BOOK REVIEWS

CIVIL LITIGATION: A PRACTICAL HANDBOOK, by David Stockwood, Carswell Co. Ltd., 2nd ed. 1986.

This book "evolved as a series of informal lectures for young lawyers and students" at a Toronto law firm, though one part on trials gives principles taught to "the profession" in Toronto. The book is intended to give "a simple system for the preparation and presentation of a civil action."

It contains 137 pages of text divided into 18 short chapters plus an appendix. There are also 14 checklists covering 22 pages, and 102 pages of forms. Some of the forms are court documents from Ontario, but many are specimens of routine law firm internal memos and standard form letters to the client or to the opponent.

The book will be very useful for four classes of persons:

(a) an Ontario litigation legal assistant or legal secretary;

(b) a student in a law faculty who wants an introduction to civil litigation in Ontario;

(c) an Ontario articling student who has had no exposure yet to litigation, nor to the Bar Admission Course of the Law Society of Upper Canada;

(d) an Ontario solicitor who has had no exposure to litigation within the past 15 years and wants to start retraining to do litigation.

The book is well suited to the needs of such persons, and young barristers need the practical emphasis that it gives on efficiency and consistent organization of paperwork and records. They will also benefit from the practice of giving clients lengthy memos or letters of standard advice for litigants.

For such an audience there are only small flaws worth mentioning. Terms which a true beginner probably would not understand are sometimes not explained. For example in Chapter 2 we find "conflict of interest" (p. 7), "equity" (p. 8), "award" (p. 8), "statement" (p. 10), "documents" (p. 10), "counterclaim" (p. 12), "retainer" (used on p. 14 in two different senses). A beginner would probably understand the first chapter better after reading most of the rest of the book. The author's advice to rearrange documents into chronological order and number them that way at an early stage is debatable; it may freeze a very incomplete order when only a small fraction have been found. But those are small quibbles. The book can be warmly recommended for the four classes of reader listed above.

Would anyone at a more advanced level than those four classes derive benefit from this book? Probably not much. The overall level of the book is elementary. A lawyer who had had a year or two of experience in civil litigation would find certain parts very helpful, such as the parts on organizing one's file and papers before trial. The author's emphasis on that topic is very apt, and his suggestions in that regard are obviously well thought out and proven in practice. But those are only a fraction of the book.

The table of contents is very impressive but most topics are covered in only a short paragraph or two. Many chapters are only a few pages long. The discussion usually sticks to basics and first steps, giving very little detail as to tactics, strategy, or technique of persuasion. Chapter 8 on discovery of documents has only three pages of text, for example. Yet the book expressly emphasizes commercial litigation, where "documents play a central role" (p. 10) and organizing the flood of paper often marks the difference between success and failure. An incautious and comparatively inexperienced reader might even assume that some of the topics omitted from the book are not important, and that his task henceforth was just to fine tune what the book says. The author does not expressly suggest such a view, however.

Would anyone outside Ontario benefit much from this book? Unfortunately, probably not. A beginner elsewhere would not know which of the contents of the book are peculiar to Ontario and which are of general application. If he relied on its Ontario procedure he would be embarrassed or worse. The provincial and the general are interwoven throughout the book with no demarcation. For example, some of the procedures described are totally inapplicable to Alberta or Saskatchewan, and others would only apply there with changes of detail and of name which would puzzle a beginner. As the book reflects the new Ontario Rules, probably there is no other province or territory of Canada where the procedure would be identical, though possibly New Brunswick's might be similar.

That is of course a common situation in Canada: most legal books describe the situation in only one province (usually Ontario) but do not flag that fact. In many cases, an experienced lawyer from another province or territory can still derive great benefit from such books. For example, if you know what the municipal legislation of your province says, then a detailed work on Ontario municipal law is very valuable. You can follow its detail where the statutes are the same, and adapt it or follow its general principles where the statutes differ. A few Canadian texts even indicate differences and equivalences in other provinces and territories. But the present book is too elementary to contain much that is likely to be new to any lawyer who is experienced or knowledgeable enough to unravel its Ontario practices from its trans-Canadian practices.

This book has a bibliography, but the list is brief. If we exclude works on substantive law, the bibliography cites only eleven items, of which one is English, three are American, and the other seven are publications of the Law Society of Upper Canada. Of those seven, four are different parts of the Ontario Bar Admission Course materials with which an Ontario student should presumably be familiar before his call to the Bar. A few other items are cited at the end of the chapters, but almost all are similar Law Society of Upper Canada publications. Most of those books cited would similarly puzzle or mislead a beginner from another province or territory, and the American and English ones would likely puzzle or mislead even an Ontario beginner. The author recommends close study of the English book (p. 101).

None of the comments above are criticisms of this book. Unfortunately, it is difficult to describe the scope or define the audience of the book without sounding negative: to describe fences is to suggest greener grass on

the other side. Canadian book reviews too often criticize an author for not writing a different type of book than the one he did write. That is not only unfair, but a great waste of ink. Rather the questions should be what the book does and does not do and how well it does it. Here the answers to those questions are that this book

(a) gives elementary very useful advice on how to organize and run an Ontario lawsuit,
(b) does that well, and
(c) does not pretend to do anything else.

J. E. Cote
(of the Alberta Bar)