangerous occurrences and spill control, and other provinces will enact, or have enacted, legislation to complement the federal proposals. For comprehensiveness these schemes should be included together with the recommendations, guidelines and codes of the international agencies bearing upon the new laws. Consequently a more functional approach would have been to produce a book which incorporates and updates amendments as enacted such as a looseleaf or annually amended service. Finally, in this proposal for a book of a different format, an essential inclusion would be analyses of the complex topics covered in the new laws and the jurisprudence arising out of their application. This feature is a major omission in *Handle With Caution*.

The above comments are not meant to derogate from my appreciation of the considerable work undertaken by the author in producing *Handle With Caution*. The book introduces us to four new laws which clearly indicate shifts in government policy as it relates to environmental protection and public safety. The next task is overseeing their application to assess the effectiveness of the new duties and liabilities to ensure protection of the environment and public safety, to clean up and restore the environment and to compensate victims of pollution accidents. Perhaps David Estrin will undertake this task as well.

Darrell J. Ogilvie-Harris & Geoffrey J. Lloyd, *Personal Injury: A Medico-Legal Guide to the Spine and Limbs*. Toronto: Canada Law Book, 1986. Pp. xxiv, 397 [\$60]. Reviewed by Gilles R. Tremblay.*

It has been a tradition over the years for each profession to develop its own jargon. It is not entirely clear whether this was intended to aid the members to better understand each other or to ensure that no one outside the profession could possibly understand them. Nevertheless both purposes have been totally realized.

In no two professions is this more true than in law and medicine. Doctors feel that lawyers' use of "legalese" is designed simply to confuse or anger. Doubtless most lawyers feel that the language of the medical profession serves the same purpose.

Personal Injury: A Medico-Legal Guide to the Spine and Limbs by Drs Ogilvie-Harris and Lloyd¹ is both timely and essential in that it provides both professions with a tool for understanding each other and working together for their common client.

The book is divided into four parts: "Doctor/Lawyer Interaction", "Assessment of Injury and Disability: General", "Assessment of Injury and Disability: Specific and Anatomical Locations" and "Assessment of Injury and Disability: Problem Areas". There is, in addition, a glossary of medical terms and a general index.

Part I deals mainly with the preparation of a medico-legal report and has great practical importance for medical practitioners. It also includes a chapter dealing with the interaction between lawyers and doctors. This chapter provides good advice for lawyers especially with regard to the handling of medical witnesses. Nothing can be more upsetting for a medical practitioner than to receive an unannounced subpoena five days prior to an expected court appearance. Such behavior has one of two outcomes: either the doctor will appear as a hostile witness or he will simply find an excuse not to appear at all. The authors further provide advice specifically designed to obviate these outcomes. The result is a more agreeable doctor/lawyer relationship to the ultimate benefit of all the parties involved.

Part II is a glossary of medical terms and a description of how the doctor assesses a patient's condition in practice or in the preparation of a medico-legal report. It includes a chapter giving a description of various radiological examinations and assesses their importance and diagnostic ac-

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¹D.J. Ogilvie-Harris & G.J. Lloyd, *Personal Injury: A Medico-Legal Guide to the Spine and Limbs* (Toronto: Canada Law Book, 1986).

curacy. This allows the lawyer to understand what each entails and to better understand the possibility of error. Hopefully such knowledge will dispel what appears to be the common impression among legal practitioners that the most recent X-ray machine is always the best.

Chapter V of Part II deals primarily with soft tissue injuries. These are particularly difficult to deal with in terms of a medico-legal evaluation because, except in sophisticated and as yet not generally accepted circumstances, there are no objective assessment methods such as X-rays and pathology specimens. In this case, as in the evaluation of post-traumatic knee instability, for example, the lawyer must rely totally on the doctor's educated but subjective assessment. This chapter also includes an outline of the usual prognosis of most common lesions as well as the currently acceptable mode of treatment. From a practicing orthopedic surgeon's point of view, the chapter is both overly simplistic and dated within the context of the current orthopedic literature. Yet the chapter provides the lawyer with a basic framework from which to ask questions in order to further characterize the clinical and legal problem under study.

In the remaining sections of Part II, Chapter VI deals with injuries to joints and includes a valuable section dealing with general indicators of injury and general concepts of management. These concepts are of particular importance to third-party users of medical records because, unlike X-rays, electromyographic records and operative summaries, they rely to a large extent on the treating physician's subjective impressions and are open to interpretation. Chapters IX and X outline the doctor's description of what he has done in surgery and what he has prescribed after surgery. Though every procedure usually has its own format of description and its own post-operative course of treatment, often one will find that deviations are made from these standards. This is primarily patient-specific and can, in most circumstances, be easily explained by the treating physician if the lawyer, using the standard form described in this book, asks the appropriate questions. Chapter XI is of particular significance and should be read by physician and lawyer alike. We have all seen well-written medico-legal reports, which are nonetheless useless because they do not take into account the patient's previous occupations, earning potential and possibilities for functional rehabilitation. The authors pay special attention to the strictly "non-medical" aspects of particular cases. Clearly, it is quite a different matter for a concert pianist and a steel worker to lose the use of the fourth finger of the non-dominant hand. This, the authors point out, is not only relevant to the actual disability compensation awarded in the case but also in the motivation for rehabilitation and the length of temporary total disability.

Part III provides a clear, layman's account of the various idiosyncracies of the major anatomical regions. This section of the book is somewhat

deficient in details and explanations, however, a text designed for a non-medical audience must compromise the need for accuracy with the need for simplicity. From this schematized framework, the lawyer can at least question the evaluating physician on the adequacy of the diagnosis, the treatment, the outcome, possible consequences and the accuracy of the final evaluation or assessment.

The final section of the book, Part IV, is by far the most interesting and useful. This section covers reflex sympathetic dystrophy, amputations, vascular injuries and compartment syndromes, infections, post-traumatic osteoarthritis, abnormal response to pain and special features of injuries to children. Since medicine is by no means an exact science and since the causative agents of disease, if known, certainly do not account for the whole of the clinical picture, the authors introduce and explain the factors which may lead to what has been termed "the unpredictable elements" in the outcome of an injury and of its treatment. Since the human animal is composed of a physical body, an intelligence, emotions and a subconscious, many factors can influence the outcome of an injury. We are too familiar with the statistics which show that a similar injury can lead to widely different periods of total, temporary disability in Workmen's Compensation cases, as compared to cases not covered by any form of income replacement.

We do not imply that all Workmen's Compensation claimants actually willingly prolong their recovery period but it is widely known that motivation is one of the primordial elements of recovery. Since income-earning potential is a very strong motivating element, it is only natural if this is removed to expect that recovery will be longer and that the final outcome will be less satisfactory.

Similarly, different individuals with different personality types will respond differently to injury and treatment. Nowhere is this more clearly exemplified than in the condition known as "reflex sympathetic dystrophy" where the personality make-up of the individual plays a major role in its manifestation. This is very well covered in Chapter XXI and every lawyer should become familiar with this chapter before he makes his own assessment of the importance of his client's claim. Again, as outlined in Chapters XXII and XXIII, complications of the treatment itself can certainly modify the course and outcome of an "otherwise normal" case, and the lawyer should certainly be aware of how these factors can influence his client's legal position. Unfortunately, the treatment of these two factors in the book is, in my opinion, sketchy at best, although the authors do provide a useful glossary of terms currently used in the medical community.

Chapter XXV of Part IV stands out as a remarkable effort to understand and to clarify what has always been a dilemma for the medical world. Pain,

more than loss of function, or even loss of limb, is certainly the most frequent basis of medico-legal claims in North America. Yet, to this date, there are no reliable methods to determine either the existence or the severity of pain. In this chapter the authors try to give a general overview of the nature of pain and of its causative factors and functional implications. If nothing else, the reader is shown that pain does not always have an organic cause and that, in most cases, the organic factor is the least important. Understanding this will certainly allow the lawyer to better assess the situation.

Finally, the last chapter of Part IV introduces the reader to the many variables which make an injury to a child both easier to treat and more laden with consequences. The child, one hopes, is not yet burdened with the concept of secondary gain, income replacement or rehabilitation potential, but at the same time he does not yet have the vocabulary nor the understanding necessary to express his symptoms accurately. The authors also point out that the child has a remarkable potential for remodeling, which can correct many deformities with growth. On the other hand, growth can also increase deformities if a corrective factor is not added to the initial treatment or if a growth area is included in the original trauma.

In conclusion, the book by Drs Ogilvie-Harris and Lloyd is an extremely valuable effort to bring the medical and legal professions closer, especially by establishing a comprehensive glossary of medical terms and expressions that the lawyer can understand.

It is by no means a medical textbook and does not pretend to be one; yet it will probably provide lawyers with enough information to better understand doctors involved in personal liability, Workman's Compensation and even medical malpractice cases, and to ask more meaningful questions.

The book is well written, does not sacrifice medical accuracy for the sake of simplicity and provides, with its index and numbered headings, a handy reference guide. It can only be hoped that in the future one or more courageous lawyers will undertake to write such a guide for physicians who have to prepare medico-legal reports, thereby explaining to the medical profession the language of the law.
