

**COURTED AND ABANDONED: SEDUCTION IN CANADIAN LAW, PATRICK BRODE
(TORONTO: OSGOODE SOCIETY, 2002)**

Civil practitioners wishing to acquire a fundamental understanding of the psychological insights into human nature that are fundamental to success in litigation are advised to read *Courted and Abandoned: Seduction in Canadian Law*¹ by Patrick Brode. The learned author has penned a *tour de force* review of the heartbalm torts that were once the staple of a civil jury practice (and the foundation for salacious news reports) and in so doing, has enriched our understanding of such contemporary concerns as:

- a) the time lag between perceived social progress and legislative action;
- b) the discordant views of legislation as between the general population who act as fact finders and the Bench;
- c) the dichotomy of views held by rural and urban dwellers as to appropriate social (and sexual interaction);
- d) the blurring of the lines of demarcation that should separate tortious from criminal conduct;
- e) the dichotomy of views held by men and women as to appropriate social (and sexual interaction); and
- f) the importance of historical foundation in understanding the rationale for the progress (or arrest) of the law as it relates to awarding damages for civil actions.

Brode has authored three other books in the Osgoode Society collection: *Sir John Beverley Robinson: Bone and Sinew of the Compact*;² *The Odyssey of John Anderson*;³ and the evocative and moving text, *Casual Slaughters and Accidental Judgments: Canadian War Crimes Prosecutions, 1944-1948*.⁴ All have been well received by critics and have enhanced our knowledge of the law; but more importantly, they have increased our perception of the complex psychosocial strands that are the impetus for the advancement of justice. In this respect, his latest book is a welcome addition.

The instruction found in *Courted and Abandoned: Seduction in Canadian Law* begins with an introduction of the law's need for fictions, with the laudable aim of securing social justice — in this case, the fact of seduction and pregnancy resulting in the loss of a child's service to her father.⁵ It concludes with a look at a recent bit of fiction, surrounding actions for alienation of affections in order to mark the emerging equality of the sexes.⁶ In between, we are treated to an in-depth and scholarly review of all of the measures that have led to civil

¹ (Toronto: Osgoode Society, 2002).

² (Toronto: Osgoode Society, 1984)

³ (Toronto: Osgoode Society, 1989).

⁴ (Toronto: Osgoode Society, 1997).

⁵ *Supra* note 1 at c. 1 entitled "Fiction of the Law."

⁶ *Ibid.* at c. 12 entitled "The Complex Dance of Seduction."

recourse, be they the vestiges of the common law or the so-called progressive measures of legislatures, having as a common denominator sexual activity not involving married persons who were thought to be vulnerable to exploitation. Stated simply, Brode has drawn a definitive study of each of the legal measures developed to respond to sexual contact between persons considered to be on an unequal footing. This penetrating study reveals much about the period's view of equality and of the role of the courts, of families and of women within the workplace, to name but a few examples.

If it is suggested that the heart of the book is only of historical interest, the response must surely be that the civil and family courts are tasked with so many civil actions having a foundation in alleged sexual misconduct that to ignore the prior response of our judges and lawmakers to such controversies is to hope for a favourable result without appreciating the foundations for such claims.

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