

BOOK REVIEWS

POWER ON DIVORCE AND OTHER MATRIMONIAL CAUSES, edited by C. Davies, Carswell, Toronto, 1980, Vol. 1 pp. lx and 359, Vol. 2 pp. lxx and 352, \$90.00.

Previous editions of *Power on Divorce* encompassed both the areas of divorce and other matrimonial causes in one volume. With the enactment of the 1968 Divorce Act and the resulting large body of case law, Professor Christine Davies felt that two volumes were necessary, and rightly so. Thus, Volume 1 was published in 1976 and Volume 2 came out four years later — in 1980.

Volume 1 concentrates exclusively on divorce law in Canada. Professor Davies' research, however, draws on jurisprudence from other countries, especially Australia and Great Britain. In her preface to Volume 1, she states that due to the striking similarities between the Canadian Divorce Act and the Australian Matrimonial Causes Act (1961-1966), the courts in Canada have drawn on Australian jurisprudence in order to interpret the Canadian Act.

In the first four chapters of Volume 1, Professor Davies examines in detail the grounds for divorce. An exhaustive analysis of the bars and defences under the Canadian Divorce Act (which probably cause, in the writer's opinion, the most confusion to the practitioner) is provided in Chapter 5. Chapters 5 and 7 focus on the areas of alimony and maintenance as well as custody of and access to children. Chapter 8 gives an excellent overview of the jurisdictional problems under the Divorce Act as well as the rather nebulous area of the recognition of foreign divorces in Canada. The final Chapter concentrates on the decrees and focuses on such issues as abridging the time between the decree *nisi* and the decree absolute, and setting aside the decree absolute.

On the whole, Volume 1 provides both the practitioner and the student with the most complete analysis of substantive Canadian divorce law to date.

The book is not designed to be a procedural handbook on divorce and should not be read for that purpose. Unfortunately, due to the fluidity of Canadian divorce jurisprudence, the material in Volume 1 is no longer entirely current. It is, however, an invaluable aid in researching the law in the area as it provides both an overview and a starting point for further research. An updated and revised version of Volume 1 is scheduled to be released in the near future. The next edition is anticipated eagerly by all persons involved in the area of domestic law.

In Volume 2 Professor Davies examines other matrimonial causes which are not as frequently dealt with by today's courts. However, Volume 2 does not discuss the area of matrimonial property law in Canada. Professor Davies, in her preface to Volume 2, indicates that her reason for not doing so was due to the law in the area being in too "volatile a state". It is hoped that in a future edition the area of matrimonial property will be dealt with in light of the fact that matrimonial property is generally the most contested issue in domestic cases.

Chapter 1 examines the legal concept of marriage and focuses on the issue of when marriages are valid or invalid. Chapters 2 and 3 contain an

analysis of the substantive law of annulment of marriage. These chapters are especially useful to the practitioner as the area of annulment of marriage is one which can present numerous difficulties when interpreting the relevant statutes and common law. Chapters 4, 5, and 8 outline the rather archaic yet extremely interesting areas of jactitation of marriage, declaration of status, torts relating to loss of consortium, and restitution of conjugal rights. Although these chapters are perhaps not as useful to the practitioner, they do provide the reader with an historical foundation of domestic law.

Judicial separation is dealt with in Chapter 7. The action of judicial separation is, again, not one commonly used by the practitioner today in light of the liberalized divorce laws. However, an understanding of the action enables one to comprehend the development of the 1968 Canadian Divorce Act. The remainder of Volume 2 examines alimony, deserted wives' and children's maintenance legislation, enforcement of foreign maintenance orders and custody of children. The area of custody of children is unfortunately not dealt with in an exhaustive manner, but, as Professor Davies points out in the preface to the chapter, an entire book could and has been written on the subject. As a brief overview, and in particular with respect to the area of conflicting jurisdictions, the material is excellent.

As in Volume 1, Professor Davies writes with clarity. Both volumes are easily understandable, despite the fact that both volumes examine areas of jurisprudence which are far from clear. She is able to present the reader with conflicting decisions in law as well as her own submissions as to what the law should be. This in itself makes both volumes a necessary part of a domestic practitioner's library. Unfortunately, both volumes have the same drawback in that the law is an inconsistent flux. It will become even more so if jurisdiction over divorce is transferred to the provinces. It is indeed unfortunate that they were not published in a looseleaf edition which would allow for continual updates.

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