value judgment invites editorial comment on *Munro* v. *National Capital Commission*,[35] the opinion of Duff J. in the *Board of Commerce* case,[36] and the group of paramountcy cases. The editors bring to notice the use of precedent in *Quebec Minimum Wage Commission* v. *Bell Telephone*,[37] the *Labour Conventions* case,[38] and *The Queen* v. *Klassen*,[39] and they are critical of the failure of the Supreme Court of Canada and the Privy Council, respectively, to articulate in understandable fashion what it is that distinguishes *Attorney-General for Canada* v. *Lavell*[40] from *R.* v. *Drybones*[41] and *Cunningham* v. *Tomey Homma*[42] from *Union Collieries* v. *Bryden*.[43]

Although this preoccupation with the decision-making technique is not inordinate, it does provide a large part of the content for the editors' notes and comments, and it highlights what is characteristic of the casebook: it is largely self-contained. Presenting Canadian constitutional law as it does with a minimal number of cases, it is not a book for the shelves of the practitioner or researcher. As a teaching book, this characteristic may have the virtue of preventing the subject matter from overwhelming the reader as tends to be the case with both *Laskin* and *Lyon and Atkey*.

—PATRICK N. McDONALD*

[35] [1966] S.C.R. 663.
[36] *Supra*, n. 21.
[37] [1966] S.C.R. 767.
[38] *Supra*, n. 29.
[39] (1960) 20 D.L.R. (2d) 406 (Man. C.A.).
[40] [1974] S.C.R. 1349.
[41] [1970] S.C.R. 282.
[42] *Supra*, n. 8.
[43] *Supra*, n. 9.
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EVIDENCE BEFORE INTERNATIONAL TRIBUNALS. By Durward V. Sandifer. Charlottesville: University Press of Virginia. Revised Edition, 1975. Pp. xxi and 519. $27.50.

Too many people, both lawyers and laymen alike, are unaware of the true character of the International Court of Justice and assume that because it is *the* international court it is the supreme court for people everywhere or the court of last resort for every petitioner who maintains that he has suffered an injustice, particularly at the hands of his own state. There is probably even a greater number of people completely unaware of the truly judicial character of this as of other international tribunals. In fact, these tribunals are as much aware of rules of evidence, procedure and the like, as are the national tribunals of any state. On one of these technical aspects, Sandifer's *Evidence Before International Tribunals*, originally published in 1939 and now brought up to date, has long been regarded as one of the leading standard works.

From the point of view of the practitioner, be it the legal adviser appearing before the World Court on behalf of his government, or the counsel undertaking a case for a private client before, for example, the United States Foreign Claims Settlement Commission, the bulk of the

work—dealing with such matters as the order and time of submission of evidence, its production and admissibility, documentary, testimonial and hearsay evidence, propositions not requiring proof and assertions of fact by a government of which the author says "the true test should be the character of the facts asserted, not the character of the party making the assertion" (p. 402), and the problem of rehearing and revision based on newly discovered or fraudulent evidence—constitutes a veritable *vade mecum* which should probably be on the shelf of any lawyer hoping ever to appear before any such tribunal.

From the point of view of the less specialized reader, the introductory and final chapters are the most important and the reviewer will confine himself to commenting upon these. The author starts from the premise that the function of evidence "is the same in municipal and international tribunals; that is, to enable the tribunal to discover the truth concerning the conflicting claims of the parties before it" (p. 1). However, on the international level judges tend to be somewhat intolerant of restrictive rules and "do not hesitate to supplement, upon their own initiative, the evidence supplied by the parties if they regard it as inadequate" (p. 4). It must be remembered of course that while international arbitration is well over 100 years old, permanent international judicial tribunals are much younger and are still dependent on the consent of the parties for the establishment of jurisdiction. For the main part, international tribunals still tend to be *ad hoc*. It is perhaps not surprising, therefore, that while there are rules of evidence, these are not to be found in any definite body or code; instead each tribunal is influenced to some extent by the legal background of its members. This factor should be kept constantly in mind, particularly when the bench comprises judges from a variety of jurisdictions and from both the civil and common law background. Moreover, as with the word 'equity', international tribunals are not obliged to accept the view of any particular system as regards their law, their evidence or their procedure. Their purpose is to arrive at the truth and contribute to the solution of disputes arising, normally, between states, and the parties would not be grateful if the case were dismissed or settled on purely formal and rigid grounds. There is already a quantity of criticism levelled at the World Court for the frequency with which it holds that it lacks jurisdiction to hear a case. Despite the apparent freedom demanded and exercised by international judges, it must not be forgotten that the members of the bench are in fact judges and will "naturally . . . give greater weight to evidence that is 'legal' and 'competent' according to the standards of municipal law" (p. 13). This means that while the court might appear lax in so far as admissibility is concerned, this is far from being the case as to the evaluation of the evidence admitted (p. 19). Difficulty lies however in the fact that "judges of international tribunals have too frequently sought to escape from [their] dilemma . . . by admitting all evidence offered and then declining to reveal what use was made of it in reaching a decision" (p. 28).

While it might be thought that the somewhat haphazard approach to evidentiary regulation to be found in international arbitral proceedings would lead to complete confusion and inconsistency, in fact "this procedure has left tribunals free to follow the practice of other tribunals, with the result that a considerable degree of uniformity of practice has developed" (p. 42). So much is this true that the learned author can

write: "Upon returning after over thirty years to a fresh examination of the literature and sources of the law and practice of evidence, one finds that the most striking impression is one of continuity" (p. 457). This leads him to comment that while it is still true that international law lacks what might be described as an evidence act, it nevertheless possesses "a cumulation of practice, generally applied, [which] may well be invoked by a tribunal as reflecting the existence of a settled principle of law" (p. 458), to be viewed as amounting almost to a customary law of evidence. Despite this, Professor Sandifer would advocate a series of reforms, suggesting, for example, tighter time limits for the submission of evidence; adverse inference from non-production of evidence, with a concomitant obligation of full disclosure; the introduction of an agent whereby in specific cases the tribunal might itself seek out the evidence; a greater use of affidavits particularly with regard to primary evidence should be introduced, associated with a means to compel the attendance of witnesses and punish for perjury, and the like. All these proposals would have the effect of bringing the practice of international tribunals closer to that of municipal courts, while still recognizing the difference in character of the tribunals, the parties appearing before them and the type of issues they are called upon to hear, all of which requires international judges to continue to possess more discretion as to evidence than is perhaps necessary in the case of national judges. The significance of this may be seen in connection with the World Court, in which one finds "the refinement of a lean and pragmatic system of evidence, providing flexibility in application and assuring maximum freedom of action" (p. 465). On the whole, one is inclined to agree with Professor Sandifer that "international tribunals have exercised a free and, in general, intelligent discrimination in the adoption of rules best fitted to the needs of the situation confronting them, without any special regard to the system of law from which they may have come. . . . The record is an encouraging one of evolutionary growth of a generally coherent and harmonious pattern of law and practice" (pp. 470-1).

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JURISPRUDENCE: THE PHILOSOPHY AND METHOD OF THE LAW. By Edgar Bodenheimer. Cambridge: Harvard University Press. 1974. Pp. xxi and 463. $15.00 U.S.

Rather than attempt a statement of the entire content of Professor Bodenheimer's thinking on a subject so rife with debate as the philosophy and method of the law, this review will endeavour to provide a perspective on this book which was first published in 1940.

The 1940 book, *Jurisprudence*, by Professor Bodenheimer, was hailed as an impressive accomplishment—the work of a young scholar of German origin who had received his American law degree only three years before. Professor Harry Jones, who commented on the 1962 edition, noted that, "... inevitably the 1940 book had some of the characteristics of a tract for the tragic times in which it was written".[1]

[1] Jones, (1962) 8 Utah L. Rev. 281 at 281.