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## BOOK REVIEWS

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### CHRONIQUE BIBLIOGRAPHIQUE

J.-E. Brassard, *Financial Assistance for Farmers: A Lawyer's Guide to Federal Programs*. Toronto: Carswell, 1987. Pp. xiv, 83 [\$32.00]. Reviewed by Jane Glenn.\*

This slim volume bears witness to the growing interest in agricultural law amongst members of the legal profession. The 1980's have thus far seen the publication of some eight individual volumes as well as at least twenty-eight law review articles or case comments — in sharp contrast to the eleven law review items in the 1970s.<sup>1</sup> Admittedly, much of this recent attention is explained by the adoption of provincial legislation protecting agricultural land, particularly Quebec's *An Act to Preserve Agricultural Land*,<sup>2</sup> but more recently other subjects — such as marketing boards, taxation, organizational structure and agricultural credit — have come to the fore. In fact, both Ontario and Quebec have recently held continuing education programmes devoted to problems of farm organization and management.<sup>3</sup> *Financial Assistance for Farmers: A Lawyer's Guide to Federal Programs*<sup>4</sup> represents a timely addition to this growing library, which the author, as Legal Counsel (National) to the Farm Credit Corporation, is well-qualified to write.

The presentation of the material is both descriptive and prescriptive. After a short historical introduction, the author, in what is by far the longest chapter (46 pages), entitled "Existing Legislation", reviews federal agricultural assistance programmes and related financial measures and incentives. As such, the study purports to be "a simple outline of what is available" and "not ... an exhaustive examination" of it.<sup>5</sup> In spite of the author's disclaimer, however, it would be wrong to regard this study as simply an expansion upon one particular aspect of the author's earlier treatment (to-

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<sup>1</sup>The *Index to Canadian Legal Periodical Literature* did not have a separate heading for "Agriculture" prior to 1970.

<sup>2</sup>L.R.Q., c. P-41.1. Two of the books and some eleven law review articles deal with this statute. Somewhat surprisingly, similar legislation in British Columbia, *Agricultural Land Commission Act*, R.S.B.C. 1979, c. 9, has not triggered the same interest amongst lawyers of that province.

<sup>3</sup>Canadian Bar Association — Ontario, Continuing Legal Education, *Closing the Barn Door Before: Advising on Farm Related Matters* ([Toronto]: The Association, 1986); Chambre des Notaires du Québec, *Cours de Perfectionnement du Notariat*, 1985 (see [1985] C.P. du N.).

<sup>4</sup>J.-E. Brassard, *Financial Assistance for Farmers: A Lawyer's Guide to Federal Programs* (Toronto: Carswell, 1987).

<sup>5</sup>*Ibid.* at iii.

gether with Sherwin Lyman) of federal and Ontario legislation touching upon agriculture.<sup>6</sup> The earlier work contains only the briefest of summaries<sup>7</sup> while the later one is both more elaborate and more discursive. The prescriptive part of the study is found in the two remaining, and considerably shorter, chapters entitled "Legislation for the 90's" (c. 3) and "Conclusions" (c. 4), in which the author suggests possible new directions in dealing with current rural economic problems.

The bulk of the book, then, is found in Chapter 2, with pride of place evidently given to the discussion of agricultural credit. The chapter treats not only direct financial assistance programmes — such as long-term mortgages (to a maximum of thirty years) granted by the government itself (or more precisely by the Farm Credit Corporation) under the authority of the *Farm Credit Act*,<sup>8</sup> intermediate and short term government-guaranteed bank loans under the authority of the *Farm Improvement Loans Act*,<sup>9</sup> and of the *Banks and Banking Law Revision Act, 1980*<sup>10</sup> section 178 securities — but also such diverse indirect measures as advance payment for crops, crop insurance schemes, fruit and vegetable storage construction assistance, various fiscal advantages, agricultural stabilization payments and a series of measures restricted in application to the prairie provinces.<sup>11</sup> The chapter ends with a statement of creditors' rights in the event a farmer does not meet his debts.

As a simple outline of what is available, this chapter undoubtedly accomplishes its purpose. It is both up-to-date and comprehensive, including material not readily available elsewhere, and it is perhaps unfair to suggest it ought to have done something else or to have done it differently. Nevertheless, the very topicality of the treatment risks dating the book more rapidly than might otherwise be the case. Some of the material included, such as a discussion of certain interim financial provisions restricted to the late 1950's, 1960's or 1970's,<sup>12</sup> is already of marginal interest and other

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<sup>6</sup>S. Lyman & J.-E. Brassard, *Agriculture*, volume 1A, *Canadian Encyclopedic Digest* (Ontario) 3d ed. ([Toronto]: Carswell, 1983).

<sup>7</sup>The entire discussion of federal agricultural credit programmes, for example, is only two pages long: *ibid.* at 58-60.

<sup>8</sup>R.S.C. 1970, c. F-2.

<sup>9</sup>R.S.C. 1970, c. F-3.

<sup>10</sup>S.C. 1980-81-82-83, c. 40.

<sup>11</sup>These range from the *Prairie Farm Assistance Act*, R.S.C. 1970, c. P-16, as rep. S.C. 1985, c. 21, to the *Western Grain Transportation Act*, S.C. 1980-81-82-83, c. 168.

<sup>12</sup>E.g., *Prairie Grain Loans Act*, S.C. 1960, c. 1 (government guarantee of loans made before 1960); *Prairie Grain Producers Interim Financing Act*, S.C. 1956, c. 1 (government guaranteed loans to grain producers in 1956); *Prairie Grain Provisional Payments Act*, S.C. 1960, c. 2; *Prairie Grain Provisional Payments Act, 1969-70*, S.C. 1969-70, c. 10 (for unthreshed grain in 1959-1960 and 1969-1970 respectively); the small farm development programme (ended 1979); *Two-Price Wheat Act*, S.C. 1974-75-76, c. 54 (applicable 1974-1980).

material will obviously become less relevant in time. Of course, this risk is present in any descriptive treatment of an area of law, and particularly so in an area as volatile as agricultural credit. However, one cannot help wishing that the author had on occasion substituted analysis for description. One wonders, for example, what roles are in fact played by the various levels of governments and private lending institutions in providing agricultural credit? Why is government responsibility under the *Farm Improvement Loans Act*<sup>13</sup> now being phased out? Why do the *Farm Credit Act Interest Rates Regulations*<sup>14</sup> limit repayment terms to five, six, ten and fifteen years whereas the *Farm Credit Act*<sup>15</sup> itself authorizes thirty year terms?

The prescriptive section of the book, potentially the more interesting, is disappointing. The author is obviously concerned with the problems currently facing the family farm and outlines a number of imaginative and innovative solutions, ranging from the creation of new financing instruments, such as an obligation "with no fixed or par value (and no fixed interest but a rate tied to market value) redeemable according to an index of agricultural returns or equity accumulation"<sup>16</sup>, or a concept of "convertible participating preferred shares"<sup>17</sup> through to repeal of section 31 of the *Income Tax Act*<sup>18</sup> (which restricts deductibility of farm losses from non-farm income). However, this section of the book disappoints for two particular reasons. Firstly, the various proposals found in the concluding chapters are unrelated to discussion elsewhere in the book. The suggestions concerning new debt instruments, for example, could profitably have been linked to the discussions of Canadian Farm Loan Bonds, small business development bonds, shared risk mortgages and commodity-based mortgages; and those concerning debt rearrangement could have referred back to preceding discussions of recent provincial and federal developments in this regard. Secondly, and more importantly, the suggestions put forward in the concluding chapters, while admittedly interesting, are merely sketches; they have not been developed to the extent the overall length of the book would easily admit. To put it quite frankly, this part of the book reads like a provocative after-dinner speech, one that stimulates more than it satisfies.

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<sup>13</sup>*Supra*, note 9.

<sup>14</sup>SOR/84-28.

<sup>15</sup>*Supra*, note 8. Quebec's Union des producteurs agricoles, for example, has objected to the provincial Office du crédit agricole's preference for twenty year terms over the twenty-nine years authorized by law as forcing young farmers to meet unnecessarily high repayment schedules: see Union des producteurs agricoles, *Le financement agricole*, Mémoire présenté à la Commission parlementaire de l'agriculture (March 1985) at 33.

<sup>16</sup>Brassard, *supra*, note 4 at 64.

<sup>17</sup>*Ibid.* at 64-65.

<sup>18</sup>S.C. 1970-71-72, c. 63.

But this study does stimulate and for that reason, should be read by anyone interested in the current plight of the Canadian farmer. Its more descriptive elements alone ensure it a place on the bookshelf of any lawyer practising agricultural law.

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R.K. Paterson *et al.*, *Canadian Regulation of International Trade and Investment*. Toronto: Carswell, 1986. Pp. xxxix, 429 [\$78.00]. Reviewed by David Stevens.\*

It is somewhat remarkable that the legal literature in Canada on national and international trade law is as sparse as it is. Canada is one of the world's leading trading nations, with some 30% of its gross domestic product accounted for by exports of its goods and services.<sup>1</sup> Compared to its two leading trading partners, the United States (10%) and Japan (14%), this is a significant figure and demonstrative of Canada's need for a "liberal and rule-oriented" international trading system and a legal profession having some expertise in the international and national regulation of trade.<sup>2</sup> The last decade or so has witnessed considerable growth in interest on the part of Canadian law faculties in the field of international trade law and the consequent publication of many valuable contributions to different aspects of trade regulation by academic and non-academic scholars alike.<sup>3</sup> Until the publication of Professor Robert K. Paterson's *Canadian Regulation of International Trade and Investment*, however, no comprehensive Canadian text had appeared.<sup>4</sup> Professor Paterson's book is, therefore, a welcome and timely contribution to the Canadian legal literature on the subject.

Professor Paterson's book is divided into two parts. Part I, entitled "Canadian Regulation of International Trade", is composed of 7 chapters. It deals with the following topics: the GATT (c. 1); Canadian tariff legislation (c. 2); import and export controls in Canada (c. 3); the *Special Import Measures Act*<sup>5</sup> and the implementation of the GATT Agreement on Government Procurement in Canada (c. 4); export financing in Canada (c. 5);

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<sup>1</sup>R.K. Paterson *et al.*, *Canadian Regulation of International Trade and Investment* (Toronto: Carswell, 1986) at 3.

<sup>2</sup>*Ibid.*

<sup>3</sup>See F. Stone, *Canada, the GATT and the International Trade System* (Montreal: Institute for Research on Public Policy, 1984); J.-G. Castel, A.L.C. de Mestral & W. Graham, *International Business Transactions and Economic Relations: Cases Notes and Materials on the Law as it Applies to Canada* (Toronto: Emond Montgomery, 1986); J. Quinn & P. Slayton, *Non-Tariff Barriers After the Tokyo Round* (Montreal: Institute for Research on Public Policy, 1982). Carswell has recently announced the establishment of a Canadian journal on international trade law, and the Institute for Research on Public Policy and the C.D. Howe Institute have each sponsored the publication of several monographs on Canada trade policy. Nevertheless, Canadian works on the legal dimension of international trade regulation remain relatively sparse.

<sup>4</sup>*Supra*, note 1. Three chapters of the book were contributed by three collaborators: c. 1 on the GATT was written by J.A. Finlayson; c. 6 on Canadian trade with the EEC was written by P. Raworth; and c. 7 on Canadian trade with Japan and the U.S. was written by M.D.H. Smith.

<sup>5</sup>S.C. 1984, c. 25.

and Canada's trade relations with the United States, Japan and the European Economic Community (c. 6-7). Part II, entitled "Canadian Foreign Investment Law", is composed of three chapters. It deals with the international regulation of foreign direct investment and of international trade in services (c. 8), the legislative regulation of foreign direct investment in Canada (c. 9) and the protection of Canadian foreign direct investment in developing countries (c. 10). The treatment of the various topics throughout is, for the most part, well-balanced, though some topics, such as the GATT and Canadian tariff legislation, are treated in less than thorough detail, no doubt on account of the availability of several comprehensive treatments of these topics elsewhere.<sup>6</sup>

Two or three key features of the Canadian situation compel special emphasis in a text of this sort. Professor Paterson's text meets these exigencies reasonably well, both in terms of topics covered and in terms of depth of coverage. One of the principal features of Canada's peculiar situation is the extent to which our foreign trade is dominated by our economic relationship with the United States. In 1984, two-way trade between the two countries totalled \$156 billion dollars (Canadian), with 76,3% of Canada's merchandise exports going to the United States and 71,4% of Canada's total imports coming from that country.<sup>7</sup> A portion of the text, therefore, provides an overview of American trade policy and legislation. Chapter 7 contains a summary of the comparatively extensive power of the American executive to negotiate and implement international trade agreements, to take protective measures under the GATT, to effect safeguard measures pursuant to article 19 of the GATT, and to impose import quotas. There are also several pages in Chapter 7 devoted to a concise survey of the American anti-dumping, subsidy, and export control legislation. Although the treatment of these various topics is brief,<sup>8</sup> there is sufficient information in the text to provide the reader with a clear picture of the structure of American trade policy and legislation, and enough guidance as to other sources for further detailed research and reading.<sup>9</sup>

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<sup>6</sup>The leading texts on the GATT are two American publications: J.H. Jackson, *World Trade Law and the Law of GATT* (New York: Bobbs-Merrill, 1969); K.W. Dam, *The GATT: Law and International Economic Organization* (Chicago: University of Chicago Press, 1970). Canadian tariff law is treated thoroughly in M. Irish, *Customs Valuation in Canada* (Don Mills: C.C.H., 1985). Canadian import policy generally is treated in D. Protheroe, *Imports and Politics: Trade Decision Making in Canada* (Montreal: Institute for Research on Public Policy, 1980).

<sup>7</sup>Paterson *et al.*, *supra*, note 1 at 239.

<sup>8</sup>These complex topics are covered in less than 20 pages.

<sup>9</sup>See R. de C. Grey, *United States Trade Policy Legislation, A Canadian View* (Montreal: Institute for Research on Public Policy, 1982), which remarkably is not cited in the Paterson book; J.H. Jackson, *Legal Problems of International Economic Relations, Cases Materials and Text* (St Paul: West, 1977); E. McGovern, *International Trade Regulation: GATT, the United States and the European Economic Community* (Exeter: Globefield, 1982).

Similarly, the text provides an overview of trade regulation in Japan (which in the early 1970's replaced the United Kingdom as Canada's second most important trading partner) and the EEC. The treatment of the EEC is considerably more extensive than that of either Japan or the United States, largely due, one surmises, to the complexity of trade regulation in the EEC, rather than the relative importance of Canada's trading relations with it. Once again, more detailed treatments of these topics exist elsewhere. But Professor Paterson's book is a useful introduction, providing the reader with sufficient detail as to the main outlines of Japanese and EEC foreign trade policy and regulation, and many suggestions for further research and reading.

Another aspect of the Canadian situation which might influence the design of a book of this sort is the importance of foreign direct investment in the Canadian economy. Part II of Professor Paterson's text deals with the international and national regulation of foreign direct investment in Canada. But it also deals with the regulation of trade in services, both nationally and internationally, and the protection of Canadian foreign direct investment in the developing countries of the Third World. Trade in services might better have been included in Part I. In any event, its relevance to international trade is obvious and undisputed. The relevance of the international investment topics, is not, however, readily apparent and, at first sight, their inclusion in the text appears to be overly-ambitious and tangential. Perhaps their inclusion is best explained on the basis that Canadian trade and investment law form an integrated case study, given Canada's peculiar situation insofar as foreign direct investment is concerned.<sup>10</sup> Yet, as is stated by Professor Paterson in the preface to the book, one might expect a Canadian text on international commercial law also to treat of such matters as technology transfer, transfer pricing, joint development projects, the private-law aspects of international trade, the extra-territorial application of laws relating to commerce and trade (and in particular, the extra-territorial application of American anti-trust legislation), the prospects and significance of a Canada-U.S. free trade agreement, the Canada-U.S. Auto Pact and the international regulation of monetary affairs. None of these complex topics is treated in the text. Professor Paterson and his co-authors are not to be faulted in this. Their text is the first contribution of its kind in the Canadian setting. And the decision to include investment and exclude these others is perhaps understandable.

Finally, Canada has in the past several years enacted legislation and adopted administrative policies implementing its obligations resulting from

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<sup>10</sup>This would not explain the inclusion of Canadian investment in the Third World which, until recently, has been relatively meagre. See Paterson *et al.*, *supra*, note 1 at 343 (roughly 16% of total Canadian foreign direct investment in 1980).

the Tokyo Round of the GATT negotiations. These have replaced and/or supplemented previous policy instruments governing the Canadian aspects of international trade. For the first time treatment of such topics as Canadian anti-dumping and countervailing duty legislation (the *Special Import Measures Act*<sup>11</sup>), Canadian customs and tariff legislation (the *Customs Act*<sup>12</sup> and the *Customs Tariff*<sup>13</sup>), Canadian "safeguard" legislation (contained in the *Customs Tariff*<sup>14</sup> and the *Export and Import Permits Act*<sup>15</sup>) and Canadian regulation of the import of textiles and clothing (the *Textile and Clothing Board Act*) are treated in one volume. Occasionally the treatment is spare — I would have liked to have seen more on Canadian trade policy formation at the administrative and legislative level and the effect of American export control laws on Canadian trade with Cuba and the People's Republic of China, for example — but generally the treatment is sufficiently detailed and in some areas quite thorough.

Perhaps the book is overly ambitious, perhaps not ambitious enough. On the one hand, there is a very wide range of topics covered, a few in a cursory fashion. On the other, the topics surveyed suggest in themselves that others might also have been included. Professor Paterson and his co-authors, however, faced a formidable task in setting out to write the first Canadian treatment of international commercial law as a whole. The balance they struck is a good one and the book will, as a consequence, serve as a basic resource work for practitioners, public administrators and law students alike. The writing is of a uniformly high standard and the extensive bibliographies at the close of each chapter, very useful.

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<sup>11</sup>*Supra*, note 5.

<sup>12</sup>S.C. 1986, c. 1. The new act revises customs administration in Canada and implements Canada's obligations under the GATT *Customs Valuation Code*.

<sup>13</sup>R.S.C. 1970, c. 41.

<sup>14</sup>*Ibid.*, ss 7, 7.1 and 8 as am. *Special Import Measures Act*, *supra*, note 5, ss 102-103.

<sup>15</sup>R.S.C. 1970, c. E-17, ss 5(2)-5(3) as am. *Special Import Measures Act*, *ibid.*, s. 104.

Lynn Smith, ed., *Righting the Balance: Canada's New Equality Rights*. Saskatoon: Canadian Human Rights Reporter, 1986. Pp. xviii, 426 [\$52.50]. Reviewed by Allan R. Hilton.\*

This book is a collection of fifteen essays, which deal with a wide range of issues arising out of the coming into force on 17 April 1985 of section 15 of the *Canadian Charter of Rights and Freedoms*.<sup>1</sup> Most of the essays were presented initially as papers at the National Symposium on Equality Rights held in Toronto in January of 1985. Unfortunately, the reader is left to guess which of the essays were presented at the Symposium and which were not, for it is apparent that no attempt has been made to update the text of some of the articles since the date the papers were presented.

The seven organizers of the Symposium took it upon themselves to "inform and generate discussion among senior decision-makers from government, the private sector, labour, academia, the legal profession, and equality-seekers organizations",<sup>2</sup> so that when section 15 of the *Charter* came into effect, the dialogue about its implementation would be well under way. The volume consists of five parts, and indeed the editors are right when they say that the essays reflect the wide range and complexity of issues raised by the implementation of section 15 of the *Charter*.

There is, however, a rather unequal division of the subject matters covered. The first three parts, which deal with the social and political context of section 15 rights, the legal context of these rights and issues of legal interpretation, contain no less than twelve of the fifteen articles. There are only two articles dealing with remedies (both of which are excellent), and only one article treating the fascinating subject of evidentiary issues. Unfortunately, this article, by Professor Jane M. Picker of the Cleveland-Marshall College of Law, Cleveland State University, is of doubtful value in the Canadian context, as it makes no attempt to compare the American experience to what may be the Canadian experience in the future.

The editors have also included two other articles by American authors which to a greater or lesser extent offer analyses of equality issues under the United States Constitution. The best of these is Professor Kent Greenawalt's paper entitled "A Neighbor's Reflection on Equality Rights",<sup>3</sup> which provides an interesting approach to Canadian *Charter* issues from an American perspective.

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<sup>1</sup>Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11 [hereinafter *Charter*].

<sup>2</sup>L. Smith, ed., *Righting the Balance: Canada's New Equality Rights* (Saskatoon: Canadian Human Rights Reporter, 1986) at viii.

<sup>3</sup>In Smith, ed., *ibid.*, 189.

The editors suggest that this collection represents "a contribution to a rapidly developing area of Canadian law and illustrates the interdependent moral, philosophical, legal, political, social, and economic dimensions of equality-making".<sup>4</sup> From any perspective, this is an ambitious undertaking, but the essays do offer a basis for thought-provoking analysis and discussion for those engaged in the development of *Charter* litigation. As a reference source, however, it is inevitable that the book depreciates in value, as a consequence of the rapidly developing case law on the *Charter*, especially as enunciated by the Supreme Court of Canada.

The Symposium took place in January of 1985, and the book was published at some point in 1986. There is an unfortunate inconsistency in the accuracy of the contents, however, even if one takes 1 January 1986 as the point of publication. For example, Professor Francine Fournier, in her article "Égalité et droit à l'égalité", asserts that sections 2 and 7 to 15 of the *Charter* are not in force in Quebec as a result of the adoption of *An Act Respecting the Constitution Act, 1982*.<sup>5</sup> Professor Fournier was quite correct in this assertion in January of 1985, relying at least in part on the authority of the decision of Deschênes C.J., as he then was, in *Alliance des Professeurs de Montréal v. A.G. Quebec*.<sup>6</sup> This judgment was reversed by the Quebec Court of Appeal on 14 June 1985<sup>7</sup> and since then Quebec Courts have consistently held that the Quebec legislature's attempt to render inapplicable sections 2 and 7 to 15 of the *Charter* is invalid.<sup>8</sup>

On the same subject, Professor William Black in his thorough survey entitled "A Walk Through the Charter"<sup>9</sup> asserts that it is "not yet clear" whether the *Act Respecting the Constitution Act, 1982*<sup>10</sup> meets the requirements of specificity required by the enabling provisions of section 33 of the *Charter*, yet he makes no reference to either the Superior Court or Court of Appeal decisions in *Alliance des Professeurs*.<sup>11</sup>

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<sup>4</sup>*Supra*, note 2 at viii.

<sup>5</sup>S.Q. 1982, c. 21.

<sup>6</sup>(1983), [1985] C.S. 1272, 5 D.L.R. (4th) 157.

<sup>7</sup>(1985), [1985] C.A. 376, 21 D.L.R. (4th) 354.

<sup>8</sup>See, most recently, *Irwin Toy Ltd v. A.G. Quebec* (1986), [1986] R.J.Q. 2441 at 2443, Jacques J.A., and at 2457, Vallerand J.A. (dissenting on other grounds); *A.G. Quebec v. Chaussure Brown's Inc.* (1986), [1987] R.J.Q. 80 (C.A.).

<sup>9</sup>In Smith, ed., *supra*, note 2, 47 at 81.

<sup>10</sup>*Supra*, note 5.

<sup>11</sup>*Supra*, notes 6 and 7. Although leave to appeal was granted by the Supreme Court of Canada on 30 September 1985, the case has not yet been argued and does not appear on the Court's docket for the January 1987 term. In accordance with s. 33(3) of the *Constitution Act, 1982*, *supra*, note 1, the effects of the Quebec law, assuming the law to have been constitutional when it was adopted, will expire on 17 April 1987.

As far as the presentation of the collection is concerned, the editors have done well to provide a summary of each article in French for the fourteen English-language articles and in English for Professor Fournier's article. Nevertheless, there are some annoying aspects of the presentation and editing, especially for Quebec practitioners.

First, it is always preferable to have footnotes placed at the bottom of the page to which the notes relate, especially, as is the case here, when many of the footnotes contain commentary as well as a citation. Second, the editors have omitted mention of the official reporter series in citations of several cases. Readers in Quebec will be surprised to learn that two important Quebec cases do not appear to have been reported in the Quebec report series.<sup>12</sup> There is also an inexplicable omission of reference to the official report series of the Supreme Court of Canada,<sup>13</sup> and in one case, an indication in the Table of Contents that a case is unreported when in the text of the article it is given a citation.<sup>14</sup>

Finally, in one other instance, there is an unexplained failure to have the text of an essay changed to reflect the outcome of two Supreme Court decisions. The decisions are treated in the text as still being reserved, while in the footnote reference is made to the fact that the decisions of the Supreme Court of Canada have been rendered yet there is no indication of what the orders were with respect to these judgments under appeal from the Ontario Court of Appeal and the Federal Court of Appeal.<sup>15</sup>

Somewhat more rigorous editing would have been desirable in making this book the type of lasting contribution its editors hoped it would be.

Despite its evident imperfections, the book is worth having, if only to give those who are new to *Charter* issues an idea of the types of problems they must confront. The reader, however, would do well to verify inde-

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<sup>12</sup>Smith, ed., *supra*, note 2 at 409, where in the table of cases *A.G. Quebec v. Quebec Association of Protestant School Boards* is cited without reference to the official Quebec reporter either at the Superior Court level, (1982), [1982] C.S. 673 and at the Court of Appeal, (1982), [1983] C.A. 77. At 414, *Malarctic Hygrade Gold Mines v. R.* was also cited without reference to the Quebec reporter, (1982), [1982] C.S. 1146.

<sup>13</sup>*The Patriation Reference* (1981), [1981] 1 S.C.R. 753 is not given its official citation at 181, 339, 415 and 417.

<sup>14</sup>In the footnotes to Professor Gibson's article at page 340, only the Dominion Law Report citation of *Reference re Language Rights under Section 23 of the Manitoba Act, 1870* (1984), [1985] 1 S.C.R. 721, is given, but in the Table of Cases, at 417, the case is said to be unreported.

<sup>15</sup>See Gibson's article, at page 333 where reference is made to the appellate judgments in *Re Ontario Human Rights Commission and Simpsons Sears* (1982), 138 D.L.R. (3d) 133 (Ont. C.A.) and *Re Canadian National Railway and Canadian Human Rights Commission* (1983), 147 D.L.R. (3d) 312 (Fed. C.A.) while the footnote, on page 341, refers to the judgments of the Supreme Court of Canada rendered on 17 December 1985 and subsequently reported at [1985] 2 S.C.R. 536 and [1985] 2 S.C.R. 561 respectively.

pendently the assertions as to the state of the law as they are described in the articles.

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J.-G. Castel, *Canadian Conflict of Laws*, 2e éd. Toronto, Butterworths, 1986. Pp. xxxix, 429 [\$115.00]. Commenté par Ethel Groffier-Atala.\*

La deuxième édition de l'ouvrage du professeur Castel représente un tour de force. En effet, la première, publiée en deux volumes, comptait près de 1 600 pages.<sup>1</sup> L'auteur a réussi à mettre à jour, à comprimer, à élaguer et à produire un ouvrage éminemment lisible et complet de quelques 650 pages. Le traité a beaucoup profité de ces coupures drastiques. Elles ont éliminé les citations et les développements un peu confus qui rendaient la lecture de la première édition difficile.<sup>2</sup> En particulier, l'auteur a supprimé les longues citations de lois et de conventions internationales en les remplaçant par un court résumé indiquant le contenu des dispositions en cause<sup>3</sup> et d'autres renseignements pertinents.<sup>4</sup>

De nombreuses références au projet de Code civil du Québec, peu utiles même du point de vue comparatif, ont également été supprimées. Elles figurent maintenant dans l'ouvrage de Jean-Gabriel Castel, *Droit international privé québécois*.<sup>5</sup>

Du point de vue de la forme, encore, nous notons avec satisfaction la numérotation par paragraphe et le nombre des sous-titres qui rendent l'ouvrage plus clair et sa consultation plus facile.

Le seul aspect du livre qui nous semble avoir un peu souffert de sa transformation est l'étude de l'évolution historique du droit international privé. Certains développements que nous trouvions intéressants ont disparu. Cela était sans doute inévitable.

En revanche, des domaines qui ont fait l'objet d'une jurisprudence récente ou d'une recrudescence d'intérêt dans la pratique ont reçu un traitement plus détaillé. C'est le cas des sociétés commerciales étrangères et des problèmes de taux de change.

L'auteur a réussi à garder un équilibre difficile entre l'aspect théorique d'une matière qui se prête aux développements philosophiques et la néces-

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<sup>1</sup>J.-G. Castel, *Canadian Conflict of Laws*, t. 1, 2, Toronto, Butterworths, 1975-77.

<sup>2</sup>Voir pour cette critique J. Blom, *Compte-rendu* (1975) 13 Ann. can. droit int. 435, (1978) 16 Ann. can. droit int. 452.

<sup>3</sup>Voir, par exemple, le paragraphe consacré à la Convention de La Haye du 15 novembre 1965 relative à la signification et la notification à l'étranger des actes judiciaires et extrajudiciaires en matière civile ou commerciale (J.G. Castel, *Canadian Conflict of Laws*, 2e éd., Toronto, Butterworths, 1986 à la p. 206), lequel remplace avantageusement trois pages de l'édition précédente (*Canadian Conflict of Laws*, t. 1, *supra*, note 1 aux pp. 239-41).

<sup>4</sup>Comme la ratification — le plus souvent l'absence de ratification — d'une convention pour le Canada.

<sup>5</sup>Toronto, Butterworths, 1980.

<sup>6</sup>*Canadian Conflict of Laws*, 2e éd., *supra*, note 3 à la p. 50.

<sup>7</sup>(1979), [1979] 2 R.C.S. 529, 96 D.L.R. (3d) 1.

sité de mettre à la disposition des praticiens un outil de travail qui leur soit réellement utile. Son scepticisme souriant à l'égard de certaines théories et « découvertes » brandies, parfois avec fracas, par nos voisins du sud fait d'autant plus plaisir qu'il est fondé sur une connaissance approfondie.

Une citation illustrera mieux que de longs développements cette qualité du livre. Il s'agit du parallèle entre la façon pragmatique et prudente avec laquelle les juges de common law abordent les qualifications et les multiples théories qui ont fleuri à leur sujet :

Under the traditional approach the court is able to concern itself with the contents of the foreign laws among which it has to choose and of the policies behind them before selecting the one state whose law will be applied, even though the court does not frame its opinion in those terms. This process had been followed long before Professors Cavers, Currie and Ehrenzweig presented their « new » methods. In practice, the court does not proceed independently of the law's contents which are to be discovered at a later stage of the inquiry. Since in most jurisdictions the foreign law must be alleged in the pleadings, this gives the court an indication of the laws which will be relied upon by the parties.<sup>6</sup>

En revanche, nous regrettons la condamnation sans appel du renvoi alors qu'on ne peut pas dire que les tribunaux en aient abusé au Canada. Pourquoi se priver d'un outil qui peut servir un jour ?

Nous regrettons également que l'arrêt *R. c. Thomas Equipment Ltée*<sup>7</sup> que l'auteur étudie de façon si fouillée du point de vue des aspects constitutionnels du droit international privé ainsi que du point de vue contractuel ne l'ait pas également poussé à nous faire part de son opinion sur les lois d'application immédiate. Elle n'aurait pas manqué, de la part de ce grand spécialiste, de revêtir un intérêt tout particulier.

Il s'agit là de reproches extrêmement mineurs à un outil de travail de précision. La table de jurisprudence est impressionnante. L'index est complet et bien fait. Une bibliographie aurait encore ajouté à l'utilité de l'oeuvre mais nous ne savons que trop que, dans ce domaine, ce sont souvent les impératifs de l'éditeur qui l'emportent.

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<sup>6</sup>*Canadian Conflict of Laws*, 2e éd., *supra*, note 3 à la p. 50.

<sup>7</sup>(1979), [1979] 2 R.C.S. 529, 96 D.L.R. (3d) 1.

