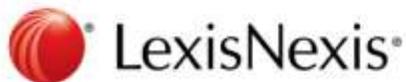


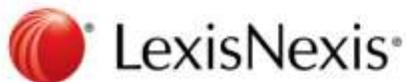
The Law of Confidential Communications in Canada

"The book is scholarly, but so clearly written that it is equally accessible to practitioners, students and laypeople. It brings together materials that are easily available in no other source and cites many relevant authorities from Canada, Britain, Australia, New Zealand and the United States. Because of its readability, excellent organization and exhaustive treatment of the subject, it should be in every Canadian Legal Collection." [1997 Canadian Law Libraries, Vol 22, No 2, Lenore Rapkin]



## Commercial Arbitration, 2nd Edition (including 2001 Companion Volume)

"The book is clearly an essential one for those intimately involved with arbitration legislation, not least commercial arbitrators themselves who will surely welcome such an authoritative exposition of the law and practice in this important area." SOLICITOR'S JOURNAL



The Independent Medical Examination in Psychiatry

“This book is designed to assist personal injury lawyers in obtaining high quality medical legal reports by setting out the different factors that must be included in the report. By reviewing this text, practitioners can avoid sending unprepared clients for their medical assessments by psychiatrists. Some highlight chapters are: Controversial Diagnoses and Recent Court Decisions, and the Psychiatric IME. In my view, this is an extremely succinct and helpful text book at only 187 pages”.

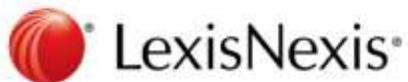
Ronald F. Maclsaac  
Maclsaac & Maclsaac  
The Verdict Issue 114, Page 62



The Law and Practice of Marine Insurance in Canada

"Litigators in this field will appreciate the organizational work that went into producing this summary of sea, lake and river law."

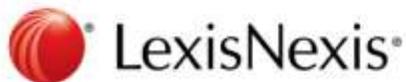
Ronald F. MacIsaac, *The Verdict*, June 2006, Issue 109, Page 82.



## Internet Banking - Law and Practice

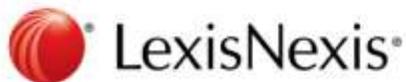
"...Internet Banking: Law and Practice is extremely well written, explaining the key internet banking law principles in a logical and clear way. By explaining the principles in this way, it quickly allows the reader to understand the law and issues and apply them to problem situations. I would unreservedly recommend this text to anyone interested in, or practising, this area of law..." (www.studentlawjournal.com - 9th December 2007)

"...interest in the legal and security aspects of legal banking has, not surprisingly, grown apace as this form of banking catches on worldwide..." (THE COMMONWEALTH LAWYER, Vol.15, No.1, APRIL 2006)



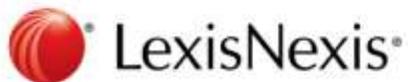
International Financial Markets Guide

"...provides a valuable summary of the legal and regulatory provisions for financial services players in 73 countries..." (Insurance Regulation & Accounting - May 2004)



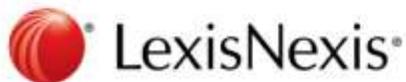
Munkman on Damages for Personal Injuries and Death, 11th Edition

"...both defendant and claimant practitioners will find much that is illuminating and useful in this work..." (New Law Journal Book Reviews Supplement - 16th July 2004)



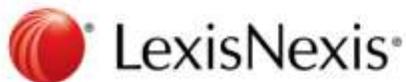
## Commercial Contracts Checklists

"...to sum up, this book is good value for money..." (SUPPLY MANAGEMENT - 7th JULY 2005) "...serves as a troubleshooting manual, revealing the most common mistakes, deficiencies and causes of disputes in commercial contracts..." (INITIATIVE - Issue 2, No.5, JUNE 2005)



## Intellectual Property in Designs

"...this book on the law of designs is aimed well above the level of an introductory work. The first chapter in the book addresses the history of the law of design. The chapter is important since, without an understanding of the history, it is not really possible to understand what the law has become..." (NEW LAW JOURNAL, 14th APRIL 2006)



## Lawyers' Medical Cyclopedia, 4th Edition

"This ten volume encyclopedia is the overall place to look to for solutions in issues arising in the preparation of claims in personal injury, medical negligence, workman's compensation and any medically related claim... The encyclopedia is a great medical mini-library for the advocate."

Ronald F. MacIsaac, *The Verdict*, June 2006, Issue 109, Page 82.

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"This the volume encyclopedia is the overall place to look to for solutions in issues arising in the preparation of claims in personal injury, medical negligence, workman's compensation and any medically related claim. A highlight is the volume dealing with toxic substances. Another highlights sets out samples of courtroom testimony by physical therapist witnesses. The encyclopedia is a great background medical mini library for the advocate."

Ronald F. MacIsaac, *The Saskatchewan Advocate*, June 2007

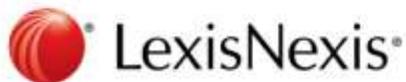
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The Oatley-McLeish Guide to Brain Injury Litigation

A stellar cast of experts has contributed their expertise in all the relevant fields..The long time trial lawyers who authored this book enable the reader to lay a good foundation at the outset and use the text for referral at each step in the development of the case. It is a must have for any brain injury claim."

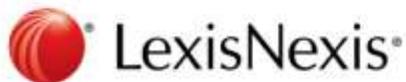
Ronald F. MacIsaac, *The Verdict*, March 2006, Issue 108, Page 67.



Medical Ethics - The State of the Law

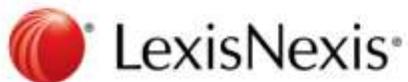
"The book's strength is as a legal reference, but one that provides elaborate context for the issues of medical ethics that are dealt with by the legal system. ....The most impressive aspect of the book is its thorough listing of court cases and the specific discussions of very difficult issues. ...Those with knowledge or interest in the legal or medical field are advised to read the book."

Daniel W. Phillips III, Ph.D., Assistant Professor of Sociology and Criminal Justice, Lindsey Wilson College, Canadian Law Library Review, Vol. 31, No. 4, Page 213



Double Taxation Relief, 8th Edition

"...contains 80 worked examples and the text of the OECD model tax conventions, UK and EU legislation and Inland Revenue guidance..." (TAX ADVISER - JANUARY 2006)



Privacy, Crime and Terror - Legal Rights and Security in a Time of Peril

"Stanley Cohen's impressive manuscript on privacy, crime and terror covers a wide range of topics currently being debated in Canada and other countries. No one in Canada is more qualified to examine these issues than he, having written extensively in the three areas that are of concern to him in this text - privacy, criminal law and national security; been the research director (Coordinator) of the criminal procedure project for the former Law Reform Commission of Canada; and having advised the government on the Charter implications of the recent anti-terrorism legislation in Canada."

[From the Foreword by Martin L. Friedland, C.C., Q.C.]

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"Despite the provocative title, this book deals with trial lawyers' practical problems with the rule of law, the Charter and the right to privacy. A highlight touches on sentencing and dangerous offenders. The table of cases will be useful in litigating privacy issues. The assessment of how much we are at risk in Terror's war without end makes interesting reading."

Ronald F. MacIsaac, *The Verdict*, June 2006, Issue 109, Page 82.

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"This is an excellent Canadian textbook on the complicated areas of privacy, crime and terror, and I cannot think of any other substantive work that has discussed the issues in such detail. ...I would highly recommend it for researchers who will be primarily concerned with the resolution of various complex issues surrounding privacy and crime or terror. Undoubtedly, the work provides an excellent and informative read and as well serves as a valuable addition to any library collection on legal issues surrounding these issues."

Humayan Rashid, Head of Cataloguing/Reference Librarian, Bora Laskin Law Library, *Canadian Law Library Review*, Vol. 31, No. 5, Page 257

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## Official Languages of Canada, New Essays

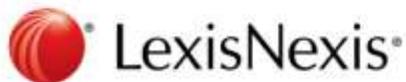
This is an impressive collection of essays on the meaning and significance of official bilingualism in Canada. The authors travel Canada's history since 1760 and review the key events that forged a fundamental trait of contemporary Canada's identity. They canvass historic milestones and legislative, judicial and administrative struggles that have helped shape Canada today.

These essays are replete with information and data that help understand the progress made and the battles that remain to be fought, to reinforce Canada's bilingual character while at the same time being a remarkable source of information on many current issues affecting official bilingualism in Canada's legislation, the Courts and government administration that will assist lawyers, judges, researchers, policy makers and legislators alike.

[Roger Tassé, O.C., Q.C.](#)

Gowlings

January 17, 2008



The Federal Environmental Assessment Process - A Guide and Critique

Review of Meinhard Doelle's The Federal Environmental Assessment Process – A Guide and Critique

Bruce Pardy, Faculty of Law, Queen's University  
January 9, 2009

Meinhard Doelle has written an effective and valuable book on environmental assessment in Canada. The Federal Environmental Assessment Process – A Guide and Critique combines the utility of a legal textbook with the insight of an academic treatise. It is practical yet not at the expense of theory; succinct yet comprehensive; concrete yet abstract; constructive yet critical. Professor Doelle makes sense out of nonsense, but does not pretend that the subject matter is more or less than the mess it really is.

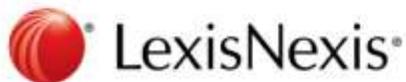
In the area of environmental assessment, this is no mean feat. The law of environmental assessment is complex and obscure. It is like much of the rest of environmental law, only more so: vague, discretionary, varied, broad in its aspirations, and narrow in its achievements. Doelle reflects this complexity in a way that makes it clear, but not artificially so. He describes the uncertain jumble of federal environmental assessment accurately, but in a manner that allows it to be understood.

The book is clearly written and organized. It includes helpful sections on the history of environmental assessment in Canada and elsewhere, consideration of the relevance of international law, treatments of the main legal issues such as jurisdiction, application, purpose, procedure, and scoping, and an effective review of leading court cases. It also offers a number of short case studies to illustrate application of the assessment process. The book is highly recommended for anyone working, teaching, researching or writing in the area of federal environmental assessment in Canada.



## Kelly's Legal Precedents, 20th Edition, Supplement + CD-ROM

"...Kelly's Draftsman continues to be an indispensable resource of the main precedents. By maintaining its one volume of coherent and relevant precedents written in Plain English, the authors ensure Kelly's Draftsman should remain close to hand. Its price also means it provides excellent value for money and is indispensable to any lawyer who regularly drafts agreements for their clients..." (Student Law Journal – June 2008) "...this latest version of what still remains a practitioner's bible sees a few stylistic changes: the contents are now arranged under four broad heads - general, private client, commercial and not for profit - and there is some tidying-up and amalgamation of chapters..." (Journal of the Commonwealth Lawyers Associations, Vol.16(1) - April 2007)



Fraud – Law, Practice and Procedure

"...with the enactment of the Fraud Act 2006 this is a good time to be in possession of such an important book as this. The title is "Fraud: Law, Practice and Procedure". Albeit the authors say they may just as well have called it, "All you need to know about fraud"... (INTERNET LAW BOOK REVIEWS - DECEMBER 2007)

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"...I know of no other work which provides such an opportunity to review the whole horizon of white-collar crime, albeit that view must, of necessity, be a brief snapshot..." (THE TAX JOURNAL - ISSUE 810, 24 OCTOBER 2005)

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"...a well written and thoroughly researched Loose leaf work clearly presented in seven parts..." (INDEPENDENT DIRECTOR QUARTERLY (e-mail newsletter) 3 FEBRUARY 2005)

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"...it is an excellent work, which will be at my side in future fraud cases. I commend it to all practitioners and judges whose work lies in this field..." (THE HONOURABLE MR JUSTICE RUPERT JACKSON)

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Environmental Law and Procedures Management (PIA Version)

"...a book for managers, especially those charged with ensuring compliance with the law..."

(ENVIRONMENTAL LAW & MANAGEMENT - JANUARY/FEBRUARY 2005)

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"...this essential reference file covers a spectrum of topics such as air pollution and contaminated land management. Highlighting the significance of relevant laws and regulations, the file helps the manager formulate a comprehensive environmental policy and helps set up procedures, which fulfil the requirements of UK legislation..."

(ENVIRONMENTAL HEALTH LAW)

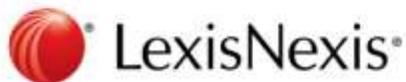
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Manning, Mewett & Sankoff – Criminal Law, 4th Edition, Student Edition

“The study and understanding of criminal law depend heavily on textbooks of this nature and quality: rooted in practice, informed by theory, and accessible to all. This is a comprehensive work that moves with uncommon fluidity from exposition of the prevailing legal rules to a succinct critique of their perceived weaknesses.”

The Honourable Mr. Justice Morris J. Fish



## Legal and Legislative Drafting

LexisNexis recently published a book entitled *Legal and Legislative Drafting*, authored by Paul Salembier. Books on legislative drafting are a rare commodity and the publication of an addition to the existing bibliography on legislative drafting is an event that should be most welcomed by the legislative drafting community. In fact, this book should be well received by the legal drafting community at large, as one of its key features is the fact that it also deals with legal drafting considerations generally, and not exclusively with matters relating to legislative drafting. The book has a number of other important features that make it a particularly interesting addition to the existing literature.

As some of you may already know, Mr. Salembier is a Canadian legislative counsel with over two decades of experience in the area of legislative drafting. He has drafted well over 1,000 bills and regulations in his career. He has also taught regulatory law, statutory interpretation and legislative drafting both in Canada and abroad. In 2004, he authored a book on regulatory law and has also published several articles on aboriginal law, regulatory law and statutory interpretation. His experience is directly reflected in the maturity with which serious drafting problems and issues are discussed and analyzed in his book, and possible solutions proposed and explained to the reader.

This new publication is remarkably well-researched and well-documented. Its sources are drawn from legislation (both primary and subordinate), jurisprudence, textbooks, articles, conference papers, originating from a multiplicity of Commonwealth countries (such as Australia, Bangladesh, Canada, India, Malaysia, New Zealand, Singapore and the U.K.), as well as from other countries such as Ireland and the U.S.A. Clearly, the drafting issues discussed in this book will interest, and be of great assistance to, legislative counsel and other legal drafters from all over the Commonwealth and beyond.

Another key feature of this book is the numerous and diversified examples that are provided and discussed in great detail by the author to illustrate and explain the principles, rules and suggested solutions that the author deals with.



People reading this new book will undoubtedly be well served by the author's in-depth analyses of the various drafting rules or drafting problems that are discussed. Mr. Salembier's analyses are consistently thorough and well balanced. At times, one might get the impression that the author's explanations are overly detailed, but for a reader who is looking for assistance in understanding a technical drafting rule or in resolving a difficult drafting problem, Paul Salembier's book will never be considered as providing too much information or too many analytical discussions concerning that very rule or problem. Rather, readers will welcome the wealth of information provided in the book on any given topic that happens to be troublesome for them, and will find Mr. Salembier's thorough analyses to be of great assistance in understanding the various options that are available to resolve their drafting problems. And if at some point readers suffer from information overload (after all, this book is not a novel), they can take a break and enjoy one of the cartoons that are scattered throughout the book.

Although the book contains much useful information, the information provided by Mr. Salembier tends to be a little repetitive at times. I can only assume that this is due to the author's preference, every time this appears to be a more convenient of approaching things, to repeat information that has already been discussed earlier rather than simply refer the reader to a previous section of the book where the same principles, which may of course be applicable to various sets of situations, have already been discussed.

One may not always agree with the views expressed or the conclusions reached by the author (and I hasten to say that I do share most of his views and conclusions). However, readers will find in the book the various arguments and explanations that will help them identify the best options to resolve their drafting problems.

In addition to fully discussing what I would call the standard issues and rules relating to legislative and legal drafting and statutory interpretation (e.g. composing a legislative sentence, conventions for drafting definitions, consistency of expression), the author does not hesitate to tackle more difficult matters such as deeming provisions, Henry VIII clauses, or the highly technical issues relating to the drafting of co-ordinating or conditional provisions (where two or more Bills before the legislature are amending the same provision). This is where his long experience as a legislative counsel is particularly valuable. Mr. Salembier is very comfortable in analysing and explaining difficult drafting issues, and proposing appropriate solutions.



Dedicating a full chapter to Interpretation Acts and how they can assist both legislative counsel and other and legal drafters is, in my view, another key feature of Mr. Salembier's book. Referring to various Interpretation Acts across the Commonwealth, the author underscores the importance for drafters to make room for Interpretation Acts in their drafting toolbox. Along the way, he suggests various improvements that could be made to existing Interpretation Acts in order to make them even more relevant as drafting tools.

The book contains a number of other chapters that I find of particular interest. Two of those deal with contemporary matters, namely plain language drafting and computer-assisted drafting. In his chapter on plain language drafting (one of his longest chapters, incidentally), the author discusses at great length, and in a very enlightening and balanced way, the various positions and views held by plain language promoters, the techniques that are proposed to make the laws easier to understand, as well as the benefits and risks associated with the various approaches discussed.

As for the chapter on computer-assisted drafting, even if it is a rather brief discussion on the topic (after all, Mr. Salembier does not claim to be an IT expert), it does contain excellent basic information to assist those offices that have not yet moved to an IT environment or to a full IT environment, in making appropriate decisions in that respect.

As we all know, legislative counsel are more than mere scribes. Mr. Salembier has decided to dedicate a full chapter to one of legislative counsel's roles on which unfortunately too little, in my view, has been written in the past. This is what the author calls the logical challenge function of legislative counsel. Mr. Salembier provides a good analysis of this particular role that legislative counsel cannot ignore if they are to properly translate policy decisions into effective law, but I believe more emphasis could have been put on the responsibility of legislative counsel to identify substantive policy deficiencies and to suggest appropriate alternatives, even though the lead role with respect to policy development is by no way their responsibility.

Chapter 13 of Mr. Salembier's book is dedicated to the topic of best practices. This, in my view, is another particularly useful chapter. The author has grouped together a number of useful tips that, although not all directly related to legislative drafting per se, could, if implemented, make the life of the legislative counsel much easier and could

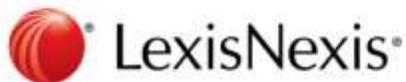


have an important impact on the quality of the documents that are drafted. In my view, this chapter could easily be expanded on in future editions to cover – or to cover more extensively – such topics as work methods, work assignment, meetings, development of a corporate knowledge base, and quality control mechanisms.

Finally, I would like to point out that the book comes with a good index, which definitely makes it easier for readers to find the information that they are looking for on any given topic dealt with in the book.

Reviewed by Lionel Levert QC

THE LOOPHOLE—Journal of the Commonwealth Association of Legislative Counsel



The Law of Hockey

“Rather than present a thesis for the whole book, the work is a comprehensive look at the legal aspects of modern hockey. It deals with both on and off ice issues, including collective agreements between the NHL and its players, transfer agreements between various international hockey federations, and the rules of the game.”

Daniel Perlin  
Reference Librarian  
Osgoode Hall Law Library  
York University

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The First Book on the Law of Hockey

““The Law of Hockey” is an engaging and a comprehensive review of the Canadian national winter sport, which at times reads as much as a historical account of the game, as it does a legal text book. Whether the reader has a passion for North American based sports or not, the comprehensive nature in which Barnes covers the on-ice and off-ice issues makes it a worthy addition to the sports lawyer’s bookshelf.”

James Patterson  
Australian and New Zealand Sports Law Association



Executive Legislation, 2nd Edition

“The new edition is particularly valuable because it analyses in a most erudite and logical way this important but neglected area of law.

The author’s erudite and scholarly analysis has undoubtedly produced a thorough and insightful account of the functions of and constraints on executive legislation in legal systems that follow the Westminster system of government. After reading this book, albeit cursorily given the time constraints, I have difficulty in thinking of any aspect of his chosen topic that the author has overlooked. 11f not least because of the dearth of other books on the topic, Executive Legislation should form an essential part of the library of every legislative drafting office and should be read, not only by those who may specialise in drafting executive legislation but also by all those engaged in drafting primary legislation.”

Duncan Berry

The Loophole - Journal of the Commonwealth Association of Legislative Counsel

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"Executive Legislation, 2nd Edition should be read by anyone who has occasion to deal with regulations or other instruments made under a delegated authority to legislate."

Professor Ruth Sullivan

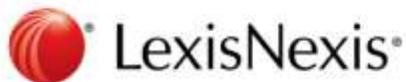
From the Foreword



Canadian Tort Law, 9th Edition

The Ontario Court of Appeal recently described Justice Linden as "the dean of Canadian tort scholars"

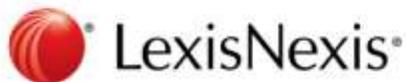
(Healey v. Lakeridge Health Corp., [2011] O.J. No. 231 (Ont. C.A.) at para. 54).



Canadian Tort Law, 9th Edition - Student Edition

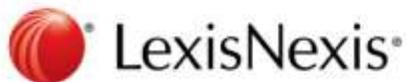
The Ontario Court of Appeal recently described Justice Linden as "the dean of Canadian tort scholars"

(*Healey v. Lakeridge Health Corp.*, [2011] O.J. No. 231 (Ont. C.A.) at para. 54).



Environmental Boards and Tribunals in Canada – A Practical Guide

"A must-read for those appearing before environmental tribunals in Canada. The authors have brought together the latest case law, practice and procedure in one place. This is a valuable resource for understanding the inner workings of the tribunals." Toby Vigod, Former Chair of Ontario Environmental Review Tribunal, British Columbia Environmental Appeal Board and British Columbia Forest Appeals Commission



Criminal Procedure in Canada

“These three learned academics sought to marry the theoretical and the practical, and the marriage is a happy one. This is an invaluable blend of Code sections, Charter caselaw and constructive academic extrapolation for both the highly experienced and the lowly neophyte.”

Alan D. Gold

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“This book offers a much needed comprehensive analysis of Canadian criminal procedure. Chronologically organized from detention and arrest right through to prosecution and appeals, this book provides a meaningful guide through all of the relevant procedural issues that could arise throughout a client’s representation. While undoubtedly necessary reading to the novice, the authors have also managed to provide critical academic commentary with respect to complex procedural areas making this an essential book for both the novice and the expert criminal lawyer.”

Marie Henein

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“Criminal procedure is an area of study that is far from intuitive, partly because of its deep historical roots, and also due to the fact that it draws on disparate sources of law. In this comprehensive and well-written volume, the authors have approached their task in a logical and straightforward manner. It is written in a manner that is sensitive to the needs of the novice. But those who are more experienced will encounter many lively and interesting discussions about controversial topics, supplemented with footnotes rich with useful reference materials. In short, I believe the authors have achieved what they set out to do.”

Hon. Justice Gary T. Trotter  
Superior Court of Justice (Ontario)



## LegisPratique – Recours et procédure en appel

« La lecture des textes rassemblés dans le présent ouvrage est frappante en ce qu'elle révèle une préoccupation commune : l'importance pour les plaideurs en appel de s'adapter aux attentes des juges. [...] Cela dit, je ne peux que louer le choix des éditeurs de ce recueil d'inviter les praticiens québécois à s'attarder aux paramètres au sein desquels œuvrent les juges des cours d'appel. »

L'honorable J.J. Michel Robert



The Law of Charitable and Not-for-Profit Organizations, 3rd Edition

"The continued expansion of the charitable and nonprofit sector in our society, prompted in part by evolution in opinions about how certain services should be provided, has required greater attention to the rules that govern it. One of the first in Canada to step up to that task in a comprehensive way was Donald Bourgeois. His book on charities and not-for-profit law first appeared some 15 years ago. It has now reached its third, much expanded edition. It is an admirable effort at a guide to "all you need to know" about the rules that affect his chosen subject.... Bourgeois' work will certainly disabuse anyone of the notion that there is not much law "out there" on charities and not-for-profit organizations or that the law in this field is simple. It will be a health warning for lawyers in other areas of practice who are asked to help out their family or friends by doing the legal work for a charity....Having this book as a reference will make the task of the lawyers and the staff and volunteers that they advise a good deal easier."

John D. Gregory of the Ontario Bar and Editor emeritus of *The Philanthropist*, Volume 19, No. 2



Paget's Law of Banking, 13th Edition

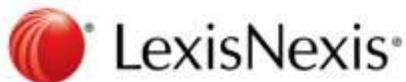
"..Paget remains a useful research tool and a good summary of such contemporary areas of banking business as electronic funds transfer..."

(JOURNAL OF INTERNATIONAL BANKING LAW AND REGULATION, V18 Iss10 -  
SEPTEMBER 2003)

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"...it ranks as one of the leading textbooks of our time..."

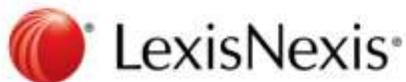
(THE COMMONWEALTH LAWYER)



Civil Liability for Sexual Abuse and Violence in Canada

“This text updates the newest developments in this legal minefield. Highlights are the chapters on Insurance coverage and the interrelationship between criminal and civil proceedings. This book will address all the issues that a trial lawyer should consider when launching a civil suit in this field. This book is your 380- page brief.”

[The Barrister, Ronald F. MacIsaac]



## The Ontario Personal Property Security Act - Commentary and Analysis, 2nd Edition

"...the second edition of the book Jacob Ziegel and David Denomme have co-authored on the Ontario PPSA is a simply superb reference work. It is comprehensive, authoritative, and clear. What's more, the book functions effortlessly and effectively not only as an encyclopaedia reference work, but also as a teaching (or self-study) tool of the first water. It will prove invaluable for anyone studying the PPSA, whether in a law school setting, or from within the more genteel walls of a law firm office.

The book is impressive in every sense. Commentary on each section of the Act includes analysis of the operation of the section and extended critical discussion of key judicial decisions along with insightful description of the section's purpose and usually its history. The authors provide extensive annotations on the regulations as well." [Banking & Finance Law Review, p139, Oct, 2001 Christopher C. Nicholls]

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"There simply aren't many chinks to be found in the Ziegel and Denomme armour. In sum, then although there are few commercial law books that one can aptly describe as indispensable, this must surely be one of them. Its clarity, comprehensiveness, and coherence have few parallels among Canadian legal reference works. Ziegel and Denomme's book belongs on the desktop of every commercial lawyer in Ontario, if not throughout the country, and the authors deserve congratulations and heartfelt thanks from those of us who have occasion to seek assistance in interpreting Canadian PPSA Legislation whether in Ontario or elsewhere." [Banking & Finance Law Review, p144, Oct, 2001 Christopher C. Nicholls]

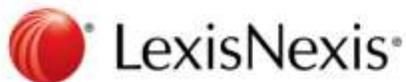
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Charities and Not-for-Profit Fundraising Handbook, 2nd Edition

Trial lawyers in their volunteer work are often asked for an interpretation of the rules regarding charitable donations. In this text, the author sets out a thorough analysis of virtually all aspects to the legal issues relevant to fundraising. In this second edition, the author also covers the retention of charitable tax status. This book is a must-have for lawyers with a charitable bent.

The Verdict Mar 2007 Issue



The Law of Human Experimentation

"This ground-breaking work is one of the first comprehensive overviews of Canadian legislation concerning the ethics of human subjects in medical research."

[Ellen Crumley, University of Alberta, *Bibliotheca Medica Canadiana*, 2001, Summer; 22(4)]

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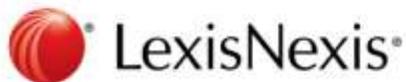
"The Law of Human Experimentation is not a light read, however, Marshall's work is a key reference for both medical and law libraries. Canadians who serve on REBs should read this work to become aware of the implications of ethics localization. It is a pioneer work in a field that has long been overlooked and, hopefully, a book which will influence the future of medical research and the development of national research ethics legislation in Canada." [Ellen Crumley, University of Alberta, *Bibliotheca Medica Canadiana*, 2001, Summer; 22(4)]



Financial and Estate Planning for the Mature Client in British Columbia

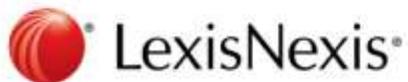
Lawyers advising plaintiffs who are seniors will find the special needs advice issues well addressed in this text. The editors and contributors are specialists in this rapidly growing field and regularly update this work. Highlights are the chapters on mental incompetency and special needs dependants. All the relevant legislation are part of the format. This is a useful text for all lawyers requiring direction on behalf of seniors.

Ronald F. Maclsaac, *The Verdict*, page 68  
Maclsaac & Maclsaac



## Actionable Misrepresentation, 4th Edition

"Like the earlier editions, this volume is sure to be an indispensable addition to the libraries of lawyers practising in common law jurisdictions." COMMONWEALTH LAWYER



Aviation Insurance, 3rd Edition

"The publication of the third edition provides an excellent opportunity for those concerned with aviation insurance to obtain a comprehensive and up-to-date analysis of the central issues, regulations and contracts of the aviation insurance market. The publication is a valuable reference book for airlines and external advisors" GLOBAL AVIATION BULLETIN, ISSUE 22, SEPTEMBER 2000

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"Margo with the able help of Butterworths, has given us a book which is truly impressive." AIR AND SPACE LAW, VOLUME XXV, NUMBER 6, NOVEMBER 2000

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"No area in aviation law is more often the subject of judicial interpretation than the construction of insurance policies. Fortunately for the past 20 years lawyers have been able to turn for assistance to Rod Margo's Aviation Insurance. Now in its third edition, the text is firmly established as the definitive work on the subject, and is both a scholarly and lucid exposition." CANADIAN BUSINESS LAW JOURNAL



Cross-Examination - The Art of the Advocate, 3rd Edition

"The author has expanded his immensely practical work by adapting his suggestions to fit with recent Supreme Court of Canada decisions. The basic text gives tips on how to handle the lying or evasive witness. It contains the rules and sets out the techniques for successful cross-examination. You will enjoy the excerpts from famous trials." [The Verdict, July 1999, P 66, Ronald F. Maclsaac]

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I recommend this book as a good text to review on the eve of a trial as it provides an excellent refresher course on techniques for successful cross examination. The text contains transcripts of famous cross examinations, all of which contain useful examples that trial lawyers can emulate in their own practice. This third edition provides expanded material with a review of key evidentiary rules. It would be an excellent addition to the library of any trial lawyer.

Ronald F. Maclsaac  
Maclsaac & Maclsaac  
The Verdict Issue 114, Page 63



Canadian Nurses and the Law, 2nd Edition

"The changes affecting healthcare have created significant challenges for nurses. This easy to read and well-organized book is written by three experts in health law and provides nurses with current information about their legal rights and duties. [Pam Marshall, Nursing in Review, April, 2000]

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"This compact volume would be a helpful addition to any nurse's collection and would be useful for employers of nurses, nursing schools and any other professionals dealing with the legal issues facing nurses." [Pam Marshall, Nursing in Review, April, 2000]

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"This book provides a comprehensive reference for Canadian nurses on a broad range of topics with legal implications. An important strength of the book is that each of the 13 chapters covers a single topic, and can stand alone as a reference source on that particular issue. This is valuable for the nurse looking for a succinct source of information on a particular topic."

[Canadian Oncology Nursing Journal, Brenda Peters-Watral, Riverview Health Centre, Winnipeg, Manitoba]



## Personal Injury Practice Manual

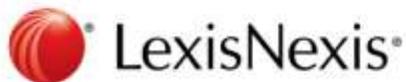
The editors have gathered together a stellar cast of contributions all of whom are preeminent in their field. This 2 volume loose leaf text has been designed to address all of the problems faced by the p.i. trail lawyer. The governments and the courts have several times tried to overhaul the laws relating to the compensation claims of victims, e.g., the ceiling on such compensation, plus a myriad of complicated procedural directives. This work should be a one stop source book for today's specialist in the injury claim field.

Ronald F. Maclsaac, The Saskatchewan Advocate March 2007

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This two volume looseleaf text is designed to help the personal injury lawyer handle a variety of personal injury claims. Readers will note that a maze of new legislative and procedural changes regarding matters such as mediation, arbitration and accident benefits have made our work immensely more complex and that the authors have addressed the full range of these problems. Recognizing the usefulness of this text, we hope that writers will follow through with their intention to update this work regularly.

Ronald F. Maclsaac  
Maclsaac & Maclsaac  
The Verdict Issue 114, Page 62



## Bias

"This book has met the demand for a text in this specialized field. The Courts have been loathe to find bias save in the most obvious cases, this the usefulness of the author's 29 charts identifying the types of bias and the decisions on same. This book will help lawyers weed out applications which are unlikely to succeed."

[The Verdict, July 1999, P 66, Ronald F. MacIsaac]



Independent Medical Examinations for Insurance and Legal Reports, 2nd Edition

"A highlight is the discussion of bias and its effect on the medical conclusions. Another highlight is the coverage of the review of pertinent documents. Trial lawyers will find this book helpful in setting out their expectations of the medical examiner."

Ronald Maclsaac, Maclsaac & Maclsaac, Victoria, B.C.

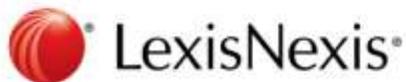
The Saskatchewan Advocate, March 2005, page 29



## Legal Research Handbook, 5th Edition

"If there is a law library in Canada that has not already purchased this text, the selector should order it immediately. There is much within these pages that is new and useful, and provides wonderful help to librarians as well as to those for whom the handbook was originally intended, practicing lawyers and students."

Lenore Rapkin, Editor, Canadian Law Library Review, Volume 5



## Legal Opinions in Commercial Transactions, 2nd Edition

"... it contains a great deal of substantive law (much more so than the first edition), it is a book by a practitioner for practitioners." [Dalhousie University's Canadian Business Law Journal, Vol. 32, 1999]

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"The depth of substantive law annotation is what sets it apart from any other work that deals with opinions." [Dalhousie University's Canadian Business Law Journal, Vol. 32, 1999]

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"Estey's book is intended above all to be useful to practitioners and it achieves this objective." [Dalhousie University's Canadian Business Law Journal, Vol.32, 1999]



The Canadian Law of Consent to Treatment, 3rd Edition

"This book is designed to guide professionals to methodology which should inhibit litigation arising from improperly obtained or documented consent to treatment. The text may be used by trial lawyers to understand the criteria for a valid consent. ...In short, while this book is intended for prevention of lawsuits, it cannot help but educate trial lawyers in the preparation of plaintiffs claims."

Ronald F. Maclsaac, Maclsaac & Maclsaac, Victoria, B.C.

the Verdict, Issue 104, March 2005, page 76

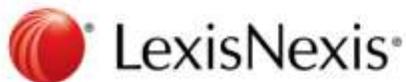


Environmental Harm - Civil Actions and Compensation

"If you are interested in the litigation of environmental law, you will want to have a copy of this book. It is a great reference guide to the various civil actions and forms of compensation available to anyone who has suffered environmental harm. Of course, it also provides information regarding defences to environmental actions." [Dalhousie Journal of Legal Studies, Duaine W. Simms]

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"Trial Lawyers who want to take on environmental civil claims will find this a most informative text. Highlights are sale of contaminated land, liability of the appraiser, the realtor and the solicitor. In addition waste disposal sites creating pollution liability is informative. The book also deals with pesticide, oil spill, class actions, and limitation periods." [The Saskatchewan Advocate, Ronald F. MacIssac]



Conflicts of Interest in the Legal Profession

"Paul Perell has written a neat little book (122 pages) which deals with conflict of interest situations. Mr. Perell states that 'the aim of this book is to assign the common situations of conflict of interest into classes and analyze the rules of professional conduct from the case law about these classes.' Mr. Perell hits the target. The book is easy to read and refers to all the relevant cases. It is of interest to solicitors as well as barristers." [Paul R. Sweeney, *Hamilton Lawyer*, Volume 5, No. 2 March 1996]

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"If you think you have a conflict, or someone else thinks you have a conflict, peruse this book. It is a good starting point for discussion or research." [Paul R. Sweeney, *Hamilton Lawyer*, Volume 5, No. 2 March 1996]

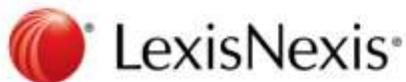
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"Law practitioners, students and the general public all realize lawyers occasionally find themselves in conflicts of interest. How a lawyer deals with such a situation reflects on the legal profession. Paul Perell has written a good reference book outlining the different types of conflicts that may arise and how to appropriately deal with such conflicts." [Doug Downey, *Dalhousie Journal of Legal Studies*, p377]



Underhill & Hayton - Law Relating to Trustees, 18th Edition

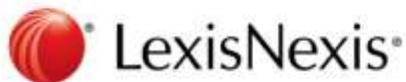
"... a work of which one can unhesitatingly say that every practitioner in the law of trusts should have on his shelves." TAKEN FROM A REVIEW OF UNDERHILL AND HAYTON: LAW RELATING TO TRUSTEES 15TH EDITION - LAW SOCIETY'S GAZETTE



## Income Tax and Family Law Handbook

This is a loose leaf update from the original work of Morton Rashkis, and that of Justice Benotto to 1995 and to 1996 with P. Rintoul. It is a very full coverage of family tax matters, e.g. provincial child support guidelines, capital gains attribution, split income of minors, absence from Canada, common law spouses, valuation of pension benefits and Crown Preferences. The book contains useful material on the effects of bankruptcy and an informative chapter on the separation agreement.

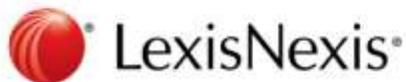
Ronald F. MacIsaac, The Saskatchewan Advocate, June 2007



British Columbia Family Law

"This two volume loose-leaf text conveniently organizes all of the relevant legislation under one roof. ...The briefing of the applicable cases chosen for each statute section is excellent-not too short and not too long. A highlight is the chapter on miscellaneous statutes. This will be a very useful continuing text service for trial lawyers in the family law field."

Ronald F. Maclsaac, *The Verdict*, June 2006, Issue 109, Page 81.



## McLachlin & Taylor British Columbia Court Forms, 2nd Edition

From the introduction to the 1st Edition of British Columbia Court Forms:

"Madame Justice McLachlin [now Chief Justice of Canada] and Mr. Taylor have an excellent understanding of what is required in practice, and they have perceived a need for a scholarly book of court forms which will assist every practitioner vexed with how best to say what needs to be said in pleadings and proceedings. Some may follow these forms slavishly and they will not likely regret doing so as the forms have been prepared with the utmost care and skill after consultation with many technicians and lawyers. Other practitioners will find the forms useful as aids to preparation of their own creation and, while I prefer the latter practice, I have no doubt that much time and expense for clients can be saved by the proper use of this important new contribution to the sum of present legal information."

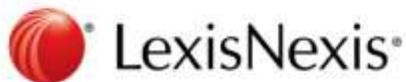
(Allan McEachern, Former Chief Justice, Supreme Court of British Columbia)



Canadian Health Information -A Practical Legal and Risk Management Guide, 3rd Edition

"...I am impressed with the authors' comprehensive take on the subject. This book is every bit as complex as the health information it attempts to portray... I suspect that it will appeal to MLTs in their roles as health care providers, employees and consumers in Canadian health care systems."

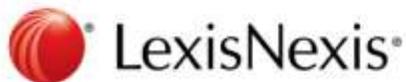
Moira M. Grant, PhD., ART, MLT, Canadian Journal of Medical Laboratory Science, Issue 67, 2005



## Conduct Handbook for Municipal Employees & Officials, 2nd Edition

### Said About the 1st Edition:

"Ostensibly written for the public sector, the book is a valuable tool for all sectors. Covering topics from abuse of office and corruption to conflict of interest, financial disclosure and post-employment restrictions, the book provides a well-written review of legislation and ethical standards. It includes many practical examples, current case law, and a section on how to develop a code of conduct." [The Legal Edge, October-November 1999, p7]



The Law of Tort, 2nd Edition  
Part of the Butterworths Common Law Series

Said about the 1st Edition:

"Provides essential guidance to the WIPO treaties, with a historical and legal background and an article-by-article commentary on each provision." WILDY'S BOOK NEWS

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"...this comprehensive survey of principle and practice will, nevertheless, prove an invaluable resource for the academic and practitioner." NEW LAW JOURNAL



Sullivan on the Construction of Statutes, 5th Edition

Said About the 3rd Edition:

"This book provides a comprehensive guide to the modern approach to statutory interpretation in Canada and expands considerably on previous editions." [Brian J. Arnold, Canadian Tax Journal, p1686, Vol. 42., No.6]

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"In general...the book is readable and well organized. It contains a comprehensive survey of the case law concerning statutory interpretation and will therefore be especially useful to practitioners." [Brian J. Arnold, Canadian Tax Journal, p1687, Vol. 42., No.6]

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"Since the first edition of this work appeared in 1974, it has consistently been recognized as the leading Canadian text on statutory interpretation. It is frequently cited as an authoritative source by courts at all levels.

This new edition, written by an academic at the University of Ottawa, is different in many ways from the first two editions and, in my view, is even better." [Advocates' Quarterly, p260]

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"This book is not tailored to the lawyer who problematizes interpretation; it is for those who recognize it as an essential and highly rewarding part of a lawyer's professional practice.

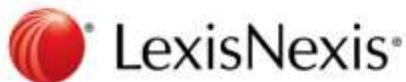
It is only by reading Professor Sullivan's third edition of Dreidger all the way through that practitioners of interpretation will appreciate its full force, and its contribution to the interpretive métier." [Ottawa Law Review, Vol. 27, No 1, 1995]

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Said About the 4th Edition:

"There is still very little available on the interpretation and construction of statutes in a Canadian context, despite the importance of this area to lawyers and students of law. Amongst this very small number of works, Sullivan and Driedger on the Construction of Statutes is the seminal work in the field. The importance of the work to the practice and study of law cannot be overstated; accordingly, this volume is an absolute must for law libraries of every description." [Nancy McCormack, Canadian Law Libraries, 2003, Vol 28, No. 4, p184]



Sexual Misconduct in Education - Prevention, Reporting and Discipline, 2nd Edition

"Sexual Misconduct in Education is a useful resource for all Ontario Educators who want clarification on how to handle suspicions or allegations against a teacher. The authors bring a wealth of experience to the subject."

Lois Browne, Professionally Speaking, March 2005, page 48

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The authors remind educators that where there is inappropriate touching that gives rise to any suspicion of sexual abuse, such suspicions should be reported. This text is designed to tell parents and teachers how to identify the risk factors of sexual abuse risks and to help school administrators prevent the incidence of sexual abuse amongst its students. Trial lawyers will benefit from the experiences in this field of law as recorded by the lawyers/authors.

Ronald F. Maclsaac, The Verdict, page 68

Maclsaac & Maclsaac



## A Practical Guide to Auditing and Related Terms

"This book is a good resource for those who need to familiarize themselves with site specific business acronyms, phrases and terms which have, in today's internal auditing and business world, become commonplace.

I found this book to be useful and would have no hesitation in recommending it."

(Alan M. Langley, CFI, Executive Director of the Association of Certified Forensic Investigators of Canada)

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"..contains some useful appendices, including a very comprehensive list of recognized professional, auditing, and related organizations throughout the world, a selected list of auditing, accounting, and related standards and guidance, and references, which includes websites, articles, and books. There are also an index of terms, and an index of designatory terms." ... "...a very useful guide for anyone involved with the oversight of the internal or external audit process."

(Belverd E. Needles, Jr., Ph.D., C.P.A., Ernst & Young Distinguished Professor of Accounting of DePaul University)

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"...a useful, easy-to-read, dictionary format volume, in which auditing and auditing-related terms have been identified from the fields of internal auditing, external auditing, information systems auditing, and fraud investigations..."

(IIA Educator, January-February 2005)

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"This indefatigable audit specialist has produced yet another worthy publication... There is comprehensive coverage with over 1,700 terms and phrases used throughout auditing, from external and internal to information systems, fraud, and operational. They have been drawn from a variety of disciplines, and this is the first ever publication of its genre."

(Gerald Vinten, Editor, Managerial Auditing Journal, January 2005, and a Past President of the Institute of Internal Auditors - UK and Ireland)

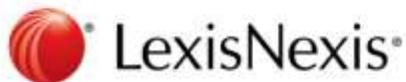


## On Trial - Advocacy Skills Law and Practice, 2nd Edition

Said About the 2nd Edition:

"In my opinion, judges as well as barristers are in constant need of instruction that is both authoritative and exhaustive on the many different issues that confront us in our daily effort at rendering justice... On Trial is not only a treasure trove for litigators, it is a gold mine for those called upon to determine whether the advocates have crossed the lines in advancing their client's cause whether the respect to evidence, procedure, or advocacy."

(Justice Gilles Renaud, Ontario Court of Justice)



## Corporate Governance and Securities Regulation in the 21st Century

“Corporate Governance and Securities Regulation in the 21st Century, coming, as it does, hot on the heels of the popularity of the subject of corporate governance in the 1990s (and magnified in importance by the notorious corporate governance scandals in the U.S. shortly after the turn of the millennium) is an extremely timely publication. It addresses the main legal and market mechanisms for promoting good corporate governance. It reviews the recent debates and developments on both sides of the border in the law relating to corporate governance in response to recent corporate governance scandals. As is common in most legal academic writing, the book is replete with footnotes that allow the reader to follow up the sources for the information relied on. Thus the edited collection also serves as a very useful research tool. The issues raised are complex and there is room for much debate on the topics covered in the book, but, as with good books generally, its most enticing feature is its thought-provoking quality. It is an important contribution to the literature and a must read for anyone interested in corporate or securities law and policy.”

Mark Gillen, Banking and Finance Law Review



Preventing Sexual Abuse of Patients: A Legal Guide for Health Care Professionals

"Having been so intimately involved in the realization of the Regulated Health Professions Act, I welcome this Guide as a much needed complement to the legislation - an essential tool for health professionals in expanding their education and knowledge of the very real and potentially damaging issue of sexual abuse of patients." (Ruth Grier, Former Ontario Minister of Health)

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"I have the book, have read it and will absolutely encourage people to purchase it. I intend to use it as part of our training and have it as a committee and staff resource. Congratulations on a fine and very important effort."  
(Mr. Irwin Fefergrad, Registrar of the Royal College of Dental Surgeons)

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This manual sets out what happens in civil and criminal trials. It contains excerpts from legislation and sets out the workplace strategies which prevent sexual abuse. A highlight is the contact list of addresses, phone numbers and websites of the many colleges that monitor each professional. The book is a fount of information for trial lawyers trying cases in this field.

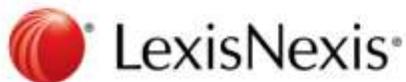
Ronald F. Maclsaac  
Book Review Editor  
Fiat  
Verdict  
Barrister



Effective Advocacy in Family Law

"This is a step by step manual intended to bring new and creative approaches to restructuring family foundations. It balances the various forums which may best bring the disputes to satisfactory resolution. A highlight is the case scenario that ties together the concepts presented by the authors. Definitely a fresh look at family law advocacy. ...This little handbook of less than 150 pages should be a good companion to take along with you to court."

Ronald F. MacIsaac, *The Verdict*, June 2006, Issue 109, Page 81.



Fundamentals of Information Technology

“A wide audience will find this book useful, as either a descriptive resource to assist readers to negotiate the IT world by understanding its components, or to provide a handy reference source for descriptions or explanation to pass along to others in the course of contract negotiation or litigation. With respect to lawyers, I initially considered that Handa’s book would primarily be useful to IT practitioners who themselves may understand the concepts they deal with, but who need to include definitions or explanations in legal briefs or correspondence in order to support a position...”

Barbara Darby, Canadian Journal of Law and Technology, Volume 4, Issue 1, March 2005 (pages 87-89)

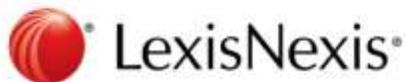


Construction Dispute Resolution Handbook

"The book is well designed to help the parties to assess the workable approaches to end the dispute and get on with the job."

Ronald Maclsaac, Maclsaac & Maclsaac, Victoria, B.C.

The Saskatchewan Advocate, March 2005, page 29



Video Game Law

"Video Game Law is more than a thorough and elegantly written analysis of the law - though it is certainly that. Festinger brilliantly extends the boundaries of legal analysis with philosophical and social commentary and creates new insights into, and understandings of, this nascent area of the law."

Joel Bakan, Professor U.B.C. Faculty of Law; Author of *The Corporation - The Pathological Pursuit of Profit and Power*, and Writer/Co-Creator of the award winning film based on it.

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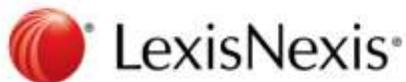
"Video Game Law is a must-read for anyone inside the game industry... the book is well written, easy to follow, fascinating in its historical approach to video game law, and deserves a place on my bookshelf."

Rusel Demaria: co-author of *High Score! - The Illustrated History of Electronic Games*, 2nd Edition



## Canadian Environmental Protection Act & Commentary, 2008 Edition

"This is the basic text for trial lawyers specializing in environmental actions. It contains the statute and regulations and sets out the circumstances when an individual may bring an action. It is a scholarly text and one highlight is the material on disclosure. The problems with asbestos are not yet historical and this is covered by the author. [The Saskatchewan Advocate, Ronald F. MacIssac]



Advising Families on Succession Planning - The High Price of Not Talking

What with the Courts liberally rewriting testators' directions via the WILLS VARIATION ACT the cost to families financially and emotionally can be enormous. Trial lawyers trying to avoid litigation in this field of law will find in this text step by step procedures that should obviate the frequent tragedies that flow from lack of intelligent planning. A highlight is the suggestion of consulting with intended beneficiaries followed by a professionally-mediated family conference. a long overdue text.

Ronald F. MacIsaac, The Saskatchewan Advocate, March 2007



## Canadian Healthcare Forms & Policies

“The materials in this book are a needed resource in the healthcare industry and the prototypes and templates provided will lead to ‘standardization’ of forms and policies across Canada.”

Gail F. Crook, CHE, CHIM  
CEO and Registrar, Canadian Health Information Management Association



## General Principles of Canadian Insurance Law

General Principles of Canadian Insurance Law, 1st ed., by Barbara Billingsley (Markham, LexisNexis Canada, 2008, liii and 432 pp., \$265)

Echoing Denis Bouvin's observation, demand for insurance coverage is ubiquitous.<sup>1</sup> It is needed to drive a motor vehicle. It is needed to obtain a mortgage for a home. Hollywood movies are not made without cast insurance in case a starring actor becomes ill or incapacitated. Satellites are not launched into space without satellite insurance in case there is a collision of satellites in space causing injury by falling debris. A Dutch wine maker is reported to have recently insured his nose on the basis that if he were to lose his sense of smell, he would not be able to guarantee the quality of his wines. Couples can insure against the extra costs of childrearing associated with unexpected multiple births. Apparently, the International Olympic Committee insured the 2004 Athens Summer Games against cancellation. Presumably, the Beijing Olympics were also insured. Contracts of insurance cover all kinds of risks.

Correspondingly, the insurance industry is huge. The Insurance Bureau of Canada, representing the private, non-government-owned property and casualty insurers in Canada reports registered sales in 2007 of \$37.9 billion and controlling assets of \$116 billion.<sup>2</sup> According to the bureau, the property and casualty business employs more than 100,000 people as independent brokers, agents and adjusters.<sup>3</sup> Then there is the life and health insurance side of the industry with \$73.5 billion in premiums and premium equivalents paid in 2007, \$432 billion in industry assets and another 100,000 persons employed.<sup>4</sup> Behind each insurance sale is an insurance contract. Each contract must meet the formalities of contract and requirements of legislation. When an insured submits a claim and the insurer considers whether to make payment, the contract and legislation must be interpreted and applied. This is not always straightforward.

Lawyers are engaged in the insurance industry in various capacities: for example, as in-house counsel to insurance companies; as in-house risk managers to businesses; as litigators in law firms advancing and defending claims for their respective clients,

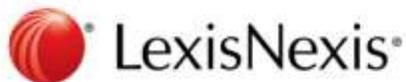


whether insured, insurer or third party claimant. In these various roles, lawyers find it useful (not to mention time-saving) to have at hand a well-organized, readable, up-to-date legal text with multiple case citations illustrating how principles of contract and legislation have been applied to facts in an insurance context. *General Principles of Canadian Insurance Law* fits the bill.

This book's purpose as stated in its preface is "to introduce the reader to the fundamental principles of insurance law in Canada"<sup>5</sup> in relation to private insurance contracts in the common law provinces. Certain areas of insurance law are expressly excluded from examination: group insurance, government-operated insurance benefit programs (such as Workers' Compensation), regulation of insurance companies, insurance agents and brokers, and marine insurance. Nonetheless there is some discussion of some of these topics. In the first chapter, without addressing specific regulations that govern insurance companies or agents and brokers, the need for regulation, the sources of insurance regulation and the constitutionality of insurance regulation are all discussed. Likewise, in Chapter 2, there is commentary and case law on the responsibility of an agent or broker to provide an insured with correct coverage, although specific regulatory obligations of agents and brokers are not canvassed.

This book is primarily a doctrinal review of Canadian insurance law in traditional legal textbook style. It is a hard cover book consisting of five chapters, table of contents, table of cases, table of statutes, and index.<sup>6</sup> There is also a practical 20-page glossary of insurance terms and an appendix of statutory conditions. Statutes cited are current to June 30, 2007. Case law cited is current to August 31, 2007, which means the judgment of the Supreme Court of Canada in *Canadian Western Bank v. Alberta*,<sup>7</sup> spawned by the incursion of banks into the insurance arena, is included (albeit in a footnote), as are the Supreme Court's judgments in *Citadel General Assurance Co. v. Vytlingam*<sup>8</sup> and *Lumbermens Mutual Casualty Co. v. Herbison*<sup>9</sup> interpreting the words "use or operation" of a motor vehicle commonly used in contracts of auto insurance.

Both of these "use or operation" cases are summarized in the policy interpretation section of the book and are appropriately reviewed using as background the leading predecessor case *Amos v. Insurance Corp. of British Columbia*.<sup>10</sup> In all three cases, an injured party was looking to an insurer for recovery in circumstances involving a motor vehicle. The conclusions of the Supreme Court are analyzed regarding the distinction between *Amos*, where recovery against the insurer was allowed, and the two successor



cases where recovery was not allowed. That distinction, as justified by the court, is based on the differences between a no-fault benefit scheme in *Amos* and liability insurance coverage in the other two cases. By way of update, a foot note identifies decisions of lower courts relying on *Amos* of the same vintage as *Vytlingam*<sup>11</sup> and *Herbison*<sup>12</sup> that may have been “wrongly” decided.

In its title, scope and format, this text is somewhat reminiscent of Professor Ivamy’s often cited text, *General Principles of Insurance Law*,<sup>13</sup> albeit removed to and set in Canada. Its substance is less about the purpose and objectives of insurance and insurance law and more about the obligations and responsibilities imposed by insurance law as articulated in common law, by statute and interpreted in Canadian jurisprudence. Lawyers practicing in the area of insurance law (and law students and judges) who want a general insurance text identifying “the law” as determined by our Canadian courts in the genre of a comprehensive black-letter text will appreciate this book. Basic insurance principles are presented succinctly. Most topics include a summary of principles communicated in a series of concise bulleted statements. Leading cases are identified and summarized.

The book is heavy with lengthy footnotes. They constitute a significant aspect of the book’s value and completeness as a resource. They cite a remarkable wealth of Canadian insurance jurisprudence, spanning the years and from various provinces and levels of court, usually providing a crisp précis of judgments cited. They pinpoint cases that uphold the principles described and cases that deviate from them. They frequently provide elaboration and additional commentary on a case and identify case-related issues. They incorporate pertinent, supportive statutory references. Occasionally they reference related academic writing (including the text author’s own articles) and point the reader to other insurance texts, not engaging with the other literature or texts but referring the reader to them for further investigation as desired. The footnotes regularly cross-reference to other sections of the book (which is particularly well done).

A footnote may also offer an insight into practice—how the law may affect a client and what to do about it. For instance, in the area of general liability insurance, an insurer may deny coverage for a third party claim, leaving the insured to defend the claim. Provincial insurance statutes commonly provide that a third party who successfully sues an insured can rely on the judgment obtained to bring an action directly against the insurer. Case law says that the judgment is satisfactory evidence of the insurer’s liability



without a rehearing. If it turns out however that the general liability insurer improperly denied coverage, the insurer's opportunity to contest the claim against the judgment creditor is lost. Whereas auto liability insurers are permitted by statute to participate in the original liability proceeding without accepting cover, similar statutory permission, as a footnote explains, is not available for general liability insurers; an alternative way forward for these insurers is to defend the liability claim pursuant to a non-waiver agreement.<sup>14</sup>

Overall, one might criticize the number and length of footnotes on the basis that some of the commentary found there could be usefully located in the main body of the text. The difficulty of course would be managing the heft and cost of the resulting book. The number of pages (432) is optimal.

A great deal of insurance law in Canada is found in statutes. Because insurance falls within provincial jurisdiction under property and civil rights, each province has its own insurance legislation and regulatory scheme. Legal texts in subject areas that are statute intensive will sometimes focus on relevant statutory references from a single province or alternately canvass statutes from various or even all provinces and territories. This text includes statutory references for comparative purposes from Alberta, British Columbia and Ontario. An appendix sets out the statutory conditions applicable to accident and sickness insurance, auto insurance and fire insurance in each of these provinces. Lamentably, there is no table of concordance of insurance legislation from across the country pertaining at least to accident, auto and fire loss. Such a table, although not a critical omission in any way, would have been an enhancing feature for practitioners working in provinces other than Alberta, British Columbia and Ontario.

One of the statutory topics tackled in Chapter 1 is that of limitation periods. Again, there are concise summaries of leading decisions of the Supreme Court of Canada, this time *KP Pacific Holdings Ltd. v. Guardian Insurance Co. of Canada*<sup>15</sup> and *Churchland v. Gore Mutual Insurance Co.*<sup>16</sup> These cases deal with the "tangled historical thicket"<sup>17</sup> of British Columbia's one-year limitation period for fire loss and its applicability to a modern all-risks or multi-peril policy. The court concludes that the limitation period for fire loss does not apply and, perhaps aware that the issue is a recurring one in other provinces as well, implores legislators to provide "specifically and unambiguously" for rules governing comprehensive policies.<sup>18</sup>



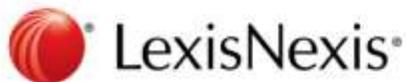
The summaries of KP Pacific<sup>19</sup> and Churchland<sup>20</sup> are followed by the author's review and analysis of outstanding issues remaining after the decisions and the conflicting case law rendered subsequently by lower courts in Manitoba, Alberta and Newfoundland and Labrador, some of which do and some of which do not follow the decisions. The analysis here is quite lively and constructive emphasizing the need for, but lack of, a policy-based approach by the courts when considering the issue. Included is a review of recent government initiatives for reforming insurance legislation in Alberta and British Columbia aimed at recognizing the prominent use of multi-peril policies over stand-alone fire policies.

Each of the five chapters begins with a brief introduction setting out the purpose of the chapter. The content of the chapters is very much what would be expected in an insurance text of this nature: (1) foundational principles regarding definition, insurable interest and utmost good faith; (2) particulars of commencing, renewing and terminating insurance contracts; (3) rules of policy interpretation; (4) claims on policies, including notice and proof of loss, relief from forfeiture, waiver and estoppel, duty to defend, valuation and limitation periods; and (5) third party rights and obligations, including rights of unnamed insurers, assignees, mortgagors, judgment creditors, and issues of contribution and subrogation.

Overall, this book delivers what its title promises. It is a sound resource text on Canadian insurance law particularly suited for general reference by lawyers practicing in the insurance field. While it is marketed not only to lawyers and law students, but also to insurance adjusters and claims examiners, it is distinctly different from Craig Brown's *Introduction to Canadian Insurance Law*.<sup>21</sup>

Despite brief explanations of concepts, such as the difference between common law and statute law, and explanations of legal terminology such as the meaning of "ultra vires", found especially in the early stages of the book, it is nonetheless a robust legal textbook and would not be as suitable for reading by most non-lawyers working in the insurance field as would Professor Brown's book, the language and content of which is plainly more appropriate for non-lawyers.

Insurance is all about risk. With this resource readily available in their libraries, lawyers will reduce their risk of misunderstanding general principles of Canadian insurance law. In time I expect the general principles of insurance law as distilled in this text will



become incorporated into the written submissions of counsel and eventually be taken up in judgments of the courts.

Lorraine Lafferty\*

\* Assistant Professor, Schulich School of Law, Dalhousie University.

1. Denis Bouvin, *Insurance Law* (Toronto, Irwin Law Inc., 2004), p. 1.
2. "FACTS 2009 of the General Insurance Industry in Canada", online: Insurance Bureau of Canada <http://www.ibc.ca> (accessed December 2, 2009). Compare 2002 statistics cited by Bouvin, *ibid.*, at pp. 1 and 2.
3. *Ibid.*
4. "Key Statistics", online: Canadian Life and Health Insurance Association <http://clhia.ca> (accessed December 2, 2009).
5. Billingsley, at p. xi.
6. A soft cover "Student Edition", identical in content, is also now available.
7. [2007] 2 S.C.R. 3, 281 D.L.R. (4th) 125.
8. [2007] 3 S.C.R. 373, 286 D.L.R. (4th) 577 sub nom. *Vytlingam (Litigation Guardian of) v. Farmer (Vytlingam)*.
9. [2007] 3 S.C.R. 393, 286 D.L.R. (4th) 592 sub nom. *Herbison v. Lumbermens Mutual Casualty Co. (Herbison)*.
10. [1995] 3 S.C.R. 405, 127 D.L.R. (4th) 618.
11. *Supra*, footnote 8.
12. *Supra*, footnote 9.
13. E.R. Hardy Ivamy, *General Principles of Insurance Law*, 6th ed. (London, Butterworths, 1993).
14. Billingsley, at p. 308, footnote 54.
15. [2003] 1 S.C.R. 433, 225 D.L.R. (4th) 193.
16. [2003] 1 S.C.R. 445, 225 D.L.R. (4th) 202.
17. *KP Pacific Holdings*, *supra*, footnote 15, at para. 12.
18. *Ibid.*, at para. 20.
19. *Supra*, footnote 15.
20. *Supra*, footnote 16.
21. *Introduction to Canadian Insurance Law*, 2nd ed. (Markham, LexisNexis Canada, 2006).



## Canadian Mental Health Law and Policy, 2nd Edition

This book provides a much needed single source reference for health law and policies across Canada. Experience on the Weisstub Commission in the late 1980s revealed that the practices on various aspects on mental health law varied across Canada. To reach this conclusion, the information often had to be gathered by review of individual provincial mental health laws.

In this era, we often discuss the goal of achieving uniformity in health care standards and practices across Canada, and prompted by the Charter of Rights, the review of health legislation continues to reshape mental health laws through experience and important “decisions”. Thus the need for a reliable reference source of mental health laws and policies across Canada is significant. This book may very well fit the bill.

Among the 3 forewords, 1 by a member of the Schizophrenia Society of Ontario refers to the author’s personal experience of having psychosis for 10 years without treatment, with significant adverse and legal consequences. This led to his stated conviction that mental health legislation should facilitate the most effective treatment strategy possible. This attitude of cooperation among the patient and the family, the legal agencies, and the clinician runs as a strong theme throughout the book. It is reflected in its authorship, in the triple forewords, and in its outline and content. This reflects a welcome state of affairs for clinicians and administrators who would prefer to devote great time and effort to providing treatment for the most seriously ill patients, rather than being forced jailors of the sick and impotently watch them deteriorate in the community while effective medicines are available.

The introduction sketches out the various issues for discussion in the body of the book. A 17-page table of contents outlines in detail its various topics and subtopics.

The authors emphasize that the book is written from a “human needs perspective,” compared with a 1987 book that had a similar title by H Savage and Carla McKaguei which, in keeping with the times, took a civil libertarian perspective. The author’s exposition of the backgrounds and premises is what captures the purpose and sets the



tone for appreciating everything about it. What's important and progressive about the book is the recognition and acceptance of "mental illness" as a legal premise.

The book's content is organized into 12 chapters that are subdivided further into multiple subheadings and sub-subheadings. In the first and introductory chapter, the authors discuss the book's scope and review the laws and policies relevant to the management of serious mental illness and mental health reform activities and processes in Canada. It also provides a summary of how its content is structured.

Chapter 2 summarizes legislation across Canada that may apply when assessing and treating the involuntary patient (that is, provincial mental health acts, various provincial consent and substitute decision-making legislation, and the Criminal Code of Canada). Differences among the specific laws in each province are elaborated in Chapters 5 and 9. Chapter 3 entitled "Mental Scan: Historical, Legal, Service and Advocacy," establishes the historic grounding of Canadian law in the British legal tradition and its dominant influence on Canadian law into the 1960s. Such legislation provided for involuntary committal with implied permission to treat and no provision for safeguard of personal rights. It mentions that several factors subsequently influenced the evolution of Canadian laws, including legal case decisions in the US, and a strong antipsychiatry trend in Western society, which was prevalent in the late 1960s to 1970s. This trend includes the writings of psychiatrists, such as Thomas Szasz, Lang, and Rosenham. The influence of the social and community psychiatry movement was also important, and it reflected the social causation theories that were extant at the time. Also important at that time was the civil rights movement. These all led to high "threshold dangerousness" criteria for committal and the separation of treatment from involuntary admission. The chapter shows how cases involving the need for treatment questions versus the right to refuse influenced this trend. Over time, experience with dangerous patients led to softening and broadening of committal criteria from dangerousness to "need-for-treatment," as a result of violence and mental and social deterioration of untreated patients. The chapter explains how US case law has influenced the evolution of Canada's mental health law, which trails and mirrors the changes in US states in many ways. In addition, it explains the impact of introducing the Charter of Rights, which led to a country-wide review of provincial laws—including mental health—to conform them with this important part of the Constitution Act. In the process, there has been a profound change in the legal environment.



Chapter 4, entitled “The Nature, Causes and Treatment of Mental Illness,” notes the legal versus clinical and medical concept of mental disorder used in mental health acts and the narrow and broad legal definitions. In practice, the application of the act must deal with the clinical reality of mental illness—that is, its subjective and objective impact on the patient’s person and life.

Further, it must deal with legal and mental health professionals (for example, the police) who will be involved with mental health patients. The material in the chapter is written at a level that is clearly comprehensible. It uses ample illustrations that apply to situations that have been, or may be, encountered while dealing with the mentally ill in the community. Examples include the delusional patient threatening violence, the relation of hallucinations and delusions to violence, and the suicide frequency in various psychiatric disorders. In conclusion, the material comes alive and is made more memorable by the appropriate use of details from important studies. This is particularly well done in the section on schizophrenia. The references to medication and hospitalization make the following point: this is a genuine biological illness, and pharmacologic treatment and early intervention have demonstrable benefits. Presenting the array of major mental symptoms in tabular classification of 5 groups (reality distortion, disorganization, psychomotor excitation, psychomotor poverty, and depression) provides a useful structure for thinking about symptoms without oversimplification.

When the author writes “treatment is usually effective in alleviating the symptoms that create risks to patient, and others” and that “the risks of admission to hospital are far less than the risk to untreated illness,” I feel that the case has been made.

Chapter 5, “Criteria for Involuntary Admission to Hospital,” and Chapter 6, “Admission Procedures and Hospitalization,” deal with issues of hospital admissions. The discussion in Chapter 5 on the background information for the analysis of involuntary admission criteria is quite thorough and covers definitional issues, as well as the historic and sociopolitical climate in Canada. Further, it covers relevant jurisdictions, such as the UK and the US. In Canada the current involuntary admissions criteria are based on the Charter of Rights and evolved from earlier committal criteria, based on the British North America Act. Several issues of importance in this evolution are discussed (for example, the question of the purpose of involuntary admission and the implications for court decisions in such cases, which are included under such criteria). In addition, Chapter 5 covers the separation of involuntary admission from treatment, the evolution from



broader to narrower criteria of immediacy and dangerousness under the civil libertarian influence, and the more recent broadening to the prevention-of-deterioration criteria of the human interest movement.

During this analysis, several important points are discussed—one such point is that, unfortunately, most Canadian Mental Health Acts, including Ontario's, do not state their purpose. Stating the purpose would provide a guide to their interpretation and would make court decisions more important.

An intriguing discussion about experiences in different provinces —with broad versus narrow definitions of mental disorders—shows conceptual inconsistencies in the various definitional elements of a “mental disorder” among the 7 provinces that have specific definitions. Certain psychiatric disorders such as attention-deficit hyperactivity disorder (ADHD), oppositional defiant disorder (ODD), and psychopathy are not plainly included. Clearly, we need to study the consequences for patients that are under these different definitions in different provinces. It looks as if part of the controversy in this area over what diagnoses should be included is more related to the fact that some diagnoses denote mental states while others denote traits. However, what is most important for most involuntary admissions is the mental state of the patient. People are admitted because they are in an at-risk state, either immediate or predictable by history, and this may be independent of the DSM diagnosis.

This chapter effectively uses a case example to demonstrate and highlight important issues and points of controversy among the legal mental health and advocacy communities.

Chapter 7, “Psychiatric Treatment Authorization and Refusal,” and Chapter 8, “Assisted Community Treatment,” deal with compulsory treatment. Chapter 7 provides a history of the evolution of the separation of authority to treat from the power to detain. Further, it compares and contrasts the 2 procedural models for authorizing treatment in Canada: the state model and the private model. The authors take on the surprising task of making a case for the involuntary treatment of the involuntarily detained patient under the Charter of Rights, in part, by showing that delay and refusal of treatment deprive patients of certain Charter rights by exposing them to harm that may flow from their behaviour in the untreated state. The patient is deprived of “freedom of thought and liberty” that would easily be restored with appropriate available treatments. This analysis appropriately uses the Fleming versus Reid case (40.R) (3A) 74 (CA). Chapter 8



provides the background to the development of various forms of assisted community treatment, such as extended leaves and community treatment orders. All sides of the issue are discussed, including the importance of broader detention criteria, evidence for the effectiveness of assisted community treatment, and the importance of appropriate supportive substitute decision legislation. The authors provide their own recommendations for a model assisted community treatment law.

The next 3 chapters, 9 to 11, deal with the topics of “Rights and Safeguards,” “Mandated Services and Comprehensive Mental Health Legislation,” and “Psychiatric Treatment and the Criminal Justice System.” Chapter 9 discusses the legal bases for the protection of the rights of involuntary patients and compares and contrasts the various rights and safeguarding mechanisms within the mental health acts of different provinces and territories. The authors use a hypothetical case to demonstrate how treatment differs from one jurisdiction to another. The chapter ends with several recommendations (for example, make a nonbinding second opinion by a psychiatrist available to involuntary patients, but only after the first renewal certificate).

Chapter 10 discusses comprehensive “Mental Health Legislation.” Comprehensive Mental Health Legislation (CMHL) is described as “a legislative underpinning for a comprehensive mental health care system.” It obligates the states to provide a full range of services that persons with serious mental illnesses require and that are implied in the involuntary detention and treatment provisions of the Mental Health Act. Restricting individual rights should be accompanied by guaranteed available appropriate treatment. Although this is what psychiatric clinicians would all wish for, it is almost nonexistent. The authors’ support for CMHL is tempered by 3 caveats: 1) legislation cannot substitute for proper planning, 2) legislation cannot substitute for delivery of services, and 3) legislation should be drafted to provide the flexibility that allows for treatment innovation. Who can disagree with this?

Chapter 11, entitled “Psychiatric Treatment and the Criminal Justice System,” discusses the increase in the number of persons with mental illness in the criminal justice system over the last 20 years. In addition, it relays the various legal mechanisms by which such an individual may become a “patient” and how that individual obtains psychiatric assessment and treatment (for example, through diversion programs, remands, and being judged not eminently responsible by reason of mental disorder [MCRMD]). No recommendations are made.

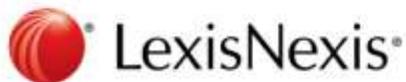


The final chapter, entitled “Trends and Recommendations,” draws together “the major policy themes in mental health legislation and examines likely developments in scientific knowledge and treatment, the service system, and legal trends that may shape the development of mental health laws in Canada.” It is one of the more interesting chapters. It culminates in the proposal of a model Mental Health Act. It foresees mental health legislation facilitating more treatment of persons with serious mental illness at the earliest possible stage in the community. Because of globalization trends, experience in other democratic jurisdictions will affect legislation. It adopts a “human needs perspective,” and includes the best elements of existing provincial mental health acts in Canada, and adds elements of the CMHA legislation proposal. This is an act most psychiatrists would love!

A section entitled “Towards the National Development of Mental Health Law and Policy” precedes the proposed Mental Health Act. It makes several points on which mental health clinicians would not disagree. Specifically, it points out that the concepts of “best practice” and evidence-based practice should be applied in analyzing mental health law and policy and that mental health laws and policies should be evaluated on the degree to which they focus on therapeutic and antitherapeutic outcomes, a concept called “therapeutic jurisprudence.”

The book declares its treatment-oriented approach to mental health legislation and policy-making in the forewords and in explicit statements and restatements in the early chapters. The early parts of the book are slow and sometimes repetitious with overexplaining. It makes one wonder about the intended target audience of the book. Was it targeted at mental health and legal professionals, at the psychiatric clients, or at the general public, including patients and their families and representatives? The language, the exhaustiveness, and the level of discussion seemed more targeted at the lay public. The degree of intellectual rigour, however, increases in the latter chapters and seems to rise climactically to the final chapters, in “Trends and Recommendations.” In this chapter, a model mental health treatment act is proposed; it contains some very progressive ideas that emerge from the author’s critical review and analysis of mental health legislation across the country, including real-world experiences with these acts, the outcome of legal challenges to these acts, and a comparative look at non-Canadian jurisdictions.

The ideas reflect a balance between an appreciation of the reality of mental illness and the value of treatment vs the need for safeguard of individual rights that can only come



from close and sometimes personal experience with serious mental illness. The argument for the human interest position is well-reasoned and supported by critical examination of available and growing scientific literature. The analysis of the Fleming versus Reid case illustrates how even the court may be influenced by antipsychiatric propaganda and the importance of having factual and readily understandable information available to the court and the public to counter antipsychiatric attitudes and to provide sound bases for judicial reasoning.

The book is a triumph of reason over rhetoric and of information over emotion. Nonphysicians (even lawyers) who have taken the care to truly inform themselves about mental illness, about its causes and effects, and about its treatments and outcomes can come to reasonable positions of cooperation with clinicians in the best interest of patients. It is the best argument for the public dissemination of available information about mental illness. Physicians who treat persons with severe mental illness, judges, lawyers, families, and patients themselves should read this book. It will also interest students and professionals in mental health law, and it will assist administrators and ministry bureaucrats to design legally and scientifically progressive mental health systems. It can provide a blueprint for future review and reform of mental health acts.

Review by Llewellyn W Joseph, MD, FRCPC  
North York, Ontario

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February 2009 – OPA DIALOGUE Newsletter  
Book Review

In his foreword to the first edition of *Canadian Mental Health Law and Policy*, in 2000, Dr. Alan Eppel, then OPA President wrote: “This book marks a crucial point in the evolution of thinking in Canadian mental health law. If the voices of these authors are heeded, this will have been a striking blow for the life and liberty of those imprisoned by mental illness”. The 2nd Edition of this book, published in June, 2008, details the changes in legislation in Canada during the last 8 years, many of which are in accordance with the recommendations made in the first edition of the book. The book also addresses issues arising from recent court cases, changes in clinical practice and areas of heightened concern such as mental health courts, homelessness and early intervention.



The authors of *Canadian Mental Health Law and Policy, 2nd Edition* address the issues with a balance of experience and expertise. Dr. John Gray was a psychologist and mental health administrator, has developed mental health legislation for two provinces, was on the Board of Saskatchewan CMHA and is past president of the Schizophrenia Society of Canada. Ms. Margaret Shone is a lawyer who worked for the Alberta Law Reform Institute, and had a primary role in drafting a report on Alberta mental health legislation. Dr. Peter Liddle was the first Professor of Schizophrenia at the University of British

Columbia. Now at Nottingham University, U.K. he is a world expert on brain functioning in psychosis and, as a clinician, runs a first episode psychosis service. This is a highly credible team for the task.

*Canadian Mental Health Law and Policy, 2nd Edition* explains the need for, and development of, mental health acts and other similar laws, how these differ between Canadian jurisdictions and makes recommendations on each major provision. These recommendations are based on “human needs principles” and experience in Canadian and foreign jurisdictions. The significant changes in mental health acts since 2000 in Nova Scotia, Newfoundland and Labrador and Alberta, are described and assessed. These changes include a broadening of the committal criteria to cover serious harms — not just physical danger — and the addition of a “likelihood of significant deterioration” committal criterion. Community treatment orders, rights advice for patients and their families, and mechanisms for dealing with treatment refusal by involuntary patients are additional new topics.

The 2nd Edition addresses research studies and experience with these laws in the last 8 years including the community treatment orders that were part of Ontario’s 2000 reforms. The international evidence on the effectiveness of community treatment disorders is examined. The authors also analyze Ontario’s Starson case which was eventually adjudicated by the Supreme Court of Canada. The authors show that the Ontario, Mental Health Act and Health Care Consent Act were responsible for denying Mr. Starson his health and freedom for over 7 years.

The 2nd Edition expands the chapter on Psychiatric Treatment and the Criminal Justice System to examine mental health courts.



# LexisNexis® Butterworths®

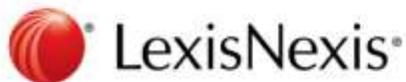
I found Canadian Mental Health Law and Policy, 2nd Edition easy to read. It is free from jargon, uses “non-legal” language, makes effective use of fictional and real cases to illustrate points and is logically structured. The table of contents, index, and appendices greatly assist in finding topics.

At \$150 the book is expensive but comparable to other books of similar quality. Given the potentially broad readership psychiatrists may want to approach their local hospital librarian and ask that the library acquire a copy.

For more information or purchase, e-mail <mailto:jegray@shaw.ca> or <http://www.lexisnexis.ca/bookstore>

Richard O’Reilly

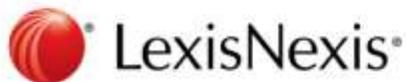
Dialogue, Ontario Psychiatric Association



The Child's Right to Legal Standing

This text covers the issues around the initiation of court actions for children such as self representation, court appointed counsel and to be a named or unnamed party. Some highlights are the material on at risk children detained by the state in safe houses, the issues of independent rights in immigration cases and independent right to seek asylum. There is a great deal of information in this book that will be useful to trial lawyers acting for children.

Ron Maclsaac  
Verdict, Barrister



## The Charter and Criminal Justice - Twenty-five Years Later

Hard to believe, but the Canadian CHARTER OF RIGHTS AND FREEDOMS has entered its second quarter century. Its impact on criminal law has been profound, and the legal community is greatly indebted to Osgoode Hall Law School for having organized The National Conference on the CHARTER and Criminal Justice in Canada. Many of the best known names in the broad area of criminal law participated, and their searching analysis has now been collected, edited and published. The result reflects the stimulating and incisive thoughts expressed at the conference by more than twenty judges, academics and practitioners, and all of us will benefit from their collective effort.”

The Hon. Fred Kaufman, C.M., Q.C.

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“A superb collection of essays from Canada's leading thinkers on the CHARTER and criminal justice. This book promises to be the definitive chronicle of how the CHARTER has remade the criminal process over the past twenty-five years. An invaluable resource for judges, lawyers and academics.”

Anil K. Kapoor

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“This collection of essays is an important academic contribution to the development of the CHARTER over the past twenty-five years not only providing a retrospective analysis but also a clear indication of where we may be going in the next twenty five years.”

Marie Henein



## Ontario Courtroom Procedure, 2009 Edition

"Ontario Courtroom Procedure is the best litigation book I have seen since I started doing litigation in 1967. It not only covers the Rules, but everything to do with courtroom procedure and ethics. It does much more than merely filling a hole in legal research, it creates a whole new category. Every court lawyer — civil or criminal — should have this book on their desk. I do."

Douglas Turner, QC, Sole Practitioner

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"Ontario Courtroom Procedure is a MUST HAVE BOOK to be included in every Ontario litigator's desk top library. It is a tour de force of valuable, practical and up to date information on all aspects of courtroom procedure. This work more than meets its objective of being a practical guide as to how trials are conducted.

Over 115 senior members of the Ontario Bench and Bar are contributors. This attests to the quality of the work. Mr. Justice Ferguson's "leave no stone unturned" approach has produced a much needed "one stop shopping" work of great utility. I am particularly impressed by the very detailed Table of Contents, Checklists, Forms, and Appendices which assist the reader in finding help in a hurry.

Cases, statutes, rules, other texts and legal articles are cited throughout, to allow the reader to pursue further research on a given point, if necessary.

Congratulations to all who conceived and executed this work; it is a classic in its own time."

Peter Braund, Insurance Litigator with Borden Ladner Gervais LLP

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“This book helps take the “sting” out of stepping into court, especially for younger lawyers facing trials for the first time. I have found it especially useful as a family law arbitrator looking for guidance as to how to ensure my arbitrations reflect the inside of a courtroom as much as possible.”

Brahm D. Siegel, Nathens, Siegel LLP, Certified by the Law Society as a Specialist in Family Law.

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“Ontario Courtroom Procedure is an invaluable 'how-to' guide encompassing everything from the first step into the Courtroom to the final adieu to the jury.”

Alan Lenczner, Q.C., Commercial Litigator, Lenczner Slaght Royce Smith Griffin LLP

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“Ontario Courtroom Procedure is a wonderful and long overdue resource for the trial lawyer. It not only furnishes the reader with the “nuts and bolts” of courtroom procedure, but its sweeping scope spans the common to the esoteric with clear, concise and fully sourced explanations. The text is very easy to navigate and digest as a quick reference for court. With impeccably synopsised law and procedure by some of our Nation’s most learned legal minds, it is difficult to imagine a more useful weapon in a litigant’s arsenal.”

Amit Ghosh, Assistant Crown Attorney, Newmarket

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Most people enter law school imagining that they will come out the other end something akin to Perry Mason (or, for our more contemporary readers, Jack McCoy,). The truth of the matter is aspiring litigators, such as myself, are usually thrown into court armed only with remnants of memory from our “Trial Practice” class in third year law school. We flounder about in our new surroundings. Our only hope for guidance comes from opposing counsel who either relish our discomfort or are themselves discomfited. No doubt frustrated by such scenes while presiding over the Ontario Court of Justice in Whitby, Justice Ferguson has taken it upon himself to provide the necessary



guidance. The result is an apparently exhaustive tome that has come to the rescue of this litigator on more than one occasion.

Take, for example, a classic mistake made by young Assistant Crown Attorney's everywhere. Having called all my witnesses and closed my case, I realized, to my horror, that nobody had actually identified the accused as the person who committed the offence. I needed someone to point to him and say, "That's the guy who did it!" I needed to re-open my case. Fortunately (or obviously) there was such a section in the index that pointed me to a summary of the case law entitling me to re-open my case. The judge allowed me to re-open my case. And my apparently instantaneous knowledge of the relevant case law was sufficient to salvage my reputation as a bumbling idiot.

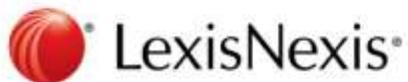
Ontario Courtroom Procedure leaves no stone unturned when it comes to conduct pertaining to our courtrooms – both civil and criminal – in Ontario. It was with great relief that I discovered that nothing is too pedantic for Justice Ferguson. He answers the questions which most would be too embarrassed to ask. At one extreme, the book addresses such questions as what to wear, where to sit, and how to introduce oneself to the judge? The book, however, progresses into the meatier aspects of everyday life in Ontario's courtrooms. The book provides a fingertip reference to substantive law and authorities dealing with pre-trial motions such as adjournment applications; special accommodations for witnesses with special needs; orders to exclude witnesses; requests to have the accused sit at the counsel table; and the raising of Charter issues. With respect to the actual conduct of trials, the book deftly guides the reader around the procedural minefield that accompanies trials in Ontario's courts. It also doubles as a book on evidence as it takes the reader through the calling and examination of witnesses, as well as the handling of forms of evidence other than testimony such as documents and demonstrative aids. And finally, the book explains the procedure surrounding judgment, sentencing and costs.

The restriction on the length of this book review does a disservice to the magnitude of that which is contained in this book. The wealth of distinguished contributors ensures that one's curiosity with respect to just about any topic is sure to be satiated. It is a must-read for anyone who plans to make any substantive appearance into a courtroom in Ontario – from the self-represented, to neophyte counsel, to experienced counsel who are no longer content to simply reinforce their bad habits. Such is the quality of the



book that I have been ... dare I say it ... on the verge of recommending it to some judges. That, however, was one of the few pieces of advice that was not in the book.

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E-mail Law

THE GAZETTE

montrealgazette.com

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BUSINESS / QUEBEC

STRICTLY LEGAL

Book looks at ramifications of email

Issues in play with every click you make by KATHRYN LEGER

If anyone ever had any reason to doubt the monumental impact of emailing on individuals and business, they only need to read one statistic contained in the introduction of a compact new book called E-Mail Law by Montreal technology law lawyers Charles Morgan and Julien Saulgrain.

“According to the Radicati Group, a technology market research firm,” the authors state, “it is estimated that, during the second quarter of 2007 (April, May, June), 196 billion emails circulated over the Internet every day and it is estimated that this number will increase to 374 billion in 2011.”

Just in the first three months of this year, the book says, Radicati estimated that there were 2 billion active email boxes in the world.

For Morgan and Saulgrain, who often work as a duo in the technology law section of the business law firm at McCarthy Tetrault LLP in Montreal, the upshot of the spectacular growth of email is a parallel rise in fast-changing technology law issues that many are still unaware of.

“Some people don’t realize what a broad range of legal issues are potentially in play every time they send an email.” Morgan said. “Some of the most striking scenarios



where email comes up in unexpected ways is in the context of litigation where that email string you thought you may have deleted, or you might have written casually a few years ago, comes back and ends up being the item that sets a different tone in the context of a trial of some sort.”

Added Saulgrain: “The language put in an email may not suggest that it is a legal document, but often it is. Contract formation might happen from a quick yes or no.”

The authors look at email and legal incarnations in five different areas.

Chapters cover contract formation via email, problems associated with unsolicited emails called spam (averaging more than 130 a week, according to one study cited), email monitoring by employers, document retention (the legal implications of trying to move toward a paperless society) and email as evidence in the courts.

There is an extensive table of case law linked directly to the relevant chapter at the beginning, and individual chapters look at the legislative frameworks under the civil law regime of Quebec, the common law system elsewhere in Canada and in the United States, and evolution in case law.

Balancing their time as authors and lawyers was almost as challenging as keeping up with the constant change marking the practice area.

“The most challenging and also the most interesting area of our practice is the fact that these are areas in constant mutation,” Morgan said. “It is really not an area of practice where once you know one or two laws inside out, you give the same sort of advice over and over again, because even the range of applicable laws is expanding, evolving, at a much more rapid pace than in most areas.”

Indeed, focusing on writing the book, in between such mandates as acting as legal counsel to governments and the telecommunications regulatory authorities of Morocco and Burkina Faso and clients active in Montreal’s telecom, pharmaceuticals and software licensing, required “fluid” logistics.



“The longer you wait, the more updates you have to do,” Morgan said, adding that the writing project he and Saulgrain thought would take eight to 12 months in end took up almost four years.

Morgan and Saulgrain were contracted to write the book by cross-town competitor Sunny Handa, the Montreal-based co-head of the information technology law group at Blake Cassels & Graydon LLP who is the creator and editor of the IT law series published by LexisNexis Canada Inc.

With technological advances occurring so rapidly, questions about how lawmakers around the world are tackling – or should tackle – governance of the Internet will be addressed at McGill University on Monday in an international symposium open to law students and members of the public. The 3rd Biennial Symposium on the Internet: Governance and the Law, sponsored by McGill and the Centre for International Legal Studies, based in Austria, begins at 9 a.m. at the Maxwell Cohen Moot Court, Chancellor Day Hall, 3466 Peel St.

The symposium will be chaired by James Archibald, director of translation studies at McGill. Archibald became aware of many of the burning international legal issues surrounding the Internet while acting as a member of the Canadian delegation to the World Summit on the Information society (google wsis for more information) in Geneva and Tunis.

Monday’s sessions will deal with such topics as cyber regulation, privacy vs. security, consumer protection, cybercrime and terrorism, domain names, open source and intellectual property rights, e-commerce and piracy.



Corporate Social Responsibility – A Legal Analysis

Human Rights Quarterly Review - [Click Here](#)

Reviewed by

David Weissbrodt

University of Minnesota

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Michael Kerr, Richard Janda, Chip Pitts. Hardback. 650 pages. LexisNexis. Can\$150

Review by: Peter Mason

Written by a group of North Americans but with a perspective that goes further afield than their continent, this substantial volume's stated aim is to 'bury the misconception that CSR is merely voluntary or optional'. It does so by unearthing soft and hard law around the world that pertains to the social and environmental impacts of business. While, given the authors' provenance, there is a natural bias towards Canadian/US legislation, there's plenty here on the legal situation in Europe and beyond. And although significant coverage is given to well-known laws such as the Alien Tort and Sarbanes-Oxley Acts, there are some unexpected reference points. Not least of these is the International Law Association's New Delhi Declaration of 2002, which sets out seven principles related to responsible business behaviour and is given prominence throughout.

The book's central tenet is that responsible conduct begins with legal compliance, even if it doesn't end there. The case is convincingly and clearly made without resort to legalese or unnecessary detail, and there are useful background chapters on the meaning of CSR, its history and the drivers behind it. In fact, it would be easier to criticize the authors for spending too much time on non-legal matters than it would be to chastise them for over-indulging in case law, regulations and statutes. But that would be churlish, for this book is clearly aimed at generalists just as much as lawyerly types. It will be valuable to both.

Peter Mason



Review By: Michael Torrance of Ogilvy Renault  
January 6, 2010

This treatise on the ambiguous concept known as “Corporate Social Responsibility” (“CSR”) is an essential primer for the legal practitioner. The absence of any other substantial legal texts in the field forces the authors to not just explain CSR but to define it. In so doing, the authors give some much needed shape to the concept while revealing the real lack of clarity there still remains as to what CSR truly entails. While not conclusive, this text provides an immensely useful starting point for what will likely be a highly interesting debate that will challenge the way lawyers understand their role as advisor to corporate clients.

The text provides both a theoretical and practical review of a number of developing principles that coalesce into the concept of CSR, and which create an imperative for corporate organizations to seek compliance with societal expectations beyond those expressed by the edicts of legislatures and courts. Structure for the discussion is provided by the authors’ elucidation of seven “CSR legal principles”: (1) Integrated, Sustainable Decision-making; (2) Stakeholder Engagement; (3) Transparency; (4) Consistent Best Practices; (5) Precautionary Principle; (6) Accountability, and; (7) Community Investment. These principles provide a categorical context to the authors’ discussion of the many multilateral initiatives, private regulatory frameworks, as well as legislative and regulatory interventions and propositions that have been created in the name of CSR. In addition to the useful assemblage of existing CSR-related “hard” and “soft” law falling under each of the seven principles, the authors also bring together a diverse academic literature spanning business ethics, stakeholder management theory, corporate law and regulatory theory.

The authors formulate a thesis (seemingly in two parts) of how CSR ought to be viewed from a legal perspective: as a stakeholder oriented form of “lex mercatoria” (customary commercial law); a form of “enforced self-regulation in the shadow of the law”. As the duality of the thesis suggests, the authors at times struggle to find definitive conceptual anchors for their subject. Far from being evidence of a shortcoming in the capacities of the authors, it is instead evidence of the uncharted legal territory into which this book ventures.



Reflecting this novelty, a significant amount of consideration is given to the existential question of CSR as a legitimate field of study for lawyers and legal theorists. The text anticipates the criticism that CSR, by nature, is voluntary and therefore lacks the quality of obligation necessary for law. To tackle this question, and indeed to justify their endeavor to the reading audience, the authors point to the empirical facts of corporate adherence to normative frameworks generally referred to as CSR and the proliferation of CSR standards, multilateral frameworks, and consciousness amongst corporate actors, non-governmental organizations and governments alike. In light of such trends, the characterization of CSR as a purely “voluntary” concept is misleading. If one can conclude that CSR and related social expectations are perceived, internalized into corporate self-governance, and consistently acted upon or at least referred to as standards of corporate behavior, then the question of whether CSR “ought” to be so viewed is practically immaterial. With such arguments the authors neatly avoid the normative obsession of most critical evaluations of CSR. The focus of the authors moves beyond those increasingly (practically) irrelevant arguments, towards consideration of the much broader and more fascinating question of how the phenomenon generally referred to as CSR should be understood by the legal practitioner.

But even getting past such inhibitions, the authors face the daunting task of defining a very elusive topic which lacks clearly defined content and defies simple explanation. These challenges may, unfortunately, dissuade a significant portion of the book’s intended audience from giving the text and its contents serious consideration. Lawyers in private practice may well view the book as lacking authoritative insights into the law as it is conventionally understood: as a series of black-letter edicts of government and governmental authorities. Conversely, the book may be overlooked by business theorist (considering issues of CSR from an “ethical” or organizational behavior perspective) who may find the discussion too “legalistic” to be useful. To this reviewer, both conclusions would be unfortunate and short-sighted. This text makes a valuable contribution to the academic literature on CSR and indeed to the fields of legal and business theory more generally.

Certainly, a legal analysis of CSR will force the lawyer to move beyond a search for “authoritative” sources of law towards a more nuanced understanding of law as part of a complex, over-lapping and hierarchical set of social expectations that affect social actors including corporations and their agents. Far from being an indulgence, such an evolution in thinking is much needed in order to align the thought processes of legal



counsel with the real dilemmas faced by their business clients. With businesses operating in often competing and overlapping normative frameworks, preservation of corporate legitimacy and the ever essential “social license to operate” necessitates consideration of more than “black-letter law”. These are imperatives that sophisticated corporate actors do not take lightly. A perceptual adjustment on the part of the legal practitioner to comprehend this reality may be necessary, not only to truly understand this book, but also to prevent the obsolescence of the legal practitioner as strategic advisor to business in a globalized world. The strategic problems posed by CSR are real for the businesses that grapple with them. If private practitioners of law are unable, or unwilling, to provide guidance that takes into consideration these issues, then corporate clients will simply look elsewhere for support and advice. The proliferation of CSR consultancies staffed by accountants and management advisors with little or no legal training suggests this has already occurred. Practitioners of law interested in staunching this trend and preserving a role of strategic importance within corporate management structures would be well advised to give this book a close reading.

As the authors well illustrate, CSR and law are not mutually exclusive and are in fact intrinsically inter-related concepts. CSR emerges from a complex network of social expectations, through the interplay of “hard” law legislation and jurisprudence, constantly evolving customary and “soft” law norms, international best practice standards, private regulations, and direct contract-like understandings between corporations and their stakeholders. All of this takes place in the shadow of state powers that have the capacity to introduce new “hard” law and regulation if corporate actors fail to act reasonably and meet legitimate societal expectations. Comprehension and navigation of such a complex web of rules and expectations is squarely within the competency of legal theorists and practitioners, and cannot be fully understood as simply a branch of “ethics” or “organizational behavior”. While those other fields are undoubtedly important in their respective spheres, the legal analysis offered by this text should be viewed as a valuable contribution to the inter-disciplinary field of CSR.

The value of the text will likely not be lost on corporate in-house legal counsel attempting to understand and implement a CSR agenda. Such persons will not be inhibited by the existential question of whether CSR “ought” to be considered from a legal perspective. For them, that question will be rendered moot once the decision has been made to take a CSR-cognizant approach to corporate governance. What will be of



more relevance for such persons will be (1) “what” a CSR mandate should entail, and (2) “how” it should be carried out?

The book and its seven principles will be most helpful in response to the first question. The internalization of a CSR mandate; initiation of conscious stakeholder engagement; development of reporting and transparency processes; implementation of best practices beyond compliance with minimum legal expectations; development of review, auditing and accountability systems; and, defining the appropriate role of community investment within the scope of CSR, are helpfully discussed in the text and will be essential “high points” of any serious CSR program.

But once these areas are identified and generally understood, the text will be of more limited value in discerning the substantive content of CSR. The book’s overview of best practices and the more substantive aspects of CSR are cursory in nature. While the book provides good direction on where to possibly look for substantive content of CSR expectations (academic literature, best practices, some regulatory and legislative initiatives) it is not at all comprehensive in describing what “compliance” with CSR expectations actually looks like. For example, little more than two pages is accorded to a discussion on what “integrated sustainable decision-making” would entail in practice (pp.156-158), with the remainder of that section focusing mostly on whether the corporate law concept of fiduciary duty is an inhibitor or facilitator of CSR. The sections on “Stakeholder Engagement” and CSR related “Transparency” provide good overviews of the existing standards and initiatives in these areas; however, the discussion tends toward a general and high-level summary of developments, with very little critical analysis. The idea of “corporate best practices” is discussed as an emerging area of international customary expectation, but its content and parameters are for the most part left undefined or only discussed in generalities. The chapter on CSR related “Accountability” outlines the major US tort law, international voluntary frameworks, and emerging transnational monitoring mechanisms that relate to CSR, and provides an interesting discussion of how CSR accountability can be understood as a form of “enforced self-regulation in the shadow of the law”. However, it is difficult to discern from that discussion how these concepts are really tied together from a legal perspective, and how legal practitioners can and ought to use CSR as a conceptual framework in the provision of advice or advocacy. In all, the reader comes away with a sense that perhaps CSR has not yet coalesced as a legal concept that can usefully inform legal analysis of contemporary business problems.



The authors appear to resist this conclusion by focusing on empirical developments and speaking of CSR as a current reality. That approach leads to a helpful compilation of legal developments which are undoubtedly linked to the concept of CSR. Indeed, CSR is a reality, at least for the business community. It is still, however, a very new and theoretically difficult subject for lawyers. The uncertainty of CSR as a field of legal study forces the authors to provide theoretical clarity to the discussion through their two innovative theses. But their theoretical afterthought is inevitably inadequate. One cannot help but wonder if the practical analysis offered by the authors, though very good, is an example of the “cart” being put before the proverbial “horse” in the absence of a clear exposition of the theoretical underpinning of their topic.

The question is begged, should CSR be understood as a legal obligation? If so, how do we deal with the fact that there is no single authoritative source that promulgates CSR obligations? In the absence of clearly defined authoritative sources, how do we identify the substantive content of CSR? More practically, how can and should legal practitioners use and apply CSR in a legal context? How do companies identify stakeholder audiences for engagement? How should corporate actors choose between conflicting legitimate interests? What happens when CSR expectations conflict with “hard” law? How will corporate actors defend their CSR management practices if challenged? These questions, which force consideration of what CSR actually means, are much more complicated than the “yes or no” question of whether CSR is permissible at law. The authors rightly succeed in putting aside that banal and practically irrelevant question. They also succeed in creating a very useful and thought provoking conceptual framework that helps define CSR as a legal field of study. However, they do not provide a strong theoretical foundation to explain how a CSR concept should be identified in the course of advice or advocacy as an obligation that can guide or justify corporate behaviour. Indeed, much work remains to be done if the empirical reality of CSR is to be reconciled with conventional understandings of law and legal obligation. While it is not a panacea for those of us craving answers to these questions, *Corporate Social Responsibility: A Legal Analysis* nevertheless provides a wonderful start and is highly recommended by this reader to forward looking and innovative lawyers everywhere.

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## LEX SUSTINEO

Corporate Social Responsibility: A Legal Analysis, by Michael Kerr, Richard Janda and Chip Pitts (Markham, Ontario, LexisNexis, 2009, xxix and 650 pp., \$150)

Corporate Social Responsibility: A Legal Analysis<sup>1</sup> is a welcome addition to an increasingly large number of books devoted to explaining how corporate social responsibility (CSR), often thought of in purely voluntary terms, interacts with binding legal obligations. A special feature of this book is that its analysis is grounded in seven CSR legal principles drawn from international sustainable development law. This is not surprising, given that Michael Kerr and Richard Janda, two of the primary co-authors, are associated with the Centre for International Sustainable Development Law, which is housed at McGill University's Faculty of Law, where Janda is an Associate Professor. Chip Pitts, a lecturer in Law at Stanford Law School, former Chief Legal Officer of Nokia, Inc. and former Chair of Amnesty International U.S.A., is the third primary co-author and editor of this book.<sup>2</sup>

Corporate Social Responsibility: A Legal Analysis begins with three introductory chapters that set the stage for the introduction of the seven CSR legal principles in Chapter 4. Chapter 1 attempts to define CSR in the absence of a standard legal definition. After drawing upon numerous disparate definitions of CSR and associated terminology, the authors conclude that CSR is best understood in light of two themes: firstly, a company's integration of economic considerations with environmental and social imperatives, and secondly, a company's method of balancing the needs of its various stakeholders.<sup>3</sup> This definition fits well with the concept of sustainable development, which is "recognized as having three fundamental pillars: economic development, social development, and environmental protection."<sup>4</sup> Chapter 2 is devoted to exploring "CSR drivers" — that is, what or who is responsible for putting pressure on businesses to conform to CSR norms. These include the usual suspects, such as pressure from communities or non-governmental organizations, enlightened investors, lenders and insurers, as well as enlightened self-interest on the part of the company itself, often described as the "business case" for CSR. Chapter 3 outlines the "conceptual foundations" of CSR, engaging with the history and theories (concession, contractual and constitutionalist) of corporate law, then briefly unpacking the question of to whom corporate managers are trustees. A fundamental claim of this chapter is that CSR is historically "embedded in the DNA giving rise to the corporation," with the need for a "social licence to operate"



remaining at the core of the corporate constitution.<sup>5</sup> Chapter 3 also expands upon the meaning of a corporate “sphere of influence,” first introduced in Chapter 1,<sup>6</sup> which derives from the “notion that with greater power comes greater responsibility.”<sup>7</sup>

Chapter 4 addresses another key feature of this text: the futility of the “voluntary versus regulatory” debate. The essence of this debate has been whether CSR is best pursued through voluntary initiatives or regulatory (mandatory) measures. However, this debate is futile as it is increasingly accepted that there is often a dynamic relationship between the two. This relationship is particularly evident in the discussion later in the book of “corporate accountability in the shadow of the law” as enforced self-regulation.<sup>8</sup>

Chapter 4 also introduces the seven CSR legal principles, which are presented in detail through Chapters 5 to 12. According to the authors, the legitimacy of the relative autonomy that the corporation has as a “legal order” is dependent on earning the trust of investors and acquiring a public licence to operate.<sup>9</sup> Accordingly, the principles that govern sustainable development under international law must be re-contextualized from their focus on nation states to apply to corporations. This approach is unique: while there is ongoing debate in international human rights law as to whether international human rights norms apply directly to corporations, and if so, how,<sup>10</sup> there has been little discussion of the direct application of international sustainable development law to non-state actors such as corporations.<sup>11</sup> The CSR legal principles are described as follows:<sup>12</sup>

**Principle 1 – Integrated, Sustainable Decision-Making:** Corporate decision-makers must consider environmental and social issues, in addition to economic considerations, when carrying out their duties and responsibilities.

**Principle 2 – Stakeholder Engagement:** Corporations must engage not only with shareholders, but also with stakeholders generally, on environmental and social issues within the corporate sphere of influence.

**Principle 3 – Transparency:** Corporations must provide periodic public reports on their environmental and social performance and disclose material information relating to environmental and social matters within their sphere of influence.



Principle 4 – Consistent Best Practices: Whether at home or abroad, corporations must seek to apply the highest environmental and social standards throughout their operations and during their interactions with business partners.

Principle 5 – Precautionary Principle: An absence of conclusive scientific evidence that serious and irreversible environmental harm will occur within their sphere of influence must not deter corporations from taking cost-effective precautionary measures. Furthermore, corporations bear the burden of proof of socially acceptable safety when they advocate potentially harmful projects.

Principle 6 – Accountability: Corporations and their decision-makers must be held accountable both for environmental and social harms and for failure to meet their own proclaimed standards of ethical conduct.

Principle 7 – Community Investment: Corporations must undertake programs and initiatives that contribute to the social, cultural, economic, or environmental enrichment of the communities in which they operate.

The chapters that follow cover an extraordinary amount of material as they explore the existing—or “emerging”—meanings of the proposed principles, with each chapter describing existing state laws and voluntary means of achieving the stated goals. Despite the breadth of sources covered, there are a few surprising omissions, and some unresolved questions that come to mind.

One would expect a Canadian and American bias in the materials covered given the orientation of the authors, and it is refreshing that much effort has been made to introduce laws from other jurisdictions. Yet, it is hard to understand why in some chapters there is extensive coverage of many jurisdictions and in others almost none, and the text does not provide an explanation. For example, in Chapter 7 on Principle 3 – Transparency, the survey of regulatory initiatives dealing with CSR reporting and disclosure covers Canada, France, the United Kingdom, Norway, Denmark, Sweden, the European Union, India, South Africa and the United States. By contrast, the legal accountability measures surveyed in Chapter 10 on Principle 6 – Accountability, is almost entirely focused upon the laws of the United States,<sup>13</sup> with some brief reference to Canadian law as well. While it would be unrealistic to expect comprehensive coverage



of increasingly important jurisdictions like China, India, Brazil and South Africa, the inconsistency from chapter to chapter is a bit confusing.

Second, it is not entirely clear whether the focus of this book is exclusively upon transnational corporations (TNCs) operating outside their home jurisdictions, or whether the principles are designed to apply equally to purely domestic small scale companies and unincorporated businesses of the informal sector. The authors clearly state that their intention is not to restrict the analysis to business enterprises that adopt the corporate form.<sup>14</sup> Yet, while Chapter 5, “Integrated, Sustainable Decision-Making,” suggests that the principle applies equally to small and medium sized companies,<sup>15</sup> other chapters, such as Chapter 8, “Consistent Best Practices,” implicitly seem limited to businesses that operate globally. The answer to this question is hinted at in the brief discussion in Chapter 12, “CSR’s Current Status and Future Evolution,” of the role of CSR in the least developed countries, including Sub-Saharan Africa.<sup>16</sup> Here, it is suggested that wealthy governments already fund programs to raise awareness of CSR with the “most obvious TNCs and sectors,” and the principles then “gradually spread out to small- and medium- sized enterprises and the informal sector.”<sup>17</sup> In this way, the lack of capacity problems that developing countries have can be surmounted by “escalating state networking with non-state regulators,” rather than escalating state intervention.<sup>18</sup> Presumably, similar forces are at work in developed countries which also have many small and informal businesses.

Another curiosity is the book’s treatment of transnational litigation designed to provide a remedy to those harmed by corporate conduct in another, usually developing country. One might assume that the cases often associated with this issue would be discussed in Chapter 10 under Principle 6 – Accountability. Yet, as Chapter 10 is focused almost entirely upon United States law, one only finds reference here to United States law on mass torts and cases arising under the Alien Tort Claims Act.<sup>19</sup> Instead, issues and case law relating to parent corporations or foreign direct liability are discussed within Chapter 8 on Principle 4 – Consistent Best Practices. This makes some sense, although it could be better “sign-posted” for readers who do not start at the beginning and read to the end. However, significantly, and perhaps as a consequence, there is essentially no material in the book on one of the most important examples of transnational litigation from a Canadian perspective: *Presbyterian Church of Sudan v. Talisman Energy, Inc.*<sup>20</sup> While summary judgment dismissal of the *Talisman* case was affirmed on appeal in October 2009,<sup>21</sup> the significance of the case from a Canadian perspective lies in the fact



that the New York court that asserted jurisdiction over Talisman Energy, a Canadian company, did so in part because it held that it was not possible to bring civil claims alleging violations of the law of nations in Canada.<sup>22</sup> Omitting Talisman from the book has the consequence of avoiding any discussion of the role that legislation could play in ensuring that companies can be held accountable (or have their cases dismissed on substantive grounds, as the case might be) in home state courts, an issue that has been raised by Justice Ian Binnie of the Supreme Court of Canada, among others.<sup>23</sup>

The problem of not finding material where you might expect it arises again in relation to an issue often described as “free prior and informed consent” (FPIC). In international human rights circles, there is much debate over whether indigenous and other communities have a right to FPIC that includes a right to say no to a proposed project (consent), or whether their right is a more limited one (consultation). This is a particularly heated debate in the extractive industries context.<sup>24</sup> One might expect to find reference to material on this topic under Chapter 11, Principle 7 – Community Investment. However, instead, discussion of FPIC appears exclusively in Chapter 6 on Principle 2 – Stakeholder Engagement, and then only in the context of an analysis of the Forest Stewardship Council.<sup>25</sup>

It is hard to avoid feeling that *Corporate Social Responsibility: A Legal Analysis* takes an overly optimistic tone at times. For example, in Principle 1, the analysis of directors’ duties under s. 172 of the Companies Act 2006 (U.K.)<sup>26</sup> highlights that the legislation makes consideration of stakeholder interests mandatory—a development that the authors rightly celebrate. Yet, even if this is a progressive development and not merely a codification of existing practice though perhaps with normative implications, this provision may be better understood as a liability shield for directors rather than as a mandatory directive. That is, it serves to protect directors from being sued for their decisions, but it in no way predetermines the weight to be given to the multitude of factors that might be considered in order to reach that decision.<sup>27</sup> In another example, consideration given to shareholder proposals under Principle 2 highlight the potential of shareholder proposals by socially responsible investment firms to contribute to the protection of human rights; however, it does not address the concern that shareholder proposals may be counterproductive where the interests of shareholders in having a project go ahead run counter to a local community’s desire to halt the project at all costs (the right to say no in accordance with FPIC).<sup>28</sup>



Finally, Principle 5 — the Precautionary Principle, has the feel of an environmentalist's wish list. It would be incredible if, as the authors' claim, the precautionary principle was a de facto legally binding standard of care for corporations throughout the world.<sup>29</sup> But while I heartily endorse the authors' sentiments, it is hard to shake the feeling that even if recent trends might suggest that principles of prevention and precaution are finally starting to receive the full attention they deserve in corporate boardrooms, the pendulum could just as easily start to swing in the opposite direction. This feeling may be the result of my having recently attended a Canada-wide environmental law conference entitled "The Demise of Environmental Assessment in Canada."<sup>30</sup> But it also points to two broader problems with this otherwise excellent text — a failure to engage explicitly with the obligations of lawyers in relation to CSR, and a failure to highlight the distinctive obligations of states.

Some books that address CSR and the law are starting to ask the question of what role corporate counsel should play in relation to CSR, and I was admittedly disappointed not to see explicit discussion of this important and difficult issue here.<sup>31</sup> This omission was particularly evident when reading the section entitled "The Principle of Non-Interference with Government Regulation." The sentiment expressed in the text is that corporations "must respect and support the state's role as a neutral regulator of citizens and the environment"<sup>32</sup> and as a consequence, must "refrain from regressive regulatory interference."<sup>33</sup> It would be extremely helpful to have some idea of what this might mean for lawyers advising corporate clients over proposed changes to the law. For example, would there be anything unethical about a lawyer telling a government committee that if a proposed law implementing stricter requirements is passed, the lawyer would feel obliged to advise clients to relocate to another more lax jurisdiction?

The second problem concerns the role of the state. While there is some recognition in the section described above on non-interference with government regulation that states might have a distinctive role, the text at times treats government as stakeholder of the corporation.<sup>34</sup> What would be helpful, however, would be some clear recognition that not only is government not merely a stakeholder of the corporation, but that governments themselves have obligations in relation to CSR (or, in international human rights language, an obligation to protect human rights from harm caused by non-state actors, including businesses). There is a very brief reference at the end of the book to the state duty to protect as articulated in the 2008 Ruggie Framework<sup>35</sup> for business



and human rights. It would be helpful for readers, however, to have some greater discussion of what the implications of this might mean for the progressive development of CSR and the law that the text presumes is a one-way path to good things. The Ruggie Framework highlights the interrelated prongs of the state duty to protect, the corporate responsibility to respect rights through due diligence, and the need for greater access to remedy. *Corporate Social Responsibility: A Legal Analysis* tackles only the corporate responsibility to respect, and does so very well. However, for a full understanding of the problems of CSR and law, the interrelated nature of the three prongs must be clearly recognized, and with it, the obligations of states as well as businesses, and the importance of effective remedies.

Sara L. Seck\*

1. Michael Kerr, Richard Janda and Chip Pitts, *Corporate Social Responsibility: A Legal Analysis* (Markham, Ontario, LexisNexis, 2009).
2. Additional contributing authors are the Honourable Charles Doherty Gonthier, Jason MacLean and Roman Picherack.
3. Kerr, Janda and Pitts, at pp. 31-32.
4. *Ibid.*, at p. 18.
5. *Ibid.*, at p. 86.
6. *Ibid.*, at pp. 9-10.
7. *Ibid.*, at pp. 83-84.
8. *Ibid.* at pp. 420 and 476.
9. *Ibid.*, at pp. 89-90.
10. See e.g., David Weissbrodt and Muria Kruger, "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights" (2003), 97 A.J.I.L. 901; and David Kinley and Junko Tadaki, "From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law" (2004), 44 Va. J. Intl. L. 931.
11. On the content of international sustainable development law, see International Law Association (ILA) resolution 3/2002: New Delhi Declaration of Principles of International Law Relating to Sustainable Development, Annex, UN Doc. A/57/329; M.-C. Cordonier Segger and A. Khalfan, eds., *Sustainable Development Law: Principles, Practices and Prospects* (New York, Oxford University Press, 2004).
12. Kerr, Janda and Pitts, at p. 91.

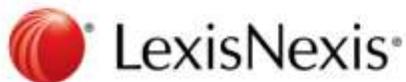


13. See e.g., Sarbanes-Oxley Act of 2002, Pub. L. 107-204, 2002 U.S.C.A.N. (116 Stat.) 745, as discussed in Kerr, Janda and Pitts, at pp. 421-424; Alien Tort Claims Act (ATCA) 28 U.S.C. } 1350, as discussed at pp. 426-434; Foreign Corrupt Practices Act, 15 U.S.C. } } 78dd-1 et seq. (1977), as discussed in Kerr, Janda and Pitts, at pp. 434-438.
14. Kerr, Janda and Pitts, *ibid.*, at pp. 24 and 597.
15. *Ibid.*, at pp. 110-111.
16. *Ibid.*, at pp. 586-590. See also at p. 36: "Today, large and even small and mediumsized corporations are based throughout the world and their impact is increasingly transnational as opposed to strictly national, leading to the concern that they are effectively unregulated by any legal regime."
17. *Ibid.*, at p. 589.
18. *Ibid.*, at pp. 589-590, citing J. Braithwaite, "Responsive Regulation and Developing Economies" (2006), 34 *World Dev.* 884, at p. 890.
19. ATCA, *supra*, footnote 13.
20. The most recent (and perhaps the last) judgment in this case dates from October 2009: *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F. 3d 244 (2nd Cir. 2009).
21. *Ibid.*
22. *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, No. 01 Civ. 9882 (DLC), 2005 WL 2082846 (S.D.N.Y. 2005), at p. 7.
23. See e.g., Justice Ian Binnie, "Legal Remedies for Corporate Participation in International Human Rights Abuses: A Progress Report" (2009), 38:4 *The Brief* 45 (American Bar Association), online: <http://www.icj.org/IMG/20091022093202185.pdf>.
24. See e.g., Lisa J. Laplante and Suzanne A. Spears, "Out of the Conflict Zone: The Case for Community Consent Processes in the Extractive Sector" (2008), 11 *Yale Hum. Rts. and Dev. L.J.* 69.
25. Kerr, Janda and Pitts, at pp. 226-228.
26. Companies Act 2006 (U.K.) 2006, c. 46, discussed in *ibid.*, at pp.129-132.
27. Mandate of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, Summary Report: Expert Meeting on Corporate Law and Human Rights; Opportunities and Challenges of Using Corporate Law to Encourage Corporations to Respect Human Rights (Toronto, November 5-6, 2009) at pp. 6-8, online:

## Manning, Mewett & Sankoff – Criminal Law, 4th Edition

“The study and understanding of criminal law depend heavily on textbooks of this nature and quality: rooted in practice, informed by theory, and accessible to all. This is a comprehensive work that moves with uncommon fluidity from exposition of the prevailing legal rules to a succinct critique of their perceived weaknesses.”

The Honourable Mr. Justice Morris J. Fish



Economic Interests in Canadian Tort Law

Economic Interests in Canadian Tort Law, by Peter T. Burns and Joost Blom (Markham, Ontario, LexisNexis Canada, 2009, lxxi and 471 pp., \$165)

With the focus on Canadian law, this text provides a wide sweep of civil law liability where the protection of purely economic interests is paramount. Its aim is to examine “how the law . . . protects purely economic interests from being injured through the acts of others,”<sup>1</sup> and thereby review the judicial response to “conflicts of competing economic interests” and to the regulation of the market.<sup>2</sup> This wide sweep includes (obviously) a discussion of the economic torts — injurious falsehood, deceit, inducing breach of contract, intimidation, conspiracy and the unlawful means tort — but also the tort of negligence (where pure economic loss is involved) and, interestingly, the equitable actions for breach of confidence (in its commercial setting) and breach of fiduciary duty (including dishonest/knowing assistance liability). It should be noted that, in English law, both breach of commercial confidence and the action for dishonest assistance appear to be well on the road to recognition as torts.<sup>3</sup>

Chapter 1 briefly places the torts in some historical context, noting that this area of civil liability was shaped “in response to problems thrown up by nineteenth century business conditions,”<sup>4</sup> though acknowledging that the development of liability for breach of fiduciary duty and breach of confidence has been a 20th century phenomenon (the latter flourishing in line with the growing importance of information and knowledge as a business asset). There is a limited discussion of conceptual and theoretical considerations in relation to the economic torts (including negligence): The authors divide this discussion into what they term “high” and “middle” theories.<sup>5</sup> The “high” theory referred to involves the economic theory of tort law and rights theories — which see tort law as a regime of rights and duties—as propounded by Ernest Weinrib,<sup>6</sup> Peter Benson<sup>7</sup> and Robert Stevens<sup>8</sup> (though more might have been made of Jason Neyers’<sup>9</sup> useful addition to this debate, rather than a reference in a short footnote). The “middle theory”<sup>10</sup> comments on the rational structure for the economic torts propounded by this writer<sup>11</sup> and by J.D. Heydon<sup>12</sup>—two opposite views on the potential and coherent development of the economic torts (though it should be noted that, because of the

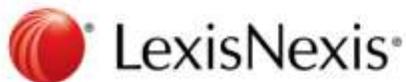


regrettable House of Lords' decision in *Total Network SL v. Revenue and Customs Commissioners*,<sup>13</sup> my framework will now have to offer additional features to take on board the separate treatment now to be afforded to unlawful means conspiracy).

Essentially, the authors appear more interested in describing the various torts/equitable principle in some detail. Thus, they suggest a pattern rather than a framework for establishing liability. The pattern they suggest is that tort recovery is most likely where the defendant unfairly impairs the plaintiff's ability to assess risk (which shades into reasonable reliance/voluntary assumption of responsibility) or unfairly creates risk to the plaintiff's economic interests where the plaintiff cannot defend himself. On this pattern, they place the torts of deceit, negligent misstatement, breach of fiduciary duty and breach of confidence<sup>14</sup> into the first category and inducing breach of contract, the unlawful means tort (including intimidation), conspiracy liability, injurious falsehood and passing off into the second category. All constitute harm by the defendant, which is not to be seen as fairly part of everyday economic life.

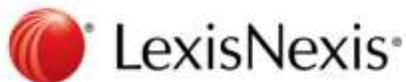
After the more general introduction, the book deals with each of the torts/equitable actions it has identified as protecting purely economic interests. The final chapter usefully discusses the range of remedies available. Each chapter involves a consideration of the ingredients and some of the debate surrounding each of these torts/equitable actions. This, of course, will be useful to the practitioner—as will the detailed references for further research that appear in the footnotes. However, it might at times have been worthwhile to have incorporated (and expanded) some of the detailed footnotes into the main text (this is particularly true of the first part of Chapter 3, "Inducing Breach of Contract"). From an English tort lawyer's perspective, it is enlightening to see the different take within the Canadian jurisprudence on some of the key issues, from a wider notion of intention and unlawful means in the economic torts, to the enlarged scope afforded to fiduciary duty. Indeed, Chapter 9, on breach of fiduciary duty, successfully focuses on situations where breach of fiduciary duty functions most like an economic tort in "everyday economic transactions," i.e., not involving well-defined fiduciary relationships, such as those imposed on directors or trustees.

This book usefully provides detailed consideration of areas of civil liability that often attract little discussion in tort textbooks, making it clear that the protection against pure economic loss involves consideration of the civil law beyond the economic torts. In a way, this reflects the view of Lord Walker in *OBG v Allan*,<sup>15</sup> who noted the unusual use



of the economic torts in the three conjoined appeals before the House in *OBG*, where perhaps allegations of conversion, dishonest/knowing assistance or breach of confidence were the more obvious focus of potential liability. And in Chapter 10, the tort of negligence is given extensive coverage based on the five categories of case identified by the Supreme Court of Canada<sup>16</sup> in which a duty of care in respect of pure economic loss has been imposed (with, of course, negligent misstatement being the most frequently litigated category from this list).

These are fascinating times for anyone interested in the economic torts. Plaintiffs see the uncertainty attaching to all the areas identified by the authors—but particularly to the economic torts— as an opportunity to expand the common law protection of their economic interests and expectations. And for this reason, my main disappointment with this text is its lack of ambition. Though clearly a useful presentation of what the law appears to be, the lack of any deep analysis is to be regretted. The passing analysis of what the law could or should be does little to guide litigants, judges or students alike in this complex area of law. That need for guidance is all the more pressing after the two recent House of Lords' decisions on the economic torts in *OBG* 17 and *Total Network*.<sup>18</sup> The tension and uncertainties revealed in these two decisions — which, arguably, involve two different agendas for the economic torts — are not apparent in this book. Indeed, these decisions are surprisingly given little space in the discussion.<sup>19</sup> Any analysis of these decisions would have to address as a central uncertainty the rationale(s) behind two party and three-party economic tort liability and the legitimacy of conspiracy liability (arguably given a huge boost by *Total Network*).<sup>20</sup> This same lack of ambition can be seen in relation to the discussion of the tort of passing off — a tort that is constantly evolving and moving closer to an action for unfair competition (and, together with the action for breach of commercial confidence, part of a quest for the Intellectual Property effect using the common law).<sup>21</sup> Moreover, it was puzzling that some discussion of general formulations of liability (prima facie tort liability and unfair competition theory) was provided in the middle of the book, in a chapter (Chapter 6) that would more naturally have simply focused on the unlawful means tort. The debate over wider formulations generally would more logically fall at the start or end of the work. Overall, although this is a useful text that will be referred to, it could have been much more, providing insight and therefore guidance as to the future application of these torts and equitable principles.



Hazel Carty\*

1. Burns and Blom, at p. 1.
2. These torts “reflect a painstaking examination by our courts of economic conflicts between citizens, corporations and the state itself.” *Ibid.*, at p. vi.
3. There is support for recognition of the action for breach of commercial confidence as a tort in the *Douglas v. Hello!* litigation (e.g., *Douglas v. Hello! Ltd.*, [2001] Q.B. 967, [2001] 2 All E.R. 289 (C.A.), at pp. 998 and 1000 (Q.B.)) and dishonest assistance was termed an equitable tort by Rix L.J. in *Abou-Rahmah v. Abacha*, [2006] EWCA Civ. 1492, [2006] 1 All E.R. (Com.) 247.
4. Burns and Blom, at p. 20.
5. *Ibid.*, at p. 20.
6. Ernest J. Weinrib, “The Gains and Losses of Corrective Justice” (1994), 44 *Duke L.J.* 277.
7. Peter Benson, “The Basis for Excluding Liability for Economic Loss in Tort Law” in David G. Owen, ed., *Philosophical Foundations of Tort Law* (New York, Oxford University Press, 1995).
8. Robert Stephens, *Torts and Rights* (Oxford, Oxford University Press, 2007).
9. Jason W. Neyers, “Rights-Based Justifications for the Tort of Unlawful Interference with Economic Relations” (2008), 28 *Legal Stud.* 215.
10. Burns and Blom, at p. 20.
11. Hazel Carty, *An Analysis of the Economic Torts* (Oxford, Oxford University Press, 2001).
12. J.D. Heydon, *Economic Torts*, 2nd ed. (London, Sweet & Maxwell, 1978).
13. [2008] 2 All E.R. 413, [2008] UKHL 19.
14. Though I am not convinced that the modern law of commercial confidence “reposes fundamentally on the idea that the plaintiff reasonably looks to the defendant to serve the plaintiff’s interests . . . by not using or disclosing particular information” (Burns and Blom, at p. 8). It would be difficult to analyse what OK! expected of Hello! magazine in this way (see *OBG Ltd. v. Allan*, [2008] 1 A.C. 1, [2007] UKHL 21).
15. *OBG Ltd.*, *ibid.*
16. See *Canadian National Railway Co. v. Norsk Pacific Steamship Co.* (1992), 91 D.L.R. (4th) 289, [1992] 1 S.C.R. 1021.
17. *Supra*, footnote 14.
18. *Supra*, footnote 13.



19. So, for example, the authors cite Lord Diplock's dicta in *Lonrho v. Shell*, [1981] 2 All E.R. 456, [1981] 3 W.L.R. 33 (H.L.), as the most recent judicial pronouncement on the rationale for conspiracy liability, but what of Lord Walker's important analysis in 2008 in *Total Network*, supra, footnote 13? The explanation may be that some of the chapters on the general economic torts — Chapters 3 to 6 — are based on earlier published articles.

20. Supra, footnote 13.

21. Again, in light of the powerful dissent of Lord Walker, it would have been worthwhile to highlight and debate in the main text the controversial aspects of the discussion and decision in *Douglas v. Hello!* (one of the conjoined appeals in *OBG*, supra, footnote 14).

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## The Law of Employee Monitoring in Canada

The growth of the information economy has been paralleled by the development of electronic tools that have increased employee efficiency but have also led to the potential for increased employee monitoring. The Internet, with its myriad of search engines, has improved the ability to find information quickly but browsers leave tracks and employers can utilize an array of software tools to monitor web surfing. The “smartphone,” for example, can allow employees to have access to e-mail and work files while on the road but the built-in GPS can also allow the employer to track employee movements. Telecommuting is a growing trend that is blurring the definition of “workplace” and has the potential to drive the monitoring of employee behaviour into the home. It is amid this growing tension between management rights and employee privacy that Melanie R. Bueckert wades into the fray with *The Law of Employee Monitoring in Canada*. In her book, Bueckert endeavours to examine the law as it relates to individual privacy rights within the workplace as well as the issue of individual privacy within a unionized environment where there is a “growing tension between the collective nature of unionization and the individualistic character of the concept of privacy”. Melanie Bueckert is currently a Legal Research Counsel for the Manitoba Court of Appeal and has had extensive experience in privacy and employment law. In 2008, while still with the court, Melanie earned her Master of Laws degree from the University of Manitoba. This book is an extension of the author’s masters thesis.

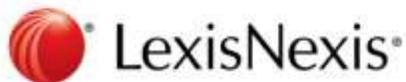
In her introduction Bueckert attempts to define employee privacy (a difficult task given the competing nature of “work space” and “private space”) and employee monitoring (a three-pronged definition encompassing the use of electronic devices to review and evaluate employee performance, the use of electronic devices to observe the action of employees, and the use of computer forensics to recover and reconstruct electronic data that may have been deleted or tampered with) and then examines the governing legal framework from the perspective of labour and employment law on the one hand and privacy law on the other. The rest of the book is divided into chapters dealing with specific forms of technologically-assisted employee monitoring methods. Bueckert examines in detail: audio surveillance; video surveillance; computer, Internet and e-mail monitoring; location awareness technologies; and biometrics. Each chapter is organized



along the same lines. Bueckert first describes the technology. She then outlines the law in the form of pertinent legislation (which is often lacking) and then examines the leading case law. Each chapter is rounded out by a discussion of emerging trends and a checklist of recommendations for employers. This format works quite well if you are using the book as a reference resource and are required to consult the subject matter in a particular chapter however if you are reading the book from cover to cover, as this reviewer did, some of the wording tends to become quite repetitive which makes for dull reading at times. This is a minor quibble. The author enlivens the theoretical discussion with ample references to relevant case law. For example, most of the cases dealing with surveillance revolve around employee malingering and whether the video or audio evidence infringes on employee privacy and is thus admissible. Most of the case law cited with respect to computer, Internet and e-mail monitoring revolves around the inappropriate use of these technologies, such as viewing pornography or transmitting sexually explicit e-mails. It is interesting to note that most of the cases were adjudicated around such issues as wrongful dismissal due to lack of progressive discipline or lack of clear computer use policies. The actual monitoring used by the employer was rarely challenged. The final chapter, entitled Looking Ahead, briefly examines emerging technologies and their potential for privacy abuse. Bueckert then outlines several options for legislative reform.

The book is well organized with a detailed index, a full bibliography, and a glossary explaining the technical terms. The text is very well documented with copious footnotes and case citations. However, a topically arranged table of cases was lacking and would have been very useful. Although there are many texts that deal with privacy law this book is unique in that it concentrates on the thorny issues surrounding employee monitoring and the legal and ethical ramifications caused by the introduction of invasive technologies in the workplace. Aimed primarily at employers who are grappling with the legal implications of employee monitoring this book will also be of interest to legal practitioners involved in labour, employment and privacy law. It will also be useful to academics studying in these particular spheres.

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Computer Services Coordinator  
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## Canadian Civil Procedure Law, 2nd Edition

“The authors have succeeded in writing a legal text that is clear and well-researched, yet balanced with common sense, experience, and examples. It takes challenging legal concepts and complex procedures and breaks them into manageable parts, providing the right amount of history and explanation so the reader can understand the procedure and use it appropriately. The book is a valuable resource on many different levels. I recommend it to everyone who is, or would like to be, engaged in civil litigation.”

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General Counsel  
Crown Law Office – Civil  
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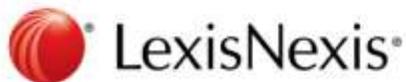
The Honourable Eugene Fedak, Q.C.  
Former Regional Senior Justice of the Ontario Superior Court of Justice (South Region)



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[Hamilton Lawyer, p2, February 2002]



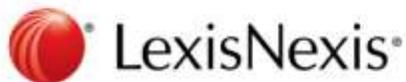
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[The Canadian Journal of Workplace Issues, Plans and Strategies, April 2002, p39]



## Privacy Law in Canada

"Informative, timely and straightforward, Privacy Law in Canada, is a very useful reference for practitioners and other professionals, as well as a good course supplement for law students or faculty studying, researching or interested in this area."

[Anne Mussett, Assistant Professor of Law, Dalhousie University, Canadian Journal of Law and Technology]

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"This is an interesting area of litigation and the book will be a useful summary of the statute and common law."

Ronald F. MacIsaac, The Saskatchewan Advocate, June 2006, Page 29.

