



## Book Reviews • Livres Nouveaux

***Evidence in the Litigation Process*, by Stanley A. Schiff, Toronto: Carswell, 1978. 2 Volumes. Pp. xliv, 1204. \$70 (hardback).**

It is generally agreed that the Canadian law text industry is in its infancy and that few areas are covered by high-quality works. In this context, evidence must be viewed as an extraordinarily fortunate field. Several years ago, McWilliams published a work on criminal evidence;<sup>1</sup> not long afterwards Sopinka and Lederman followed with their excellent book on civil evidence.<sup>2</sup> Now, Stanley A. Schiff has published two volumes entitled *Evidence in the Litigation Process*, and they provide material for thought and for study for those interested in both criminal and civil evidence.

This work conforms to a well-established Canadian model of a compendium of cases, articles, statutes and comments by the author.<sup>3</sup> Clearly, the evaluation of such a compendium must be made on the basis of the quality of the outline, the selection of extracts and the incisiveness of the comments. We shall consider these areas one at a time.

### The Outline

Evidence can be a technical and practical subject or it can deal with fairly esoteric but essential questions of the meaning of truth and the nature of justice. The title used by Schiff would suggest a practical orientation. However, a glance at his elaborate outline shows that not to be the case. The chapter titles and the arrangement of topics attest to the

<sup>1</sup>P. K. McWilliams, *Canadian Criminal Evidence* (Agincourt: Canada Law Book Co., 1974).

<sup>2</sup>J. Sopinka and S. N. Lederman, *The Law of Evidence in Civil Cases* (Toronto: Butterworths, 1974).

<sup>3</sup>For other examples, see B. Laskin, *Cases and Notes on Land Law* (rev. ed.), (Toronto: Univ. of Toronto Press, 1964); *Canadian Constitutional Law* (4th ed.), (Toronto: Carswell, 1975); J. N. Lyon and R. G. Atkey, *Canadian Constitutional Law in a Modern Perspective* (Toronto: Univ. of Toronto Press, 1970).

author's interest in the more abstract areas of evidence as well as in the trial process. Each chapter appears to follow the logical pattern of discussion of the basic principles followed by their application to everyday litigation. In that sense, Schiff has produced a complete work, spanning the whole subject matter and operating on several levels at the same time.

One comment (not necessarily critical) which one is forced to make about the outline is its American, as opposed to British, flavour. From the name of the first chapter, "The Name of the Game: Official Dispute Settlement in Society", to the very end one can sense the influence of American sociological and "social engineering" schools, both in language and in content. The advantage of this is the presence of valuable American material, usually absent from British-oriented Canadian texts. The disadvantage is some stylistic infelicity and pompous terminology.<sup>4</sup>

An undisputable fact which emerges from the outline is Schiff's devotion to detail. He has covered minute areas of admissibility (e.g. evidence of liability insurance) as well as the usual main topics and has therefore produced a work unique in Canada for its scope.

### The Selection of Extracts

Schiff cannot be faulted in any significant way for his selection of extracts. He has reproduced many Canadian, American and British leading cases and has generally chosen them wisely. Where he has had to cut, he has done so tastefully, leaving enough for the reader to form his own opinion and reproducing portions of dissenting judgments. The treatment of *Hogan v. The Queen*<sup>5</sup> at p. 973 is an excellent example of the treatment of cases.

Essays and extracts of essays or books are also reproduced in a tasteful and proper manner whenever they are pertinent. An example of this is the excerpt from McCormick's *Handbook of the Law of Evidence*<sup>6</sup> at p. 68.

In short, the book represents an extremely valuable collection of materials on the law of evidence and this in itself would make it a major contribution to the study of law in Canada.

<sup>4</sup>E.g., what is the advantage of calling rebuttable presumptions of law "compelled — unless determinations"?

<sup>5</sup>*Hogan v. The Queen*, [1975] 2. S.C.R. 574.

<sup>6</sup>E. W. Cleary, *McCormick's Handbook of the Law of Evidence* (2nd ed.), (St. Paul: West Publ. Co., 1972).

### Schiff's comments

Schiff provides a variety of comments, ranging from the terse paragraph to full-scale essays. He deals with possible reform,<sup>7</sup> analyses of cases,<sup>8</sup> and summarizes areas of law.<sup>9</sup> He links cases to previously reproduced materials.<sup>10</sup> He attempts to provide a rationale for rules of evidence and to evaluate them.<sup>11</sup> All of these things are done thoughtfully and well. There is no doubt that Schiff succeeds eminently in adding an individual flavour and creating more than a mere compendium.

Strong praise is due to Schiff's practice of providing copious supplementary reading for each chapter. A curious reader is given ample direction for further research. While the book was intended primarily for students, the research directions furnished by Schiff may make it useful for practitioners as well.

A criticism which can be levelled at Schiff's comments is that they are not always set out clearly and that at times one can be confused about where they begin or end. But this matter is not major and does not detract seriously from the merits of Schiff's work.

Another, more important criticism is the absence of a strong conclusion.<sup>12</sup> Schiff does not end by disclosing his philosophy or by indicating how the law of evidence should develop. He was not so reticent in his comments, so we know his views on most subjects. He has chosen not to end by bringing them together. Perhaps this type of book is not intended to be didactic, but a somewhat more remarkable ending would have been welcome.

### Conclusion

Stanley Schiff has published a valuable work which will be of aid to all who are interested in studying evidence in Canada. Despite minor flaws, his materials and comments constitute an excellent addition to the existing literature on this subject. One may add that only one area of evidence — Quebec civil evidence — is left without adequate commentary in this country. It is ardently to be hoped that this vacuum will soon be filled.

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<sup>7</sup>*E.g.*, at 924.

<sup>8</sup>*E.g.*, at 1172.

<sup>9</sup>*E.g.*, at 608 and 952.

<sup>10</sup>*E.g.*, at 847.

<sup>11</sup>*E.g.*, at 1151.

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