

perhaps unresolvable question. Some place for judicial creativity seems inevitable in any instance where a judge has to decide between two competing tenable arguments; a judgment is not a computer print out. But whether it is desirable to go all the way with Lord Denning's view of judicial activism, given present ill-defined methods of choosing the judiciary, seems doubtful. Lord Denning's own thirty-six year career on the English Bench has been a remarkable one, and one well-chronicled by himself. It is best to leave to history the final verdict on both it and his own peculiar brand of creative law-making.

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***Canadian Mortgage Practice Reporter*, Gerald S. Fields and Bernard Gersham (editors-in-chief), Toronto: Richard DeBoo, 1979. 2 Vols. \$225.00 (loose-leaf service).**

With the proliferation of reporting services reaching the Canadian legal market, the *Canadian Mortgage Practice Reporter* would at first glance appear to be a priority acquisition for those solicitors engaged in mortgage financing. The title itself would lead one to such a conclusion. However, it might be advisable to consider the adage, "never judge a book by its cover" and indeed more so where the initial cost alone merely reflects a highly inflationary economy.

The first question one might ask is whether this two volume series does, in fact, relate to the practice of mortgage law in Canada? Secondly, to what part of the Canadian market is the Reporter series directed? The questions in themselves might appear trite, if not the inauguration of an overly critical review, yet ultimately the practitioner will have to be the sole judge.

The first volume of the "Reporter" contains the editorial commentary, conveniently divided according to topic followed by forms, precedents and check lists. Volume II will eventually contain the relevant statutes and regulations for both the provincial and federal jurisdictions. Accordingly, it may be convenient to look at each volume separately.

Volume I

The editorial commentary, consisting of eighteen selected topics, is introduced by providing the subscriber with a compendium of mortgage lending terms. The definitions contained therein range from those first encountered in an introductory real property course: "assignor", "chattels", "grantee", "grantor", to those which are truly the jargon of mortgage lenders: "kicker", "leverage", "downside leverage", "sandwich lease", "non-recourse loan", "package loan", "component financing". To the solicitor whose mortgage practice centers on the residential market this digest of terms will prove most illuminating. For the solicitor whose practice centers on highly complex commercial financing the terms as defined may lack the necessary depth.

Based on the length, content and style of the commentary, one can readily assume that the intention of the editors was not to displace the role of *Falconbridge on Mortgages*¹ as the basic and sole text pertaining to the substantive elements of the law of mortgages. The commentary has conveniently allotted seventy-three pages for the common law jurisdictions while the law pertaining to a "hypothèque" has been accorded thirty-seven pages, eighteen of which contain the English translation. Inasmuch as the Reporter is entitled so as to encompass Canadian mortgage law and practice it is to be noted that the vast majority of cases are of Ontario origin followed by those of British Columbia. Similarly, reference to the majority of standard covenants contained in a mortgage are prefaced on Ontario "short forms" legislation.

The ensuing topical subject pertains to the structure of a financing transaction. Here it becomes somewhat more evident that the Reporter series has been evolved with a view to providing those individuals involved in mortgage lending, who lack formal legal training, with a basic understanding of mortgage law and the procedures necessary in order to ensure that a mortgagee is fully protected and secured. A portion of this topical subject examines recent developments in mortgage financing while appropriately noting that there may be certain problems which should be considered when utilizing one or more of the alternate mortgage instruments referred to in the text.

For example, the use of a variable interest rate mortgage is discussed and, as well, the problems that may be encountered by virtue of Section 6 of the *Interest Act*² of Canada. On the other hand one alternate type of financing noted pertains to a permanent mortgage containing an option to purchase. However, the seemingly innocuous discussion contained in a mere ten lines of the commentary does not

¹Raynes, W. B. and R. H. McLain, eds., (4th Ed.) (Agincourt: Canada Law Book, 1977).

²R.S.C. 1970, c. I-18.

make any reference to the problems inherent therein. The concept of a permanent mortgage, while qualified as being one of long term, is repugnant to the very concept of a mortgage expressed in the fundamental rule, "once a mortgage always a mortgage". Indeed, the concept of an option to purchase whether such an option be contained in the mortgage document itself or in a separate document is immediately in conflict with the rule that "any stipulation which restricts or clogs the equity of redemption is void." On the other hand, the commentary does provide a subscriber with useful explanations of wrap around, graduated payment, reverse and flip mortgages as viable alternate means of financing. The brief discussion on interim financing will be of interest to lenders as well as the novice practitioner who may become involved in construction financing.

The commentary pertaining to the remedies of mortgagees is drafted from the perspective of Ontario practice and procedure. References to cases and statutes dwell mainly on the Ontario experience although references are made to decisions of the Alberta, British Columbia and Saskatchewan courts. As for a summary of procedural considerations, only the Ontario experience is fully canvassed.

The remaining topical commentaries, aside from the tax considerations in mortgage financing transactions, would appear to be for the benefit of mortgage lenders and those solicitors engaged in the practice of private mortgage lending. Thus, such topics as appraisal, mortgage mathematics accounting, loan, submissions and mortgage servicing are included in this volume.

The remaining two-thirds of Volume I is devoted to forms, precedents and check lists. Under this heading sample mortgage loan applications and mortgage commitments are included. As of this date, the complete forms (pursuant to the various short forms legislation) for Alberta, British Columbia, Ontario and Quebec are included in the Volume. The utility of the forms provided must of necessity be left to the judgment of the practitioner. Undoubtedly, the editors will include at a later date an update for the remaining provinces where statutory forms do exist. Whether or not a solicitor will find the inclusion of statutory forms for all the provinces useful is once again a question which each potential purchaser and subscriber must answer.

Volume II

Volume II of the *Canadian Mortgage Practice Reporter* will eventually contain all of the relevant statutes and regulations, both federal and provincial. At the present time, only the federal legislation and the statutes and regulations of Alberta, British Columbia, Ontario and Quebec are included in this volume. It should be noted, however, that

there is no cross referencing of statutes, nor a commentary on the statutory provisions, nor references to any decisions where the relevant section of an act or regulation has been judicially considered.

Conclusion

The series, while designed for the benefit of both the novice and the specialist, will attract an even wider following, namely those in the mortgage lending field. For those who consider themselves "novices" this series will undoubtedly prove to be of value, but caution should be observed as the series was not primarily designed to provide a substantive analysis of mortgage law or practice in Canada.

In any review of this series the reader should be forewarned that the editors are still in the process of collecting material to be supplied by regional or provincial editors dealing with those remaining jurisdictions not dealt with to date. The inclusion of those materials will enable the Reporter to be a truly Canadian series. But the further question of whether the compilation of statutes and regulations in a separate volume is a necessary and welcomed feature of the Reporter is a question which the practitioner alone can answer. Bearing in mind that the series goes beyond the narrow legal sphere of mortgage law and practice by reaching into the mortgage lenders world of terminology and practice, solicitors may well find that such an approach can only heighten one's awareness and appreciation of the ever expanding mortgage lending field.

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***Wrongful Dismissal, second edition*, David Harris, Toronto: Richard De Boo Limited, 1980. Pp. 211. \$24.95 (paperback).**

"Industrial capital punishment" in the jargon of grievance arbitration cases is the phrase which has been used to describe the impact of discharge on an employee. Despite its melodrama, the phrase does, nonetheless, graphically convey the potential severity of the consequences of dismissal for an individual resulting from the loss of income and employment, particularly in present economic conditions.