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Book Review of *Public Law* by Michael Bryant and Lorne Sossin

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bering. These changes are reflected, too, in the price: the softcover 4th edition cost \$26 when published in 1998, while this edition lists at \$37. Future editions would perhaps be better issued in separate French and English editions, once again Cerlox-bound to facilitate use.

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The Charter of Rights and Freedoms. By Robert J. Sharpe, Katherine E. Swinton and Kent Roach. 2nd ed. Toronto: Irwin Law, 2002. 348p. Includes detailed and summary tables of contents, introduction, table of cases, glossary and index. ISBN 1-55221-063-4 (soft cover) \$44.95.

In the introduction to this text, the authors indicate that their objective is to explain the *Charter of Rights and Freedoms* to non-specialist readers who are interested in acquiring a basic understanding of the Canadian legal system and constitution. To put it another way, this text is aimed at students in political science or introductory law courses who are studying the *Charter* for the first time.

The overriding theme of the text is a discussion of the tension between Canada's democratic tradition and the supremacy of the *Charter*. The authors note that the wording of Canada's constitution reflects a conscious political choice to give judges the power to interfere with the decisions of democratically elected representatives. Consequently, there is a debate about whether judges, who are unelected and unaccountable, should have the power to decide significant issues of public policy. The authors respond to this debate by pointing out that unchecked majorities may fail to respect the values of individual dignity, autonomy and respect. They add that the *Charter* requires the majority to respect the rights of the few and, as such, contributes to a stronger Canadian democracy.

This text is very well organized and easy to use. Students doing research can make use of the detailed table of contents or the index to help them find the specific issue that interests them. There are chapters devoted to topics such as the historical context, judicial review, *Charter* interpretation and *Charter* litigation. More importantly, there are chapters for most of the rights and freedoms protected by the *Charter*. These include: freedom of association, mobility rights, democratic rights, equality, language and the principles of fundamental justice.

The chapters are broken down into logical and helpful sub-topics. Thus, the chapter on freedom of expression has subsections that discuss, among other things, hate speech, pornography, political expression, and commercial expression. Most chapters have a conclusion section that offers a

succinct overview of the topic or *Charter* right under discussion. Each chapter has extensive footnotes and a list of further readings.

The text contains a glossary that defines basic legal concepts such as damages, disclosure; *stare decisis* and torts. There is also a table of cases and a complete copy of the *Constitution Act, 1982*.

While this text is easy to navigate, the overview approach drains much of the life out of this vital and interesting area of the law. The authors skim through each topic in a manner that could easily lose the interest of the novice reader. Cases that could generate much thought-provoking debate in a social science class or essay are reduced to turgid summarizing sentences. For example, *R. v. Feeney*, in which the Supreme Court of Canada allowed the appeal of a man convicted of second degree murder, is dealt with, in its entirety, as follows: "The Court has also upheld the individual's privacy interest in a dwelling house by finding that the police violate section 8 by forcible entry to make a warrantless arrest absent circumstances of 'hot pursuit' of a fleeing suspect." This cursory treatment does not help illustrate the tension between majority and individual rights, nor does it inspire students to delve deeper into the subject. Instead of simply summarizing the *ratio* of case after case, the authors need to describe the circumstances of these cases in order to bring their thesis into focus.

A second complaint about the overview approach is that the text does not offer an exhaustive treatment of any one topic. For example, my 2004 *Annotated Tremear's Criminal Code* includes, in very small type, 8½ pages of annotations under section 8 of the *Charter*. In contrast, section 8 is canvassed in 4½ pages, of regular type, in this text.

This text is well organized and could be a useful resource for students seeking an entry point into the subject of the *Charter*, civil liberties, and the relationship between majority and individual rights. However, the text is overly perfunctory in its treatment of its subject matter. As a result, it will not stimulate students to formulate opinions on, or learn more about, the *Charter*.

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Public Law. By Michael Bryant and Lorne Sossin. Toronto: Carswell, 2002. xlviii, 228 p. Includes table of cases, index. ISBN 0-459-24031-5 (hardcover) \$85.00.

On several occasions while conducting legal research or while guiding students in their research, I have noted that Canadian legal literature would benefit from a one-stop text on public law. Of course, there are many excellent works on

public law topics: administrative, constitutional, Crown, public international, and aboriginal law. In many instances, though, the early stages of a research project call for a single-volume secondary source to help set the direction of the research or to provide guidance on different aspects of the problem.

Thus, when I heard about the publication of *Public Law*, I was excited that a single-volume text on the general area was entering Canadian legal literature. In introducing the subject, the authors note that there is no single definition of “public law.” It broadly refers to “all aspects of the individual’s relationship with the state” and at least comprises administrative, constitutional, and international law. The authors have chosen to analyze these topics, and aboriginal law, in five chapters.

Structurally, the detailed table of contents is useful and is helpfully repeated chapter by chapter. Given the number of scholarly references, a table of such authorities – in addition to the table of cases – would be welcome.

The first chapter, “Aboriginal Law,” offers an excellent and thorough analysis for a text of this size. The chapter defines the topic and reviews constitutional aspects of aboriginal law as well as the law deriving from treaty rights and the *Indian Act*.

The next two chapters form a brief treatment of what might be found in greater detail in a good text on constitutional law. Chapter 2, “The Charter of Rights and Freedoms,” gives an overview of the *Charter* by analyzing its key components – reasonable limits, fundamental freedoms, legal rights, equality rights, and *Charter* application and remedies – and their judicial interpretation. Chapter 3, “Constitutional Law...” gives a useful and interesting review of the separation of powers between the legislative, executive and judicial branches in our parliamentary system. This chapter contains content that might comprise the introductory parts of an administrative law text. Indeed, it lays such a good foundation and relates so well to the other material in the book that this chapter could have been placed first. Chapter 3 also analyzes the important constitutional concept of federalism – the respective powers and jurisdiction of the federal and provincial governments – as well the division of powers doctrine developed by constitutional interpretation.

The fourth and fifth chapters distinguish this book from a general constitutional law text. Chapter 4, “Administrative Law,” offers a good discussion of the topics given in a standard administrative law text: the duty of fairness and natural justice, judicial review and practice, and the various standards of review. I found the up-front analysis of the important and topical issue of the standards of judicial review to be very useful and a good choice to lead the chapter.

The final chapter, “Public International Law,” is a good introduction to the topic for those readers with only a cursory knowledge of its issues and principles. This subject seems discrete and not obviously interconnected with the others: public international law generally involves state actors rather than individual ones. The authors note however that international jurisprudence occasionally enters domestic

public law disputes. Of particular relevance are the discussions of international human rights law and the Supreme Court of Canada’s 1998 Québec Secession Reference decision.

The book is not comprehensive, nor was it intended to be so. This book is meant to offer an overview of public law to provide a head start in research. Does it achieve that goal? Yes, admirably so in many respects. However, recalling my own research on public law matters, I believe the book might benefit from an extra chapter or two. An introduction to public law could explain more about what the term characterizes, the different actors, and other introductory matters for the student or more junior practitioner. Another chapter could review public law issues for the civil litigator: the particularities of taking proceedings against the Crown and other procedural and substantive matters of Crown law (although the constitutional and administrative law chapters do address some matters of Crown law). Overall however, this text is a welcome contribution to Canadian legal literature and would be a useful addition to the libraries of law schools, superior courts, and firms that practice in administrative, constitutional and other areas of public law.

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An Introduction to Law and Social Theory. Reza Bankar and Max Travers, eds. Oxford: Hart Publishing, 2002. 367 p. ISBN 1-84113-208-X (cloth) \$76.00 (US) ISBN 1-84113-209-8 (paper) \$36.00 (US).

In compiling a coherent collection of essays on the subject of law and social theory, the editors have taken on a difficult task. Pointing to the lack of emphasis in traditional law school curricula on the topic, Bankar and Travers hope to raise the issue of the relationship between law and sociology “for a new generation of law students and teachers.” Their main point is that “sociology needs to be taken seriously as a discipline in its own right, and this means paying attention to a whole range of traditions in the discipline, and how they can be used to study law.” In contrast to the predominant internalist approach, where law curricula almost exclusively emphasize black letter legal doctrine, “[a] sociological approach to law is concerned with how this institution works and the relationship between law and other areas of social life.”

In order to present the broad scope of diverse schools of thought, the editors arrange the text into six sections: classical sociology of law, systems theory, critical approaches, interpretive approaches, postmodernism, and pluralism and globalization. Each of the six is treated in a separate section