[1938] S.C.R. 100) and speech (*Switzman* v. *Elbing* [*1957*] *7 D.L.R. (2d) 337).* Since passage of the Bill of Rights Act federal legislation can be scrutinized under the same heads, as *Robertson* v. *The Queen* [1963] S.C.R. 651 illustrates.

Late in 1972 the Alberta Legislature enacted the Bill of Rights Act based on Canada's, save that the provincial Act omits that portion of Canada's section 2 which deals with particular safeguards in judicial and administrative proceedings.

The existence of the Canada and Alberta Acts will inevitably require lawyers to pay much more attention to the concepts contained in the Acts than they did in the past. This being so, it is inevitable that recourse will be had to American authority. Our Appellate Division, in its first case dealing with due process in connection with a criminal prosecution, quoted from American authorities as to the meaning of that phrase (*Reg.* v. *Martin* (1961) 35 W.W.R. 384). In a recent case on entrapment, Greschuk J. quoted from a judgment of Chief Justice Hughes (*Reg.* v. *Sirois* [1972] 2 W.W.R. 149). Mr. Justice Laskin in his opinions dealing with Canada's Bill of Rights has frequently referred to American doctrines and cases. A notable example is the recent decision in *Curr* v. *The Queen* (1972) 26 D.L.R. (3d) 603. Mr. Justice Laskin discussed at some length American concepts and decisions in connection with the question whether the "statutorily-compelled giving of a breath sample" is an infringement of any of the safeguards in the Bill of Rights Act.

One can confidently predict that references to American doctrine will increase even though our courts will not necessarily accept all of those doctrines as applicable here.

The judge, solicitor or student wanting to pursue American developments in the last twenty years will clearly find the Casefinder of great assistance. This assumes of course that he has access to the American Law Reports, and it will be borne in mind that in Alberta there are few good collections apart from that in the Faculty of Law at The University of Alberta.

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CANADIAN NEGLIGENCE LAW.

By Allen M. Linden, B.A., LL.M., J.S.D., Professor of Law, Osgoode Hall Law School, York University. Butterworths of Canada. Pp. 575. $48.50.

Every tort lawyer in Canada is, or should be, familiar with the writings of Professor Linden on the subject. Over the years he has published a significant body of essays in leading periodicals, thereby building a well-deserved reputation for scholarly work of depth and understanding. At long last, he has produced a broader ranging discussion, in book form, which must inevitably take its place as a leading monograph. For this reason, it is unfortunate that the publishers have thought fit to charge such a large sum for this book, of the magnitude that will virtually render it impossible for law students, most law professors, and possibly many practitioners, to purchase and have available for constant reference as well as deep and lengthy study. Unquestionably, this is a book

which all those concerned, in theory or practice, with the administration of the law of torts in general and negligence actions in particular, should possess and read.

What Professor Linden has attempted to do, successfully, in the opinion of this reviewer, is to collect all the available Canadian decisions on negligence in the law of tort, and present them skilfully in an analysis of the tort that throw great light on its problems and the way courts in the common law world, and especially in Canada, have tried to resolve them. On every page there is strong evidence of the extensive and perceptive reading of Professor Linden in the case law, periodical literature, and textbooks; his assimilation and understanding of the complex, and sometimes confusing material; and his ability to render this material into a palatable, intelligible, enlightening, and stimulating form. Let me make it clear, however, that what Professor Linden achieves in this work is not simply an amalgan of decisions and the writings of others. He has been genuinely creative and original in his approach.

As he explains in his Introduction, Professor Linden analyses liability for negligence in terms of standard of care, damage suffered by the plaintiff, duty of care, proximate cause, and the absence of conduct on the part of the plaintiff that will bar his recovery. It is interesting to note that his first emphasis is upon standard of care in relation to negligence. On the part of many writers the first stress that is placed is frequently upon the twin-related issues of duty and remoteness (sometimes also with reference to causation). The switch by Professor Linden is important and merited. Too often the question of standards is forgotten, by academics at any rate, in the pursuit of esoteric lore on foresight and duty. Yet the foundation of liability for negligence is a negligent act, *i.e.,* conduct falling short of what is to be expected of the hypothetical reasonable man. Hence the extent and scope of Professor Linden's discussion are to be welcomed. In this respect, particular mention should be made of his chapters on custom as a source of the standards of the reasonable man, and the use of penal statutes in this regard. It is not unfair to say that in his consideration of the relevance and effect of custom Professor Linden is something of a pioneer. Yet there can be little doubt that this is a topic of great importance, fully justifying the extended treatment contained in this book. The chapter on violation of penal statutes is, perhaps, more derivitive; nonetheless, it performs a useful service in bringing conveniently together cases and ideas which bear upon this vexed issue. One small point, in this section of the book, on which I would disagree with the author is in regard to the application in Canada of the decision in *Rondel* v. *Worsley*. Professor Linden suggests that its adoption in Canada should be resisted. He gives certain practical reasons as well as more theoretical ones, such as the need for tort law to create standards and the impossibility of excluding the medical profession from a similar immunity. With all respect to Professor Linden, I cannot accept either his arguments from the point of view that such protection is not necessary, or his thought that in this respect lawyers and doctors should be treated alike. Admittedly, there is a significant distinction between the legal profession in England, which is divided, and that in Canada which is not. Perhaps this could be the foundation for a different view. But even so, I would prefer the reasoning of the English courts in this respect with regard to the obligations of lawyers when acting as counsel (as opposed to acting as solicitors), and

would think that they have as much application in the Canadian scene as in England.

The chapter on proof of negligence contains a useful analysis of the doctrine of *res ipsa loquitur*. This puzzling idea has produced somewhat different lines of development as between Canada and England, as Professor Linden brings out (see at 181-192). There is another significant difference between the two countries in this, or perhaps more properly, an associated matter, and that is with regard to the difference between trespass and negligence and the defence of inevitable accident. What is intriguing is Professor Linden's espousal of the idea that the onus of disproving negligence should be on the defendant, in trespass as well as perhaps more generally (see at 205-206). It is always gratifying when an author of repute and experience adopts the same viewpoint as oneself. Having written on this matter in the pages of this Review, readers will readily appreciate my accord and satisfaction with Professor Linden!

The next three chapters are concerned with various aspects of the duty/remoteness question. In these the author provides a very clear and detailed guide to various issues, decisions and views. This is not an easy part of the law of negligence to assimilate. Yet Professor Linden manages to make his account not only eminently readable, but also straightforward to follow. When he provides reasons for some decision, or grounds of criticism, in this as in other parts of the book, he is careful to set them out distinctly, logically, and plainly so that the reader can grasp without too much difficulty (bearing in mind that some of the concepts or points at issue are intrinsically difficult) what he is saying or why a certain decision or opinion is right or wrong, good or bad. Here, as elsewhere, he is punctilious in providing the facts of leading decisions, citations from judgments, and an analysis of the reasons given by the court, so as to enable the reader to follow the trends of the law, the twists it sometimes develops, and the criticisms of Professor Linden. Without wishing to commit the offense of being too narrow or petty in my comments, I would like to mention my surprise that Professor Linden did not refer to the Australian case of *Andrews* v. *Williams* [1967] V.R. 831 in his discussion of nervous shock (though he rightly and fully discusses the Australian decision in *Mount Isa Mines* v. *Pusey*), just as I am surprised by his omission to consider the English decision in *Griffiths* v. *Arch Engineering* [1968] 3 All E.R. 217 in connection with the discussion at 419 of the question whether there is still a separate category of things dangerous in themselves.

Professor Linden next considers the effect of the plaintiff's own conduct on potential liability, *viz.*, assumption of risk and contributory negligence (he does not discuss the particular problem recently considered by the present reviewer in the McGill Law Journal). In relation to contributory negligence, mention must be made of the author's full discussion of the seat-belt issue, on which he has written elsewhere. I cite this only as evidence of Professor Linden's modernity of approach and his awareness of, and interest in, problems of living interest, not simply the dogmas, academic disputes, or philosophical debates of a bygone age. Indeed one of the most refreshing features of this book is its impact upon modern law: its alertness to the current vital problems of negligence law in the latter part of the twentieth century. Older difficulties have not been ignored—when they have some meaning for

modern tort lawyers. But, throughout, the author is attuned to what is important today, and he expects and encourages his reader to be of like mind.

Reference to this leads me to the next major division in the book, containing chapters dealing with specific issues in modern times, namely, products liability and automobile insurance and the replacement of tort liability by some scheme of compensation. These are matters which have exercised the mind of Professor Linden for some time, as witness his earlier writings. In the chapter on products liability he brings out very well (which some tort writers have failed to do) the interrelation of contract and tort in the area of liability to consumers. This is, as the author states, "an age of consumption". Consequently, perhaps, nowhere is the law of tort, and especially the law of negligence, more important than in respect of the potential liability of manufacturers, repairers, *etc.*, for defective goods. Much of the law of sale of goods in modern times has been concerned with the position of the retail customer. Tort law has an important role to play, analogous to that of the law of sale of goods, in relation to consumers who are not necessarily customers. The ramifications of this role, and the problems it creates are the subjects of this particular chapter. The chapter on automobile accident compensation contains an extremely helpful (because succinct and clear) discussion of the problems raised by "guest passenger" statutes in Canada; the defects of the present system of tort liability for such accidents; and the legislative changes made in several Canadian provinces moving towards replacing common law liability by statutory schemes of compensation. Professor Linden points, with pride, to the advance made by Canada in this regard, as a result of which both systems can live side by side, without the need for excessive conservatism on the one hand or radical change on the other.

He concludes this book with a consideration of the future of negligence law. While these pages are not as immediately relevant or useful as the rest of the book, in a sense, and for certain purposes, they represent what is in many ways the heart of the whole study. Why should we still care about the law of negligence? What purpose does it serve? Should it be retained? These are the issues to which Professor Linden addressed himself in these concluding pages. Naturally he does not proffer a complete answer. Indeed he calls for a deeper, rigorous cost-benefit analysis. But he also suggests a number of reasons, all of which he points out require fuller analysis, particularly by reference to financial factors, why the law of torts, especially negligence, is important. With all his reasons it may not be possible to agree. I find, in particular his comparison between tort law and the church, in terms of function (page 485) a little strained, similarly his suggestion that ultimately tort law may become like a Gothic Cathedral, in the sense that not everybody needs a Cathedral in which to pray, is colorful, but somewhat extravagant language. Nonetheless, his adumbration of material functions or purposes served by tort law is enlightening and helpful. At the very least he has provided arguments for professors of torts to employ in their own defence!

In short, therefore, this is a book that is timely, as well as invaluable. It is written in a lively, pleasant, attractive style (though I, personally, find the use of the word 'bottomed', instead of 'founded', jarring). It culls its information not only from the law reports but also from government

and similar documents, textbooks, law reviews, even, in one instance, *i.e.*, at 438, gossip (though, presumably, well-founded gossip). The result is a work that can be thoroughly recommended to anyone who is interested, in whatsoever capacity, in finding out the present state of the law of negligence in Canada.

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SUBSTANTIAL JUSTICE: LAW AND LAWYERS IN MANITOBA 1670 - 1970.
By Dale and Lee Gibson. Winnipeg, Manitoba: Peguis Publishers. 1972. Pp. 357.

Substantial Justice, as its title indicates, covers the development of legal institutions and the legal profession in Manitoba during the period from 1670 to 1970. The original intent of the volume was to provide a history of Manitoba's law and lawyers for the province's 1970 centenary. As such, it appeared two years late. The richness and scope of the final product have made it well worth the wait.

In tracing the growth of the law in Manitoba from its primitive beginnings under the Hudson's Bay Company to its present stature, the authors have done great service to the infant cause of Legal History in the Canadian West. Several particularly fascinating historical and legal problems are examined in the book. How could the Hudson's Bay Company perform both as a trading concern and as an arbiter of justice? Are justice and profit poor bedfellows? How is the native population to be dealt with by the white man's legal system? What was the fate of earlier bilingual experiments in Manitoba?

As well as these and other particular problems, *Substantial Justice* provides an examination of the legal processes inherent in the peaceful development of the frontier into a complex modern society and lays bare many of the difficulties and stresses which arise in the process.

The interest of the book lies not only in its treatment of these questions of a more general concern, but also in the way in which a vast storehouse of anecdotic material is set forth. This material is of two types. The first includes a look at the events which have shaped the province of Manitoba, many of which have had a national impact. These include the Riel Rebellion, the Manitoba Schools question and the Winnipeg General Strike. The authors also discuss in a richness of detail the many fascinating trials and court battles which occurred during this period. The second includes biographical sketches of most of the era's colourful and controversial lawyers. The personalities of such legal giants as Adams Archibald, Henry J. Clarke, Edmund Burke Wood and numerous others breathe life into the book. Indeed, one might say that Manitoba lawyers make a far more interesting subject matter than the law.

The book deals also with the development of such legal institutions as the Law Society, the Bench and the institutions of legal education in some detail. It is notable in this connection that many of the problems facing lawyers and legal educators today were encountered or foreshadowed in earlier times. For instance, younger members of the legal