BOOK REVIEWS
LIVRES NOUVEAUX

Précis du droit de la vente et du louage. Par Thérèse Rousseau-Houle. Québec: Presses de l'Université Laval, 1978. Pp. 399.

A la suite d'autres éditeurs, les Presses de l'Université Laval ont lancé il y a quelques années une collection consacrée aux ouvrages de droit, la Bibliothèque juridique. A une monographie, une thèse et deux rapports de recherche, s'ajoute maintenant un ouvrage pédagogique, le *Précis du droit de la vente et du louage,* écrit par le professeur Thérèse Rousseau-Houle, qui enseigne ces matières à l'Université Laval depuis plusieurs années.

La table des matières inclut à peu près tous les sujets qu'annonce un tel titre, et même un peu plus. Outre le droit commun à toutes les ventes, on y trouve les ventes à réméré, à tempérament, à l'enchère, la vente de créances, de droits successifs, de droits litigieux, ainsi que l'échange et la dation en paiement. Le louage de choses couvre les règles du Code civil et de la *Loi pour favoriser la conciliation entre locataires et propriétaires.*[1] Le louage d'ouvrage inclut la responsabilité des constructeurs, ingénieurs et architectes; toutefois, le transport et le travail sont exclus, ce qui paraît fort justifiable vu que ces matières font souvent l'objet d'une certaine spécialisation tant dans l'enseignement que dans la pratique.

Le précis n'est pas un genre très répandu en droit québécois. L'auteur a fait un heureux choix dans ce sens et est parvenu à énoncer clairement et succinctement l'état du droit sur les sujets abordés. Le texte est parsemé d'abondantes références à la jurisprudence — avec souvent des petits sommaires intéressants.

Le texte est assorti d'une table analytique des matières, d'une bibliographie partielle et d'un index. A propos de ce dernier, il faut signaler une faiblesse, du reste fréquente dans les index confectionnés au Québec, soit le trop grand nombre de renvois pour une même rubrique (par exemple, soixante-et-onze renvois pour "dommages-intérêts"): cette imprécision décourage le lecteur, qui emploiera d'autres moyens pour trouver l'information qu'il cherche (table analytique des matières, renvois d'une partie à l'autre du texte,

[1] S.Q. 1950-51, c. 20, telle que modifiée.

et bien d'autres), lesquels s'avèreront souvent moins efficaces (des informations lui échapperont), voire moins rapides. Malgré le format économique de la publication, la présentation matérielle est correcte.

L'ouvrage appelle quelques réserves. Ainsi, le lecteur est un peu déçu de la part faite à la révision du Code civil; malgré l'annonce faite dans l'avant-propos, le texte comporte peu d'énoncés ou même de renvois au *Projet de Code civil*,[2] notamment dans certaines questions où la révision opère d'importants changements. Par ailleurs, quelques sujets méritent plus d'attention que ne leur en accorde l'auteur (par exemple, les motifs de non-prolongation du bail par la Commission des loyers). Enfin, l'énoncé de certaines règles manque malheureusement de rigueur.

Pierre-Gabriel Jobin*

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[2] Office de révision du Code civil, *Rapport sur le Code civil du Québec* (1977).

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Legal Implications of Remote Sensing from Outer Space. Edited by Nicolas Mateesco Matte and Hamilton DeSaussure. Leyden: A. W. Sijthoff, 1976. Pp. xiv, 197.

The legal profession is indebted to the Institute of Air and Space Law of McGill University for the publication of the Institute's symposium on the legal implications of remote sensing by satellite. The conference was held at the Institute between October 15th and 19th, 1975; the articles which the participants contributed have been jointly edited by Professors Nicolas Matte[1] and Hamilton DeSaussure.[2]

The symposium commences with a discussion of "Technical Applications of Remote Sensing from Outer Space". In his article, "Remote Sensing by Satellite: Technical and Operational Implications for International Cooperation", Stephen E. Doyle pays tribute to NASA's achievements in the Landsat program, especially with respect to the economic benefits which the participating countries have acquired. His article also records the potential of remote sensing technology and the possible difficulties which publicists will encounter in the future. In his study, "Remote Sensing Satellites — What Do They Actually Measure and How Sensitive is the Information", Lawrence W. Morley[3] identifies at least nine different categories of information obtainable through the use of remote sensing satellites, and comments on the nature and the degree of their sensitivity. He observes that the remote sensing experiment "appears so far to have had no seriously bad side effects when operated in an open manner".[4]

Dr G.C.M. Reijnen, in "Remote Sensing by Satellites and Legality", succinctly surveys several draft agreements submitted by state members to the UNCOPUOS[5] for consideration. He reviews the general consensus on the need for international cooperation in remote sensing activities, and notes some major disagreements, particularly with respect to the concept of states' sovereignty vis-à-vis the positive legality of remote sensing from outer space. He nevertheless anticipates that a Draft Treaty will be available in the near future. A useful study by Dr André W. Stoebner, entitled "Remote Sensing of Earth Resources: Technique and Law", examines the nature of remote sensing with a view to ascertaining

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[1] Director of the Institute of Air and Space Law, McGill University.
[2] Professor of Law, Akron Law School.
[3] Director-General of the Canada Centre for Remote Sensing.
[4] P. 18.
[5] United Nations Committee on the Peaceful Uses of Outer Space.

the legal status of sensed data. The author discusses the existing gaps between the states which own the natural resources and those which own the "intellectual" resources, and emphasizes the importance of proper notification to the sensed state, as well as wide dissemination of the collected data. In his opinion, "information is (potentially) more dangerous when it becomes confidential than when there is free access to it".[6]

The second part of the symposium is entitled "Impact of Remote Sensing on the Economic Development of Western Europe and Latin America". In the first essay, "Europe and Remote Sensing", Michel Bourély[7] contrasts the views held by ESA member states with those held by the Latin American countries. The second essay,[8] by Ambassador Aldo Armando Cocca, deals with Latin American views toward remote sensing of natural resources. On the question of states' sovereignty over their natural resources, Ambassador Cocca expresses the view that the concept of sovereignty includes the right to control not only the access to natural resources information but also the dissemination of such data. He concludes that the establishment of a legal regime obliging states to conduct remote sensing activities for the benefit of all and to the detriment of none is called for.

Professor Diederiks-Verschoor, in "Observations on Remote Sensing Satellites", considers remote sensing activities in Western Europe. She believes that damage resulting from remote sensing activities is not governed by the 1972 Convention on International Liability for Damage Caused by Objects Launched into Outer Space.[9] However, there remains considerable doubt as to the proper legal regime governing damage caused by remote sensing activities *per se*. Even more unsettled is the crucial problem of ascertaining the types of damage to be included in such a legal regime.[10] Professor Gorove writes on the "Legal and Economic

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[6] P. 39.

[7] Legal Adviser, European Space Agency.

[8] "Remote Sensing of Natural Resources by Means of Space Technology: A Latin American Point of View".

[9] (1972) 8 U.N. Monthly 19. For a general discussion on the subject, see Jenks, *Space Law* (1965), 284-85. For a more recent discussion on the types of damage covered by the Convention, see Matte, *Aerospace Law* (1977), 157.

[10] For a discussion on the principles generally agreed to by states, see Vlasic, *The Evolution of the International Code of Conduct to Govern Remote Sensing by Satellite: Progress Report* (1978) 3 Annals of Air and Space Law 561, 564-71; for a general discussion on the adverse effects caused by data sensed, see DeSaussure, *Remote Sensing by Satellite: What Future for an International Regime?* (1977) 71 Am. J. Int'l L. 707, 714-18.

Implications of Remote Sensing from Outer Space — Focus on Latin America". In a penetrating discussion of the 1974 Argentina/Brazil draft,[11] Gorove assesses the Latin American countries' push for expansion of states' exclusive rights over their natural resources, their preference for restricted dissemination, and the likelihood of an international agreement serving the interests of an independent world. Professor Pépin[12] discusses the legal regime governing remote sensing in the context of the draft proposal submitted by France to the Legal Subcommittee of the UNCOPUOS.[13] He outlines the general principles contained in the French draft and the problem of an equal and mutual participation by the sensed state, and emphasizes states' "inalienable right to dispose of their natural resources and of information concerning those resources".[14]

The third part of the symposium is entitled "Worldwide Utilisation and Dissemination of Data Acquired Through Remote Sensing". The first essay is by Eilene Galloway[15] on the legal implications of utilisation and dissemination of data.[16] The author submits that open dissemination of survey information over public lands should continue, despite the scientific advances in space technology by which information is obtained. Galloway assesses a model Memorandum of Understanding on ground stations between NASA and foreign participating government agencies, and then analyzes the problem of dissemination of information on a non-discriminatory basis. S. Neil Hosenball's illuminating article, "Free Acquisition and Dissemination of Data through Remote Sensing", outlines the objectives to be pursued by remote sensing experiments, and the obligation of states to make public the results of their space activities as provided in Articles I and XI of The Outer Space Treaty of 1967.[17] In addition, Hosenball offers a comparative analysis of three draft proposals which Argentina, Brazil, France, the U.S.S.R. and the United States submitted in the 14th Session of

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[11] U.N. Doc. A/AC.1/1047 (1974). This draft was co-sponsored by Venezuela, Chile and Mexico.

[12] Former Director of the Institute of Air and Space Law, McGill University.

[13] "French Proposals with Respect to Remote Sensing of Earth Resources by Satellite". The draft text is found at U.N. Doc. A/AC.105/L.69 (1973).

[14] P. 86.

[15] President of the Theodore Von Karman Memorial Foundation.

[16] "Remote Sensing from Outer Space: Legal Implications of Worldwide Utilisation and Dissemination of Data".

[17] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies [1967] 18 O.S.T. 2410, T.I.A.S. No. 6347.

the Legal Subcommittee of the UNCOPUOS.[18] With respect to a restricted dissemination scheme, as suggested in the Argentina/Brazil and France/U.S.S.R. proposals, the author concludes that such a scheme "would result in remotely sensed data being unavailable to all but a few states having the capability to provide their own space and ground segments of a remote sensing system".[19]

Dr George S. Robinson's essay, "For a Worldwide Utilisation and Dissemination of Data Acquired through Remote Sensing", rejects the "[a]ssertion of greater sovereign territorial rights with less sovereign power".[20] He finds the existing legal positivism unable to respond to the present day reality, and the enforcement of restraints by moral test inadequate. Robinson therefore suggests that legal experts should strive to protect unrestrained access to data by all nations, and should attempt to ensure effective international intervention to prevent the abuse of such data. Gennady P. Zhukov discusses the "Problems of Legal Regulation of Using Information concerning Remote Sensing of the Earth from Space". Conceding that states have the inherent and absolute right to dispose of their natural resources and information pertaining thereto, he finds that the common interest of states in data acquired from regions beyond their national jurisdiction is sufficient to demonstrate that access to such information should be recognized by international agreement.

Part four of the symposium is entitled "Possible Integrated North American Landsat Program". In an essay entitled "The Case for a Possible Integrated North-American Landsat Program", Professor Carl Q. Christol argues that any proposed legal regime imposing limitations on future sensing capacity is unlikely to be accepted by the advanced states. He examines the doubts and fears of the less-developed countries about the potential of modern sensing technology, and suggests that the greater the number of participants in a joint program, the more difficult deception will be. Given its nature as a global enterprise, the more predominantly homogeneous (and correspondingly devoid of political and military suspicion) a given joint venture can be, the more amenable it will be to the states sensed. From his firsthand experience with the remote

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[18] The texts of the proposals may be found as follows: France/U.S.S.R. proposal at U.N. Doc. A/AC.105/C.2/L.99 (1974); Argentina/Brazil proposal, *supra*, note 11; United States proposal at U.N. Doc. A/AC.105/C.2/L.103 (1975).

[19] P. 111.

[20] P. 116.

sensing technology, Dr J.-C. Henein[21] has contributed a knowledgeable account of setting a framework conducive to the healthy regulation of remote sensing activities in space.[22] He assesses the alternatives open to less-developed countries and concludes that a "remote-sensing equalization program",[23] with the assistance of the sensing states or the international community, would provide the kind of flexibility needed to permit the sensed states to participate in a joint venture.

Monroe Leigh[24] writes of the United States policy with respect to the collection and dissemination of sensed data.[25] He notes the growth of expectations in the Landsat program, which has created a wider recognition in the international community of the need to explore the new technology on an experimental basis. He believes that an open dissemination system on the most-favoured-nation basis would be justified, if the sensed state is accorded the right to gain access to data "as soon as it is available to any third country".[26] In his study, "Canada and the International Principles Governing Remote Sensing", Erik B. Wang[27] advances the view that domestic legislation does protect and regulate access to information dealing with states' natural resources; however, the extent to which the developing countries can combine a scientific infra-structure with their technological capability is a major problem regarding the effective use of remote sensing satellites. Wang concludes that "it might be premature to say that there is a body of customary international law developing".[28]

Part five of the symposium is entitled "Role of the United Nations". Ambassador Peter Jankowitsch writes on "The U.N.: Framework for a Consensus on Remote Sensing". His article focuses on international cooperation and common understanding as affected by the concept of sovereignty. Pointing out that the views of advanced countries about the peaceful uses of outer space may not necessarily be shared by other states, he notes that the rule of

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[21] Chief of Program Planning and Evaluation, Canada Centre for Remote Sensing.

[22] "Notes on the 'Real World' Framework for Space Law as Applied to Remote Sensing".

[23] P. 142.

[24] Legal Adviser, Department of States.

[25] "United States Policy of Collecting and Disseminating Remote Sensing Data".

[26] P. 149.

[27] Director of Legal Operations, Department of External Affairs.

[28] P. 154.

unanimous consensus adopted by the UNCOPUOS, though entailing slower progress, ensures that "each step forward is a more solid foundation for the next step".[29] He advises that decisions be reached by truly joint efforts. Two other authors are concerned with specific issues. David Leive[30] deals with Intelsat's experience with special reference to its institutional and functional features[31]; and Brigadier General Martin Menter examines the development of a legal regime governing space activities through the efforts initiated by the United Nations and its specialized agencies.[32] The final essay by Marvin Robinson — "The United Nations as an International Forum for Developing Consensus" — takes as a point of departure the question of the appropriate forum for an international remote sensing system. The author indicates that in this respect, the United Nations "can make a substantive contribution to the organization and implementation of such a system".[33] Although he takes a somewhat conservative view of the possibility of achieving a timely consensus (as he regards the slow progress made by the UNCOPUOS as inherent), he concludes that "it would be a great pity if, in an area basically scientific and technical ... we still find it impossible to use the structure created ... thirty years ago — the United Nations".[34]

This is an interesting series of essays to which one can scarcely do full justice within the limited space of a review. The editors have performed a signal service in providing an invaluable compilation of essays dealing with the various different aspects of remote sensing by satellite.

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[29] P. 162.

[30] Legal Adviser, Intelsat.

[31] "The Intelsat Arrangements".

[32] "The United Nations Contribution Towards an International Agreement on Remote Sensing".

[33] P. 192.

[34] *Ibid.*

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The Discipline of Law. By the Rt Hon. Lord Denning. London: Butterworths, 1979. Pp. xxii, 331.

Many regard Denning (to use a phrase he himself has been known to employ) as possessing "all the Christian virtues except resignation".[1] On the other hand, during the last British general election a then senior member of the British Cabinet was widely reported as having called him "an ass".[2] It is not given to many in their eighty-first year to excite such passionate and contrary opinions.

The Discipline of Law was published on Denning's eightieth birthday. Denning describes the nature of the book in the preface:

> I have put forward proposals which have had a mixed reception.... Most of them have found their way into the Law Reports. So recently I determined to collect them together in a book. I have arranged them, chapter by chapter, according to the subject in hand. I have quoted extensively from my judgments and counected them together by a running commentary in the hope that these proposals may be discussed in the Law Schools: and perhaps in future years find acceptance (p. v).

There are several references in the book to law schools and law students. For example, Denning tells us that *High Trees*[3] is "an appropriate theme for discussion in the Law Schools" (p. 197). In connection with difficulties surrounding the extension of the liability of professional men and of public authorities, he expresses the hope "that the Law Schools will help to provide the solution to these problems" (p. 227). Lord Denning's sensitivity to the role of law schools — in educating future lawyers, improving legal scholarship, and assisting in reform of the law — is one of the characteristics that sets him apart from the lesser judges.

The book is divided into seven sections: construction of documents; misuse of ministerial powers; *locus standi* (with the *Gouriet* case[4] as centerpiece); abuse of group powers — the possible judicial

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[1] Denning has used this phrase in describing what has been said of him by those who regret that he did not have to retire at age 75.

[2] Because of a speech Denning gave at the University of Western Ontario during the British election campaign, in which he attacked trade unions for abuse of power. This speech became a minor election issue and there were some calls for Denning's resignation. See, *e.g.*, "Denning Rebuked by Unions", *The Sunday Telegraph*, London, April 22, 1979, 4. The article begins: "Mr. Callaghan [the then British Prime Minister] yesterday led a storm of labour and trade union protests about remarks made by Lord Denning, Master of the Rolls and Britain's most eminent judge, on trade union power".

[3] *Central London Property Trust* v. *High Trees* [1947] K.B. 130 (C.A.).

[4] *Gouriet* v. *Union of Post Office Workers* [1977] 1 All E.R. 696 (C.A.); *rev'd* [1978] A.C. 435 (H.L.).

restraint of which Denning views as "the most important question affecting society today" (p. 148); *High Trees;* negligence — with the case of *Dutton* v. *Bognor Regis UDC*[5] emphasized as "one of the most important of modern times" (p. 255); and the doctrine of precedent. Much of Denning's work is not mentioned; there is no account, for example, of *Lloyds Bank* v. *Bundy*,[6] *Karsales (Harrow)* v. *Wallis*,[7] *Harbutt's Plasticine*,[8] the deserted wife's equity, or constructive trusts. Denning himself provides the explanation: "I have no time to write more now" (p. 315).

The theme of *The Discipline of Law* is announced in the preface:

> ... the principles of law laid down by the Judges in the 19th century — however suited to social conditions of that time — are not suited to the social necessities and social opinion of the 20th century (p. v).

Thus is endorsed the prevailing view of Denning's *leitmotif*. But scepticism is appropriate. For one thing, judges, by reason of position and personal history,[9] may not well understand "social necessities and social opinion" — and Denning is no exception. Are the views of Lord Denning as expressed in *Re Weston Settlements*[10] and *Re Brocklehurst*[11] (neither case is mentioned in *The Discipline of Law*) those of the average Englishman? Denning himself, in a rather offhand way, articulates a second theme which has greater explanatory power:

> In the 19th century the individual was predominant in our affairs. In the 20th century it is the group.
>
> Like the powers of government, these powers of the groups are capable of misuse or abuse. Likewise too, the question is: Has the law any means of restraining the abuse or misuse of them? (p. 147).

Above all else, the Master of the Rolls moves to protect the individual, and in that sense may be regarded, despite his protestations, as espousing the values of an age gone by.

Attacks on Lord Denning for introducing uncertainty into the law are commonplace. More of that shortly. What is sometimes not

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[5] [1972] 1 Q.B. 373 (C.A.).

[6] [1974] 3 All E.R. 757 (C.A.).

[7] [1956] 2 All E.R. 866 (C.A.).

[8] *Harbutt's Plasticine* v. *Wayne Tank & Pump* [1970] 1 All E.R. 887 (C.A.).

[9] See, *e.g.*, Blom-Cooper & Drewry, *Final Appeal: A Study of the House of Lords in its Judicial Capacity* (1972), ch. VIII.

[10] [1969] 1 Ch. 223, 245 (C.A.): "There are many things in life more worth while than money. One of these things is to be brought up in this our England, which is still the envy of less happier lands."

[11] [1978] 1 All E.R. 767, 777 (C.A.): "... do not let the transaction stand so as to work the destruction of an estate of which he was morally, though not in law, only a life tenant. It was his duty to preserve the estate in the interests of his family, the neighbourhood and the country at large."

appreciated is the effect of Denning's use of the courts (particularly their discretionary jurisdiction) to protect the individual. Here lies the essence of Denning's activity.

Lord Denning says of statutes that "[t]he meaning for which we should seek is the meaning of the Statute as it appears to those who have to obey it — and to those who have to advise them what to do about it; in short, to lawyers ..." (p. 10). It was this approach that Lord Simonds described as "a naked usurpation of the legislative function under the thin disguise of interpretation".[12] Implied terms in contracts are to be invoked "whenever it is reasonable to do so — in order to do what is fair and just between the parties" (p. 37). So-called "ouster clauses", designed to stop the courts from reviewing tribunal decisions, are avoided by holding that errors of law go outside the jurisdiction of the tribunal and the tribunal's determination is therefore void.[13] We are told that the courts have the authority to inquire into the exercise of a discretionary power by a minister or his department: "If it is found that the power has been exercised improperly or mistakenly so as to impinge unjustly on the legitimate rights or interests of the subject, then these courts must so declare. They stand, as ever, between the executive and the subject".[14] On the question of *locus standi*, high constitutional principles are at stake:

> I regard it as a matter of high constitutional principle that if there is good ground for supposing that a government department or a public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of Her Majesty's subjects, then any one of those offenders or injured can draw it to the attention of the courts of law and seek to have the law enforced, and the courts in their discretion can grant whatever remedy is appropriate.[15]

Yet another high constitutional principle is found in *McWhirter's* case where the Court of Appeal sought to extend *locus standi* to declaration and injunction:

> In these days when government departments and public authorities have such great powers and influence, this is a most important safeguard for the ordinary citizens of this country: so that they can see that those great powers and influence are exercised in accordance with law.[16]

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[12] *Magor & St Mellons R.D.C.* v. *Newport Corp.* [1951] 2 All E.R. 839, 841 (H.L.).

[13] See *Pearlman* v. *Governors of Harrow School* [1978] 3 W.L.R. 736 (C.A.).

[14] *Laker Airways* v. *Department of Trade* [1977] Q.B. 643, 708 (C.A.).

[15] *Attorney-General ex rel. McWhirter* v. *Independent Broadcasting Authority* [1973] Q.B. 629, 647 (C.A.); quoted in *R.* v. *GLC, ex p. Blackburn* [1976] 1 W.L.R. 550, 559 (C.A.).

[16] *Ibid.*, 649. The House of Lords disapproved of this high constitutional principle in *Gouriet* v. *Union of Post Office Workers, supra,* note 4.

Nor are domestic tribunals free from the control of the courts.[17] As for the powers of "industrial companies or working men" against other persons — for example, the power to form a cartel, to gain a monopoly, or to establish a closed shop — the "efforts of the common law have been set at naught in large measure by the intervention of Parliament. Many of the means or the ends which the common law would have regarded as unlawful have been rendered lawful by statute" (pp. 176-77).[18]

The picture emerges. In the modern age the individual is beset on all sides. His freedom may be threatened by trade unions, giant corporations, tribunals, the executive arm of government, contracting parties seeking to take advantage of his frailties, and even Parliament itself. Who, in this dire predicament, will champion the rights of the ordinary man? The judges, says the career of Lord Denning. Not just to bring nineteenth century legal principles into accord with twentieth century social conditions, but once again to make the individual "predominant in our affairs".

Such an ambition seems admirable enough, but has constitutional implications that may not be wholly palatable. Can we contemplate with equanimity the courts taking such power unto themselves? Is our faith in the courts greater than our faith in Parliament? Do we prefer judges — there until age seventy-five — to ministers of the Crown, who may be considerably reduced in status at the next election? Why should the Court of Appeal prevail over contracting parties? How much protection — political hyperbole aside — do we need from trade unions and giant corporations? The answers to some of these questions may be the answers given by Lord Denning. But the questions are important.

As I mentioned earlier, a criticism often levelled at Lord Denning is that he contributes to uncertainty in the law. In a revealing passage, Denning comments on the Court of Appeal's obligation to follow its own previous decisions:

> ... there were ways and means of getting round a previous decision that was wrong. The conventional means was by 'distinguishing' it, that is, finding some distinction on the facts or on the law — maybe a minor distinction. But still it would serve the turn. Another means was by 'pouring cold water' on the reasoning given in the previous case; by saying that it was unnecessary for the decision of the case; or it was

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[17] See *Lee* v. *The Showmen's Guild* [1952] 2 Q.B. 329 (C.A.).

[18] Recently the Court of Appeal has moved vigourously to restrict the scope of Parliament's intervention. See *BBC* v. *Hearn* [1977] I.C.R. 685, [1978] 1 All E.R. 111 (C.A.), and *Star Sea Transport Corp.* v. *Slater* (1978) 122 Sol. Jo. 745 (C.A.).

> too widely stated; or the Judges cannot have had such cases as this in mind. If those means failed, it was often possible to find some ground for 'departing' from a previous decision: such as by saying that things were different now that equity and law were fused, or by relying on one of the exceptions to the rule in *Young v Bristol Aeroplane Co.* (pp. 297-98).

In these techniques lies the well-spring of Denning's creativity. These are the techniques which Denning has used in his relentless pursuit of individual freedom. Much uncertainty in the law is created indeed thereby. Is the game worth the candle?

What are we to make of this remarkable man and judge, who seems to dominate the common law world, and whose career raises great questions about the function of law and the role of the courts? A modern-day Lord Mansfield, as is sometimes said? Or an ass?

Philip Slayton*

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The Practice of Labour Relations and Collective Bargaining in Canada. By Gerald E. Phillips. Toronto: Butterworth & Co. (Canada) Ltd, 1977. Pp. x, 266.

It is difficult to review a book which is intended to be used as an introductory undergraduate textbook. What standard should one apply? Introductory textbooks seldom exhibit original scholarship, or great intellectual depth. Such general surveys often have no unifying thesis or theme. Chapters may be arranged so as to supplement lectures or other teaching material extrinsic to the text. Topics may bear no apparent relationship to one another and some may be included only because it is considered imperative that a textbook at least mention them. Such textbooks are inevitably superficial, and tend to resemble a set of notes prepared by a lecturer for his use in giving an introductory course. Phillips' book is no exception.

In the industrial relations field, the reviewer's task is further complicated because there is neither a general concensus on what a "Canadian" textbook should contain, nor a widely accepted existing work against which newcomers can be judged. Indeed, there is not even a firmly established body of industrial relations theory or a settled definition of what the subject encompasses. Each discipline tends to consider industrial relations phenomena exclusively from its own perspective, making it a prodigious task to assemble a complete picture. As Phillips notes in his preface:

> Because the field of "industrial relations" covers a very broad territory, any effort to produce a comprehensive textbook on Canadian industrial relations would be an extremely demanding task for any single person. Any textbook which attempts to integrate the contributions of economists, lawyers, psychologists, historians, sociologists, corporate managers and countless others interested in industrial relations could take on the aspects of a nightmare for both the author and the student... . This introductory book has been written with the modest objective of introducing the reader to the practice of labour relations and collective bargaining in Canada. To fulfil this objective, disgressions [*sic*] into other disciplines, abstract theoretical discussions and terse legalistic phrases have been minimized (p. iv).

With this express disclaimer, can one now complain that the book is shallow and superficial? By restricting himself to a "modest objective", Phillips has limited both the possibility of criticism and the academic stature of his work.

Nevertheless, the book is an excellent introduction to the field of industrial relations. Phillips has done an exemplary job of organizing and presenting diverse material. Each chapter is supplemented by a list of additional readings; statistical material from various sources has been assembled to complement the text. Despite

the disclaimer that "the book rarely expresses opinions on what are obviously controversial topics" (p. iv), Phillips does include a wealth of general information on current issues which, if more widely known, would undoubtedly elevate the level of public debate and might even improve the quality of media coverage.

It is unfortunate that Phillips did not set his sights a little higher; too often he merely whets the appetite and leaves the reader unsatisfied. The chapter on work stoppages is a case in point. The discussion concludes with a statistical comparison of industrial conflict in various countries over the last two decades. These statistics reveal that while the level of industrial conflict (as measured by man-days lost in Canada) is relatively high, the aggregate time lost is still less than half of one per cent of total work time, or less than one-twentieth of the time lost from unemployment. On the other hand, no effort is made to explain why the Canadian environment is so "strike prone", or why our performance is markedly different from that of other countries. In this, as in other chapters, Phillips excites a curiosity which can only be satisfied by reference to the supplementary readings. Nevertheless, Phillips has admirably accomplished his "modest objective" and created a useful book for the teacher of industrial relations or the general reader who wants to improve his understanding of the collective bargaining system.

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