

## **BOOK REVIEWS**

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## **LIVRES NOUVEAUX**

*Canadian Tort Law*, by Allen M. Linden, Toronto: Butterworths, 1977. Pp.ix, 623.

The avowed aim of the author is to record the achievements of the Canadian courts in the law of torts. He rightly informs us that much Canadian development has taken place in this area and proclaims his mission to tell "a story that needs to be told" (p.vii). At the same time he delivers what can only be described as a back-handed compliment to the Canadian judiciary, past and present, when he observes that, as a race, they are growing "more literate" (p.vii).

The author's aim is not an easy one to accomplish. He has to record Canadian achievements and yet he must not ignore the fact that Canadian jurisprudence is deeply rooted still in the common law tradition, for fear of presenting a distorted picture of the law. "In recent years," he tells us, "the common law has lost much of its universality" (p.vii). If by that he means that modern Canadian courts are less likely to follow English decisions blindly, he is happily and undoubtedly correct. But the statement does not hold true if one addresses oneself to the frontier areas of negligence liability, negligent misstatement, economic loss, government liability, unborn children and medical liability, to name a few examples, where English, American, Canadian, Australian and New Zealand decisions have a ready currency in other jurisdictions. A failure to take account of actual and potential cross-fertilisation does less than justice to the organic complexity of the law of torts in the twentieth century.

The author's field of inquiry is "Canadian Tort Law." At least, that is what the spine of the book tells us, with corroboration coming from the title page. Nor is there anything in the author's preface to alter the impression thus created. Sterne's novel *Tristram Shandy* tells us very little about its eponymous hero and Professor Linden's inaptly named book leaves almost as much unsaid about the subjects of his study, namely Canadian torts. This book has nothing to say about the following subjects: privacy (apart from a footnote to the effect that it is beyond the scope of his inquiry), occupiers' liability, vicarious liability, defamation, liability for animals, nuisance, trespass to land, conversion, detinue, trespass

to chattels, conspiracy, intimidation, interference with contractual relations, injurious falsehood, damages and fatal accidents claims, passing off, interference with domestic relations, deceit and malicious prosecution. Very little is said about limitations and hardly anything about joint and concurrent tortfeasors. How this book can properly be described by author and publisher as "Canadian Tort Law" is hard to see. These omissions sometimes detrimentally affect the author's treatment of certain areas. He attempts to describe negligent misstatement without reference to the tort of deceit or the doctrine of fiduciary relations. A failure to reveal that the progenitors of the rule in *Rylands v. Fletcher*<sup>1</sup> were nuisance and cattle trespass results in a distorted treatment of that subject.

Space could have been found for a treatment of other topics. The material on failure to act and nonfeasance is too long, likewise custom. Sixty-three pages are taken up with a discussion of breach of statutory duty, with the author going into the kind of extensive and repetitive detail that one expects to see in a practitioner's book. In sharp relief stands Professor Linden's discussion of the unborn child — less than one and a half pages in which all of the fundamental questions are evaded. He makes no comment, for example, on the judicial assumption that a prenatal injury produces damage only on the birth of the child.

Although the author is prepared to criticise individual decisions, frequently in forthright terms, and in one case an American writer (for his "undistinguished and incomplete article" (p.419)), this book is generally short on criticism and analysis. A few examples will suffice.

First, he quotes extensively Rand J. in *Cook v. Lewis*<sup>2</sup> and yet makes no comment on the proposition that the (possibly) negligent actors did a separate wrong to the injured plaintiff "in relation to his remedial right of making . . . proof"<sup>3</sup> of negligence.

Secondly, at page 415, referring to the British Columbia Supreme Court decision in *Houle v. B.C. Hydro and Power Authority*,<sup>4</sup> he states:

It is apparently possible, however, for a jury to apportion negligence 10 per cent to the defendant, 15 per cent to the plaintiff and 75 per cent to no one.

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<sup>1</sup> (1868) L.R. 3 H.L. 330; [1866] L.R. 1 Ex. 265.

<sup>2</sup> [1951] S.C.R. 830.

<sup>3</sup> *Ibid.*, 832.

<sup>4</sup> (1972) 29 D.L.R. (3d) 510.

Can "no one" be sued as co-defendant or joined by a third party notice? The author makes no comment on, and essays no explanation of, this extraordinary decision.

Thirdly, he suggests, without citing authority, that a battery can be committed by an indirect, intentional act. Later, he lends his support to the Supreme Court's misguided historicism<sup>5</sup> in reversing the burden of proof of fault in cases of "force directly applied to" the plaintiff. Why the incidence of the burden of proof of fault in trespass actions should vary according to whether force is applied directly or indirectly, the author does not say. Neither does he criticise the injustice of the decision in *Hollebone v. Barnard*,<sup>6</sup> where the defendant in a negligent trespass action was denied the benefit of apportionment legislation, nor the incongruity of reversing the burden of proof in *Larin v. Goshen*.<sup>7</sup>

The book contains a number of blemishes which diminish its reliability. The following are examples:

First, at page 92, in his discussion of the epicene reasonable person, he states:

There is even a case which, in another context, imported the concept of a "humane" person, but it is likely that this standard would be considered too hard on defendants to be generally applied at present, although that may change in the coming years (p.92).

The case referred to is *Southern Portland Cement v. Cooper*<sup>8</sup> and the unspecified context is occupiers' liability to trespassers but the clear implication is that the standard somehow exceeds that of the reasonable man.

Secondly, Professor Linden states (p.220, 260) that the burden of proof of negligence is reversed in the case of injury caused by a dangerous product. This statement is in no way qualified and is supported by reference to only one decision, *Ives v. Clare*.<sup>9</sup> A reading of that case reveals that the Ontario judge based himself on a perverse reading of the Privy Council decision in *Dominion Natural Gas v. Collins and Perkins*.<sup>10</sup>

Thirdly, liability for wild and vicious domestic animals is misleadingly assimilated to *Rylands v. Fletcher*<sup>11</sup> liability (p.453).

<sup>5</sup> *Supra*, note 2.

<sup>6</sup> [1954] O.R. 236 (H.C.).

<sup>7</sup> (1975) 56 D.L.R. (3d) 719 (N.S.S.C.).

<sup>8</sup> (1974) 2 W.L.R. 152 (P.C.).

<sup>9</sup> [1971] 1 O.R. 417 (H.C.).

<sup>10</sup> [1909] A.C. 640 (P.C.).

<sup>11</sup> *Supra*, note 1.

The author's chapter on negligent misstatement is a particular disappointment. As stated above, there is no reference to deceit and the doctrine of fiduciary relations. He does not even breathe the words "special relationship." Nor does he analyse the idea of assumption of responsibility which is present with varying emphasis in all the speeches in *Hedley Byrne v. Heller*.<sup>12</sup> He does, however, refer to Lord Denning's attack on the idea in *Minister of Housing v. Sharp*<sup>13</sup> where his Lordship's reference to voluntary assumption of responsibility emerges in the text as voluntary assumption of risk (p.386). It is hardly surprising, therefore, that Professor Linden refers to an "imposed" duty (p.383) in *Hedley Byrne*<sup>14</sup> and that he fails to appreciate the significance of the disclaimer clause. In their Lordships' collective opinion, the disclaimer clause did not exclude a duty raised by reasonable foreseeability; rather, it negated the very assumption of responsibility by the defendants in the first place. The author's judgment of the case as a "confusing dictum" [sic] (p.383) is singularly inapt.

Perhaps the book's major shortcoming is its insufficient clarity of purpose. Professor Linden has set out to write a text but has produced something more like a tract. The book is written in a thoroughly tendentious way and is dominated by the author's apparent desire to see the burden of proof of fault reversed whenever and however possible, with a liberal admixture of strict liability thrown in from time to time. In the process, the author fails to give an account of the organic development of tort law. His temporal points of reference are the present and future only, and the dividing line between the two is not always as clear as it should be.

Finally, the author has a tendency to recite case after case in a mechanical fashion and uses too many and too lengthy quotations, some of which are remarkably trite and do not bear repetition. It is difficult to see what market this book serves.

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<sup>12</sup> [1964] A.C. 465 (H.L.).

<sup>13</sup> (1970) 2 Q.B. 223.

<sup>14</sup> *Supra*, note 12.

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*Canadian Environmental Law*, by Robert T. Franson and Alastair R. Lucas, Toronto: Butterworths, 1976. 6 volumes. (\$275.00\*).

Professors Franson and Lucas have obviously devoted considerable effort to producing this six-volume loose-leaf service dealing with Canadian environmental law. Following a tradition pattern in this sort of enterprise, the first volume is devoted to a statement of the law together with a digest of cases. Volumes 2 to 6 contain major statutes and regulations on environmental law from all Canadian jurisdictions. Volume 6 also contains an index.

For those with purely regional interests, the publishers do offer the possibility of purchasing certain volumes only. These regional packages include volumes 1 and 6 (Statement of the law, federal statutes and index) and the volume containing the pertinent provincial statutes and regulations. For purposes of this review, the publishers have provided volumes 1 and 5 only (volume 5 containing the provincial statutes and regulations of the Atlantic provinces and Quebec). Consequently, only volumes 1 and 5 will be assessed.

On examining a publication of this type — and their number in recent years has increased tremendously — one must never lose sight of the market for which it is intended. As this service appears to be intended for practising lawyers the review has been prepared with that thought in mind. On the whole, Franson and Lucas have done a masterful job in collating material and in drafting the statement of law. The latter effort is certainly the more difficult for it requires the authors to be selective in their choice of subject matter, concise and yet thorough in its presentation. My chief reservations relate not so much to their effort as to the pitfalls inherent in the subject they have chosen.

Unlike mining law, oil and gas law or tax law, all of which have been the object of similar publications by the same publishers, environmental law is not an easy field to define. Calling it "that body of law aimed principally at protecting the environment"<sup>1</sup> is not very

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<sup>1</sup> Franson and Lucas, *Canadian Environmental Law* (1976), vol.1, [1], 201.

\*The full service bears the kind of price tag that serves to identify the public for whom it is intended: practising lawyers and their corporate clients. Low-budget environmental protection groups are obviously not in the publisher's market and this is deplorable. It is also out-of-reach for law students, many law professors and those concerned members of the public who have been largely responsible for the growth of environmental law.

helpful as this includes too wide a range of human activity. To keep the subject manageable, the authors have been forced to pare this broad definition down to a few specific headings: air and water pollution, litter and solid waste disposal, noise, pesticides and contaminants. On the way, a number of topics have of necessity been left aside or worse, given a cursory and superficial treatment. These include urban and regional planning, heritage legislation and the workplace environment. Soil conservation in such key industries as forestry, mining and agriculture is also largely ignored for two stated reasons: first, legislation in these areas is largely aimed at specific industries and second, "there is simply too much to include".<sup>2</sup> However valid these reasons may be, they leave the reader with the distinct impression that there is much of environmental law which has not been entrapped within the covers of volume 1.

The difficulty which the authors have in defining environmental law is reflected throughout the service, especially in the selection of statutes and regulations published in volumes 2 to 6. There is a certain lack of uniformity from one jurisdiction to another which leads one to suspect that many statutes were selected by the relationship which the title, rather than the content, bore to the authors' definition of environmental law. As a result, many environmental provisions contained in statutes dealing with other matters have been left out. This has led, in the case of Quebec, to the omission of the *Watercourses Act*,<sup>3</sup> the provisions of the *Cultural Property Act* dealing with natural districts,<sup>4</sup> the provisions of the *Roads Act* dealing with roadside dumps,<sup>5</sup> the so-called "reserve of three chains"<sup>6</sup> and provisions of municipal enabling statutes dealing with environmental matters.<sup>7</sup> It is also surprising that the various provincial

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<sup>2</sup> *Ibid.*, vol.1, [1.4], 205.

<sup>3</sup> R.S.Q. 1964, c.84.

<sup>4</sup> S.Q. 1972, c.19, ss.45 to 50 and the *Regulation respecting historic and natural districts*, Q.O.G. 1973, Part 2.

<sup>5</sup> R.S.Q. 1964, c.133, ss.25a - 25e (am. by *An Act respecting roadside dumps and old car dumps*, S.Q. 1965, c.48; am. by *Transport Department Act*, S.Q. 1972, c.54).

<sup>6</sup> *Lands and Forests Act*, R.S.Q. 1964, c.92, s.41a (am. by *Wild Life Conservation Act*, S.Q. 1969, c.58, s.83).

<sup>7</sup> One example would be s.426(1d) of the *Cities and Towns Act*, R.S.Q. 1964, c.193 (am. by S.Q. 1974, c.46, s.1; am. by S.Q. 1975, c.66, s.14) which enables municipalities to prevent for a temporary period of twelve months the demolition of an immovable identified as cultural property or as within an area which might appropriately be designed as an historic or natural district. A similar provision is to be found in the *Municipal Code*, art.392f (am. by S.Q. 1974, c.46, s.1; am. by S.Q. 1975, c.82, s.22).

parks statutes have been left out<sup>8</sup> while space is devoted to such esoteric curios as the Quebec *Artificial Inducement of Rain Act* and *Tree Protection Act*.<sup>9</sup>

The chapter on constitutional law underlines the difficulties of doing justice to a broad, inadequately-defined topic in sufficient depth to enable the practising lawyer to solve specific problems. To attain this goal, the authors are compelled to cover almost every area of constitutional law as it might hypothetically relate to environmental law. In general, the discussion attains a high level and represents a masterful synthesis of the topic, but practising lawyers faced with complex constitutional litigation in the environmental field should not expect to find more in the service than the starting point for their research. That the authors have achieved this much is to their credit and far overshadows any specific criticisms which may be directed against the text.

The short development on the problem of interjurisdictional immunity is one example of inadequate treatment of a major constitutional problem.<sup>10</sup> The immunity doctrine has important environmental implications with respect to the application of provincial legislation to federal Crown lands. Yet there is no specific discussion of this aspect of the doctrine and some major references are omitted.<sup>11</sup> There are also a number of cases on the subject which it would have been useful to cite.<sup>12</sup>

The discussion of the spending power offers a welcome contrast. The authors are careful to point out the limits to the federal spending power which the cases have hinted at and some writers have blissfully ignored. Some weight might be added to the authors' position by reference to an article which develops more fully some of their arguments.<sup>13</sup>

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<sup>8</sup> In the case of Quebec, the new *Parks Act* would certainly deserve to be classified as environmental legislation: S.Q. 1977, c.56 (Bill 19).

<sup>9</sup> S.Q. 1970, c.28 and R.S.Q. 1964, c.95.

<sup>10</sup> *Supra*, note 1, vol.1, [2.7.3], 271-272.

<sup>11</sup> LaForest, *Natural Resources and Public Property under the Canadian Constitution* (1969); Garant, *Contribution à l'étude du statut juridique de l'administration gouvernementale* (1972) 50 Can.Bar Rev. 50; Gibson, *The "Federal Enclave" Fallacy in Canadian Constitutional Law* (1976) 14 Alta L.Rev. 167.

<sup>12</sup> *Aéro Club de Montréal v. Montreal North* [1972] C.S. 695; *Re Orangeville Airport Ltd and Caledon* (1976) 66 D.L.R. (3d) 610 (Ont. C.A.).

<sup>13</sup> Dupont, *Le pouvoir de dépenser du gouvernement fédéral: "A Dead Issue"?* (1967) C.de D.; U.B.C.L.Rev. 69.

After analyzing the *Interprovincial Cooperatives* decision,<sup>14</sup> Franson and Lucas conclude that federal jurisdiction over air is even clearer "in light of the speed with which the air crosses the whole of the country".<sup>15</sup> This undocumented statement is of dubious validity and certainly cannot be made to flow from a careful reading of the *Interprovincial Cooperatives* decision. Constitutional jurisdiction over air pollution is a complex problem, as some writers have ably demonstrated.<sup>16</sup>

The part of the constitutional law chapter devoted to an overview of federal-provincial jurisdiction ([2.8]) should either be expanded or dropped as in its present form it is too superficial and incomplete to be of any real use to practising lawyers. How can one do justice to the jurisdictional issues in the field of planning in one fifteen-line paragraph? Inevitably certain major points are omitted when the authors state that federal jurisdiction must be based on the spending power or the power over census and statistics. What about the general power (planning jurisdiction over the National Capital Area)<sup>17</sup> or ancillary powers (federal expropriation powers)?<sup>18</sup>

One final note on the constitutional law chapter applies equally well to other parts of the study as will be pointed out below. Franson and Lucas seem to be largely unaware of the very considerable body of legal literature in the French language dealing with their subject. In the field of constitutional law as it relates to the environment, it is my view that some of the best in-depth research on the subject in recent years has been published in the French language.<sup>19</sup> It is highly likely that Franson and Lucas' oversight is more

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<sup>14</sup> *Interprovincial Co-operatives Ltd v. R* (1975) 53 D.L.R. (3d) 321 (S.C.C.).

<sup>15</sup> *Supra*, note 1, vol.1, [2.4.9], 266.

<sup>16</sup> Alhéritière, *Les problèmes constitutionnels de la lutte contre la pollution de l'espace atmosphérique au Canada* (1972) 50 Can.Bar Rev. 561.

<sup>17</sup> *Munro v. National Capital Commission* [1966] S.C.R. 663.

<sup>18</sup> See generally, Lajoie, *Expropriation et fédéralisme au Canada* (1972).

<sup>19</sup> See, e.g., Alhéritière's doctoral thesis, *La gestion des eaux en droit constitutionnel canadien* (1976), Editeur officiel du Québec, and by the same author, *La compétence fédérale sur les pêcheries et la lutte contre la pollution des eaux* (1972), 13 C.de D. 53; *Éléments pour une étude comparative des dix organismes provinciaux au Canada chargés de mener la lutte contre la pollution des eaux*, 3 R.G.D. 280; L'Ecuyer, *Les dimensions nationales et la gestion de l'eau* (1972) 13 C.de D. 231. On water law generally, including constitutional aspects, there is the comprehensive study by the Centre de recherche en droit public (C.R.D.P.), *Le droit québécois de l'eau* (1976) 2 vols., Québec, Ministère des Richesses naturelles.



due to the language barrier than to any conscious manifestation of what Chief Justice Jules Deschênes of the Quebec Superior Court has called "judicial separatism", but nonetheless this cannot serve as an excuse for depriving English-speaking lawyers with a reading knowledge of French of access to this important body of literature. There is also no excuse for not locating the French-language law review articles as they are all indexed under the appropriate English subject headings in the *Index to Canadian Legal Periodical Literature*.

The chapter on civil liability for environmental damage is extremely well done and the authors are once again to be congratulated on a readable and thorough analysis. The chapter's major defect is that it will be of little or no use to Quebec lawyers as private law in that province is based on civil law and not on common law. In all fairness, it would have been proper for Franson and Lucas to warn readers in the opening lines of the chapter that the law stated therein is that of the nine common-law jurisdictions in Canada. In this respect, however, the authors stand in good company because most private law treatises dealing with the common-law jurisdictions in Canada forego this caveat.

In fact the civil law and common law systems differ considerably in the area of liability for environmental damage, if not always in the result at least in the legal categories and channels which must be followed to reach that result. Thus responsibility for environmental damage in the civil law will flow from three broad headings: fault (art. 1053 C.C.), abuse of neighbourhood rights and duties and legal servitudes (art. 501 C.C. *et seq.*). A separate treatment of these headings in the law of Quebec would have been most valuable to lawyers faced with problems to solve under Quebec law.<sup>20</sup>

In the section devoted to injunctions, the reader is left with the impression that the remedy is generally available against polluting industries. Later on, in the section on statutory modifications, no mention is made of the fact that in some jurisdictions the remedy of injunction against polluting industries has been barred by legisla-

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<sup>20</sup> See generally: Baudouin, *La responsabilité civile délictuelle* (1973); Kenniff, *Le contrôle public de l'utilisation du sol et des ressources en droit québécois - I* (1975) C.de D. 763, 818-828; Hétu et Piette, *Le droit de l'environnement au Québec* (1976) 36 R.du B. 621; Hétu, *L'application de la théorie des troubles de voisinage au droit de l'environnement du Québec* (1977) 23 McGill L.J. 281.

tion.<sup>21</sup> Such a legislative bar was immediately enacted in Ontario, for example, to remedy the effects of the landmark decision in *K.V.P. Co. v. McKie*.<sup>22</sup> The statement that possible economic hardship to the defendant in injunction proceedings is not generally regarded by the courts as relevant<sup>23</sup> is thus misleading in jurisdictions where remedial legislation has either barred injunction proceedings or instructed the courts to balance the impact of granting an injunction on the economic situation of the defendant and the community. Nor do Franson and Lucas draw any distinction between interlocutory and permanent injunctions as to the application of the "balancing of equities" rule. In some Quebec cases which are not beyond criticism, the courts have gone as far as to refuse an interlocutory injunction on the grounds that the balance of equities lay in favour of the economic interests of the community in keeping jobs, against the environmental interests of those affected by the polluting industry.<sup>24</sup>

The section on ground water<sup>25</sup> in the chapter on civil liability also fails to do justice to the civil law of Quebec. Moreover, the later section on statutory modification with respect to Quebec does not make much sense and contains several glaring errors of such magnitude that the best one can do in a short commentary of this nature is to refer the authors to the literature.<sup>26</sup> Suffice it to mention two points here. First, the law of Quebec distinguishes between springs which belong outright to the surface owner who is free to dispose of them as he sees fit (art.502 C.C.), and underground water which is regulated by a permit system.<sup>27</sup> The second point is that the authors' statement that no general provision vesting ownership and right to use of water in the crown is contradicted by article

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<sup>21</sup> Under the Quebec *Cities and Towns Act*, where an industry has been operating in a municipality for more than five years and has been authorized to operate by municipal by-law: R.S.Q. 1964, c.193, s.427(18). Such a by-law cannot subsequently be repealed! For similar provisions in Ontario, see Estrin, *Annual Survey of Canadian Law - Part II - Environmental Law* (1975) 7 *Ott.L.Rev.* 397, 401-402.

<sup>22</sup> [1949] S.C.R. 698; *The KVP Company Limited Act*, S.O. 1950, c.33.

<sup>23</sup> *Supra*, note 1, vol.1, [3.8.2], 376.

<sup>24</sup> *Beaulieu v. Brique Citadelle Ltée* [1971] C.S. 181. See also *Grandes-Bergeronnes v. Guay* [1976] C.A. 230.

<sup>25</sup> *Supra*, note 1, vol.1, [3.9.2], [3.9.4.9], 381-382, 389.

<sup>26</sup> See especially: *Le droit québécois de l'eau*, *supra*, note 19; Bouffard, *Traité du domaine* (1921) chs.4 and 5.

<sup>27</sup> *Mining Act*, S.Q. 1965, c.34, s.190-194; *Regulations concerning Underground Waters*, (1967) 99 Q.O.G., 2921 (no 18, 6/5/1967). Québec Revised Regulations 1972, 3-019.

400 C.C. Finally, Franson and Lucas' statement that there is no substantial difference between the common law and civil law with respect to riparian rights is not supported by the cases and authors cited in the footnote.<sup>28</sup> Once again the authors have confused some similarity in result with an identity of legal system, thereby ignoring the impact on the Quebec legal system of the old French law in force prior to the Conquest and the seigniorial land grant system which was not abolished until 1854.

A final remark on the chapter dealing with civil liability concerns references to the relator action.<sup>29</sup> This remedy has had a chequered history in the law of Quebec and has only recently been revived in environmental litigation.<sup>30</sup> It is also worth pointing out that the *McWhirter* case<sup>31</sup> has been overruled by the House of Lords in *Gouriet v. Union of Post Office Workers*.<sup>32</sup>

In the chapter devoted to air and water pollution control, Franson and Lucas provide a thorough description and a careful analysis of the principal statutes and regulations dealing with this area of environmental law. With few exceptions, they succeed in avoiding the main pitfalls of such an enterprise, in the form of unconscious omissions and cursory descriptions.

Without wishing to dwell on the difficulty of finding a satisfactory definition of environmental law, one must underscore that the authors' continuing quest for such a definition is in part reflected in this chapter. Some federal material dealing with toxic substances in the workplace is included, although no such provincial material is canvassed.<sup>33</sup> Provincial parks legislation is also referred to, although none of the statutes are included in later volumes. These are minor points and perhaps serve to highlight the complexity of the subject rather than any defect in its treatment.

In the authors' description of the federal *Clean Air Act*,<sup>34</sup> no mention is made of the definition of "ambient air", although the

<sup>28</sup> See especially, Brun, "Le droit québécois et l'eau (1663-1969)" in *Le territoire du Québec* (1974), 149-203; Bouffard, *supra*, note 26, ch.4; *Le droit québécois de l'eau*, *supra*, note 19, 149-213.

<sup>29</sup> *Supra*, note 1, vol.1, [3.1.1.2], 355.

<sup>30</sup> Giroux, *L'intérêt à poursuivre et la protection de l'environnement en droit québécois et canadien* (1977) 23 *McGill L.J.* 292; Pépin, *L'intérêt à poursuivre en droit public canadien* (1975) 6 *R.D.U.S.* 3.

<sup>31</sup> *McWhirter v. Independent Broadcasting Authority* [1973] 2 *W.L.R.* 344, 1 *All E.R.* 689 (C.A.).

<sup>32</sup> [1977] 3 *W.L.R.* 300, 3 *All E.R.* 70 (H.L.).

<sup>33</sup> *Supra*, note 1, vol.1, [4.2.1.3.3], 471. See also *ibid.*, [6.3.3], 744.

<sup>34</sup> *Supra*, note 1, vol.1, [4.2.1.1], 466-470.

definitions of "air contaminant" and "air pollution" are given. One would have thought that the definition of "ambient air" should have been included as it fixes the scope of application of the Act by excluding from its ambit, air within a structure such as a factory or in an underground space such as a mine.

The section on Quebec law in this chapter has been considerably improved by the issue of the second supplement in March 1977. References have been added to some of the literature and cases, and important distinctions have now been made, such as that between the two general municipal enabling statutes. Much is still missing but the authors are to be commended for having improved the section considerably. It is unfortunate that the improvement in content should be marred by an inordinately high number of typographical errors.

The presentation of the statutory material in volume 5 is well-organized, thus facilitating consultation. An examination of the supplements also reveals that amendments and new statutory material are issued promptly. My specific comments on the content are limited to the Quebec material. The Quebec (Revised) Statutory Regulations referred to on occasion<sup>35</sup> are a private consolidation without any legal status. As many unauthorized changes were made in the original regulations during the process of consolidation, one is always well advised to refer to and consult the original document in the Quebec Official Gazette (Q.O.G.). It should also be noted that contrary to the note at the beginning of the *Environment Quality Act*,<sup>36</sup> sections 54, 55, 56, 58, 59, 64, 66 and 67 were proclaimed in force on January 22, 1975.<sup>37</sup>

If this service is really intended for the practising Bar, I am at a loss to explain why in the Quebec section the statutes and materials are printed in English only. Until the recent *Charter of the French language*,<sup>38</sup> both languages were officially used in statutes and regulations. Since the enactment of the *Charter*, new statutes are official in French only (subject to what the courts may decide as to the constitutional validity of those parts of the *Charter*). Even under the now-repealed *Official Language Act*,<sup>39</sup> the French text of a statute took precedence over the English text where discrepancies could not be resolved by the ordinary rules of statutory

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<sup>35</sup> *Ibid.*, vol.5, [1A], R.S.Q. 1964, c.161, 51.

<sup>36</sup> *Ibid.*, [3], S.Q. 1972, c.49, 201.

<sup>37</sup> (1975) 107 Q.O.G., part 2, 859 (no 7, 12/1/1975).

<sup>38</sup> *Charte de la langue française au Québec*, S.Q. 1977, c.5.

<sup>39</sup> S.Q. 1974, c.6 (repealed 1977, c.5).

interpretation.<sup>40</sup> It seems to me that the publishers ought to consider it both essential in law and sound in terms of marketing to print the Quebec material in both French and English. Any other course of action must be viewed as a relinquishment of the market of practising lawyers in Quebec.

In conclusion, Franson and Lucas have made an important contribution to improving the knowledge of environmental law among members of the legal profession. For students and teachers of law, this service will provide a base from which to launch their research and a rich source of materials for those interested in comparative law. Many of the comments made here are aimed at improving the service in the future. For the present, the authors are to be commended for having accomplished a considerable task in very capable fashion.

Patrick Kenniff\*

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<sup>40</sup> S.Q. 1974, c.6, s.2.

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Harmonisation du droit des affaires dans les pays du marché commun: *La formation du contrat, sous la direction de René Rodière, Centre National de la Recherche Scientifique, Paris: Editions A. Pedone, 1976, pp.140.*

The first of a programme of comparative studies in obligations and contracts, this volume deals with the formation of contract in the nine Member States of the European Economic Community. However, English and Irish law come under one rubric whilst Scottish law has been ignored. That will not be forgiven in Scotland.

The rather ambitious object of the exercise is to produce a draft project of a uniform law and in fact we find such a draft at the end of the book. The conclusions are drawn from replies to a set of questions addressed to the nine systems of law and tabulated in a comparative table. Thus one can see at a glance where the systems agree or disagree and where the answer is qualified. Not surprisingly, the English-Irish system is the odd man out more often than any other though, surprisingly perhaps, Danish law too asserts its uniqueness more than any other Civil Law system considered in the project.

The enquiry purports to determine the juristic nature of contract, the mechanism of offer and acceptance and the essence of agreement and, in broad terms, it does. The result provides, therefore, an excellent basis for discussion but unfortunately does not solve the problem of the unification of national laws. To a national lawyer his law is his second nature and, when discussing unification, he does not proceed from an abstract basis but from his own firm conviction that he has the best system to offer to humanity. It is precisely on this attitude that many a project of unification has foundered. However, we have before us a clear and concise exposition of rudiments of nine systems of law coupled with a project of a uniform law distilled from these sources and this in itself is an achievement.

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*Aerospace Law; From Scientific Exploration to Commercial Utilization*, by Nicolas Mateesco Matte, Toronto: The Carswell Company Limited; Paris: Editions A. Pedone, 1977. Pp.354.

In this welcome volume Nicolas M. Matte OC., Q.C., LL.D., Director of the Institute of Air and Space Law of McGill University, has defined and analyzed the critical space law issues that have emerged since his publication in 1969 of *Aerospace Law*. In his new study he has emphasized the practical utilization of areas of the space environment, namely outer space, the moon, and other celestial bodies. Thus, his most recent contribution advances the state of legal art beyond the adolescent stages of space law, which by 1969 had culminated in the *Outer Space Treaty*,<sup>1</sup> to a more mature second stage of aerospace law.

The structure of Professor Matte's new book follows to a certain extent the format of his 1969 volume. Part One of the 1977 book is entitled "International Cooperation at the Institutional Level and State Activities". Indicating his interest in the prospects for the commercial utilization of the space environment the author in this part inventories the contributions to such developments of non-governmental international learned organizations, intergovernmental organizations, bilateral cooperation among states, and the space activities of the principal resource states.

Part Two is entitled "Commercial and Cultural Utilization of Outer Space". These chapters assess United Nations efforts to arrive at international agreements on the remote sensing of earth by satellites and on the direct broadcasting of ideas and images to home receivers by satellites. In joining these subjects in Part Two the author specifically acknowledges the similarity of the legal problems in these situations. The 1967 *Outer Space Treaty* in Article 1 provides that the space environment is to be free for exploration and use by all states without discrimination of any kind. Yet, such is the tenacity of the notion of national sovereignty that it is seen by some as having relevance despite treaty provisions in these areas. The author, as a realist, duly takes national concerns into account.

Part Three is entitled "Conventions and Draft Treaty". Here the author examines in detail the background and status of the Con-

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<sup>1</sup> 1967 Can.T.S., No.19.

vention on International Liability for Damage caused by Space Objects (1972)<sup>2</sup> and the Convention on Registration of Objects Launched into Outer Space (1974).<sup>3</sup> In this part the author also describes the present attempt at the United Nations to secure the drafting of a treaty on the moon. The book contains nine annexes consisting of international agreements of a regional and universal nature, national and organizational proposals received at the United Nations relating to sensing and direct satellite broadcasting, the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974),<sup>4</sup> and the Draft Treaty Relating to the Moon (1975).<sup>5</sup>

This volume, like its predecessor, is marked by the scholarly and objective analysis of the author. There are numerous citations of the documents resulting from the deliberations of the U.N. Committee on the Peaceful Uses of Outer Space. There are frequent references to the papers delivered at the annual meetings of the International Institute of Space Law, which reflect the very high quality of the scholarly efforts that see fruition in this forum. Scholarly papers delivered at meetings sponsored by McGill University's prestigious Institute of Air and Space Law also are frequently cited.

Professor Matte has not been content merely to provide an assessment of the progressive development of the critical concepts of space law following the 1967 *Outer Space Treaty*. He joins other scholars who are increasingly reflecting concern over the lacunae in Article 4 of that agreement relating to the use of the space environment for "military purposes" (p.79), including the use of "a destructive satellite in outer space" (p.80).

Holding the pragmatic view that mankind is vastly influenced by forces producing an accelerated world interdependence he offers constructive suggestions for future consideration. He continues to believe that, "functional freedom in an indivisible space must be acknowledged" (p.203). In order to relieve sovereign concerns over sensing by foreign states he favours the, "establishment of a remote sensing data distribution centre or centres under U.N. auspices" (p.125). Believing that non-sensing states may nonetheless have the benefit of the science and technology of more advanced states he urges that,

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<sup>2</sup> United Nations General Assembly Resolution 2777 (XXVI) of November 29th, 1971. Reprinted in (1972) 66 Am.J.Int.L. 702.

<sup>3</sup> 1976 Can.T.S., No.36.

<sup>4</sup> U.N. DOCS ST/LEG/SER.D/10 1976, 539.

<sup>5</sup> U.N. Documents on Space, A/AC.105/115 Annex 1.



... a compromise must be found between the principle of freedom of exploration and use of outer space and the principle of national sovereignty over natural resources. Rather than adopting a strict prior consent rule, the solution should perhaps be sought in the adoption of a free dissemination of data rule, with certain priorities for the sensed State (p.134).

He also urges the utilization of regional centres under U.N. auspices for the dissemination of data provided by sensing.

Professor Matte favours the utilization of regional facilities in the field of direct broadcasting. He writes,

... if an international cooperative structure is to be set up in the field of direct satellite broadcasting, it seems to be more appropriate to do this on a regional rather than on a global basis (p.138).

He supports this conclusion with the view that such regional approaches would suitably bolster the various educational and social needs of different cultures and national outlooks. He believes that international co-operation and consultation can be the vehicle to overcome national preoccupations that the science and technology utilized in modern space activities will allow for an unlawful interference by one state in the allegedly wholly domestic affairs of other states. Throughout he accepts the view that advanced space science and technology are vital forces whose overall influences cannot be thwarted. Such forces reduce, as he observes, the "absolutism of the past principles of sovereignty" (p.206). For the future he urges the need to accept a vision of a new kind of international instrumentality to deal with space problems.

Professor Matte has clearly demonstrated the transition from the major interest in the 1960s in the technical exploration of the space environment to concerns for an international economic and socially-oriented exploitation of the environment in the 1970s. He has clearly identified the need for law to keep pace with such developments and for the improvement of the world's institutions to this end. In his new book he has again made a major contribution to an understanding of space activities and the legal and institutional aspects of man's great adventure in space.

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