

THE CRIMINAL LAWYERS' GUIDE TO EXTRAORDINARY REMEDIES BY BRIAN J GOVER AND VICTOR V RAMRAJ [Canada Law Book Inc, 2000; xxxiv + 189 pp (including index). CAD\$57.]

THIS book is the product of a joint collaboration between Brian J Gover, a partner with the Toronto litigation firm of Stockwood Spies, and Victor V Ramraj, an Assistant Professor at the Faculty of Law, National University of Singapore.

It deals specifically with the application of administrative law remedies (or “extraordinary remedies” as they are termed under Canadian law) in the context of criminal law. A concise practitioner’s text, it assumes a basic knowledge of the history and concepts of administrative law, as well as the workings of the Canadian legal system.

The book finds its genesis in the Bar Admission Course materials prepared by Brian Gover, who has served as an instructor in the course since 1988. True to its roots, its contents are presented in a clear lecture-style format. Each chapter and subsection typically opens with a brief introduction of its objectives, a short history and the flavour of the particular remedy in focus, followed by the presentation of the main body in a logical and systematic fashion. This format is standardized throughout the book, affording thematic consistency and facilitating easy reference.

The approach of its authors is relentlessly practical. In an area of law the

development of which has been piecemeal, the book omits traditional expositions on legal history in favour of working definitions, which are fleshed out with comprehensive discussion on the situations in which the remedies are commonly applied. This provides conceptual unity to an area of law where, according to the authors, the last major text dates back 25 years.

As expected in a practitioner's text, the authors are modest in advancing their personal views on the subject. They have instead reserved their comments to pertinent issues – for example, the diminished availability of extraordinary remedies in the face of appellate or Charter relief, the impact of statutory limitations on the remedies under Part XXVI of the Canadian Criminal Code (RSC 1985), as well as the portent of extending certiorari to superior court decisions in the context of *Kourttessis v MNR* (1993) 81 CCC (3d) 286.

The first chapter of the book provides a succinct overview of the armory of remedies available to the criminal lawyer, as well as their characteristics and the general principles governing their use. It also provides a concise description of “jurisdictional error”, a term notoriously difficult to define, in terms of five basic components: (i) errors relating to preliminary matters, (ii) failure to comply with mandatory procedural rules, (iii) failure to comply with the rules of natural justice, (iv) errors relating to the qualifications and impartiality of the court, and (v) abuse of process.

The next chapter covers certiorari in a systematic template which is replicated subsequently. It lays out the general principles and limitations behind certiorari, the availability of certiorari in specific situations, and the procedural aspects of the use of certiorari. The section on the application of certiorari is particularly useful, as it contains incisive analysis of section 548(1) of the Criminal Code and the issue of whether jurisdictional error can result from committing an accused for trial in respect of an offence which was not set out in the information. It also provides clear analysis of the difference between “fundamental justice” under section 7 of the Charter and “natural justice” under common law.

Prohibition is covered in the third chapter, in a similar format as certiorari. The section setting out the grounds of prohibition is commendable, and contains a clear analysis of the difference between individual and institutional bias. The discussion on the use of prohibition to protect Charter rights is also particularly instructive. The next chapter moves on to concentrate on mandamus and procedendo. Of special note is the discussion of whether mandamus lies where an appeal may also be available, following the case of *R v Beason* (1983) 43 OR (2d) 65. The focus on procedendo is however brief, in the light of its diminished role under the Criminal Code.

The fifth chapter deals with the remedy of habeas corpus. It starts with an instructive historical explanation of how habeas corpus developed in Canada, tracing its development from a hybrid of common law and statute, to its elevation as a Charter right under section 10(c). This sets the stage for the main theme of the chapter – the characterisation of this remedy in its role under the Charter, and its subsequent expansion following the shift in judicial attitude from a technical to a purposive interpretation of the remedy in *R v Gamble* (1988) 66 CR (3d) 193.

The sixth chapter provides a brief overview to the procedural aspects of applying for extraordinary remedies, as governed by the Criminal Code and the respective rules of court in provincial jurisdictions. While it does not seek to provide details on the various provincial rules, a complete list of the applicable law is usefully footnoted at the beginning of the chapter. Furthermore, the Appendices reproduce the relevant federal and provincial statutory provisions for easy reference. The book is concluded in the seventh chapter, which provides a tantalizing comment by the authors on the future impact of the Charter on the other prerogative remedies,

following the change in judicial attitude towards habeas corpus.

The brevity of this book belies its comprehensive coverage and careful analysis of an area of law which has required re-examination since the promulgation of the Charter in 1982. Common lawyers will find it useful primarily for its insightful glimpse into the impact of the Canadian Criminal Code and Charter on administrative law. But it is naturally to Canadian practitioners to whom this book is commended as a concise reference guide to extraordinary remedies in the context of criminal law.

KENNETH YAP