

1-1-1998

The Journalist's Legal Guide, Third Edition

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Recommended Citation

Arnold Ceballos, "The Journalist's Legal Guide, Third Edition" (1998) 7 Dal J Leg Stud 267.

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BOOK REVIEWS

The Journalist's Legal Guide, Third Edition

Michael G. Crawford

Scarborough, Ontario: Carswell, 1996, 380 pp.

Reviewed by Arnold Ceballos[†]

It is unlikely that many journalists know that they could face criminal charges if their work “willfully disturbs or interrupts an assemblage of persons met for religious worship or for a moral, social or benevolent purpose.” Yet, as *The Journalist's Legal Guide* notes, section 176 of the *Criminal Code* does indeed create a summary conviction offence for such an act. While it is doubtful any reporter needs to worry much about such an obscure law, there are many other areas of law, such as defamation and access to information, which will impact more directly on their professional lives. It is for this reason that *The Journalist's Legal Guide* is an invaluable resource. Though aimed primarily at journalists, this book will also be of interest to lawyers and students interested in the broad and expanding area of media law.

The easily readable 380-page book is a handy guide which author Michael Crawford notes “aims to provide a detailed, yet practical outline of the rights and obligations of Canadian journalists” (at Preface). The first chapter, entitled “Freedom of the Press: The New Era Dawns,” provides a brief history of press law as it has developed in Canada and notes that, prior to the *Charter of Rights and Freedoms*, judges struggled with the issue of press freedom. According to Crawford, “there were few grounds beyond the common law to justify the courts making radical changes to media-related laws” (at 7). However, this changed with the arrival of the *Charter*. Perhaps the most encouraging indication of this, according to the author, is the Supreme Court's 1994 decision in

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*Dagenais v. Canadian Broadcasting Corporation*¹ in which the Court held that the traditional approach, which favoured the suspect's right to a fair trial, did not provide sufficient protection for the freedom of expression (at 2).

That case dealt with the 1992 national ban on the airing of the television movie "The Boys of St. Vincent," which a judge felt would unfairly influence jurors in a case involving child sexual and physical abuse. As Crawford notes, the Supreme Court ruled that while the right to a fair trial was important, press freedom is sometimes of greater importance (at 10). As a result, the Court limited the discretion which a judge could use in issuing such a publication ban. However, while this case is a positive sign for journalists and proponents of freedom of expression, the author notes that, even under the *Charter*, the media does not win that frequently: one straw poll showed that only a fifty percent success rate recently (at 2). Nonetheless, he asserts that the *Charter* does provide a great potential to expand press rights in the future.

The introductory chapter is followed by fifteen others which are practically oriented and deal with issues ranging from defamation to contempt to how to gain access to public hearings and meetings. Each chapter is supplemented by annotated case citations, as well as useful explanations of the differences in approaches between the provinces. In addition, each chapter ends with a 'checklist' summarizing the key points or issues from that chapter.

There are also three appendices, which consist of primers on the legal system, court procedure, and a mini-law course. Each of these will seem very basic to any lawyer or law student; for example, the Mini-Law Course has brief descriptions of the major areas of law such as contracts and torts. The appendices are likely to be useful to journalists who have little or no legal training or familiarity with substantive or procedural law. There is also a comprehensive ten-page glossary at the end which defines everything from balance of probabilities to *ex turpi causa non oritur actio*.

A common theme throughout the various chapters is the need for reform or revision of certain laws, many of which also remain relatively untested. One example is the *Official Secrets Act*, which Crawford notes contains reverse-onus clauses which could violate

¹ [1994] 3 S.C.R. 835.

the Charter (at 238). Likewise, certain election black-out laws, which limit the ability of the media to report about elections and referenda, “seem to be a blatant violation of Charter rights, begging for a news media-sponsored court challenge” (at 255).

It is clear that the *Charter's* full impact has yet to be felt in the rapidly developing field of media law. With the existence of new trends such as the increasing role of the Internet in the spreading of information, journalists and lawyers will need to keep abreast of the law as it adapts. In this regard, it is understandable that this book, which was published in 1996, already needs updating. For example, there are several instances in which Crawford mentions a particular legal challenge which has not yet been resolved as of publication. Likewise, the chapter on copyright does not reflect the most recent amendments to the *Copyright Act*. Unfortunately, it is quite difficult to include such developments, unless the book was to be updated every year. Even the Preface to this third edition in a decade recognizes the major changes occurring in the law and points out that the book is current to the fall of 1996.

Other than this inevitable need for updating, and in light of the changes taking place, it perhaps may have been useful if Crawford had drawn more on the U.S. experience in order to help us understand the law as it unfolds in Canada. This minor point aside, however, *The Journalist's Legal Guide* is overall a very useful reference which will be of interest to anybody working as a journalist or media lawyer in Canada, as well as for those curious about the broad and rapidly developing field of press law.