

**DUE PROCESS SAFEGUARDS AND CANADIAN CRIMINAL JUSTICE—A ONE MONTH INQUIRY.** Toronto: Canadian Civil Liberties Education Trust. 1971. 93pp.

Canadian lawyers are generally unaware of the defects and needs of our operating system of criminal justice. Until recently there was little opportunity to become aware and, even now, only very little research has been done to determine what is happening in the criminal process. Defects and unfulfilled needs continue because ". . . the amount spent in research in the social sciences and particularly in law has not been a white chip in a poker game."<sup>1</sup> Thankfully, a few, among them Professor Friedland, have done research and published their impressions so that at least a partial picture of the status of Canadian criminal justice is emerging.

The book under review is essentially the report on a project undertaken by the Canadian Civil Liberties Education Trust and it makes a valuable contribution to that emerging picture.

In its own terms the Trust recognizes that the cost of liberty is eternal vigilance and that research is the basis of vigilance. The report discloses a vast discrepancy between our professed ideal of due process in criminal justice on the one hand and the operating reality on the other. In one aspect it concludes that due process safeguards are often subordinated to the need for efficiency, to the need to minimize costs, and to the convenience of judges and the police—and, worst of all, the depressingly simple fact is that we "won't pay the money, we won't take the trouble."<sup>2</sup> This last statement is recorded as an impression but the reader will readily adopt it as the only possible explanation of the needless procedural mistreatment of accused persons which the project uncovered. To the extent that indifference is the problem, and that indifference is founded in ignorance, publication of the report obviously serves a useful purpose.

The basis of the report is information collected in a one month survey during January, 1970, of the criminal process in five cities—Halifax, Montreal, Toronto, Winnipeg and Vancouver. Information obtained in Toronto and Winnipeg is more comprehensive because of a concentration of Trust resources in these two cities.

Two types of information were sought: one relating to the functioning of the courts and gathered by court monitors, the other having to do with the experience of particular accused persons and obtained through interviews with them. The basic sample for each type of information seems sufficiently large to ensure that the findings are representative and capable of giving a reliable impressionistic picture of Canadian criminal justice—three hundred thirty-six court days were monitored and about five hundred people were interviewed.

To give an example of the work done by the Trust: it was found that seventy-three per cent of accused persons were arrested and only eighteen per cent summonsed; that bail was refused in only five per cent of all cases; that in eighty-eight per cent of cases where bail was set, it was posted and the accused went free. The Trust concluded that the predominant use of arrest in launching the criminal process could not

<sup>1</sup> John L. Farris, *A Look at Tomorrow*, (1971) 2 Con. B. Assoc. J. at 4, 5.

<sup>2</sup> Canadian Civil Liberties Education Trust, *Due Process Safeguards and Canadian Criminal Justice—A One Month Inquiry* at 48.

be justified by any consideration of public interest in view of the fact that so many persons arrested were subsequently released on bail. The utility of a money deposit to secure attendance at trial was convincingly doubted. The widespread use of the power of arrest was seen as a "gratuitous affront to the legal presumption of innocence."<sup>3</sup>

Other findings are at least as important, often surprising, and the conclusions are as well founded.

In conclusion, the Trust reports:<sup>4</sup>

What the survey has conveyed . . . is a picture of the daily grinding down of accused human beings—not through the brutal violation of their bodies, but through the piecemeal diminution of their dignity. Our system can be characterized by its plethora of cursory trials, defenceless interrogations, needless detentions, and inadequate facilities.

The undeniable specifics of this grinding down process are to be found in the Trust report.

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<sup>3</sup> *Id.* at 45.

<sup>4</sup> *Id.* at 48.

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LAW OF CIVIL PROCEDURE. By Williston and Rolls. Toronto: Butterworth. 1969. Pp. 1200. \$70.00.

Williston and Rolls' *Law of Civil Procedure*, the first Canadian textbook on the subject, is a welcome publication.

Published in two volumes, it is handsomely bound and well indexed. The authors cover all the main subjects of Civil Procedure from Jurisdiction through to Judgment. It does not deal with the conduct of a trial, and there is only a summary treatment of the enforcement of judgments.

It is, indeed, a useful textbook, but the publishers certainly seem to have misjudged the market. It is expressed to be written primarily for students, but the cost alone (\$70.00) precludes its recommendation to students. There is not even a paperback edition for regular sale and, if there were, at the current rate of discount for paperback productions, even that product would be too expensive. The fact that it is Ontario Civil Procedure is an additional factor which will limit its use outside of that province. While the authors do not purport to be stating the "Canadian Law of Civil Procedure", the publishers are promoting the book as one that is "national in scope". While the similarity of procedure from province to province does make the book useful to the student outside of Ontario, the sparsity of material used from outside of Ontario and England belies any claim to national authority. Indeed, a practitioner in Western Canada who relied upon it as being authoritative would soon find himself in considerable difficulty. The book is of a quality which would no doubt recommend itself to the Ontario practitioner. However, the Ontario practitioner who is going to buy an expensive book on procedure is likely to go all the way and buy