nation, having drawn up its own constitution and having received official recognition from a federally appointed panel, would possess delegated powers comparable to those normally held by Canadian municipal councils. With specific cabinet approval in each case, additional and broader powers not unlike those envisioned in comprehensive land claim settlements could be delegated" (p. 331). While this is too modest a proposal to satisfy some of the more ambitious proponents of self-government, it has an attractive flexibility and the incremental feature could gradually, and pragmatically, expand the ambit of Indian government.

The book also contains opening statements to First Ministers' conferences by Prime Ministers Trudeau and Mulroney, an essay on "Aboriginal Rights in the Constitutional Process" by former Saskatchewan Attorney-General Roy Romanow, and a useful appendix of documents ranging from the Royal Proclamation of 1763 to a list of constitutional proposals at the 1985 First Minister's Conference. This is a rightly-varied and useful book for all students of Aboriginal rights.

W.H. McConnell


A whole is often more than the sum of its parts. Native law, for example, is more than just law with Native people as litigants. It is, in the words of Chief Justice Brian Dickson of the Supreme Court of Canada, "woven with history, legend, politics and moral obligations." It is also bound up with the survival of a people. This book is less than the sum of its parts. While the contributions are generally of a high quality, unfortunately, their nature varies and the book as a whole fails to gel.

Nevertheless, it is an important work. Canada has long had need of a set of materials for teaching Native law. It is now some fourteen years since the publication of the second edition of Cumming and Mickenberg's *Native Rights in Canada*. While it is invaluable as a resource, Cumming and Mickenberg is a text rather than a casebook and that fact renders it unsuitable for use as teaching materials, at least in a law school. Attempting to fill the need for a "basic resource," Bradford Morse and Carleton University Press offer this useful and valuable, and yet ultimately flawed book.

After a general introduction, *Aboriginal People and the Law* explores five major areas of Native law. These are:

1. the relevance of international law (chapters 2 and 13),
2. the substantive portions of Canadian law on Aboriginal and treaty rights (chapters 3 to 5),
3. an introduction to constitutional issues (chapters 6 and 7),
4. an indepth consideration of two selected matters affected by the Indian Act (chapters 8 and 9), and
5. some aspects of the land claims process (chapters 10 to 12).

Morse's introductory chapter works well although it might have been preferable to have included an introduction to law and the legal method for non-lawyers. Noel Lyon in chapter 6 does include such an introduction, an extract from an article by C.B. Blackman (pp. 411-417), but it would have been more useful at the beginning of the book.

Maureen Davies contributes two chapters on the relevance of international law. Chapter 2, on the relevance of international law in Aboriginal law, is particularly recommended. Her chapter on Aboriginal rights in today's international law (chapter 13), while it contains much of great interest, suffers from a rather too strong commitment to liberal ideals. She fails to note the possible importance of the Covenant on Economic, Social and Cultural Rights, dismissing it because it does not permit individual petition (p. 774). While this is indeed a failing of the covenant, nevertheless, the Aboriginal peoples can certainly
use its provisions in their pressure on the Canadian government. After all, it is precisely economic, social and cultural rights for which they are pressing. This apart, Davies provides an excellent introduction to this increasingly important area.

The second area of focus, Aboriginal and treaty rights, consists of three chapters. These are typical law school teaching materials in that they contain little analysis. They merely present the legislation and cases and allow the reader to come to her/his own resolution of the complexities and inconsistencies which exist. The analysis that is there comes from Cumming and Mickenberg or from other authors.

Chapter 3, on Aboriginal Title by D. Elliott, is a useful introduction to the area. He covers all the major Canadian cases and also manages to address the very important American and English Colonial cases. Some minor complaints, however, are in order. I found the discussion of the Calder case in chapter 3 (pp. 61-76) rather confusing, partly because of the formatting which only slightly indents quotes and consequently sometimes obscures where they begin and end. More seriously, I can see no reason for his one and a half pages of questions on the possible effects of the new Constitution (pp. 86-86). They add nothing to one's understanding of the issues addressed. This criticism is more pertinent when one considers the fact that there is a full chapter on constitutional issues alone. One last complaint, and one which should not be leveled at Elliott alone, concerns the occasionally sloppy referencing of authorities. On page 80 Elliott cites the Kruger and Manuel case to the Dominion Law Reports. On the following page, he cites an extract from the case to the Supreme Court Reports, but fails to identify the source. This certainly is easily avoided.

Chapter 4, on Pre-Confederation Treaties by B. Wildsmith, contains extracts from many major treaties and the cases which interpret them, along with an "Integrating Overview" extracted from a paper by Doug Sanders. It is a well organized introduction to these early treaties.

Much the same can be said of chapter 5 on Post-Confederation Treaties by Norman Zlotkin. I particularly liked his
introduction to modern treaties which he accomplishes through a "case study" of the making of Treaty Nine. Since these later treaties are all very similar, Zlotkin properly concentrates on cases rather than the text of treaties.

On the whole, the three chapters in the section on Aboriginal and treaty rights work well. All are comprehensive and thorough introductions to their respective areas, as well as excellent law school teaching materials. They might not work as well in other disciplines, however, where an analytical or descriptive approach might be more appropriate.

The next section, consisting of chapters 6 and 7, concerns constitutional issues. Noel Lyon's chapter is a lively discussion of the constitutional issues which Native law raises. While it fades somewhat at the end, it is an excellent introduction to these issues for non-lawyers and useful even for law students, teachers and practitioners. Doug Sanders, in his chapter on the application of provincial laws to Indians, demonstrates the wackiness of the judicial decisions and their seemingly total lack of uniformity. While this section is somewhat superfluous in that the problems are dealt with elsewhere, it is nevertheless of value to have the material addressed so concisely in one place.

Section four, an in-depth consideration of two Indian Act matters, consists of R.H. Bartlett's chapters on Reserve Lands and Indian Taxation issues. Each is a complete and thorough treatment of its subject matter.

The final section, on land claims issues, contains three chapters. Moss's concise introduction to the problems created by the James Bay Agreement, chapter 11, follows quite nicely from Morse's discussion, in chapter 10, of the modern policy of land claims resolution. Morse is perhaps a little sparse in citing the authorities to which he is referring but his chapter is a good one. It could, perhaps, have included some comment on how the problems connected with the implementation of the James Bay Agreement have affected the willingness of the Native peoples, and perhaps of the government, to sign any more
treaties. That, however, is more of a political issue than a legal one.

Cumming's chapter on the far north, chapter 12, is more difficult to assess. It is, to a large degree, a plea for a just resolution of northern Native land claims before more major development takes place. He seems intent on placing his own view of Canada and its place in the world before the reader, one which requires, in Cumming's mind, a certain resolution of Native claims. For example, one can find the following comments on the first page of his chapter:

Canada is at least the equal of any of the advanced societies in the world .... Canada is a free society with traditional core values and institutions remaining intact .... Clearly, Canada does not want to follow the examples of Britain, France, or the United States (p. 695).

Such opinions may be valid but they are not the facts with which one normally builds a legal argument. The chapter seems strangely out of place amongst the more typical law school teaching material which makes up the rest of the book. In law school it is more common to downplay or ignore opinion.

The focus on these five major areas, together with the title of the book, illuminate two major problems. First, the book is not about Aboriginal peoples; it is about status Indians. In his introductory chapter, Morse, the editor, states that the term "aboriginal people" includes "all Indians, whether registered under the Indian Act or not, the Metis and all Inuit" (p. 1). That may be so, but the content of the book as a whole is in fact almost exclusively concerned with the Aboriginal rights of status Indians. Of the 13 chapters and some 800 pages, fully 6 chapters and in excess of 550 pages deal with the rights of status Indians. Of the remainder, chapter 12, consisting of some 40 pages, does relate somewhat to the Inuit and the Metis of the Northwest Territories. The rest, approximately 200 pages, deals with areas where the Metis, non-status Indians and Inuit are involved but pays only lip service to the concerns of other than status Indians. This is doubly unfortunate. It is bad enough that the governments give short shrift to Metis and non-status Indian claims. It adds insult to injury for the writers on the subject to do the same.
Secondly, the book is not so much about the law but rather about Aboriginal rights. Aboriginal rights concerns such things as Aboriginal title to the land, treaty rights and residual rights to self-government. The law is concerned with the administration of powers of government, with schools and education, with labour relations, with resource development, with economic development, with family and criminal matters; in fact, with the day-to-day life of Native communities. One might also have expected some discussion of Native customary law. There is a need for a work covering such areas, yet this book does not address them.

The five part framework also produces some problems of repetition. The substantive law of treaties, for example, is given two chapters: one for pre-Confederation treaties and one for post-Confederation treaties. One wonders if it makes sense to separate the treaties by the fact of confederation. It is clear that the two Robinson Treaties, being the models for all the post-Confederation treaties, belong more properly in the set which includes all those later treaties. They are, in fact, dealt with in both chapters.

Cumming's chapter on northern land claims, chapter 12, also illustrates the problem. He deals, inter alia, with Aboriginal title, with the claims presently before the Office of Native Claims and with the James Bay Agreement. All these issues have chapters of their own. The effects of the new constitution are dealt with in this chapter for the third time. Such repetition is perhaps unavoidable in a book which is a collection of the work of many authors; however, it is not a problem which cannot be overcome. It is a fact that Aboriginal Peoples and the Law is in need of a much heavier editorial hand.

There are other problems. Ignoring the inevitable typos that seem to plague all books these days, and there are many here, the book fails to meet some of its own objectives. For example, Morse in his introduction states his intention as being to serve law schools, undergraduate departments of law and Native studies, Native organizations, government officials and lawyers (p. xix). Given such a broad intended audience, perhaps
some shortfall is inevitable. Parts no doubt are appropriate for each of these groups. But it cannot properly serve all of them. Certainly the lack of an index severely limits its value as a resource for lawyers and government officers.

I do not wish to leave the reader with the impression that this is not a worthwhile book: indeed, it is worthwhile and very much so. The individual contributions are, for the most part, excellent. It is very reasonably priced at $29.95 and most people interested in Native law can and should buy it. My real criticism is with the editing.

Let us hope that, when Carleton produces the second edition, the necessary time will be taken to tighten up this important collection and produce a more cohesive work worthy of its title, one that will assist not only the status Indians, but also the non-status Indians, the Inuit and the Metis in their long struggle to achieve and maintain what they have been consistently denied in this country: justice, dignity and their rightful place as self-governing nations within Canada.

Phil Lancaster

NOTES


4 Perhaps the most amusing of these is footnote 8, on page xxv, which informs us that we can find R.H. Bartlett's chapter on taxation at pages 000 to 000. From this, it would appear to be only a minor contribution to the field.
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