

BOOKS REVIEWS

REVUE DES LIVRES

La documentation juridique — Références et Abréviations, par Ernest Caparros & Jean Goulet, Québec: Les Presses de l'Université Laval, 1973. Pp. 182 (\$5.95).

The authors, professors at the Faculté de droit of Laval University, have provided a most valuable reference work on a difficult subject: the content and style of references to legal documentation. Their aim, in which they have succeeded admirably, is to indicate now-established modes of citation and abbreviation and, where established ones do not exist, to provide suggestions for uniform practice in the future. The subject is an unpopular science (it is complex and apparently fussy) no matter how necessary a discipline (information must be communicated accurately). Their work is not a methodology of legal research and writing but a "style manual". It is the first to be published in the particular context of Quebec and for the Quebec user. It will, this reviewer hopes, become our recognized text on the subject.

The legal documentation relevant to Quebec is vast and very complex because of the duality of its historical sources in French and English law and because of Quebec's place in a federal system involving a duality of legislative and judicial functions. Its constitutantly complex position is made even more complicated by the officially bilingual character of much Canadian legal documentation. Heretofore there has been no single work in either English or French that has united in one coherent whole either a guide to the identification of references to this material or guidelines for its material presentation. The text under review, conceived as a tool for the French language writer, is situated primarily within the second of these two perspectives but serves in part the first function as well.

The organization of this material is as follows: after a preliminary chapter devoted to the "notions essentielles" or elements of a citation, its style and arrangement, the work is divided into two principal parts: the documentation of what is called the "Anglo-Saxon" tradition (Part I) and that of the "European Continental" tradition (Part II). Within each of these parts, and with respect to the legislative, judicial and major doctrinal materials of each,

the mode of abbreviation of the material is indicated. In most instances this abbreviation is of course already established but proposals are made where no firm usage exists. The documentation of the United Kingdom is given some space, but with regard to it and to that of the United States the authors quite reasonably refer the reader to other works providing complete information.

It is within Part I that Canadian and Quebec materials are presented, and they form the bulk of the content. In their regard the authors have provided their most considerable service both by way of explanation, illustrated by examples, of the citation of legislative materials, and in the form of lists of abbreviations of the many law reports and periodical journals (current and defunct) that we have in Canada. However, the use of the term "Anglo-Saxon" to designate the whole body of Quebec and Canadian documentation, while not a truly serious matter leading to any real defect in the organization of the material, is somewhat puzzling. It is apparently used to designate either material in the English language (which explains the references, even if passing, to American as well as United Kingdom materials) or material in the British legal conceptual mode of thought even though it may be expressed in French as well (such as Quebec and Canadian statutes). The general idea that Canadian materials, whatever their language of expression, are situated primarily in the British tradition is, of course, true, save for the special form of Quebec's private law codifications. Canadian and Quebec judicial materials, as well as the form of arrangement of individual statutes, are more closely patterned on English traditions than on those of France. But the Canadian style of "revised" or "consolidated" statutes, at least since Confederation and even more so since the federal Revision of 1970, has been very different from the English. One would have thought that Canadian materials generally had reached that stage of maturity which could justify their presentation as simply "Canadian" — that is, as an autonomous, or at least distinct, tradition.

There are however few other points on which one would want to take exception with the judgment brought to bear on what are often very vexed questions. The authors have not perhaps satisfactorily resolved the dilemma raised by the practice of including the year within a reference to a judicial decision when the year is not an integral part of the reference (nor really of any interest at all if it amounts to no more than a reference to the date of publication of the volume). Clearer guidelines might have been given respecting the point that the year truly of interest, in all instances, is that in which the judgment was rendered (*cf.* pp. 7, 49). And

while the designation "official" in regard to periodical literature (*cf.* pp. 93-98) merely amounts to "indicated by the publisher", a word of explanation on its possible ambiguities in respect of judicial reports would have been helpful (*cf.* p. 50 and p. 61, notes 31, 34, 35). The omission of a general subject index is, given the elaborate table of contents, quite justified; on the other hand, a unified table of abbreviations combining those now divided into several distinct lists would assist the researcher in many circumstances. And, in the spirit of endeavouring to provide future writers of legal material with wise counsel as to the presentation of their own texts, this writer would suggest that whenever bilingual legislative texts are available to an author, both language versions of such text should be cited *in extenso* no matter in which language he himself is writing (*cf.* p. 24).

The utility of the work is evident. Its clarity, concision and general good sense recommend it highly to anyone handling Canadian or Quebec materials, or those elements of foreign systems which must be presented from the point of view of a person writing for a Quebec readership. It is to be hoped that it will be used as a standard text for law students and that its influence, once established there, will continue to grow and be accepted in other milieux. The authors themselves confess to such an ambition in their *avant-propos* and introduction — and it is not immodest on their part to have done so.

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La fonction publique canadienne et québécoise, par Patrice Garant avec la collaboration de Marcel Morin, Québec: Les Presses de l'Université Laval, 1973. Pp. XXIV, 463 (\$14.75).

L'on ne saurait mettre en doute l'importance et l'intérêt de ce livre. L'oeuvre du professeur Patrice Garant facilitera la compréhension des rouages fort complexes des Fonctions publiques du Canada et du Québec qui ont connu un tel essor et qui occupent une telle place dans notre système économique, social et politique. De plus, en tant que citoyens, nous sommes tous directement concernés par ce qu'est et ce que fait la Fonction publique. L'intérêt de ce livre réside précisément en ce qu'il permet de situer la Fonction publique dans notre système juridique, d'en saisir les principes de fonctionnement et d'en apprécier les conséquences juridiques et politiques. L'approche choisie se veut avant tout descriptive. Les principales sources du droit de la Fonction publique y sont analysées de façon systématique et rigoureuse sous la forme d'un bilan général des règles de marche de la Fonction publique canadienne et québécoise.

Le livre comprend quatre parties. La première partie présente le cadre juridique et institutionnel de la Fonction publique. L'auteur y dégage les éléments fondamentaux des structures de gestion et d'aménagement interne. L'étude du système de relations de travail en place offre à l'auteur ses conclusions les plus significatives en lui permettant de faire la comparaison entre la Fonction publique fédérale et celle du Québec. En effet, dans le cas du Québec, les règles gouvernant les rapports collectifs de travail diffèrent considérablement de celles que l'on retrouve dans le secteur privé et dans la Fonction publique fédérale. Le législateur québécois veut se percevoir comme un employeur ordinaire qui envisage de façon globale ses rapports avec ses employés répartis en quelque grands groupes de négociation, alors qu'au fédéral la distinction entre le «gouvernement-employeur» et le «gouvernement-puissance-publique-responsable-du-bien-commun» ressort beaucoup plus nettement et influence aussi bien la théorie que la pratique des relations de travail. Il est bien possible, comme le suggère l'auteur, que le gouvernement québécois s'en trouve vivement désavantagé lorsque ses rapports avec les syndicats prennent une dimension politique. Par contre, il n'est pas dit que la tendance à la politisation des relations de travail au Québec ne soit pas un indice précurseur du type de conflits qui marqueront à l'avenir les rapports entre des employés publics solidement regroupés et encadrés et un Etat-patron pouvant représenter des intérêts différents. Un chapitre consacré au contrôle parlementaire termine très bien cette première partie, à mon avis, la plus intéressante et la plus originale du livre.

La deuxième partie de l'ouvrage analyse les règles concernant la carrière dans la Fonction publique tandis que la troisième partie traite des devoirs et des droits du fonctionnaire public. L'étendue et la diversité des matières étudiées dans ces deux parties expliquent sans doute que chaque question abordée n'a pu faire l'objet d'une recherche également approfondie. C'est ainsi que les chapitres consacrés au recrutement, à l'avancement et à la titularisation des fonctionnaires soulèveraient beaucoup plus d'intérêt s'ils avaient débordé plus largement sur l'étude des modes de gestion utilisés dans notre système administratif. Toutefois les très bonnes sections sont consacrées aux règles du désintéressement et aux mécanismes visant à assurer l'intégrité de la Fonction publique. La question des libertés publiques du fonctionnaire donne lieu à une solide analyse et présente beaucoup d'intérêt.

Dans la quatrième partie de son livre le Professeur Garant s'attache surtout à l'étude des lois particulières qui régissent le statut juridique des agents des organismes para-gouvernementaux, des tribunaux administratifs et de certaines entreprises publiques. L'importance croissante de ce secteur rendait nécessaire cette inclusion dans ce livre.

Le livre du professeur Garant n'est pas d'une lecture toujours facile: il couvre un domaine vaste et complexe. Cependant, peu d'éléments y sont négligés et le lecteur persévérant trouvera dans ce livre à peu près tout ce qu'il faut savoir sur le droit de la Fonction publique canadienne et québécoise. Pourtant, même à un livre aussi complet, il semble manquer quelque chose: le préfacer, M. Roch Bolduc, alors sous-ministre de la Fonction publique du Gouvernement du Québec, y fait allusion lorsqu'il indique que l'étude des facteurs et des situations sociales et économiques, ayant moulé ce cadre légal, reste à faire. Sans reprocher à l'auteur d'avoir écarté dès le départ cette dimension sociologique et analytique, on ne peut s'empêcher de signaler que ce livre eut acquis une portée encore plus grande si l'auteur s'était montré plus sensible à ces aspects. Il risque de décevoir le lecteur qui y chercherait du moins quelques tableaux statistiques lui permettant de saisir les principaux traits de ce qu'il appelle lui-même la "réalité concrète régie par l'ensemble des règles qui font l'objet de la science juridique" (p. 6). Mais ces reproches n'affectent en rien la qualité essentielle de ce livre: il constitue, à ma connaissance, l'une des meilleures présentations du droit de la Fonction publique d'un régime fédéral.

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La faillite en droit constitutionnel canadien, by Albert Bohémier, Montreal: Les Presses de l'Université de Montréal, 1972. Pp. 439 (\$5.00).

This first rate study of the constitutional implications of the field of bankruptcy was originally Professor Bohémier's doctoral thesis at the University of Montreal, and had been highly praised by the jury (chaired by Professor Frank Scott) when it was publicly defended by the author.

The book itself is well divided so that one may easily follow the legal threads that hold it together. Its basic divisions deal with:

- 1) The conditions under which bankruptcy occurs;
- 2) The law applicable to various types of bankruptcy;
- 3) The legal consequences of bankruptcy; and
- 4) The nature of the judicial organization in matters of bankruptcy, and the structure and jurisdiction of the courts.

It is written in precise and clear prose, which is always helpful in a study of this nature. The reader is left free to grapple with ideas and not language. In sum, the book reads well.

The study covers the whole field of bankruptcy law in relation to the civil law of Quebec as well as to the law of the other provinces. The author draws analogies between interpretations of bankruptcy law as put forth in the common law jurisdictions and those put forth by Quebec law when the question has not been conclusively resolved with regard to the civil law. Similarly, when a purely civil law question is analysed, reference is made to the corresponding law in other provinces (*e.g.* p. 232).

The comparisons and references to other legal systems dealing with bankruptcy (*e.g.* those of England, the United States and France) are quite useful in a study of this nature (pp. 335 ff.). As well, the in-depth treatment of legislative history (*e.g.* pp. 125 ff.) contributes to a fuller understanding of contemporary bankruptcy legislation and problems. On many occasions Professor Bohémier gives us an overview of the socio-economic and political background so that the legal problem is framed in its true context (*e.g.* pp. 150-152, dealing with the economic problems of the 1930's).

Because of my particular interest in constitutional law, I was most interested in the analysis of the problems dealing with paramountcy (or concurrency) that flow from the federal jurisdiction over bankruptcy. Much has been written on paramountcy but this is the first intensive study of the many constitutional issues that arise from the inter-relationship of bankruptcy law and the civil law. Thus, the author has made an important contribution to the legal literature in this area of the law. He has contributed to the classroom as well:

the constitutional law teacher will find many interesting paramountcy problems which will lend themselves to classroom discussion.

Hundreds of cases are cited and analysed, and often an analysis is made of all judgments from first to last instance of the same case. It would appear that, in his extensive treatment of case material, the author has not omitted anything of significance. Essentially, Professor Bohémier has given us an exhaustive study of the federal jurisdiction in s.91, head 21 ("Bankruptcy and Insolvency") of the *British North America Act*, and the inevitable conflicts that arise with provincial legislation based on s.92, head 13 ("Property and Civil Rights in the Province"). While other heads of power in s.91 and 92 have previously been treated (e.g. A. Smith, *The Commerce Clause in Canada and the United States* (1963)), until now no in-depth study had been made of the federal jurisdiction over bankruptcy and insolvency.

This book is a valuable addition to Canadian legal studies in general and to the field of constitutional law in particular. It deserves to be widely read.

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