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Book Review: Law of Trusts in Canada, by D. W. M. Waters

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BOOK REVIEWS

REVUE DE LIVRES

Law of Trusts in Canada. By D. W. M. WATERS. Toronto, Canada: The Carswell Co. Ltd. 1974. Pp. xcii, 1070 (\$85.00)

This handsomely produced book is the first treatise on the law of trusts in Canada. Any book which filled such a deplorable gap in our literature would be entitled to a warm welcome. This book, however, is far better than we have any right to expect of a pioneer. It is original, both in its organisation and in its treatment of particular topics; it is Canadian in its scrupulous citation and discussion of Canadian cases and statutes; and it is written in an easy style which made it a pleasure to perform the reviewer's task of reading it from cover to cover.

The book invites comparison with the English texts by Lewin¹ and Underhill² which are similar in size. But whereas the English books attempt to reduce the law to a set of relatively terse propositions supported by a thick undergrowth of footnotes, Waters' book is discursive, argumentative and critical. He often discusses the historical or social policy background of a rule and the views of academic commentators; he criticises the decisions which seem to him to be wrong; and he usually concludes his discussion of a topic with general evaluation of the law and suggestions for reform. The flavour of the book is quite unlike the standard English texts. It is more like a series of law review articles — or perhaps a less ambiguous version of *Scott on Trusts*.³

The author says in the preface that the book is written in a style "which attempts to meet the needs of the continuous reader". Presumably, the continuous reader will normally be a student or professor, and they will certainly appreciate the discursive style. The author's concern for the student reader comes out in other ways too. Legal terms, including simple ones, are defined when

¹ *On Trusts* (16th ed., by W. J. Moberly, 1964).

² *Underhill's Law Relating to Trusts and Trustees* (12th ed., by R. T. Oerton, 1970).

³ *The Law of Trusts* (3rd ed., 1967).

they are first encountered. There are chapters on the modern use of the trust, including its use in tax planning, which are necessarily insufficiently detailed for practical application but which will be useful in helping students to gain an understanding of the trust concept and its importance. Another interesting chapter describes the trust in Quebec, along with the other devices which in civil law systems achieve some of the same results as the trust. The book is an academic one in the best sense of that word, and every Canadian law school library will want to keep several copies on its reserve shelves. Unfortunately, outside the library budgets there will be practically no law school market for the book, because it is more than a thousand pages in length and it costs \$85.00.

The size and the price of the book obviously confine its general sales to practitioners. They will find it very useful. Here for the first time between one set of covers is the entire Canadian law of trusts. So far as the reviewer could ascertain, most important Canadian cases and all statutes are referred to. All Canadian jurisdictions are covered, and while there is a high degree of uniformity in the law, dissimilarities between provinces are always noted and discussed. Three appendices correlate the statutory provisions of each province with respect to investment powers, trustees' powers generally and judicial powers. The author states in the preface that he aimed to emphasize the Canadian authorities, even at the expense of English, Australian, New Zealand or American authorities. The aim is realised in the book, but it does not lead the author to neglect the leading cases where they are non-Canadian, nor does it prevent the author from constantly making helpful comparisons between the Canadian law and that of England and occasionally other Commonwealth jurisdictions or the United States. In places I felt that the author had gone to too much trouble to discuss every last Canadian case. There are quite a number of decisions at first instance which are simply wrong and which need not be taken too seriously. This is a characteristic of the case law of any country. Some of the many cases which the author finds to be "curious", "remarkable", "disturbing" or "difficult to understand", and which he criticises at length, could have been relegated to a brief footnote with some saving in the length of the book. On the whole, however, I felt that the author had struck a happy balance between his Canadian sources and the material from elsewhere.

Inevitably, in a book so long, I found passages with which I disagreed. But the points with which I would join issue seem so trifling as not to justify discussion in this review. Inevitably, too,

there were some misprints, but these were relatively few and far between. I cannot forbear mentioning one, however, which I found delightful. The institution of the trust, we are told, "was brought by the Loyalists into Canada, as it was taken by the settlers [*sic*] into Australia and New Zealand".

The labour needed to write this book must have been enormous. But I think all readers will agree that the product is of commensurate value. The author deserves our warmest congratulations.

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¹ [1971] S.C.R. 23.

² [1971] S.C.R. 272.