THE PREROGATIVE WRITS IN CANADIAN CRIMINAL LAW AND PROCEDURE

By Gilles Letourneau
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The role of prerogative writs in Canadian criminal proceedings is one that requires clarification. One reason lies in the writs' inherent complexity, which is compounded by the failure of case law to clearly delineate the scope of their applicability in criminal cases. The criminal law specialist generally enters uncharted waters when confronting the decision whether to apply for a prerogative writ, since such writs have found their primary use in administrative law where they have traditionally served as an instrument for judicial control of administrative tribunals. Unless he has developed a working knowledge in this area of the law, the criminal lawyer may feel himself trapped in an unpenetrable maze, especially when he must decide on the applicability of a particular writ in the midst of ongoing proceedings.

The work is structured so as to provide not only a general framework but also a detailed exposition of the individual writs. In the first chapter, which relates the genesis of the writs in English and Canadian law, the author provides an historical survey of the process whereby the various Canadian provinces incorporated the writs into their jurisprudence. The initial chapter also deals with the seldom used writ of *procendendo,* which was illuminating to this reviewer. It is rarely used today because it has generally been replaced by the writ of *mandamus.*

The second chapter treats the concept of jurisdiction, which is central to any discussion of prerogative writs. In order for a writ to issue, the court must usually discover a defect in the procedures of the inferior court or tribunal, to which the label "jurisdictional" can attach. The author here aptly illustrates the confused state of the law regarding the nature of jurisdiction as applied to prerogative writs.

The bulk of the treatise is devoted to an analysis of each individual writ. The writs of *certiorari* and *prohibition,* which in effect complement one another, are considered in Chapter 3, *Mandamus* is the subject matter of Chapter 4, while Chapter 5 focuses upon *habeas corpus* and *certiorari.* Each writ is handled under the following general headings: its procedural nature, the conditions precedent to issuance, the grounds for issuance, and the legal effect attaching to

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issuance. This framework thus offers the basis for a comprehensive discussion of the specific nature and function of the various prerogative writs, and Professor Letourneau succeeds admirably in that regard. As a result, he has produced a general reference work of considerable merit, where the reader will find a thorough treatment of the role of prerogative writs in criminal cases.

Prerogative Writs in Canadian Criminal Law and Procedure is advertised as a "working tool to assist practitioners, academics, researchers and students in the field of prerogative writs." I would, however, respectfully dissent from the claim that the work serves the needs of both academic and practitioner. While it may well satisfy the former, it is certainly not structured as a handy reference guide for the latter. It is nonetheless a welcome addition to the limited body of literature on Canadian criminal law and procedure.