



BOOK REVIEW

*Gilles Renaud**

CRIMINAL EVIDENCE IN HONG KONG

by Andrew Bruce and Gerard McCoy

Butterworths, Hong Kong 1991

lxii 469 pages

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C *RIMINAL Evidence in Hong Kong* (Second Edition) is above all things a practical and sound exposition of the law of evidence in respect to criminal matters tried in Hong Kong; that much is self-evident from the title and the reception accorded to the first edition of the text, published over 5 years ago. But, of greater interest to the Commonwealth practitioner, it is also a well written, methodical and contemporaneous review of the state of the law of evidence buttressed by multiple references to Canadian, Australian, English, and New Zealand decisions. It should thus prove to be of signal assistance in the consideration (and resolution, it is hoped) of thorny evidentiary issues whether arising in Manitoba, Queensland or the Lake District.

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The text is divided into 15 sections, and counts a detailed Index and a brief but valuable Table of Statutes which includes relevant United Kingdom legislation. The Table of Cases, however, might be improved by listing all references by the name of the accused, and deleting the oft confusing references of R, Attorney General and DPP.¹ To their credit, the co-authors describe in their preface (at p6) an egregious error found in the first edition respecting the effect of Section 40 of the Evidence Ordinance, and those who possess a copy of that text, and who will not be led by this and other reviews to purchase the second edition, should note that that section applies only to civil proceedings.

The text is notable for the ease of presentation of the various sub-themes discussed; for example, the various heads of privilege in Chapter 7 and the procedure in the examination of witnesses in Chapter 10. Moreover, a good number of subjects are discussed by means of consecutively numbered brief paragraphs, such as the rule respecting declarations in the course of duty (at pp155-156). This technique enhances the reader's understanding of the subject matter and assists greatly in the crafting of a schematic representation of the argument to be advanced. Further, the discussion is ably framed by various pithy comments of interest, such as the following (at p54): "Presumptions are bats of the law flitting in the twilight, but disappearing in the sunshine of actual facts. *Mackowik v Kansas City* (1932), 94 SW 256."

It is thought that the most valuable contribution of the authors is their discussion of the subject of documentary evidence in Chapter 12. The presentation is scholarly yet not unduly extensive, the references to the jurisprudence are abundant but not self-defeating by their sheer number. The subject of judicial notice is also discussed in a manner notable for its clarity and brevity (at pp54-60). In this respect, reference might have been usefully made to *Delgamuukw v BVC*,² a decision of the British Columbia Supreme Court respecting the subtle interplay between judicial notice and reference to historical materials, including oral history, in determining factual issues. Further, the varied references throughout the book and in Chapter 15 to case law respecting the now decade old Canadian Charter of Rights and Freedoms appear to be a valuable contribution to counsel anticipating the effects of the Bill of Rights in Hong Kong on issues

1 For example, reference might be had to Judge Fontana, *The Law of Search and Seizure in Canada* (Butterworths, Toronto, 3rd ed 1992) or to Boyle & Allen, *Sentencing Law and Practice* (Sweet & Maxwell, London 1985).

2 (1989) 38 BCLR (2d) 165.

respecting admissibility of statements, presumptions and "The Siracusa principles".³

In addition, useful comments include the reference to *R v Buisson*⁴ respecting the soundness of fingerprint identification where fewer than 12 characteristics are present (at p10) and to the discussion respecting the need for the trial judge to direct the jury as to the character and credibility of a decreased declarant, with reference to cases from Malaysia and Guyana (at pp152-153). As well, the comments involving the burden on the defence in cases involving an alibi are noteworthy.⁵

[I]t might be that the courts will be prepared in the future to allow a laymen to have a greater latitude in expressing opinions as to the general standard of education rises. For example, a court might be more likely today to allow a witness to state in evidence that he thought that a particular person he observed looked depressed. This view may be contrasted with *R v Mason* (1911) 7 Cr App R 67.⁶

In conclusion, the Second Edition of *Criminal Evidence in Hong Kong* should prove to be an invaluable addition to lawyers practising in that jurisdiction and a quite useful reference tool for Commonwealth counsel.

3 These references may be resorted to with profit when considering the recently proclaimed New Zealand *Bill of Rights Act* 1990 (NZ). See the comments of Maxwell & Bates, *Luxford's Police Law in New Zealand* (Butterworths, Wellington, 4th ed 1991) p609.

4 [1990] 2 NZLR 542

5 At pp324-326. A useful discussion of this subject is found in Pinsler, *Evidence, Advocacy and the Litigation Process* (Butterworths, Singapore 1992) at pp164-167.

6 With respect to emerging areas of opinion evidence, reference may usefully be made to the discussion in "Novel Sciences: The Twilight Zone" in Hodgkinson, *Expert Evidence: Law and Practice* (Sweet & Maxwell, London 1990) at pp131-134.