

obligation to advise detained suspects of their right to counsel, the police may nevertheless attempt to induce them to waive their rights. If this is actually the Court's message, then its strong attempts to deter the flagrant and willful disregard of constitutional rights in such cases as *Manninen*, *Therens*, *Collins*, have been seriously undermined".¹³⁶

Such an approach by the Supreme Court to the use of right to counsel "with reasonable diligence" creates a problem for the adequate use of this right, in a sense that it forces the defendants to opt for the first available counsel, rather than utilizing the services of the counsel of their choice.

When one examines the issues associated with the exercise of section 10(b), one wonders if doing away with custodial interrogations altogether and replacing them, perhaps, with something else¹³⁷ seems like the most reasonable way to rectify the contradictions that are built into the nature of police interrogation in the *Charter* era.¹³⁸

¹³⁶ *Ibid.* at 155.

¹³⁷ This thesis argues for a revival of a modified pre-trial magisterial examination procedure.

¹³⁸ On this point Professor Hogg raises a question to the effect that, would

Given the shortcomings of s. 10(b) that have already been discussed I hold that this section is incapable of providing considerable protection to detained suspects in addition to the doctrine of voluntariness. Section 10(b) of the *Charter* leaves much to be desired in the way of providing protections to suspects taken into custody for interrogation. With this in mind, we now turn to an examination of the principles underlying each of the right to silence and the confessions rule: the principle against self-incrimination (or privilege against self-incrimination). Much of our criminal law is organized around this ancient right. By discussing its ambiguous nature, briefly tracing its history and assessing the rationales for its existence, we can familiarize ourselves with its fundamental importance in the criminal law and how it is a foundation upon which other rights may be built. We will also discuss how it is under attack, and we will see the reasons why many would do away with the privilege.

it not be "...more logical to simply prohibit all statements to the police. Such a rule would be honest and straightforward, and would ensure that all suspects, whether or not represented by counsel, were treated equally." Peter Hogg, *Constitutional Law of Canada*, 3rd ed. (Toronto: Carswell Legal Publications, 1992) at 47-13.

Book Review of *Mack's Criminal Law Trial Book, 2016* (Toronto: Thomson Reuters Canada, 2016)

REVIEWED BY JUSTICE RICK LIBMAN

Pocket-book or soft-cover style trial books, like *Mack's Criminal Law Trial Book, 2016* are handy, easy to use portable resources that equip legal services practitioners with an up to date and readily accessible legal resource in court, to navigate the criminal trial process. It is not intended to replace a pocket *Criminal Code* or legal data-base, but is an especially valuable and practical research tool, as if the practitioner had brought a number of legal memoranda to court setting out the essential elements of the offence, the *mens rea* and *actus reus* requirements, and so on.. As the author observes, this book is intended to function as a well-used "trial companion", and not as a "desktop adornment".

The book commences with a chapter on bail. It includes disclosure, and discusses bail at the hearing stage, as well as subsequent reviews or revocation hearings. The annotations are concise and well referenced. The case citations helpfully include court neutral

cites, so that there are multiple sources for locating the cases mentioned by the author.

The next section of the book is headed offences. It lists, for the most part, *Criminal Code* offences in alphabetical order. While this has the advantage of finding the material in a simple manner, it also presents some of the related offences more randomly. For example, while the driving offences of impaired driving and over 80 are grouped sequentially, although they are not in alphabetical order, attempted murder is followed by the breach offences, whereas the heading murder follows libel, and is followed by obstruct police. Grouping offence topics by similarity and placement in the *Criminal Code*, rather than letter of the alphabet, might assist the practitioner in locating topics, and avoid cross-referencing, since for offences like murder, and attempted murder, the same *mens rea* must be proved. However,

the annotations which follow these offence categories typically set out the requisite prohibited act and fault requirements, as well as associated topics, such as causation for murder, in an easy to follow, well explained and pithy way.

Chapter 3 is entitled defences. These are for the most part substantive in nature, whereas procedural defences, such as those that might arise under the *Charter of Rights and Freedoms* are dealt with in a separate chapter. In future editions of the book, the author might wish to add to the list of enumerated defences other related defences such as mental disorder.

Trial procedure is the subject of chapter 4. This lengthy portion of the book covers a number of topics, commencing with the Crown's election on dual procedural offences, to judge and jury trials. Preliminary hearings, attendance of witnesses, adjournments are some of the matters covered, as well as applications for production of records in the possession of third parties, and applications for the appointment of a state-funded lawyer. Appeals are also discussed by the author.

The subject of evidence is included in chapter 5. Publications on substantive law often do not contain material on procedure, and the same is true for procedure books tending not to discuss substantive law issues in much detail. Mack's *Criminal Law Trial Book* helpfully covers both, and is especially invaluable in this regard. This way, the practitioner is equally equipped for a question from the Bench about the tendering of say, hearsay evidence, as well as proof of the required elements of the offence.

A lengthy chapter on the *Charter of Rights* follows. It sets out topics that particularly arise in criminal prosecutions, such as search and seizure, arbitrary detention, right to counsel,

unreasonable delay and so on. Remedies under s.24(1) and (2) are also addressed. This material will assist the legal services provider both in preparing and responding to *Charter* issues that arise during the course of a prosecution.

The concluding chapter of the book is on sentencing. It contains a discussion of general sentencing principles, evidentiary issues such as pre-trial custody credit, as well as a review of the sentencing case-law that has developed for specific offences, such as assault, sexual assault, manslaughter, robbery and the like. Dangerous offender hearings and assessment orders are also canvassed.

Two other parts of the publication should be noted. There is a helpful appendix that includes checklists for topics ranging from bail, examining a qualified breath technician in an over 80 trial, proof of voluntariness and sentencing submissions. Those legal service providers who are perhaps not as experienced as others will find these checklists a helpful tool both for preparing, before court, to examine the witness and planning their examination, as well as for guiding submissions in court. Finally, the Index at the back of the book is easy to use, and is helpful in cross-referencing topics that arise in a criminal case.

In summary, legal service providers of all levels of experience and familiarity with the criminal justice system will find Mack's *Criminal Law Trial Book 2016* a helpful and valuable tool for use both in and outside the courtroom. It provides easy to access practical, procedural and substantive annotations and guides for matters that typically arise during the course of a criminal proceeding, starting at the bail hearing and concluding with sentencing. It will doubtlessly be "well-thumbed" as the author intends it to be.