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**Book Review: MacGillivray and Parkington on Insurance Law
Relating to All Risks other than Marine, Seventh Edition, by
Michael Parkington, Anthony O'Dowd, Nicholas Legh-Jones and
Andrew Longmore**

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MacGillivray and Parkington on Insurance Law Relating to All Risks other than Marine. Seventh Edition. By MICHAEL PARKINGTON, ANTHONY O'DOWD, NICHOLAS LEGH-JONES and ANDREW LONGMORE. London: Sweet & Maxwell. 1981. Pp. cxxiv, 1029 including appendix and index. (\$178.75)

This book is the best English practitioner's book on the market. It is, beyond doubt, superior to Ivamy or to Colinvaux.

Yet the book has almost the look of a nineteenth century practitioner's work. It is very heavily weighted in favour of case law. Astonishingly, the Policyholders Protection Act 1975,¹ perhaps the most important piece of insurance legislation passed in the United Kingdom this century, goes

³ L.R.Q. 1977, c. C-11.

⁴ S.R.C. 1970, c. O-2.

⁵ Gérald A. Beaudoin et Walter S. Tarnopolsky (éds), *Charte canadienne des droits et libertés* (1982). Voir aussi le numéro special de la *Revue du Barreau canadien* (1983), 61 R. du B. can. 1.

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¹ 1975, c. 75.

unmentioned. The Insurance Brokers (Registration) Act 1977² is given a bare mention and the provisions of the Insurance Companies Act 1981³ are only outlined. A division of insurance law into contractual and statutory parts is nothing short of antediluvian.

In the sixth edition, some reviewers had criticized MacGillivray for not dealing with the very important question of what is an insurance company.⁴ In this edition, four pages are devoted to this topic but the discussion is almost worthless. Some English cases are summarized but the tests they lay down are so broad that they would cover most contracts. Reference to Professor Hellner's classic article on the subject would have helped the authors.⁵

The chapter on insurable interest in property is set out comprehensively and with a great deal of historical learning. What is not pointed out is that the rules for deciding who has an insurable interest are irrational. Thus, to give but two examples:

- (1) an unsecured creditor has no insurable interest in property;⁶
- (2) a *bona fide* purchaser of a stolen good has no insurable interest in the stolen property.⁷

The authors cite the "useful" article by Harnett and Thornton on insurable interest in property⁸ in a footnote⁹ but they fail to apply the central argument of that article, namely that the definition of insurable interest in property arbitrarily deprives many insureds of coverage.

In the chapter on agency, the outrageous decision in *Newsholme Bros. Ltd v. Road Transport and General Assurance*¹⁰ is accepted without question. The very limited scope given to agents in terms of ostensible authority also passes without comment.¹¹ Only the rule in *Grover and Grover v. Matthews*,¹² which prevents a principal from ratifying after a loss is criticized.

² 1977, c. 46.

³ 1981, c. 31.

⁴ See *e.g.*, the review by Professor R.M. Goode (1977), 93 L.Q.Rev. 458.

⁵ See this article, *The Scope of Insurance Regulation: What is Insurance for the Purposes of Regulation?* (1963), 12 Am. J. of Comp. L. 494.

⁶ See *e.g.*, the decision in *Aqua-Land Exploration Ltd v. Guarantee Co. of North America*, [1966] S.C.R. 133, (1965), 54 D.L.R. (2d) 229.

⁷ See *e.g.* *Chadwick v. Gibraltar Insurance* (1981), 34 O.R. (2d) 488.

⁸ *Insurable Interest in Property: A Socio-Economic Re-evaluation of a Legal Concept*, (1948), 48 Col. L. Rev. 1162.

⁹ P. 20, n. 14.

¹⁰ [1929] 2 K.B. 356 (C.A.).

¹¹ See *e.g.*, *Comerford v. Britannic Assurance Co.* (1908), 24 T.L.R. 593 and the cases cited at p. 397, n. 41.

¹² [1910] 2 K.B. 401.

There is some mild criticism of the scandalous state of the law with regard to the duty of disclosure¹³ but in the end the authors would retain the doctrine. They write in defence of the duty of disclosure:¹⁴

In the first place, cover is sometimes obtained over the telephone without the protection of the proposal form and its warranties. Secondly, there must be occasions when the risk is quite definitely affected by a circumstance which was outside the scope of the most thorough proposal form—the house next door was only recently on fire or is thatched, or for that matter, the life assured develops serious symptoms after the proposal form is sent off, but before the premium is paid. It cannot be said, in our view, that the doctrine of non-disclosure is otiose.

Once one requires an insured to disclose the fact that his neighbour's house has a thatched roof or that he has had a recent fire, then this leaves the law precisely where it is today.¹⁵

The authors do not find it strange that the insurer owes the insured no duties of disclosure. Thus, an insurer does not have to tell the beneficiary of the existence of a life insurance policy after the insured has died;¹⁶ nor, does it have to tell the insured the price of his or her insurance.¹⁷ This seems more than a little unfair.

Finally, in their chapter on subrogation, the authors spend a considerable amount of time on the history of subrogation but there is no mention of the fact that the doctrine has been criticised as being wasteful because it shifts losses from one insurer to another at great expense.¹⁸ The authors are a little troubled by the decision of the House of Lords (a decision which they regard as "inescapable") in *Lister v. Romford Ice*.¹⁹ This, they say, should be a matter "for legislation in the context of industrial relations as a whole".²⁰ But legislation abolishing subrogation in the field of employers' liability insurance alone would still leave many employees in the same position as the defendant in the *Lister* case. The decision of the Supreme

¹³ See Hasson, *The Doctrine of "Uberrima Fides" in Insurance Law* (1969), 32 Mod. L. Rev. 615.

¹⁴ P. 288.

¹⁵ To be fair, the authors state that the law should be changed in two respects. First, all proposal forms should carry a warning to the applicant that anything he knows relevant to the risk of loss should be communicated. Second, they propose that the test of materiality of undisclosed facts "should be the opinion of the reasonable assured as to its materiality, so that he is not put in the enviable position of disputing the evidence given by the insurers as to how the prudent insurer would like to run his business". See p. 289. In my view, these changes are largely cosmetic and would do very little, indeed to change the law.

¹⁶ See the excellent note, *The Insurer's Duty to Disclose the Existence of a Policy* (1976), 76 Col. L. Rev. 825.

¹⁷ See e.g., Kimball and Rapaport, *What Price "Price Disclosure"?*—The Trend to Consumer Protection in Life Insurance, [1972] Wis. L. Rev. 1025.

¹⁸ See e.g., Hasson, *Blindfolding the Courts: A Further Comment on Photo Production v. Securicor* (1981), 5 C.B.L.J. 498 (1981).

¹⁹ [1957] A.C. 555 (H.L.).

²⁰ P. 502.

Court of Canada in *Greenwood Shopping Plaza v. Beattie*²¹ is confirmation of that fact.

It might be argued that I am being unrealistic and unfair in requiring a practitioners' book to adopt a critical stance but it should be remembered that *Corbin* and *Wigmore* were (and are) legal classics precisely because they adopted a critical point of view.

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²¹ (1980), 111 D.L.R. (3d) 257.

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¹ (1975)

² (1979)

³ (1981)