(or distemper) of the times gave rise to circumstances which might be more fully documented. As case in point, the Board of Broadcast Governors found itself operating in a policy vacuum much of the time and had, against the better judgment of the then chairman, issued its own policy statements in areas where policy might better have come from government. (e.g. Board of Broadcast Governors, "The Extension of Alternative Services" 2 December 1962). Also, while one welcomes the inclusion of a portion of the "Troika" report in which the three authors agreed (Document 34), it would have been instructive to include portions of the individual statements of the three authors where their fundamental differences were laid bare. Finally, while "the Air of Death" material makes interesting reading (Document 49), one wonders why nothing was included on "the Seven Days" controversy, perhaps the most soul-searing experience the body politic of the CBC ever faced. Undoubtedly, the Editor was under pressure from the Publisher to limit an already healthy-sized volume!

One substantive issue which caught this reviewer's eyes in particular was the suggestion that the members of the CRTC did not enjoy "total independence of the government of the day" (Document 39, p. 406). One might ask why they should. Even Mr. Bureau, the CRTC's present Chairman, has not gone that far in challenging the Cabinet's powers in the 1968 Act. In a parliamentary system of government, surely the ultimate control of policy must rest with the Cabinet.

These minor comments aside, one looks forward to the second edition of this most valuable work where opportunity would be provided to add excerpts from parliamentary committee reports, ministerial statements, industry comments and pressure group reaction, all a part of the process leading to the introduction of the draft Broadcasting Act, 1988—an Act which, of course, when passed would also be included in a second edition. In the meantime, students of Canadian broadcasting can be most grateful for this concise historic record and contemporary research tool which Professor Bird has provided us.

Reviewed by:  W.H.N. Hull
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The Law of Defamation in Canada
Raymond E. Brown

Let me tell you a little story about law books. They used to be called treatises and their object, their only object, was to "state the law". The genre flourished in England, reaching its zenith in the late 19th and early 20th centuries. Canadian imitations were popular for a brief period prior to the First World War. The treatises, a manifestation of the dominance of formalism in legal circles, had their own rigorously observed
form. They were put together—I hesitate to say written—by lawyers for lawyers. They ranged, as a result, from the merely turgid to the impenetrable.

The law was stated as if it existed independently of any time or place. It had no historical or social roots or functions, no context. There was, thus, no need to explain how the law had come to acquire its form and content, how it expressed particular social forces and, in its turn, gave shape to those social forces. Likewise, there was no need for analysis or criticism. The law was, simply, the law and nothing more needed to be said.

From the First World War until the late 1950s Canadian legal scholarship and legal literature were in serious decline. The profession controlled legal education. English treatises were dominant. But profound change began to occur. The universities reestablished themselves as the primary, and eventually the only, fora of legal education. In the process a new Canadian legal literature was created. The basic Canadian material had to be written. This, slowly, began to happen. The first Canadian law books tended to be replications of English texts. Their style and structure and much of their content were identical to English works. The only real difference was that many of the cases cited were Canadian. Still, a Canadian literature was being produced and by the beginning of the 1980s there were basic Canadian works on most subjects.

Specialised monographs began to appear in profusion and a certain critical edge even emerged. A consciousness of being Canadian, of the need to shape the law to Canadian ways and realities, could often be discerned. In short, a Canadian legal literature has begun to emerge. Raymond E. Brown’s book is a throwback. It exemplifies many of the worst features of the 19th century English legal writing. Let me explain.

The book attempts to state the law, but in a social and historical void. The law of defamation is of concern to writers, editors, broadcasters, film-makers and so on. These are the people primarily affected by the law. Some effort, one might have thought, could, therefore, be devoted to addressing the particular concerns such persons may have. Furthermore, defamation law is supposed to involve a balancing of free expression, on the one hand, and the reputations of individuals, on the other. The respective importance given to each of these competing claims is going to vary from society to society and over time within any given society. If one is going to write about defamation in Canada in the 1980s, one should essay some discussion of the relative significance of expression and reputation in Canada in the 1980s. Brown doesn’t bother.

It would also help to have some sense of who is defaming and who is being defamed. Who tends to sue for libel and under what conditions? Who defends actions and who apologises or settles? None of these questions is raised. All Brown gives us is abstract, disconnected "law"—a series of Propositions which are, indeed, the law of no time and of no place. A case from 20th century Canada will be juxtaposed with a
case from 17th century England, as if the two societies were identical, or as if there were not in those two societies vastly differing notions about the relative significance of expression and reputation.

A major issue, perhaps the major issue, in Canadian defamation law is whether, with the adoption of the Charter and its guarantee of freedom of expression, we will follow the U.S. example and constitutionalize our law. Brown purports to devote 122 pages to this question, but, in fact, never addresses it. He expresses not even a hint of an opinion on how Canadian courts should approach the question. All we are give is a totally uncritical recitation of American case-law. Again, there is no attempt to analyze the social and cultural realities which have shaped Canadian and U.S. law. In particular, Brown makes no attempt to assess the vastly different roles which the mass media play in Canada and the U.S. And this is what is fundamentally wrong with Brown's book. It is simply an inventory of cases, a montage of file cards. The author spent years reading hundreds and hundreds of cases and then scissored and pasted them together for our benefit.

This leads to two dismal features of this work. One is merely annoying. The other is an outrage. The book is very repetitious. The same subject matter, dealt with in very similar words, appears in several places. To take one example, the content of Chapter 19, "Pleadings" is not vastly different from that of Chapter 22, "Evidence".

This is a very long, very expensive book. But most of its content is pure make-weight. On average I would guess that a least 60 per cent of every page is footnotes. And these footnotes are largely case citations and many of the same cases are cited over and over again. Nearly 100 pages of Volume 1 are devoted to listing all the cases that most of the rest of the work is given over to citing. Rather than taking up more than 1500 pages in two volumes, this work, with some judicious editing, could have been published in one volume of about 700 pages. It would also have been a far more useful book.

There is a growing interest in media law in Canada and a growing body of writing in the field. We need more critical, thoughtful writing which addresses Canadian reality and the issues that currently vex us. Brown has demonstrated his mastery of a form which has lost its sway, even in England. His book contains little of practical value to persons working in the mass media or with an interest in media law. The only purpose to be served by this book is to provide a reference work in a law office.

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