

BOOK REVIEWS

CANADIAN CONSTITUTIONAL LAW IN A MODERN PERSPECTIVE. By J. Noel Lyon and Ronald J. Atkey, University of Toronto Press, Toronto. 1970. \$25.80.

Canadian Constitutional Law in a Modern Perspective by J. Noel Lyon and Ronald J. Atkey is an imposing compendium of opinions and judicial decisions relating to Constitutional Law. The Authors have endeavored to bring the Constitution out of darkness into light and in a large measure have succeeded by collecting a far broader body of opinion and discussion relating to the "Rule of Law" as conceived by the Authors. They have drawn into the net such things as Royal Commissions, Mass Media, Governmental Agencies, the appointment of Judges and other matters not directly related to the Constitution in the orthodox sense.

It would appear that the Authors would approve a widening and extension of the role of the Courts in developing legal concepts within the frame-work of the Constitution.

An example of this tendency is to be found in Part 1 subheading 2 of the book under the caption "Policy and Logic in Constitutional Decisions." Commenting on the decision of the Supreme Court of Canada in *McKay v. Queen*¹ after giving the reasons for judgment of the majority and dissenting Justices, they state:²

It is suggested that both Judges (majority and dissenting) failed to articulate the authoritative, or legal, policies at stake in the case: that is, whether the law should, in the circumstances of the case, protect the community interest in maintaining property values and an attractive living environment in Etobicoke or the interest in ensuring that all political parties and their members have a certain minimum opportunity to promote their candidates in a federal election.

Once having articulated the policies, the Judges might have gone on to examine the relevant facts and to assess the relative importance of the values for which protection was being sought for the opposing parties.

And again referring to the judgment of Chief Justice Duff in the reference, *Re Alberta Legislation*,³ they state:⁴

A policy oriented analysis, properly worked out, would enable Judges to weigh the competing interests before them and the choices open to them in terms of their impact on the values our legal system seeks to promote and protect.

These quotations, it is submitted, suggest an approach to the problem that would destroy the disinterested impartiality a Judge should exhibit in relation to the facts of the case before him and would cause him to be a law or policy maker, instead of functioning as an interpreter of the law in the traditional manner. It is suggested that this is not the proper function of the Court but it is the responsibility of the elected representatives of the people.

Part II of the book dealing with "Protected Value Processes" poses the interesting question as to whether what were once regarded as

¹ [1965] S.C.R. 798.

² Lyon and Atkey, *Canadian Constitutional Law in a Modern Perspective* (1970) at 64.

³ [1938] S.C.R. 100.

⁴ Lyon and Atkey, *supra*, n. 2 at 64.

basic human rights and freedoms are not to some extent outmoded, and require to be reassessed and re-defined in a world threatened by such things as pollution, noise, loss of privacy and a rising crime rate.

The issues outlined in this book, many of which are controversial, will definitely stimulate interest and discussion in matters relating to the Constitution and conceivably will assist in making some progress at future Constitutional Conferences.

The arrangement of the book into its various parts is excellent. It will be extremely valuable as a text book for students of Constitutional Law and will appeal to members of the legal profession as an exhaustive reference book.

H. J. WILSON, Q.C.*

* Magistrate, Judicial District of Edmonton.

A CASEBOOK ON EQUITY AND SUCCESSION. Tiley, 1968; Sweet and Maxwell Ltd. xix plus 432 pages. \$6.35.

This book is the companion volume to Nathan and Marshall, *Casebook on Trusts* [1967]. The law is stated as at January, 1968. It may seem to be a very ambitious undertaking to cover the whole of the law on Equity and Succession in 421 pages. It may seem especially difficult in view of the fact that there are several blank pages throughout the book [see pages 156, 157, and 158]. This task has been accomplished by the employment of rather smaller print than is usual. This enables the author to pack more into the book than he otherwise might. It is noticeable that the print is sometimes extremely small [reference may be made to page 20].

The book is divided into five parts. The first of these is entitled Law and Equity. The notes on the fusion of law and equity are good. The excerpts from the Report of the Judicature Commission, 1869, are interesting but rather verbose when reprinted in full. Both these excerpts and those from the Judicature Act, 1925, are all relevant but are rather tryingly long-winded. However, the author seems to have attempted to brighten up the opening chapter by the introduction of new cases wherever this has been possible, and he has added some Australian cases. The book starts off well with a selection of good cases which are well-pruned to be manageable. One thing that is noteworthy is the condensation of argument which is particularly well-done. There is also a succinct summary of the facts. The reviewer has often wondered whether it might be useful to set out at the beginning of the case in a casebook the decision or a summary of the *ratio*. Admittedly, this would be providing a shortcut for the student, but a diligent student would at least know in advance what he was looking for, and this might sometimes be a help. However, Tiley in this casebook does not need to do that because he does not give pages of judgment in each case to wade through. Thus, the treatment of cases in this book is very straight forward and has many advantages. It is very difficult to be both precise and include all the relevant points. Thus, on page 15, there is an interesting note on revocation of licenses. It is straight to the point and blunt. However, it goes straight into revocation and does not talk about