

initials, although one does find 'Arthurs, Dean Harry', 'Hart, H. L. A.' and 'Russell, Professor Peter,' and would one really expect to find under *L* such entries as 'Lord Birkenhead' and 'Learned Hand'?

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CONSTRUCTION OF STATUTES: By E. A. Driedger, Q.C., B.A., LL.B., LL.D., Professor of Law, University of Ottawa, Former Deputy Minister of Justice and Deputy Attorney-General of Canada, Butterworths. 1974. Pp. 1 and 370. \$19.50.

Mr. Driedger, in the Foreword to this book, points out that "The Construction of Statutes" is intended to be primarily a teaching book, having grown out of a series of lectures given by the author at the University of Ottawa. Its aim is to teach students how to read and understand statutes. To what extent has the author been successful in achieving this objective?

In answering this question and in thereby evaluating this book one must concede that the problem of the construction of statutes is at the best of times difficult. As Mr. Driedger admits, in referring to the maxims and canons of construction which he discusses, "sometimes they are applied, sometimes not, and there is no rule by which it can be determined whether they should or should not be applied in a given situation". It therefore must be recognized that the book's objective to teach students to construe statutes is not one which is easily met.

The method of instruction employed in the book is the case method. Mr. Driedger demonstrates the various maxims of construction by reference to cases in which these maxims were applied. There are over 700 cases referred to in the text — the majority of which are English.

The reference to so many cases and the exposition of the maxims necessitates a slow and careful reading of the book if it is to be worthwhile as a teaching aid. It is impossible to read the book as a narrative and at one sitting — the rules soon become clouded and the reader confused. The book must be put down and the points must be thought about and mulled over.

Moreover, it is essential to supplement the material presented in the book with the opportunity for the student to ask questions about it. All points were not clear to me and I often would have welcomed the opportunity to seek further clarification from Mr. Driedger. The book would, nevertheless, be very useful when used in conjunction with a course in Legislative Drafting and Construction.

The first four chapters of the book present the three prime rules of construction — the mischief rule, the literal rule and the golden rule — and seek to establish that they can all be fused into one modern principle:

[T]he words of an Act are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

In these chapters Mr. Driedger analyses past judicial decisions on the basis of this principle of construction. He argues that the Courts in construing statutes should adhere to the following principle, as expressed by Lord Atkinson in *Victoria City v. Bishop of Vancouver Island*, [1921] A.C. 384, at 387:

In the construction of statutes their words must be interpreted in their ordinary grammatical sense, unless there be something in the context, or in the object of the statute in which they occur, or in the circumstances with reference to which they are used, to show that they were used in a special sense different from their ordinary grammatical sense.

He disputes those decisions which apparently do not conform to this mode of construction and argues that those which do are construing statutes correctly.

There are two difficulties with this presentation.

Firstly, because it so often appears that the Courts in construction of statute cases reach their conclusion as to the interpretation of statutes first and then find reasons for justifying this construction, it seems somewhat misleading to place too much emphasis on the alleged reasons for coming to one construction or another. This is not to say that one should not try to construct a logical and orderly approach to the construction of statutes; but only that in doing so one should not lose sight of the fact that because this theory can be so flexibly and arbitrarily applied it may not be very useful.

Secondly, because there are no fixed rules of construction and because it is obvious that the Courts are not all adhering to a common approach, it is very difficult, even with the modern principle, to predict what the next Court is going to do. In fact, even if you thought that the Court would adhere to the so-called modern principle, you would still have a difficult task in trying to predict how it would use the principle to decide the issue before it.

Notwithstanding these difficulties, which are after all not due to Mr. Driedger's approach, but to the nature of the subject matter itself, the presentation, by Mr. Driedger clearly exposes the options available and indicates with appropriate authority the approach considered most correct by the author.

The remainder of the book goes into the actual detail of reading and construing statutes. It offers the student a logical sequence of steps which ought to be followed in solving problems of statutory construction, consistent with Mr. Driedger's principle of construction. Specific problems of statutory construction are discussed and the reader is instructed as to how he can obtain guidance from various sources in order to properly construe a statute.

Among other matters, the following specific questions are dealt with:

- (1) What is the meaning and application of the rules popularly known as *ejusdem generis* and *expressio unius est exclusio alterius*?
- (2) What effect should be given to the title of a statute, or its marginal notes, headings, section numbers, schedules, and preambles?
- (3) What is the relationship between the construction of a statute and commission reports, international agreements, or parliamentary debates?
- (4) What is the meaning and application of the presumption against interference with vested rights or the presumption against the retrospective operation in respect of statute construction?
- (5) Do taxation statutes or penal statutes deserve a special type of construction?
- (6) How should the Interpretation Acts and the Bill of Rights be used to solve problems of statutory construction?

There are four Appendices in the book. One is an article which was originally published by Dr. J. A. Corry in 1935 in the University of Toronto Law Journal, and which is reproduced here with the alteration of the first five paragraphs only, and a second is an article on Subordinate Legislation by Mr. Driedger which was originally published in the Canadian Bar Review. Since these two articles are quite lengthy (about 75 pages in all) it would have been preferable to have only referred to them, thereby reducing the cost of what is essentially a students' text.

The other two Appendices are The Interpretation Act and The Canadian Bill of Rights.

The book is a very worthwhile investment for any one interested in law since it is clear that no matter what legal area is involved statutes will inevitably crop up and questions will undoubtedly be raised about their construction. The book goes a long way in teaching its reader how to do this construction.

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THE CANADIAN BILL OF RIGHTS: By Walter S. Tarnopolsky, B.A., A.M., LL.B., LL.M., Professor of Law, Osgoode Hall Law School of York University, McClelland and Stewart Ltd. 1975. Pp. ix and 436. \$4.95.

To the legal profession in 1960, it appeared that the enactment of the Canadian Bill of Rights¹ heralded in a new era in the development of the law of civil liberties in Canada. To the legal profession in 1975, however, the 1960 enactment does not assume the importance that many thought it would. However, during this fifteen year period, not only has there been significant jurisprudence arising out of the Canadian Bill of Rights, but also there have been other developments in the law of civil liberties. Virtually every province has enacted anti-discrimination legislation and there is presently before Parliament a proposal for a national human rights commission. In addition, the office of ombudsman has now been established in several provinces. So, the law of civil liberties in Canada has received important legislative and judicial attention during the past fifteen years.

This dynamic era, unfortunately, has not received the attention it should have received from legal academicians, at least not in the form of comprehensive treatises relating to the law of civil liberties in Canada. In fact, prior to the publication of Professor Tarnopolsky's revised second edition, there were only two volumes upon which teachers and students could rely. The first was Dean Douglas Schmeiser's 1964 text on *Civil Liberties in Canada*. Secondly, there was Professor Tarnopolsky's first volume of *The Canadian Bill of Rights* published in 1966.² While there have been numerous articles on this and related topics, a new volume of the nature of the text presently under review is certainly welcome.

Professor Tarnopolsky's second revised edition of *The Canadian Bill of Rights* has now been published as part of The Carleton Library series by McClelland and Stewart Limited. As such, it is available in paperback at a reasonable price of \$4.95. This makes it accessible to both teachers and students without regard to the excessive costs which characterize many modern texts. In addition, the volume is being distributed through most regular book stores, and as such, is available to the general public who are interested in this vital topic. Any treatise, as authors certainly appreciate, can become quickly out of date as the courts decide new cases in a particular area. This text, written as of December 31, 1973, is comprehensive and up to date, but it of course lacks

¹ The Canadian Bill of Rights, S.C. 1960, c. 44; R.S.C. 1970, Appendix III.

² In addition, since the publication of this book, Carswell has released a new and revised 4th edition of *Laskin's Canadian Constitutional Law* by Albert Abel and revised by John Laskin, and Butterworths has released a volume of cases, notes, and materials also entitled *Canadian Constitutional Law* by John Whyte and William Lederman. Both of these volumes contain a substantial section on the law of civil liberties.