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Book Review: Constitutions of Canada, edited and annotated by Christian L. Wiktor and Guy Tanguay

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BOOK REVIEWS
REVUE DES LIVRES

Constitutions of Canada. Edited and annotated by CHRISTIAN L. WIKTOR and GUY TANGUAY. Dobbs Ferry, New York: Oceana Publications 1978. Loose-leaf service planned for four volumes two of which have been published. (\$75.00 U.S. per volume.)

This work is planned as a four-volume, loose-leaf service on *Constitutions of Canada*, which is being compiled by Christian L. Wiktor and Guy Tanguay, who are the law librarians at Dalhousie University and the University of Sherbrooke. So far two volumes have been issued. The publisher has advised me that "it may still be quite a while until the remaining two binders are ready", and so it seems appropriate to review now the first two binders.

The purpose of the service is to collect in one place the "legislative sources" of Canadian constitutional law, both federal and provincial. The first two volumes cover general sources; the third and fourth volumes will cover provincial sources. The loose-leaf format will allow the service to be kept up-to-date by the issue of supplements when necessary. The collection is annotated by the editors in that each new section of material is introduced by a brief introductory commentary and a few "selected references" to other writings. The collection is bilingual in the sense that where material is available in both English and French both versions are reproduced. The editorial commentary is also in both English and French.

There is of course a serious difficulty in defining what constitutes the "constitution" of Canada, let alone the "constitutions" of Canada by which term the editors include the constitutions of the various provinces. This difficulty is faced by the editors in an introductory essay. So far as subject matter is concerned, the editors do not provide a criterion for selection other than citing various definitions referring to the "important" rules of government. So far as source is concerned, the editors confine themselves to "legislative" sources, thereby excluding case-law, conventions and the general patterns of governmental behaviour.

In the introductory essay, the editors justify their exclusion of non-legislative material by asserting that "the case law can be easily located through various reference tools",¹ and that the conventions "can be found in textbooks on government or constitutional law".² But the fact is, surely, that the legislative material is much easier of access than the case-law or conventions or non-legislative events and arrangements. It will be recalled that the last volume of the Revised Statutes of Canada, 1970 has an appendix which contains many of the important legislative sources of Canadian constitutional law, including the Royal Proclamation of 1763 and other important pre-confederation instruments, the British North America Act and all its amendments, the Statute of Westminster, the statutes and orders in council which admitted or created new provinces, the letters patent constituting the office of Governor General, and the Canadian Bill of Rights. For the lawyer this is a very convenient collection, and the widespread availability of the Revised Statutes of Canada in public libraries (if Toronto's libraries are typical of the rest of the country) makes the material accessible to the layperson as well. Of course, the material is not easy to understand in its raw form, but that is a difficulty which can only be resolved by much more extensive annotation and explanation than have been essayed by the editors of this service.

The scope of the work may be demonstrated by a description of the contents of volumes 1 and 2. The first document is the British North America Act which is a photographed reproduction of the consolidation by Elmer A. Driedger which consolidates all the amendments and "glosses" the result with many helpful footnotes. The Driedger consolidation has been an indispensable aid to those consulting the British North America Act, and the editors were very wise not to attempt to re-invent the wheel, especially as their own work is never as ambitious as Driedger's. No other statutes are footnoted, for example. The British North America Act is followed by the Statute of Westminster, 1931 (Imp.). The Colonial Laws Validity Act, 1865 (Imp.) is not included, despite the fact that it is the statute which protects the British North America Act from domestic alteration; moreover, it is one important statute which is not included in the Appendix to the Revised Statutes of Canada.

The next section of the work covers the topic of Admission into Confederation and includes the instruments by which each of the provinces (other than the four original provinces) joined the union or was created. These documents are all referred to in footnote 5 of the Driedger consolidation, and of course they are already conveniently collected in the Appendix to the Revised Statutes of Canada, 1970.

¹ P. xi.

² *Ibid.*

Then there is a section on Boundaries which does collect some genuinely fugitive material relating to national and provincial boundaries, including various treaties, as well as statutes and (in prudent violation of the general rule to exclude case-law) the decision of the Privy Council settling the Quebec-Labrador boundary. That completes volume 1.

The first topic treated in volume 2 is federal-provincial relations. Under this rubric are included the statutes and agreements by which natural resources were transferred to the western provinces. These resource transfers, so long ago executed, seem a curious inclusion under "federal-provincial relations". Surely, they are better regarded either as a second phase of the admission to confederation of the western provinces or as part of the constitutions of the provinces to which they apply. The only other instrument under the rubric "federal-provincial relations" is the Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977. This statute is incomprehensible to all but a few specialists in federal-provincial finances; yet it is included without any explanatory commentary (apart from a single-page introduction explaining the taxing and spending powers). Nor are any details given of the various shared-cost programs and other arrangements which constitute the stuff of federal-provincial relations.

Other topics covered in volume 2 are executive power, legislative power, judicial power, fundamental rights, language rights, citizenship and allegiance, emergency measures, coat of arms, national flag, emblems of Canada, national anthem, and national capital. In each case the material included is confined to legislative material, so that we find such statutes as the Royal Style and Titles Act, the Ministries and Ministers of State Act, the Senate and House of Commons Act, the Canada Elections Act, the Supreme Court Act, the Federal Court Act, the Canadian Bill of Rights, the Official Languages Act, the Indian Act, and the War Measures Act. These statutes are of course all in the Revised Statutes of Canada. Indeed, it is the very typeface of the Revised Statutes of Canada which has been photocopied and reduced for inclusion in the service.

It will be obvious that a collection basically confined to legislative material presents a partial and misleading picture of the topics with which it deals. In some areas, notably those dealing with executive and legislative power, one would have to say that the language of the statutes is the least important of the material, since it conveys no hint of the true locations of power and how they are exercised. In other areas, the statute law, while not unimportant, is seriously misleading unless supplemented by non-statutory information (as with federal-provincial relations) or case-law (as with the British North America Act).

The editors attempt to meet this deficiency by a short textual introduction to each topic. But these introductions are so brief and general, typically occupying only one to three pages, that they necessarily give an oversimplified account of the background to the following material, and they hardly begin to fill the gaps in the statutory material or to prepare the reader for the complexity of the statutory material which follows. The editors also give a few selected references to secondary writing on each topic (where it exists), and those references are a valuable feature.

The service will be kept up-to-date by regular supplements. It is safe to assume that, unless the scope of the service is enlarged, little supplementation will prove necessary. Most of the changes in our constitutional arrangements occur outside the legislative process. I am afraid that this point underlines the relative lack of usefulness of the service. It will not alert the reader to new decisions of the Supreme Court of Canada, to new federal-provincial arrangements (unless embodied in statutory form), to changes of government, to standings in the House of Commons and provincial legislative assemblies, or to new procedures within government (an "inner cabinet", for example). I cannot help contrasting the service under review with the tax service to which I subscribe, which attempts to explain the terms of the Income Tax Act and Regulations, and which regularly informs its readers not only of changes in the Act and Regulations, but also of new cases, new departmental rulings and practices, all accompanied by editorial comment. A service of this kind on constitutional law would be exceedingly valuable.

I would certainly not say that the service as it stands is useless, and of course I have not yet seen volumes 3 and 4, which will cover provincial constitutions. It does bring together in one place a wide variety of legislative material with a constitutional aspect to it. This may be useful in a non-Canadian setting, or even in a Canadian setting where the Revised Statutes of Canada are not available. But I fear that the lay (or non-Canadian) reader will need more explanation to understand the material, and the expert reader will be disappointed with the absence of non-legislative material. The loose-leaf format makes it possible for the work to evolve. I would respectfully suggest that the supplementation be employed not merely to keep the service up-to-date, but to add some flesh, even some clothes, to the bare bones which are here collected.

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