

REVIEW

Evidence

by Anthony F. Sheppard
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*Campbell Wright**

A STATEMENT OF THE LAW OF EVIDENCE more confident in presentation and broader in scope than this by Professor Sheppard can scarcely be imagined. While one expects that a text purporting to state the law in a particular field will necessarily map out, and not merely roughly explore, the full area contained within drawn boundaries, one must applaud the degree to which the author succeeds in reaching every corner and niche of this vast and not always easily defined territory.

The work is the text-book edition of the "Evidence" title in the *Canadian Encyclopedic Digest* (3rd ed.). To students-at-law and practitioners, the tables of case authorities and statutes located at the beginning and the subject index, which is located at the end, will be familiar as straightforward and helpful research tools. Familiar too will be the positive and largely uneditorialized statements of the law of evidence found in between. The statement of the law is as of August 1988, which, as readers in Manitoba will recognize, precedes the effective date of the new Court of Queen's Bench Rules in that province.

In part due to the breadth and complexity of the law of evidence and in part due to its dual character, the subject is notoriously difficult to present in a neat and logically structured way. "Certainly no one save a lawyer can understand the law of evidence, and... no lawyer, even though he may admit to understanding that law, could ever explain it," wrote Dean C. A. Wright in an extensive 1942 review of an evidence text.¹ Overcoming these hurdles, Professor Sheppard presents the subject in a clear, thoughtful manner, commencing with a substantial introduction that is followed by fifteen subtitles, each of which deals with a particular area of evidence law. As is pointed out at the outset, the law of evidence is at once procedural, or adjective, and

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1 "The Law of Evidence: Present and Future" (1942) 20 Can. Bar Rev. 714 at 719.

substantive, notwithstanding its usual characterization as the former. Grey areas are highlighted, and the particular importance of procedural matters in the criminal law context consistently emphasized.

As much as could reasonably be expected in an endeavour of this magnitude, the author provides a detailed description of what he found exploring the topic. Predictably and appropriately, exclusionary rules receive much attention, but not to the exclusion of more obscure points, such as the trial judge's duty when the evidence recording device fails and the consequences thereof. He points out to the reader the link, where there is one, between the common law and statute law. While the text does not purport to contain a history of the law of evidence, Professor Sheppard does not overlook that important aspect.

Consistent with the objective of updating the statement of the law of evidence, Professor Sheppard has ensured that new developments in the field, and in particular the impact of technology, are drawn to the reader's attention. In most instances, the new issue is addressed in the context of an existing rule or principle, as for example the best evidence rule and its applicability to computer generated print-outs.

The text neither contains a critical analysis of the law that it states nor does it urge or lead the reader to a position on new or controversial issues. Awkward or confounding aspects of evidence law are not examined, and solutions not proposed. Dean Roland Penner's modest proposal "...that we do away with the law of evidence in its entirety..." made at the 1987 Isaac Pitblado Lectures in Winnipeg, is characteristic of the type of issue not addressed by the author.

It is clear, however, that critical analysis was not Professor Sheppard's purpose. He does not explain evidence law but rather states what the law is. His work is a primary research tool consisting of fairly bold pronouncements of what the law is based upon the author's interpretation of the voluminous and unreproduced judicial decisions cited. Except to the extent that Professor Sheppard's own interpretation of the judicial decisions is valuable authority in itself, in most cases review of the original sources will have to be repeated by the researcher to verify support of a particular proposition.

Professor Sheppard's work accomplishes precisely what it was intended to do; that is, to provide a broad but thorough statement of the law of evidence that is confidently presented and in which confidence may be placed for learning and research. It does more. For the student or practitioner prudent enough to resort to the work it will lead, by its sensible and clear presentation, to an awareness of a particular evidentiary rule of proposition in the broader context of the entire body of the law of evidence. Although it may not address Dean Wright's concerns about explaining the law of evidence, it certainly enables the reader to

more easily know or understand it. The text is a work of highest quality that will prove to be of great assistance to all who have occasion to have recourse to it.

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