THE LAW OF EVIDENCE, David Paciocco and Lee Stuesser (Concord: Irwin Law, 1996)

I. INTRODUCTION

The Law of Evidence by David Paciocco and Lee Stuesser provides a useful handbook on the law of evidence. As a textbook of some 299 pages, it cannot compete with the treatise on *Evidence in Trials at Common Law* by Wigmore, nor the 1,000 page text on *The Law of Evidence in Canada* by Sopinka, Lederman & Bryant, 2d ed. Nonetheless, it is, in the words of Madam Justice Louise Charron (who wrote the foreward to the textbook), "a concise yet scholarly summary of the major rules of the law of evidence."[1]

The book consists of thirteen chapters. Chapter 1 is an introduction, and chapter 13 is a conclusion. The remaining chapters consist of a discussion of the law of evidence on the following subjects, namely: "*Relevance and Materiality: The Basic Rule of Admissibility*"; "*Character Evidence: Primary Materiality*"; "*Hearsay Exceptions*"; "*Opinion Evidence*"; "*Privilege*"; "*Self-Incrimination*"; "*Improperly Obtained Evidence*"; "*Methods of Presenting Evidence*"; "*Secondary Materiality and Your Own Witness*"; "*Rules Relating to the Use of Admissible Evidence.*" The textbook encompasses rules of evidence in civil litigation and criminal litigation.

II. METHODOLOGY OF THE AUTHORS

In chapters 2 through 12, the authors summarize what they extrapolate as the basic rules of evidence in a series of italicized statements. There are approximately sixty of these summations contained in the textbook. Each of these statements of the rules governing various areas of evidence law are then discussed in the context of the governing authorities. Some of these concise statements of the law are easily articulated and easily understood. For example, the concept of relevance is described in the following summary statement:

> Evidence is relevant where it has some tendency as a matter of logic and human experience to make the proposition for which it is advanced more likely than that proposition would appear to be in the absence of that evidence. To identify logically irrelevant evidence, ask, "Does the evidence assist in proving the fact that my opponent is trying to prove?"[2]

Other summations of the law are far more complex and less easily understood. See, for example, the discussion on past recollection, present recollection, transcripts and dispositions in the context of a discussion on the methods of presenting evidence.[3] Other summations of the law are left in an uncertain state. See, for example, the rule of spousal incompetency.[4]

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1 D. Paciocco & L. Stuesser, *The Law of Evidence* (Concord: Irwin Law, 1996) at xvii.

2 *Ibid.* at 19.

3 *Ibid.* at 217.

4 *Ibid.* at 208-11.

Nonetheless, this extremely helpful attempt at stipulating the law based on the existing authorities will no doubt be of immeasurable assistance to students, practitioners and members of the judiciary.

III. STRENGTHS

The fundamental strengths evidenced in the book are its readability, conciseness and simplicity. In the various areas of the law which are the subject of discussion, it gives a functionality which simply is not available in the much longer textbooks authored by Sopinka, Lederman and Bryant and Wigmore or, for that matter, the established authority *Canadian Criminal Evidence*, 3d ed., by McWilliams.

It is also helpful that Professors Paciocco and Stuesser, where possible, reference precedents of the Supreme Court of Canada. This gives authority to the work and comfort to the reader. Where Supreme Court of Canada decisions are not available, provincial appellate references are used. All of this gives serviceability to practitioners without regard to their province of residence.

IV. LIMITATIONS

To suggest that a textbook such as this has limitations is doing a disservice to the authors. It would be more appropriate to simply recognize the obvious. It is impossible to write a 299 page discussion on the law of evidence that is intended to be a comprehensive treatise on the subject. For example, some topics such as "without prejudice" communications are not referenced at all. The discussion of the so-called litigation privilege, or Solicitor-Third-Person Privilege as it is described in the book, consists of two pages. Obviously a topic of this importance cannot have justice done to it in such a short context. In addition, occasionally language is used which, at least to a practitioner, would not appear to accord with the language used in the courtroom. For instance, in the discussion on hearsay and opinion evidence the following statement is made:

> An expert opinion can be based on a melange of admissible and inadmissable information, although there must be some admissible evidence presented to establish the factual foundation on which the expert opinion is based.
>
> The expert can describe both the admissible and the inadmissible information that he has relied upon. This is done to explain the foundation for his opinion to the trier of fact....[5]

In fact, what the authors are referring to are factual matters proven in evidence. The reference to admissible and inadmissible might more usefully have been described as proven and unproven. Nonetheless, the intent is clear.

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[5] *Ibid.* at 125.

V. CONCLUSION

This book has a very definite place for students, practitioners and members of the judiciary. It is the type of textbook in which major principles of law can be easily identified and the principal authorities governing those concepts easily referenced. However, it must necessarily be used as a starting point on a discussion of the law and ought not to be used as a comprehensive authority on the law of evidence. Recognizing those limitations, there is little doubt that the book is an admirable attempt by the authors to do service to the profession, and they have achieved a most satisfactory result. It is clearly a buy.

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