

WORKING MANUAL OF CRIMINAL LAW. By Janet A. Prowse. Carswell, 1984 and supplements. Supplements to date: February 1985, May 1985 and November 1985.

This book had its origin in another written by Ms. Prowse in 1978 for use by members of the Crown Counsel Office of the British Columbia Ministry of the Attorney General, where she worked. That book was never updated and in 1982, when she left the Crown Counsel Office to go into private practice, the Ministry asked her to produce a new book to replace it. The author states in the Preface:

I agreed to write this book provided that I could pursue publication. (I felt that the book was more likely to be kept updated if it was published. It is crucial that a book like this one be kept as current as possible.)<sup>1</sup>

She also writes:

This book is designed to be a portable, general reference book for various areas of criminal law. It is not meant to be an exhaustive study of each of these areas or a literary masterpiece.<sup>2</sup>

The book's limitations must be borne in mind if the user is to avoid disappointment. It is neither comprehensive in scope nor consistently thorough in its treatment of the subject matter. It is particularly weak in its treatment of the *Canadian Charter of Rights and Freedoms*<sup>3</sup> and there are a number of signal omissions. However, it is a good jumping-off point for preparation of a case for trial and the updates may rectify (in some cases already have rectified) some of the more important weaknesses. Supplements to date have not only added current caselaw to existing sections of the work, but also new sections such as Admissibility of Evidence, Defence of Accident and Informations and Indictments. In some cases the author has rethought or reorganized and rewritten sections for greater clarity. In others, references to cases previously overlooked have been added.

A practical omission in the initial publication has also been corrected. It is essential in any reference work meant to be updated periodically that every page bear the date of publication so that a reader referring to any section will know the extent to which further updating is required and what period to search. Beginning with the first supplement, all pages are dated.

Generally, the book is well structured. The text is divided into five parts: Defences, Evidence, Procedure, Sentencing and Substantive Offences. Provided a point is covered in the book, the reference can easily

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<sup>1</sup> P. V.

<sup>2</sup> *Ibid.*

<sup>3</sup> Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11 [hereinafter *Charter*].

be found from the general index. Of further assistance are the table of cases and the table of statutes indexed by section number.

*Working Manual of Criminal Law* reflects a strong Crown bias in that it is written from the narrow perspective of the practising Crown Attorney. The issues that are treated the most thoroughly correspond to those a provincial Crown Attorney would encounter most frequently in provincial or district court.

The book will be helpful to the novice lawyer who finds him or herself in provincial or district court on an uncomplicated case; however, experienced counsel will find a need for more sophisticated materials. It is a useful backup for the general case, where "the law" takes a back seat to a marshalling of the facts. In this context it is notable that the Evidence section<sup>4</sup> is the strongest in the book.

Shortcomings in content aside, the material is well presented. The standard sequence moves from general principles of the area under consideration to a more detailed treatment of specific points of law, followed by examples of application of the principle. Often the procedural sequence will be outlined and, where applicable, instructions to the jury and possible verdicts are included.

As is to be expected in a work of this nature, the book relies heavily on leading cases. Such an approach can be misleading, particularly where there are unresolved issues or divergent lines of caselaw which are not referred to. Though not definitive, secondary cases may offer a great deal of help in the difficult case and those where novel points of law arise. In this regard I note that the author has revised as well as updated her work through the supplements. Many areas formerly treated in a simplistic fashion have been fleshed out to reflect areas of uncertainty and in these areas options are explored.

One very useful aspect of the book is the way in which case citations are presented. Not only is the court given, but the names of the judges sitting are given as well. The cite indicates which judge delivered the majority judgment, which judge gave the minority judgment and the number of judges subscribing to each.<sup>5</sup>

Unfortunately, entries have a tendency to be too concise, hinting at the rationale behind the law without explaining it. Case references often appear without explanation, factum-style. The section on Not Calling a Defence (Insufficient Evidence Motion)<sup>6</sup> is a good example of this. It is not at all clear from the author's comments that she is referring to a motion for directed verdict. The area has been somewhat unclear and confused in the past and the author does not deal with the consequences of bringing such a motion. It is an important tactical option and has been dealt with too

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<sup>4</sup> Pp. 67-119.

<sup>5</sup> See, e.g., p. 194.1. Following the case of *Leblanc v. R.* (1975), [1977] 1 S.C.R. 339, 68 D.L.R. (3d) 243, a list of judges is given as follows: (De Grandpre, Martland, Judson, Richie, Spence Pigeon, Dickson, Laskin C.J.C., Beetz 6:3)

<sup>6</sup> P. 253.

briefly, unclearly and with an air of being derived from another source though imperfectly understood. There is a separate section on the Directed Verdict<sup>7</sup> but its presentation is very sketchy and addresses only the consequences of a directed verdict on included offences and situations where there are multiple accused.

A number of important areas are not covered adequately in this work. The book does not deal with any aspect of search and seizure. Four years after the coming into effect of the *Charter* there is but one fleeting reference to the possibility that section 8 may qualify the rule in *R. v. Wray*.<sup>8</sup> Further, no reference is made to the cases of *R. v. Rao*<sup>9</sup> or *Hunter v. Southam Inc.*<sup>10</sup> There is no excuse for such an omission two years after the publication of the results of a Law Reform Commission empirical study<sup>11</sup> which indicated that in many places in Canada the majority of search warrants are defective as issued.<sup>12</sup>

There is virtually nothing on bail hearings, nothing on young offenders and nothing on jury selection (there is, however, a very useful checklist on the judge's charge to the jury).<sup>13</sup> There is nothing on electronic surveillance and only a single reference to the right to counsel.<sup>14</sup>

The book is generally weak on the *Charter*, which is presented as a gloss on the criminal law rather than the guiding spirit behind it. The material on remedies under the *Charter*<sup>15</sup> is illustrative of the author's approach. The subject is disposed of in half a page in the section on Admissibility of Evidence, which itself was not added to the book until the May, 1985 Supplement.

The supplements have also added material on arrest<sup>16</sup> (originally there was none). The new material deals with the issue of lawfulness of an arrest, but no attempt is made to trace the effect of the *Charter*.

The treatment of general and specific intent offences is vague. Moreover, the material is scattered, some appearing in the sections on Drunkenness<sup>17</sup> and Insanity,<sup>18</sup> some in the section on Resisting Arrest.<sup>19</sup> The

<sup>7</sup> P. 213.

<sup>8</sup> (1970), [1971] S.C.R. 272, 11 D.L.R. (3d) 673. The rule is set out on p. 143 of the text.

<sup>9</sup> (1984), 46 O.R. (2d) 80, 9 D.L.R. (4th) 542 (C.A.), leave to appeal to S.C.C. denied 57 N.R. 238.

<sup>10</sup> (1984), [1984] 2 S.C.R. 145, 11 D.L.R. (4th) 641.

<sup>11</sup> Law Reform Commission of Canada, *Criminal Law, Police Powers — Search and Seizure in Criminal Law Enforcement* (Working Paper 30) (Hull, Quebec: Supply and Services Canada, 1983).

<sup>12</sup> *Ibid.* at 84.

<sup>13</sup> Pp. 241-3.

<sup>14</sup> The only reference to right to counsel is to the case of *R. v. Therens* (1985), [1985] 1 S.C.R. 613, 18 D.L.R. (4th) 655. (See p. 385).

<sup>15</sup> See pp. 70.1-70.2.

<sup>16</sup> Pp. 414-414.1.

<sup>17</sup> Pp. 16-30.5.

<sup>18</sup> Pp. 35-44.

<sup>19</sup> Pp. 413-414.2.

author provides examples of cases going either way, but does not attempt to articulate the basis for the distinction. It is admittedly a murky area of the law but it has not been met head on by the author.

The book does have a number of strengths. The part on Evidence<sup>20</sup> has already been mentioned and the part on Procedure<sup>21</sup> is also generally good. The newly-added material on treatment of defects in informations and indictments<sup>22</sup> is particularly helpful.

There is a very good treatment of Self-Defence<sup>23</sup> which is a difficult area of the law, but the complex interaction of a number of related sections of the *Criminal Code*<sup>24</sup> is covered with a felicitous combination of clarity and conciseness. Unfortunately, no reference at all is made to the related section 25,<sup>25</sup> which deals with justification of the use of force.

There is a good review of the law in relation to the rule against multiple convictions.<sup>26</sup> The part on Sentencing<sup>27</sup> is concise but thorough and well presented. This is an area all too often ignored or given short shrift by practitioners and the material here will be helpful to many. There is a good treatment of Hearsay,<sup>28</sup> including the often mysterious co-conspirators' exception to the hearsay rule.<sup>29</sup>

A section of the book covers the more commonly encountered Substantive Offences.<sup>30</sup> These include: Assault: Bodily Harm, Peace Officer, With a Weapon; Breaking and Entering; Causing a Disturbance; Criminal Negligence; Dangerous Driving; Escape; False Pretence; Forgery; Fraud; Gross Indecency, Indecent Act; Hit and Run; Impaired, .08, Refusing; Mischief; *Narcotic Control Act*; Obstruct Peace Officer; Possession of Stolen Property, Robbery; Resisting Arrest; Sexual Assault; Soliciting; Theft and Weapons.

The omission of homicide and attempted murder in this section seems odd. Constructive murder issues are completely ignored as are many issues as between first degree murder and second, or manslaughter.<sup>31</sup> The book only deals with homicide matters obliquely, from the perspective of accident, consent, drunkenness, provocation and self-defence. Although the Substantive Offences<sup>32</sup> part is not the strongest section of the book it contains no remarkable weaknesses. Generally it provides a competent

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<sup>20</sup> Pp. 67-199.

<sup>21</sup> Pp. 201-80.

<sup>22</sup> Pp. 240.1-240.6.

<sup>23</sup> Pp. 62-66.3.

<sup>24</sup> R.S.C. 1970, c. C-34.

<sup>25</sup> *Criminal Code*, R.S.C. 1970, c. C-34.

<sup>26</sup> Pp. 265-9.

<sup>27</sup> Pp. 281-318.2.

<sup>28</sup> Pp. 134.5-134.28.

<sup>29</sup> See pp. 134.27-134.28.

<sup>30</sup> Pp. 319-446.

<sup>31</sup> The presence or absence of intent to kill, the nature of the intent underlying the act which results in a death and whether or not the act was planned and deliberate are issues frequently explored here.

<sup>32</sup> Pp. 319-446.

run-down of the elements of the offence, the proof required, the definitions and the leading cases.

The eleven-page section on the *Narcotic Control Act*<sup>33</sup> gives a nod to the existence of drug offences. Its brevity is not to be criticized, as a work of this scope cannot be expected to compete with MacFarlane's text.<sup>34</sup>

In summary, this book is very much a curate's egg, that is, parts of it are excellent. The reader must bear in mind what the book is and what it is not, as stated in its Preface. It is a quick reference tool for identifying standard cases on problems that commonly arise. It is not a complete handbook of criminal law nor an exposition and analysis of legal principles underlying the cases. A work such as this must strike a balance between being concise enough for practical, everyday use and containing enough information to penetrate the superficial. It does not always succeed.

The manual can serve as first aid in an emergency situation or as a jumping-off point for case preparation, but the diligent counsel will want to dig deeper. It will not be a great deal of help in the difficult case and it offers few hints on approaches to unresolved points of law (the section on Character Evidence,<sup>35</sup> which offers a number of very helpful comments, is an exception). In general, however, it is accurate as far as it goes.

The author has been diligent not only in updating but also in revising her work and has eliminated a number of deficiencies and inconsistencies. If this process continues, the manual will become a very good basic tool for everyday courtroom work, particularly if more attention is given to *Charter* concerns.

David McKercher\*

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<sup>33</sup> Pp. 391-8.

<sup>34</sup> B.A. MacFarlane, *DRUG OFFENCES IN CANADA* (Toronto: Canada Law Book, 1979).

<sup>35</sup> Pp. 76-80.1.

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