

CRIMINAL PLEADINGS AND PRACTICE IN CANADA. By Eugene Ewaschuk. Canada Law Book Ltd., 1983. Pp. cl, 700. (\$90.00)

As most practitioners will attest, Mr. Justice Ewaschuk's book is a worthwhile contribution to the ever-growing body of materials on Criminal Procedure. Unlike other books on the subject, it is not written as a text, but as a digest of the law instead, using short black letter statements followed by relevant case authorities. The result is a comprehensive account of the law with little critical commentary. Consequently, the book is not one to read, but rather one to be consulted when faced with a particular problem or issue. Mr. Justice Ewaschuk makes no apology for the "factum" style format however, and advises that he has opted for the black letter approach because it "appeals to the harried practitioner looking for a quick answer to pressing technical problems".<sup>1</sup>

The text consists of 700 pages divided into twenty-five chapters. It is also divided into seven parts, although at times it is difficult to see what merit, if any, there is in this further division of the materials.<sup>2</sup> The book contains 129 pages of cases printed in small print.

The diversity of issues addressed makes this a difficult book on which to comment. It is not unlike trying to describe the contents of a single volume of an encyclopedia. As a consequence, this review will probably be more useful if a few general shortcomings are noted.

Before making these comments, I would note that the book is thorough, comprehensive, and as far as my own knowledge of the subject permits me to judge, accurate. A spot check indicated that the cases tended to support the propositions for which they are cited. It must be said, however, that more than one practitioner has complained of the book's orientation toward the Crown. This, it is submitted, is partly a result of the "black letter law approach" which results in definite statements in an area where defence counsel might be inclined to see the cases as supporting a less sweeping analysis.<sup>3</sup>

It is evident that for a book to be of use to a "harried practitioner" who needs a quick answer to a technical problem, it needs an extensive, cross-referenced index. This book's index has substantial shortcomings. Rather than being cross-referenced conceptually, the index appears to follow the outline of the book. As a result, a practitioner unfamiliar with

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<sup>1</sup> P. x.

<sup>2</sup> It is particularly difficult to fathom why the author has bothered to divide the book into parts. The result suggests an analytical framework which is clearly not borne out by the text. At best, the parts can be described as a pragmatic break. At worst, they could result in confusion, in that many of the topics have very little, if anything, to do with each other.

<sup>3</sup> Moreover, it should be said that areas of great concern to defence counsel are given short shrift. An example of this is contained in the material on the tests for committal at a Preliminary Inquiry at p. 314. In two paragraphs the author disposes of an area that is of considerable importance and complexity.

the book will be unable to find the relevant material and will spend a great deal of time looking through the index and the chapter headings. I conducted a spot check myself and had that difficulty. A good example of this problem is the locating of "special pleas". There is no reference in the index to special pleas even though the term is used in the text as a chapter subheading. Nor is there a reference to *autrefois acquit* or *convict*. To find this material, one must look under "pleas".<sup>4</sup>

Another practical problem results from a lack of detail in some of the black letter law statements. While a critical commentary was clearly not the aim of the author, it must be equally clear that some of his statements are too general.<sup>5</sup> This leaves the "harried practitioner" with the task of reading five or ten cited cases before he knows whether his case falls within the general principle stated. Although this is not a substantial hurdle, it certainly does not provide the quick and easy solution that the author intended.

Putting these difficulties aside, I think it is fair to say that this volume will take a well-deserved space on every practitioner's book shelf. It is an excellent reference tool for both the criminal practitioner and the lawyer who only enters the criminal courtroom occasionally. But one cannot fail to note that this book is no more than a reference tool and not always, as the author intended, a source "for a quick answer to pressing technical problems".

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<sup>4</sup> Other examples include conspiracy indictments. The index entry reads "conspiracy: see indictment" and when one looks up indictment there is no alphabetical listing of conspiracy; it is located under duplicity and multiplicity. Another example is joint trial. There is no heading "joint trial" in the index. Nor is there such heading under "trial or joint trial". I was unable to locate a point in the index that would assist a practitioner in finding the point made in para. 15.133 at p. 402. In short, the index is a shambles and it detracts from the effectiveness of this work.

<sup>5</sup> A list of ten or fifteen cases reciting a "bare bones" statement of law gives the practitioner nothing more than a start and certainly not an answer to his problem. Examples of these problems can be found on pages: 233, para. 9.183; 247, para. 9.227; 603, para. 25.25.

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