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Book Review of *Oosterhoff on Trusts: Text, Commentary and Materials*, 6th ed by
A.H. Oosterhoff, Robert Chambers, Mitchell McInnes, and Lionel Smith

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lication providing pragmatic and strategic advice to lawyers on the conduct of defamation cases. The real strength of this outstanding publication lies in the fact that the authors have skillfully combined a practical handbook with a substantive law text.

At over 1000 pages and with more than 500 case references, this publication provides a comprehensive review of this complex area of law throughout Canada. This is no small task, given that each province and territory has its own unique libel and slander statute imposed on common law principles with origins to the Court of the Star Chamber in England several centuries ago. One of the best features of this book is that it highlights and contrasts the differences in the law and in the rules of civil procedure among each of the provinces and territories. In this age of globalized communication and the Internet, defamatory messages can be delivered across the country by anyone with a computer. To have a single resource summarizing the laws and procedures of the different jurisdictions is beneficial in these increasingly prevalent situations. Another commendable feature of the book is that it focuses considerable attention on important evolutions in defamation law in recent years, including the expansion of the "Polly Peck" defence in Canada, the emergence of internet libel and the judicial recognition that the defence of qualified privilege should be available in certain circumstances to media defendants.

The aspect of this book that separates it from the other publications in this area of law is the valuable pragmatic guidance included throughout. Chapters entitled "Defamation Actions to Avoid" and "Should You Sue?" provide welcome advice on the practical considerations to be assessed in deciding whether or not to commence an action. Another chapter discusses the steps that a defendant should take immediately after being served with a claim. Recognizing that the rules of pleading in defamation cases are extremely strict, there are 12 chapters (roughly one-third of the book) devoted to the preparation of proper statements of claim, statements of defence and replies. Another chapter identifies the pre-trial motions that can be brought if an opposing party delivers an improper or incomplete pleading. The book also contains helpful information on assessing damages, preparing for examinations for discovery, leading evidence at trial, preparing jury submissions and arguing appeals.

Although numerous books have been written on libel and slander law, this is the best of the lot. Since obtaining it several months ago, I have rarely opened the other texts on my bookshelf. It is always the first resource I access on any issue in my libel and slander practice and it almost invariably provides the information I need. I would definitely recommend it to any lawyer involved in a defamation action, whether a seasoned expert or a first-timer.

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Oosterhoff on Trusts: Text, Commentary and Materials. By A.H. Oosterhoff, Robert Chambers, Mitchell McInnes, Lionel Smith. 6th ed. Toronto: Carswell, 2004. lii, 1219p. Includes summary of chapters, table of contents, table of cases and index. ISBN 0-459-24142-7 (hardcover) \$159.00.

This book, now in its sixth edition, follows the cases and materials style often used in law school texts. The five parts -- "Introduction," "Express Trusts," "Purpose Trusts," "Remedial Trusts," and "The Administration of Trusts" -- are divided into fifteen chapters. The various sections within each chapter contain commentary or narrative discussions of the rules and principles applicable to the topic covered, followed by an excerpt from a case which either exemplifies or establishes the principles. Each section concludes with a series of notes and questions, including hypothetical problems, which expand the analysis or offer an opportunity to apply the principles.

Users of the book may find the notes and questions sections either highly useful or perhaps extraneous, depending on the context of the use. These sections may be of great advantage to law teachers and students for explanation, illustration, and analysis of the concepts presented in the chapter. On the other hand, law practitioners likely will prefer to skip these sections entirely, preferring for their purposes the information contained in the discussion portions of the text to the hypothetical scenarios in the notes and questions. This aside, these materials did not detract from the value of the information I obtained in my uses of the book for practice-related research.

Where relevant, statutory references are included for all common law provinces and territories except Nunavut, for which the Northwest Territories trusts legislation is still applicable. Trusts generally are a feature of common rather than civil law, but the authors include in the first chapter an analysis of the trust as it has been incorporated in the *Civil Code of Quebec*, along with a brief discussion of trusts in civil law generally.

The authors of this book are indeed learned scholars on the subject of trusts, and I found the content of the book to reflect this. I have not reviewed previous editions of this text, but the "Preface" indicates that large parts of the book were rewritten to reflect the significant developments in trusts law in the six years that had elapsed since the previous edition. The authors note that they reorganized and rewrote much of the discussion of non-charitable, purposes, remedial trusts, and breach of trust, to reflect important new case law.

Many sections of the various chapters conclude with a list of references for further reading. These references are to scholarly articles in journals from various jurisdictions in and outside Canada. Commendably, the authors also make reference to the other leading Canadian text on trusts, D.M.W. Waters, *Law of Trusts in Canada*. These lists of further reading, with their inclusion of leading authors and scholars on

the subject, are likely to be of great assistance in research conducted by academics and practitioners alike.

In recent research I have conducted on trusts issues, I have made use of both this book and the 1984 edition of the text by Waters. Both books are highly informative and important authorities on various aspects of trust law. Waters is perhaps more widely used and cited, and is likely considered to many to be the authoritative Canadian book on trusts. In my view, however, Oosterhoff et al. is an important if not essential item in the trusts collections of both academic and law practice libraries. It is up to date, containing analysis of the important developments in trusts law that have taken place in recent years in the courts and in legislatures, along with current citations to the relevant statutes.

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Drafting Trusts and Will Trusts in Canada. By James Kessler and Fiona Hunter. Markham, Ontario: LexisNexis Canada Inc., 2003. xl, 380p. Includes bibliographic references and index. ISBN 0-433-44008-2 (hardcover) \$129.00.

The inspiration for this book is co-author James Kessler's English law text *Drafting Trusts and Will Trusts*, currently in its seventh edition. Kessler and co-author Fiona Hunter note that *Drafting Trusts and Will Trusts in Canada* is intended to be "a wholly Canadian version of the English text." By charting a course through the intricacies of drafting trust instruments in Canada, with consideration paid to the impact of domestic tax rules and the influences of English law, the authors have created a valuable resource for estates practitioners specifically and for the Canadian legal community generally. Hunter has admirably reshaped the English text to reflect the Canadian experience, while Kessler, a founding member of the Society of Trust and Estate Practitioners (STEP) and author of the STEP Standard Provisions, has provided an English trust law perspective. This text is an essential resource for any library that caters to Canadian legal professionals who are required to draft or interpret *inter vivos* or testamentary trusts.

The authors state their purpose in writing this book is "to aid the generalist by discussing general and technical issues which arise in the drafting of trusts and will trusts, and to provide precedents." However, the book is also a worthwhile reference resource for the experienced estates practitioner. The authors have researched extensively and include concise discussions of numerous complex aspects of trust law. For instance, their treatment of the applicability of the rule against perpetuities across Canada is logical and thorough. In this respect, the book functions as a treatise as much as it

does as a practical guide. While the logical structure of the book and the accompanying precedents enable generalists to draft effective trust instruments, the authors' thorough and insightful attention to drafting and interpretation in terms of specific trust problems make it equally valuable to those who specialize in this area of practice. What may be lacking in this book from the generalist's perspective is a theoretical discussion of the trust concept. This text will definitely be more accessible to readers who are already familiar with the fundamentals of trust law.

In terms of structure, a brief, but helpful, listing of trust terminology follows the usual initial tables of contents, cases and abbreviations. The authors then discuss the role of a drafter, including potential liability, and principles with respect to appropriate drafting styles with an emphasis on simplicity and the use of plain language. Finally, the authors outline principles of interpretation and construction, concluding with an exploration of the key components of trusts and how to appropriately draft clauses dealing with these elements.

Following a detailed outline of the general provisions of a trust, Kessler and Hunter then explain and provide advice on various types of trusts, such as spousal trusts, alter ego and joint partner trusts, charitable and non-charitable purpose trusts, and on powers and the administration of trusts, such as overriding powers, settlor exclusion clauses, administrative provisions, and jurisdiction clauses. The authors then deal with special topics such as pension benefits and life insurance proceeds with respect to trusts, and the drafting of trusts for incapacitated settlors and disabled beneficiaries. Finally, the authors provide advice about the execution of wills and trust deeds.

Throughout the text Kessler and Hunter incorporate precedents of various clauses and portions of trusts as they address specific topics. The book concludes with the STEP Standard Provisions and precedents for various types of trusts. The accompanying compact disc provides digital versions of the trust precedents. The book is well organized and contains a table of contents, a series of additional tables (*i.e.*, precedents, cases, statutes, abbreviations), an annotated bibliography and a well-structured index.

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Video Game Law. By Jon Festinger. Markham: LexisNexis Butterworths, 2005. 154p. Includes appendix. ISBN 0-433-44759-1 (softcover). \$49.00.

A professor at Queen's recently told me that she had conducted a poll in her classes. "How many hours per month," she asked her undergraduate students, "would you say you play video games?" The answer -- about forty hours,