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The Law of Independent Legal Advice

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of the labour movement in Canada, the broader trends and analyses offer valuable insights for lawyers practising labour law, union leaders, or anyone interested in the effects of current events on worker representation.

REVIEWED BY
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***The Law of Independent Legal Advice.* By Ted Tjaden. 3rd ed. Toronto: Carswell, 2021. xciii, 778 p. Includes table of cases, bibliographic references, and index. ISBN 9780779898947 (softcover) \$250.00.**

The name Ted Tjaden is, in my opinion, synonymous with legal research in Canada. His third edition of *The Law of Independent Legal Advice* clearly illustrates his knowledge and understanding of a legal researcher's needs. The first edition was published by Carswell in 2000, followed by the second edition in 2013. The current edition, published in 2021, is far more comprehensive and includes significant new content.

Tjaden's dual role as lawyer and law librarian has given him keen insight into the systematic categorization of information in such a way as to simplify the navigation by his target audience. This includes lawyers, judges, law students and, presumably, the law librarians who inevitably assist these groups with their research. Tjaden's background in legal research has driven him to compile an impressively comprehensive collection of "all relevant statutory and judicial authority on the topic of independent legal advice" (p. v).

This third edition includes the analysis of over 250 new decisions with excerpts highlighting important legal reasoning and principles. Along with the standard detailed table of contents, table of cases, and index, it offers the reader ample material to pursue further research on subtopics of independent legal advice (ILA) through extensive footnotes. Tjaden organizes each chapter in approximately the same way, beginning with an introduction to ILA as it relates to the area of law, a summary of jurisprudence reflecting both support for and criticism of the provision of ILA in certain circumstance, practical advice for lawyers, and, a new feature in the third edition, curated lists of research references at the end of each chapter.

The first three chapters give context for readers who are new to the topic of ILA. Chapter 1 provides a short but succinct overview of the definition, intention, and categories of ILA. This is followed in Chapter 2 by an elaboration of updated professional standards from the Federation of Law Societies of Canada and provincial bar associations relating to standard of care, conflict of interest, and duty to unrepresented persons. Chapter 3 addresses areas of law that are closely related to the law of ILA, such as *non est factum*, undue influence, duress, and unconscionability.

The bulk of the text is found in chapters 4 through 11. ILA required within banking, family, employment, corporate, and insurance law are addressed respectively in chapters 4–8, updated to incorporate the evolution of the law since

the last edition. Chapter 9, new to this edition, covers estate planning.

Chapter 10, also new to this edition, covers self-represented litigants (SRLs) and *amicus curiae*. Here, Tjaden does a deep dive into focused ILA issues, such as the ethical considerations for lawyers and judges and the impact of SRLs on the judicial system specific to civil, criminal, and family law, as well as administrative boards. Chapter 11 is a summary of potential negligence claims involving ILA and, to reaffirm the practical nature of the text, Chapter 12 presents practical advice for lawyers through key considerations, recommendations, and checklists.

While the entire text is valuable for someone focused on ILA as a topic, its organization and academic yet approachable tone makes it accessible to a wider audience. A law professor can easily select a chapter addressing ILA within a specific area of law and assign it as a required class reading (e.g., a Family Law class having to read Chapter 5, "ILA in Family Law"). As a law librarian, I have flagged Chapter 10 on SRLs and *amicus curiae* for questions on the reference desk, as this chapter provides a background on the rights of SRLs from the perspective of a lawyer/litigator. As a legal research instructor, I have noted the inclusion of specific Boolean strings within the reference guides to use as examples when introducing students to advanced searching techniques on legal research platforms.

I have only a few minor issues. As expected from a legal research guru, the citations and references are flawless and packed with additional information. While this style of footnotes displays Tjaden's comprehensive research and attention to detail, on certain pages they border on overwhelming. Also, while the curated reference guides that close each chapter contain a wealth of knowledge ranging from key texts, reports, journal articles, and CLE seminar papers, a significant number of the sources included are from proprietary sources. Of course, as a Carswell publication, items published by the other large legal publisher are omitted. This is not the fault of Tjaden, but it is worth noting the issues with the existing duopoly on legal information in Canada and the value of open sources, particularly for the current cohorts of law students and junior faculty.

Tjaden's text is the most comprehensive text available on the topic of ILA. There are several texts from foreign law jurisdictions, but in the context of Canadian common law there are only a small number of publications on family law and corporate law that have chapters addressing ILA. There are several print government publications offering practical advice for SRLs, but they are dated and have likely been replaced by online guides developed by bar societies across Canada. These online guides are typically FAQs that communicate the definition and intention of ILA without significant depth.

If you have the first or second edition in your collection, I advise you to update with the third. Since its first edition, this text has had the self-proclaimed goal of being a "one-stop shop" on the topic of independent legal advice. Specifically, it aims to educate readers on how to determine when ILA is necessary by elaborating on the nuances of specific areas

of law as exemplified in primary law authorities. Each edition has nearly doubled in length, and, at 778 pages, the third edition delivers this “one-stop shop” experience. *The Law of Independent Legal Advice* provides a broad overview and introduction to the law of ILA while allowing readers to select the details and additional resources that are relevant to their specific research. It is thorough while being concise, highly practical, and easy to navigate.

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***Modern Criminal Evidence*. By Matthew Gourley et al. Toronto: Emond, 2022. xxix, 762 p. Includes table of cases and index. ISBN 9781772556421 (hardcover) \$295.00; ISBN 9781772556438 (eBook) \$271.00.**

This is an invaluable handbook for practitioners of criminal law. My review was nearly late because my copy was in high demand from lawyers in the office researching issues of admissibility and leading certain kinds of evidence.

Modern Criminal Evidence is very user friendly. The general table of contents is followed by a comprehensive table with subheadings. As well, each chapter’s title page has its own content breakdown. Footnotes cite the referenced cases, statutes, and secondary sources. The book also includes a detailed index and table of cases. Cited case law is inclusive of all Canadian jurisdictions, making this a useful resource for criminal lawyers anywhere in the country.

The authors introduce the basic concepts of the law of evidence followed by chapters on judicial notice, judicial fact-finding, opinion evidence, circumstantial evidence, hearsay, character evidence, examination of witnesses, types of witnesses, confessions, privilege, digital and documentary evidence, identification evidence, and intersecting proceedings. Each chapter begins with a definition before delving into the granular detail of each type of evidence, how it is admitted, and how the court uses it.

Of note is the chapter on judicial findings of fact. Designed to be of assistance to judges, the chapter includes practice tips for counsel requesting that the judge make particular findings. It reminds the judge that all the parties bring their own life experience to the courtroom, but it is the responsibility of counsel to ensure that evidence or supporting material are presented to the judge relying on it.

Chapter 12 on digital evidence is a useful, contemporary update to previous evidence texts, as it addresses the relatively recent evolution of both the legal issues of admissibility and the practical issue of presenting digital evidence. The authors have included a glossary of commonly used digital evidence terminology, which may not be familiar even to people who regularly handle evidence cases of this kind.

The book ends with the chapter “Intersection of Proceedings.” Given that criminal proceedings are often not the only legal

proceedings arising from an incident, this chapter provides helpful tips for counsel needing to be vigilant about issues being raised in other proceedings outside of their expertise. This chapter extends the use of evidence in criminal proceedings to civil litigation, family law, and immigration proceedings, and vice versa.

Every chapter in *Modern Criminal Evidence* includes practice tips on how to use the information presented in the chapter and, where appropriate, includes examples of specific documents, such as an agreed statement of fact pursuant to section 655 of the *Criminal Code*. There are checklists for the consideration of certain types of evidence and examples of the kinds of questions that would assist the reader with issues of admissibility and in bringing evidence before the court.

Modern Criminal Evidence is a detailed, up-to-date reference book designed for someone facing the issue of admissibility and needing to find the answer within a 15-minute break during a trial. I highly recommend it for criminal law firms, law school libraries, courthouse libraries, and criminal law practitioners.

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***Narrative Expansions: Interpreting Decolonisation in Academic Libraries*. Edited by Jess Crilly & Regina Everitt. London, U.K.: Facet, 2022. xxxii, 290 p. Includes bibliographic references and index. ISBN 9781783304974 (softcover) US\$78.99; ISBN 9781783305216 (ePUB) US\$92.00.**

Narrative Expansions: Interpreting Decolonisation in Academic Libraries aims to present how academic libraries interpret and enact decolonisation. The editors have assembled a diverse selection of essays on work initiatives in academic libraries as part of the decolonising movement in higher education.

The book includes contributions from authors with different backgrounds: students, librarians, anthropologists, researchers, curators, and academics. While it’s international in scope, it includes authors mainly from the U.K., Canada, and the United States. Part 1: Contexts and Experiences includes chapters on libraries’ circumstances and settings, and Part 2: In Practice focuses on projects undertaken in libraries where the theory and practice of decolonisation intersect. Each chapter includes extensive references. Although there is an index, the online version doesn’t include pagination or links, which is not helpful.

It is useful to understand some of the definitions of the term “decolonisation” to have context for these essays. The first chapter, “Decolonising the Library: From Personal Experience to Collective Action” by Hillary Gyebi-Ababio, offers two definitions of the term. One of the earliest texts to define it is Frantz Fanon’s *The Wretched of the Earth*, first published in 2004. Fanon speaks of decolonisation as “the need to thoroughly challenge the colonial situation.” In more