CANADIAN ENVIRONMENTAL LAW. By Robert T. Franson and Alastair R. Lucas. Toronto: Butterworths. 1976. 6 volumes. $275.00.

The decision to undertake a survey of Canadian Environmental Law obviously involved Professors Franson and Lucas in an enormous task. The production of these volumes required a vast amount of legal research, much of it excruciatingly dull in nature, and it has resulted in a comprehensive and useful addition to the Canadian literature in this field. Unfortunately, the very magnitude of the task assumed by the authors makes the appearance of some flaws in the final work inevitable and these must to some extent temper the initial enthusiasm felt by the reader on the appearance of this publication.

Canadian Environmental Law is a six volume loose-leaf service, similar in form to the established work on Oil and Gas Law by Lewis and Thompson. The first volume is essentially a text on environmental law and the remaining five volumes contain a collection of leading statutes and regulations from every jurisdiction in Canada. The service will be kept current by regular supplements, which can be inserted conveniently into the main body of the work.

The handsome price exacted by the publishers for the service makes it clear that it is intended almost solely for the practicing legal profession. It will be evaluated with this market in mind, in respect of both the subject matter covered and the quality of the coverage.

Despite its current popularity, the subject matter of environmental law is not well defined. The authors include in the term environment, "the interlocking web of plants, animals and resources, and the associated flow of energy from the sun and from one form to another, that make up our life support system."[1] If, as a corollary, environmental law is regarded as the law dealing with these relationships, then it covers so many aspects of human conduct that it becomes totally unmanageable. Lucas and Franson overcome this problem by narrowing the definition of environmental law rather arbitrarily and they place most of their attention upon "laws enacted to protect the natural environment and, more particularly, on legislation dealing with waste management and pollution control."[2] While this sharpening of focus is undoubtedly necessary, it may limit the value of the book for at least Alberta practitioners, who commonly encounter environmental issues in land use planning and in the regulation of resource industries. No extensive consideration is given to either of these fields, although there remains in the service a great deal of material which will be frequently relevant to the practising profession.

The first volume of the service offers a thorough survey of the traditional areas of environmental law and will be of great assistance in enabling those involved in environmental actions to characterize the nature of the problems they face. The chapter on constitutional law begins at such a basic level that it seems not to be intended for a legal audience at all, but it proceeds to a useful discussion of the major constitutional powers relevant to environmental questions. A practitioner with a serious constitutional problem will be forced to look much further than the text for a solution, but here, as elsewhere in the volume, he will

1. Franson and Lucas, *Canadian Environmental Law* (1976), 201 (hereafter cited as *Franson and Lucas*).
2. *Franson and Lucas*, (i).

be referred clearly and quickly to the major authorities. One exception to the high quality of the constitutional discussion occurs when the authors boldly state that federal jurisdiction over air pollution can be supported under the federal general power because "of the speed with which air crosses the whole of the country."[3] This is surely very superficial and it ignores the analysis of a comprehensive article on constitutional aspects of air pollution.[4] The nature of the constitutional discussion leaves little room for attention to policy matters, but in the light of the piecemeal approach to environmental problems encouraged by the division of powers, the authors point out the urgent need for co-operation between the two senior levels of government.[5] It is interesting to speculate whether the successful examples of co-operative federalism which they cite have removed their earlier expressed scepticism about the usefulness of this device in the natural resources field.[6]

The treatment of private law remedies for environmental degradation is similarly thorough and raises the major problems which would face a practitioner involved on either side of an environmental action. This otherwise practical discussion reaches a slightly ethereal level on only two occasions. At one stage, the authors tantalize environmental counsel by suggesting to them the possibility of resurrecting the action on the case, based on a single High Court of Australia decision, which has been severely criticized in that country.[7] They also mention as a potential cause of action the American public trust doctrine which, as they explain, has not been successful in Canadian courts even when argued in the most favourable circumstances.

The remainder of the environmental law text deals in detail with the regulation of environmental problems in every jurisdiction in Canada. This requires the consideration of a multitude of long and complex statutes and involves two significant dangers. Firstly, it is possible that a section of some lengthy environmental statute will be neglected or misinterpreted, thus weakening the legal analysis in the text. Secondly, when so many statutes are being examined, the accounts may be so superficial as to offer no solutions to practical problems. Generally, the authors have completed this arduous task very well and with an enviable grasp of the wide variety of subject matter covered. The practitioner is offered a brief account of the function of most major environmental statutes and can thus approach the regulatory maze with the assistance of some useful signposts. However, the first danger is not entirely avoided and some of the authors' signposts must be followed with care, for they occasionally point in the wrong direction. For example, in the discussion of the survival of a riparian owner's right to the flow of water past his land in Manitoba, no mention is made of a section which was added to the Water Rights Act of that province in an attempt to abolish riparian rights of use entirely, except for domestic purposes.[8] When the survival of

3. *Franson and Lucas*, 266.

4. Alheritiere, *Les Problemes Constitutionnels de la Lutte contre la Pollution de l'Espace Atmospherique au Canada* (1972), 50 Can. Bar Rev. 561.

5. *Franson and Lucas*, 277.

6. *See* Lucas, *Proceedings of the Peace-Athabasca Delta Symposium* (1971), 282.

7. *Franson and Lucas*, 372. The case, *Beaudesert Shire Council* v. *Smith* (1966), 120 C.L.R. 145, is criticized in Dworkin and Harari, *The Beaudesert Decision—Raising the Ghost of the Action upon the Case* (1966-67), 40 Austr. L.J. 296, 351, as stating a proposition "that cannot be correct as stated and cannot be accepted as new law."

8. All three prairie provinces seek to limit riparian rights by means of sections not discussed by Lucas and Franson (*See* Water Resources Act, R.S.A. 1970, c. 388, s. 9; Water Rights Act, R.S.S. 1965, c. 51, s. 12).

the same riparian right to flow in Saskatchewan is considered, the authors seize upon a section of that province's water legislation which prohibits from 1931 express Crown grants of land in terms that would vest exclusive rights in the grantee. They use this section apparently to establish the twin propositions that Crown grants ceased to carry with them a full bundle of riparian rights in 1931 and that the position of Saskatchewan in this respect differs from that prevailing in Alberta and Manitoba.[9] Neither proposition is valid. In fact, this section applies to all Crown grants of land in the prairie provinces after 1894 by virtue of the Northwest Irrigation Act[10] and has been re-enacted in Alberta and Manitoba.[11] In any event, as the section deals with express grants of exclusive water rights, a good argument can be made that it has nothing whatever to do with riparian rights, which are neither exclusive nor expressly granted.[12]

The danger of superficiality in an account of so much legislation is again not completely avoided and this reduces the value of the service to a practitioner faced with solving a particular problem. An example of this may be drawn from the authors' account of groundwater regulation in Alberta. Groundwater disputes arise most frequently, as they have recently in several heavily publicized instances in northern Alberta, when a new groundwater well impairs the supply of existing wells in the neighbourhood. In attempting to resolve these disputes, it is of little comfort to be told that "prior licenced appropriators (of groundwater) enjoy a measure of security" under the Water Resources Act,[13] for groundwater fits very uncomfortably into the legislative scheme of that Act. If both competing well owners are licensed under the Act, it is difficult to see how the rules of prior appropriation can apply, for the later well is unlikely to cut off the supply of the earlier well. In many instances, the later well will simply reduce the pressure of the existing well and this possibility is not dealt with under the Act. If, on the other hand, the later well interferes with an unlicensed domestic well, the position is clouded by the adoption in Alberta of a statutory formula which states that nothing in the Act "restricts the right of a person owning or occupying land to use such quantity of groundwater as he may require for domestic purposes on the land." As the well owner did not enjoy any right to groundwater at common law, except under the rule of capture, it is doubtful whether this section gives him any basis for legal complaint if his supply is impaired by any well, licensed or unlicensed.

In their surveys of environmental law across the country, the authors are to be congratulated upon their decision to include a lengthy discussion of Quebec, which is all too often omitted from texts purporting to deal with the law in Canada. Their thorough discussion is most useful to English speaking lawyers and would be enhanced if, in future supplements, reference were to be made to some of the existing Quebec

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However, in addition to the sections now found in Alberta and Saskatchewan, Manitoba added a further provision in an attempt to suppress riparian rights when water resources came under provincial jurisdiction. (*See* Water Rights Act, S.M. 1930, c. 47, s. 9(4), now R.S.M. 1970, c. W80, s. 11(2).) All of these sections are of vital importance in discussing the survival of riparian rights to flow on the prairies.

9. *Franson and Lucas*, 390.

10. 57 & 58 Vic., c. 30, s. 5.

11. Water Rights Act, R.S.M. 1970, c. W80, s. 9; Water Resources Act, R.S.A. 1970, c. 388, s. 8. Alberta adopted a simplified version of the section presently found in Manitoba and Saskatchewan in S.A. 1939, c. 11, s. 5.

12. *See* Percy, *Water Rights in Alberta* (1977), 15 Alta. L. Rev. 142, 155-156.

13. *Franson and Lucas*, 381.

14. Water Resources Act, R.S.A. 1970, c. 388, s. 5(7).

literature which deals in great detail with much of the law outlined by Lucas and Franson.[15]

The remaining five volumes of the service consist of a collection of leading environmental statutes and their attendant regulations. These will be of great value to anyone wishing to undertake research into environmental law problems because, although they are all available elsewhere, their retrieval is very time consuming. Many leading environmental statutes are frequently amended and are unmanageable except in some form of consolidation such as that offered in this service. Similarly, the detailed regulations which are of great importance in day to day activities are often inaccessible to those lacking the time or facilities for a patient library search. In this major part of the service, Franson and Lucas have provided an invaluable research tool. Perhaps in future supplements it would be possible to include a notation of cases decided under particular statutory sections and to include in the Alberta segment of the service the Land Surface Conservation and Reclamation Act, which is of the utmost importance in the environmentally sensitive coal mining industry.

In conclusion, although it may seem churlish in the face of the immense effort expended by the authors, it is necessary to be critical of some of the editorial aspects of the book. Errors, apparently of typesetting, make nonsense of sections in the discussion of the federal criminal law power at page 257 and of the treaty making power at page 265 and misspellings often mar the text. Nevertheless, Franson and Lucas have undoubtedly produced a service of considerable value to the legal profession. Its limitations spring only from the size of the task they have undertaken and do not alter the fact that its publication represents a significant accomplishment.

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15. *See* in particular the comprehensive article by Kenniff and Giroux, *Le Droit Québécois de la Protection et de la Qualité de l'Environnement* (1974), 15 C. de D. 5 and Hétu and Duplessis, *La Pollution de l'Air et les Cours Municipales du Territoire de la Communauté Urbaine de Montréal* (1975), Revue Juridique Thémis 323.

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THE REGULATION OF STATELESSNESS UNDER INTERNATIONAL AND NATIONAL LAW. By A. Peter Mutharika. Dobbs Ferry: Oceana. 1977. Looseleaf. $60.00.

EUROPEAN LAW AND THE INDIVIDUAL. Ed. by F. G. Jacobs. Amsterdam: North Holland Publishing Co. 1976. xi and 211 pp. $19.25.

DISCRIMINATION ON GROUNDS OF NATIONALITY. By Brita Sundberg-Weitman. Amsterdam: North Holland Publishing Co. 1976. vii and 248 pp. $29.95.

At a time when the Canadian Government—as are so many others in the western world—is considering new immigration regulations, it is interesting to find three new works devoted to specific aspects of this problem. From the point of view of comprehensiveness, Professor Mutharika's is the most significant. The larger part of his work is devoted to collecting the tests of resolutions and recommendations of private and intergovernmental organizations; selected draft conventions, going back