

***Poisons in Public*, Ross Howard, Toronto: James Lorimer and Co., 1980. Pp. 173. \$8.95 (paperback).**

The author is billed as an environmental journalist although the accent should probably be placed on journalist rather than environmentalist. *Poisons in Public* was prepared under the auspices of the Canadian Environmental Law Research Foundation — a national, non-profit organization dedicated to protecting and improving application and reform of the laws of Canada.

This book is subtitled, "Case Studies of Environmental Pollution in Canada." In a short introductory chapter, Ross Howard presents a brief sketch of the four cases to be dealt with in the book and the current status of citizens' rights to a clean environment. He was aptly stated the position concisely:

Sadly, Canadian political reality is such that individual citizens need not and shall not participate in determining reaction to poisonings, let alone in setting preventive strategies. As a rule, citizens are prohibited from learning the facts of their condition. Even when armed with facts and opinions, citizens are by no means entitled to a hearing before many of the so-called assessment or review boards which deal with the issues of prevention and reaction. Often the fight to gain a hearing and present the evidence involves prohibitive financial cost to citizens, and equality with well-financed opponents becomes an impossibility. In cases where citizen access to environmental impact assessment is guaranteed, a laudable concept in itself, the process is too often side-stepped by more powerful political interests. A citizen's right to environmental protection, let alone to seeking it, is largely nonexistent in Canadian environmental law and practice.¹

In the next four chapters Mr. Howard discusses four nationally known situations which he considers representative instances of environmental pollution affecting the lives of Canadians. Chapter Two deals with the dumping of mercury into the English-Wabigoon River Systems near Dryden, Ontario, by the Reed Paper Company. The third chapter will be dealt with later. The fourth chapter discusses the questionable ground disposal of nuclear wastes from Eldorado Nuclear Limited in Port Hope, Ontario and the fifth chapter explores the aerial pollution by lead refineries in two downtown neighbourhoods of Toronto.

But it is his second situation, or case reported in Chapter Three, that I wish to explore more fully for several reasons. Firstly, the major audiences for the U.N.B. Law Journal are the academic and practising lawyers in New Brunswick and, secondly, with my own experience, as a graduate entomologist with a thesis on insecticide spraying² the spruce budworm spray programme in New Brunswick could not slip by without further comment.

¹Howard, at 16.

²Reynolds, John W. and Richard C. Dobson, "Dispersal characteristics of Ciodrin® as an ultra-low-volume spray in a confined area", (1969) 24 *Proc. Entomol. Soc. Amer.* 46.

The author is frank to admit that he has a bias:

This is, of course, a book with a point of view, because my orientation is very much towards the interests of ordinary citizens who demand — and deserve — protection from environmental poisons. It goes without saying, therefore, that this is a book with a bias, a "healthy bias" if you like. I have, however, tried to ensure that this viewpoint has not interfered with my factual accounts of the cases examined in this book — though a citizen-oriented position leads me to focus attention on many facts that corporate spokesmen tend to ignore. To the best of my ability, the facts recorded here are accurate. The point of view which underlies this book is quite different from that of corporate spokesmen, and their allies in government, whose first concern is the protection of their business interests.³

If I have a bias, I hope that it is not evident in this review. In reading Ross Howard's arguments for an *a fortiori vis-à-vis a posteriori* approach to environmental controls and legislation, I am reminded of the great debates of the mid 1960's *re* Rachel Carson's *Silent Spring*.⁴ As well as being an accomplished author, she had received formal university training and a degree in science. But in her explosive appeal for a reduction in the use of pesticides, the writing community hailed her as a better scientist than writer while the scientific community came to the opposite conclusion. Since *Poisons in Public* has been available for only a few weeks at the time of this writing and for only a couple of months when this review will be published, only time will tell how Mr. Howard's thesis for citizen input into environmental law changes in Canada will be viewed by the public, scientific and legal communities. I think that with the author's stated bias, the reaction of the chemical industry is a foregone conclusion.

One area where the author's background and possible bias can be seen is in his reference materials and footnotes. Forty-four per cent of the footnotes are to newspaper articles, notably the *Toronto Star*⁵ and the *Globe and Mail*, with one footnote each for the *King's County Record* and the now defunct *New Brunswick Plain Dealer*. A second major source of information comes from governmental reports or journals (32% of the footnotes). The remaining 24% of the footnotes are references from six miscellaneous sources.

In a book on environmental rights and law, the paucity of references to case law is surprising. There is only one reference to potential legal action, "The citizens carried on collecting evidence but were advised their chances of directly suing the government-owned spray company were slim."⁶ In actual fact, the government-owned spray company, Forest Protection Limited, has been involved in several

³Howard, at 16-17.

⁴Boston: Houghton Mifflin Co., 1962 (ISBN 0-395-07506-8).

⁵The author is employed as a journalist for the *Toronto Star*.

⁶Howard, at 54.

reported cases in recent years, e.g. *Bridges Brothers Ltd. v. Forest Protection Ltd.*,⁷ *R. v. Forest Protection Ltd.*,⁸ *Friesen et al. v. Forest Protection Limited*⁹ and the *Forest Protection* appeal.¹⁰ What makes the situation surprising is that only the facts of the *Friesen* case are discussed in detail by the author¹¹ (the facts of the other cases are not mentioned at all) and even then he fails to mention or discuss the judgement. This case in particular was given wide coverage by the electronic and print media. The mention of these cases, if not a brief summary of their holdings, would have strengthened the author's case and comments.

In the *Bridges Brothers* case,¹² Stevenson J. held Forest Protection Ltd. negligent and liable in nuisance *vis-à-vis* trespass for allowing the sprayed insecticide to escape onto the Bridges Brothers' land. The court awarded the plaintiffs almost \$10,000 in damages and reduced fruit set.

The case of *R. v. Forest Protection Limited*¹³ arose out of thirty charges against Forest Protection Limited laid by the Concerned Parents Group Inc. which is opposed to the aerial spraying of New Brunswick's forests for spruce budworm (*Choristoneura fumiferana*). At trial, Forest Protection Limited applied for orders of *certiorari* and prohibition to quash the informations against it and to prevent the court from proceeding on the grounds that it was immune from prosecution as a servant of the Crown under the *Fisheries Act*¹⁴ and the *Pest Control Products Act*.¹⁵ Stratton J. held Forest Protection Limited was an independent contractor and not immune from prosecution. In Forest Protection's appeal,¹⁶ Hughes C.J.N.B. held that they were liable under the *Fisheries Act* but not under the *Pest Control Products Act*.

Forest Protection Limited raised the defence of statutory authority under the *Forest Services Act*¹⁷ in the *Friesens'* action¹⁸ for damages in trespass and nuisance. Dickson J. awarded the plaintiffs about 5% of the cost of the action as general damages for personal injuries

⁷(1976), 14 N.B.R. (2d) 91 (N.B.S.C.).

⁸(1978), 20 N.B.R. (2d) 653 (N.B.S.C.).

⁹(1978), 22 N.B.R. (2d) 146 (N.B.S.C.).

¹⁰*R. v. Forest Protection Limited* (1979), 25 N.B.R. (2d) 513 (N.B.C.A.).

¹¹Howard, at 52.

¹²*Supra*, footnote 7.

¹³*Supra*, footnotes 8 and 10.

¹⁴R.S.C. 1970, c. F-14, ss. 33(2), 33(5), 64 and 71.

¹⁵R.S.C. 1970, c. P-10, s. (3)(1).

¹⁶*Supra*, footnote 10.

¹⁷R.S.N.B. 1973, c. F-23, s. 3.

and loss of enjoyment of property. One might consider this a high price to pay to assert your right to a clean environment on your own property, especially after the fact of contamination. After the successful *Friesen* action, the Legislature of New Brunswick changed the law so that Forest Protection Limited would no longer be liable in any future cases similar to this — the Friesens' success was short lived.

I am willing to admit that legal actions or judicial consideration of the other situations discussed by Ross Howard, *i.e.* mercury in the English-Wabigoon River, lead in Toronto and nuclear burial in Port Hope, may not exist. But failure to include the above cases may be considered a weakness in his case *re* New Brunswick insecticide spraying. The author's examples are well known and provide little that is new or revealing, which is another weakness in the text.

From a technical aspect, as mentioned in a previously written review,¹⁹ terminally located footnotes are disturbing to the reader. The publisher has also followed the unfortunate practice of numbering the footnotes of each chapter independently which is an additional inconvenience to the reader. The page numbers and folios are located at the lower outside margins, not the usual position, but easier to utilize than those of the Schneider book.²⁰

Regardless of any criticisms I have made, *Poisons in Public* should be a book which finds its way into the libraries of those concerned with environmental quality in Canada.

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¹⁸*Supra*, footnote 9.

¹⁹*Infra*, (1981) 30 *U.N.B.L.J.*; at 288.

²⁰*Ibid.*

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***Reasons for Judgment, A Handbook for Judges*, Roman N. Komar, Toronto: Butterworths, 1980. Pp. 112. \$32.95 (cloth).**

This book is concise and constructive. It is but ninety-seven pages in length, excluding a brief bibliography. I found that the reading of it was helpful, but, alas, as a trial Judge, it sets forth objectives which, in my opinion, are very difficult to attain. The author is very much aware of