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Information Technology Transactions: Business, Management and Legal Strategies

Duncan Card (Toronto: Thomson/Carswell, 2002)

Michael E. Deturbide †

Although a number of Canadian books have appeared over the past few years addressing the legal issues that have arisen with the explosion in information technology, few have highlighted the practical implications that these legal issues have in technology transactions. Duncan Card's new book, *Information Technology Transactions: Business, Management and Legal Strategies*, tackles these issues from a practical perspective that will be useful, as the title suggests, to both lawyers and management.

This is not an academic or comprehensive text. The author is forthright in his statement in the Preface that the focus of the book is "getting the deal done". As such, the reader will find checklists, pitfalls and lessons learned from experience, and suggested contractual provisions; a convergence of cautions and recommendations leading towards successful deals with minimal risk. But this is more than a simple "how to" book. For example, the author does not merely suggest boilerplate clauses that have particular application to information technology agreements. Instead, each heading of a putative information technology agreement is analyzed in various degrees of detail, and always with the admonition that the specific issue being addressed cannot be considered independently without having regard to other issues in the overall transaction.

The author relies on his considerable experience as an IT lawyer in his analysis and provision of recommendations (invaluable information to a practitioner). In many instances, however, he also provides detailed references to cases, legislation, and academic writings that bolster his assessment, an enhancement that is, unfortunately, rare in transaction-focused books aimed at practitioners. For example, in his analysis of the standard of care in confidentiality clauses, the author cautions that the nature of the relationship among the participants

may have a bearing on the appropriate duty of care, and provides a footnote that lists a series of articles that address possible fiduciary obligations in technology transactions. Even a discussion on the mundane topic of recitals in agreements references cases in which the plain meaning of recitals has been used to interpret obligations. The degree of referencing is not uniform (for example, a discussion of freedom of information requirements when dealing with the public sector does not specifically refer to the relevant legislative provisions) but where it occurs, it is thorough and valuable.

Although, as mentioned, this is not exclusively a "how to" book, it would be a mistake not to highlight the fact that this text does a superb job in setting out the necessities of planning, strategy, and negotiation, leading to a successful information technology agreement. It contains practical tips for lawyers, but is also a business guide for effective transaction management in the IT sector. For example, Chapter 1 is dedicated to preparation and planning, and contains advice on assembling the right team of internal employees and external consultants. It invites business managers to fundamentally assess the business case for the transaction, and to engage in internal due diligence before expensive resources are committed.

Amusingly, several chapters are introduced with quotations that infer analogies between successful information technology transactions and Machiavellian strategy, war, and the necessity of risk — the latter a quote from Donald Rumsfeld! The author's position is that diligent work and foresight will minimize the risk, and prevent subsequent fallout. He has articulated this position in a well organized, insightful, and easy-to-read book that fills an important niche for anyone engaging in information technology transactions.

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