

Book Review of F. Sussmann,

**THE LAW IN CANADA —
A CITIZEN'S INTRODUCTION
TO THE CANADIAN LEGAL SYSTEM**

(Kenlaw Communications Inc., Ottawa, 1976)
iii and 145 pp.

WILLIAM BINCHY*

Professor Sussmann of the University of Ottawa has achieved the enviable task of writing a "citizen's introduction"¹ to Canadian law which is likely to be read and enjoyed by those for whom it was written. We all must have had the experience as laypersons of attempting to gain a passable knowledge of some subject, only to be turned away irrevocably by some tedious or complex text holding itself out as a layperson's guide. *The Law in Canada*² is, in contrast, a most attractive work. As the author indicates, the book is not directed towards persons seeking specific information, such as how to secure a divorce, but rather at those wishing to acquire a basic understanding of how Canadian society is regulated by law.

The book is divided into three parts. The first, of more than 50 pages, provides "in more or less conventional form"³ an account of the nature and kinds of law, the Canadian Constitution, the legislative process and the machinery of justice, as well as referring briefly⁴ to the avenues⁵ of reform and improved accessibility of the law.

The second part of the book, of 27 pages, comprises an annotated bibliography of books, reports and pamphlets which might be useful for research on the Canadian legal system. Over 40 works are cited, ranging from such mundane representatives as *The Revised Statutes of Canada* and *Martin's Annual Criminal Code* to a handbook on women's rights⁶ and Dean Schmeiser's text on civil liberties.⁷ The publications of the Law Reform Commission of Canada are also included. Throughout the bibliography a detailed description of the contents of each work cited is provided.

* William Binchy, B.A., Barrister, Research Counsellor, The Law Reform Commission, Republic of Ireland. (This review written in a personal capacity.)

1. F. SUSSMANN, *THE LAW IN CANADA — A CITIZEN'S INTRODUCTION TO THE CANADIAN LEGAL SYSTEM* (1976).

2. *Id.*

3. *Id.*, iii.

4. *Id.*, CH. 9.

5. Reference is made to the establishment of Law Reform Commissions, Ombudsmen, and community legal education programmes.

6. M. ZUKER AND J. CALLWOOD, *THE LAW IS NOT FOR WOMEN!* (1976).

7. D. SCHMEISER, *CIVIL LIBERTIES IN CANADA* (1964).

The third part of the book, of over 70 pages, is described by the author as an "indexcyc", a somewhat confusing neologism for a combined index and encyclopaedia. Over 500 key words and expressions are listed. A cross-reference to Part I of the book is made but in certain cases a more detailed explanation of the word or expression is provided in Part III. Thus, for example, the Canadian Bill of Rights,⁸ which is described briefly in Part I of the book,⁹ has its text set out in full in Part III.¹⁰

The advantage of this structure is that the book may be read with profit by persons starting at the beginning, middle or end. The more conscientious reader will presumably begin at page 1, but those who dip into the "indexcyc" will be drawn almost inevitably to the main part of the text.

Who, then, is likely to read the book? The author hopes that "the reader as citizen in the broad sense"¹¹ will do so and there is every reason to expect that he or she will. But another type of reader who may consult the book — perhaps somewhat surreptitiously — is the first year law student, intimidated by the apparently knowledgeable references by his colleagues to such matters as the *Murdoch* case,¹² the *Bail Reform Act*¹³ and the principle of *stare decisis*.¹⁴

On matters of emphasis, certain of the author's selections may perhaps be questioned. The example¹⁵ of legislation on contributory negligence is hardly the most readily understandable that might have been chosen to illustrate the difference between common law and statute law. The statement that a legislative draftsman "usually . . . will limit himself to stating general propositions using general terms, thus leaving it up to the judges to discover the meaning of the statutes' provisions as applied to the facts before them"¹⁶ takes an unduly modest view of most legislative provisions, which involve a high degree of specificity. The decision to limit the heading of "how to find the law"¹⁷ in the "indexcyc" to statutory materials, on the basis that ". . . looking up the common law requires a basic knowledge of its structure and resort to secondary sources . . . is a task for a trained lawyer or law researcher"¹⁸ appears unfortunate. The risk of an untrained person making an error in statutory

8. *An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms* (8 & 9 Eliz. 2, c. 44., 1960).

9. *Supra*, fn. 1, 16, 22-23.

10. *Id.*, 84-86.

11. *Id.*, iii.

12. *Murdoch v Murdoch*, 41 D.L.R. 3d 367 (Sup. Ct. Can., 1973), discussed in Sussmann, *supra*, fn. 1, 128.

13. Discussed in Sussmann, *id.*, 81-21.

14. Discussed in Sussmann, *id.*, 9, 10, 138.

15. *Id.*, 10-11.

16. *Id.*, 40.

17. *Id.*, 106.

18. *Id.*

research is surely at least as great as in regard to a simple reference by him to a leading textbook on a predominantly common law subject such as contract or tort. The use of the expression "guilty mind" in the explanation¹⁹ of *mens rea* might give the impression, in the absence of further clarification, that subjective malice is an element of criminal responsibility. Throughout the book, an undue emphasis appears to be given to the criminal law, thereby lending support to the widespread misconception among laypersons that "the law" means essentially the criminal law.

These matters of emphasis apart, Professor Sussmann is to be congratulated for having succeeded in the difficult task of making the complex subject of law come alive for "the reader as citizen", which is the book's very *raison d'être*.

19. *Id.*, 126.