

# Book Review: Fraser and Stewart: Company Law in Canada, by J. L. Stewart and M. Laird Palmer, Fifth Edition

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Book Review

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*Fraser and Stewart: Company Law in Canada.* BY J. L. STEWART AND M. LAIRD PALMER, FIFTH EDITION. TORONTO: CARSWELL COMPANY LIMITED. 1962. Pp. cxxii, 1213.

The appearance of a fifth edition, under the editorship of J. L. Stewart and M. Laird Palmer, of *Fraser & Stewart: Company Law of Canada*, should perplex only those innocents abroad who attempt to unearth the four editions which preceded it. The Canadian lawyer will not be misled, and a glance at the preface will reassure the casual user that *Masten & Fraser*—the bible of the local profession in this branch of the law—has not been consigned by the publishers to an unwanted oblivion. All obscurities of authorship aside, the success of the current editors in preserving intact the virtues and the shortcomings of a familiar text will no doubt satisfy the traditionalist as surely as it will disappoint his more adventurous colleagues. And in all fairness it should be conceded, perhaps, that since the work was directed in its original conception to the needs and approval of the first group, it is probably uncivil of the second to lament a lost opportunity for improvement.

A clash of opinion is nonetheless inevitable if admission be made—as it must be made—of the changing role of the text-book in the intellectual armoury of both student and practitioner. The traditionalist will no doubt be firm in his assertion that however much the mechanics of legal education may have altered since the year in which the first edition of this work appeared (1901), the obligation of the practitioner to his client demands for its proper discharge a meticulous catalogue of judicial precedent which will indicate with certainty what the law may be at the relevant date of publication (in this case January 1, 1961, with an occasional post-deadline dividend such as the Court of Appeal's disposition of *Re Bugle Press, Ltd.* [1961] 1 Ch. 270). And on this basis of evaluation, the fifth edition of *Fraser & Stewart* is deserving of a legitimate place with other distinguished annotations such as *Palmer* in Great Britain and *Ballantine* in the United States. Indeed, the industry which can record terse comments on a case list of one hundred and sixteen pages will as surely prompt the practitioner's admiration as a generous sale will attest to his gratitude.

Yet it may be doubted, on the other hand, whether even the most conservative lawyer in 1963 can disregard in his judgment the disturbing effects of an educational pattern to which the majority of his number will almost certainly have been exposed—a pattern which has seen the didactic text subordinated to the selective case-book, the ratio of the judgment to the adumbrations of the judge, the tidy perfection of the code to concern with its inevitable exceptions, and simplicity of professional purpose to the complexities of social and economic obligation. To acknowledge these trends is not to suggest, of course, that the declarations of the legislature or the decisions of the courts can be lightly disregarded in any assertion of responsible

comment. On the contrary, the fabric of the law is tailored by those same hands with no less authority in 1963 than we take for granted to have been the case in earlier years of legislative civility and judicial isolation. Yet, sensitive as we must necessarily be to the traditions and philosophies of our forbears, it behooves us today—the practitioner no less than the academic—to acknowledge the tempo of change and to integrate as best we may the actual certainties of the past with the probable certainties of the future.

And in no field of the law is this more immediately apparent than that which relates to corporations. One need hardly advert in the context to the voracious concern of the state with the privacy of commercial affairs; to the economic revolution by which the man on the street has become an accepted arbiter of corporate conduct and morality; or to the philanthropist's solicitude for those gigantic geese which lay their golden eggs in altogether dazzling profusion for the greater benefit of the public weal. As the brokers' advertisements not inaccurately observe, Wall Street has indeed—again—become Main Street, and no man, however modest his expectations, need deprive himself of the dignity and excitement of the investors club or the closed-end trust. The legislator, in turn, mindful as ever of the peril to his constituents yet grateful for the benign anonymity of the corporate taxpayer, has managed with splendid inconsistency to protect the constituent on his way in as surely as he relieves him of his investment on the way out.

In the result, therefore, no examination of the law of companies can be considered now to be even reliable, let alone complete, unless cast within the framework of an informed public demand for ever wider regulation of this powerful and pervasive economic instrument. Disregarding for present purposes the literature and legislation through which our American colleagues attempt to rationalize, if not to subdue, the surpassing strength of the beast, it is perhaps worthy of note that Parliament in Great Britain has seen fit on no less than two occasions within the last twenty years to authorize remedial enquiries into the laws which regulate its activities, and the enactment in 1948 of a "new" statute, which already bids fair for replacement as a result of the recently published recommendations of the Jenkins Committee on Company Law, is plainly significant. One has only to examine the voluminous evidence presented to that Committee (and to its predecessor under the chairmanship of Lord Cohen) to confirm the view that no branch of the law is more fluid in its direction or less adequately adapted for adjustment to earlier annotations.

Yet no trace of this disquieting agitation has been allowed to intrude upon the orderly discourse under review. Indeed, the apparent satisfaction of Canada's Parliament with its labours of 1934 (the statute being virtually unchanged since the day of its enactment) has relieved the editors of *Fraser & Stewart* of any obligation to depart from the explanatory text as it appeared in the fourth edition,

save only for collateral references to those other Canadian statutes (most notably the Ontario Corporations Act of 1953) which differ in specific detail from the provisions of the Dominion Act. References are given, moreover, to relevant sections of the United Kingdom Act of 1948, but apart from indicating the principal points of divergence, no effort has been made to enlarge upon those issues of policy and practice to which they are so directly attributable, and one is often left with the perhaps dangerous impression that questions of substance are frequently subordinate to mere variations of language. Altogether lost is the close relationship of that Act to the recommendations of the Cohen Committee, and to other legislative material having a wider operative significance than the language of the Act might of itself suggest. The works of Parliament are herein well recorded; a pity they were not as well explained.

To return, then, to the reservation expressed at the outset. No doubt a case can be made for employment of the title *Company Law of Canada*, and legitimate argument may be advanced for disregarding those other statutes (relating, e.g., to income tax, combinations and securities transactions) which play so large a part in the affairs of corporate clients and their professional advisers. The fact remains that the worth of the book would have been immeasurably enhanced if the editors had sought in even modest measure to draw it within the contemporary convention of that informed and candid comment for which they possess such singular qualifications. The work as it stands would rightly adorn a Canadian *Halsbury*; perhaps, too, the currency of its judicial precedents could be better maintained by use of the ubiquitous ring-binder; but only a major revision could convert this text into what *Gower*, with no little justification, very properly describes as *Modern Company Law*.

No exception can be taken to the technical production of the book, which is admirable in every respect. Although welcoming deletion of the statutory text from the heading of each chapter, it may be doubted whether the expense of reprinting the *Companies Act* and the *Winding-up Act* can be readily justified, if the reader is required in any event to revert to original sources for those other statutes to which his attention is so frequently referred. It would be helpful, as well, if a Table of Statutes had been provided in addition to the concordance of the Canadian *Companies Acts*, and if important decisions such as *C.P.R. v. City of Winnipeg* had been included in the Table of Cases. The omission, moreover, of a useful case such as *Welch v. Bank of England* (regarding the effect of negligence in the passing of a forged transfer) is no less surprising than the addition, at p. 667, of certain propositions regarding instruments of proxy for which no authority whatever is cited. These, however, are mere trifles, and cannot qualify in any way the editors' success in substituting the year 1961 for the year 1941 without effecting the slightest departure from either the virtues—or the shortcomings—of the edition which preceded it.

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