

CRIMINAL PROCEDURE:

Cases, Text and Materials

By Louise Arbour and Larry T. Taman

Toronto: Edmond-Montgomery, 1980. 567 pp.

Jeffrey F. Harris*

The subject matter of this book is not unique, but there is no pretext that it is otherwise. The authors have delivered what the title promises and the result is a well-organized and extensive analysis of Canadian criminal procedure.

With the exception of the first two chapters, each of the subsequent eight chapters deals with a different aspect of criminal procedure. In presenting the topics, the authors rely heavily on case extracts, and to a lesser extent, articles by other authors. The cases have been edited to present the aspects essential to the issue-at-hand, without sacrificing the background necessary to understand the context in which the cases arose. The articles have also been well selected and edited. Although the authors use cases from all jurisdictions, there appears to be a heavy reliance on Ontario jurisprudence.

Throughout the book, the authors have punctuated each topic and subtopic with their own commentaries and questions. The commentaries and questions are well designed and raise substantive procedural and policy considerations. As is to be expected in legal education, more questions are raised than are answered. To assist in the pursuit of the answers, the authors have provided numerous case and article references for each topic.

The first two chapters of the book deal with the theoretical and constitutional framework of criminal procedure. The inclusion of these chapters makes it reasonably clear that the book was prepared with law students, as opposed to the profession, in mind. The next six chapters are directed at the pre-trial aspects of the system. This includes "Jurisdiction", "The Investigative Process", "Judicial Interim Release", "The Preliminary Inquiry" and others. It is appropriate that the emphasis of the book be on these aspects of the process as the bulk of the practice of criminal law occurs within this pre-trial period. The last two chapters deal with the trial and the appeal respectively.

Probably the most noteworthy chapter is that regarding "The Investigative Process". The chapter addresses numerous issues which are of primary import to the rights of suspects, for example the limits of police power. In particular, this involves searches, writs of assistance, arrest, electronic surveillance, and controlling police behavior. The authors have done a good job in presenting these contentious issues and posing further questions for consideration. This chapter in itself is worthy of recommendation to all students of law and practitioners who have an interest in the criminal justice system.

As the authors have undertaken to examine the whole of criminal procedure in Canada, an intensive analysis of the system was impossible in one volume. Nonetheless, it is unfortunate that some very important aspects did not receive more attention. Plea bargaining, for example, is inadequately dealt with. There can be little doubt that plea bargaining plays a major role in the process and has evoked much commentary from the bench, the profession, and the public. Given the importance of this topic, one case and a couple of questions is insufficient.

Thus, the main shortcoming of the book is that it lacks depth with regard to some topics. However, as noted, the authors have provided a good number of references for further study. In that it gives a good overview of criminal procedure and facilitates further inquiry, it is a book which a student or beginning practitioner might well consider purchasing.