

# INDEX

**NOTE:** *References are to paragraph numbers or appendices.*

**Abuse of process,** 8.1220

## **Accused**

false statements by. *See* False statements

inferences from silence of, 7.250-7.260

injured, 5.460

intoxicated, 5.460

investigation in custody —

    removal from state to police custody, 5.258.1

misled to believe was witness, 2.1275

mental condition of, 1.215, 8.430

misled to believe was witness, 2.1275

photograph of, 9.760-9.770

police plants in cell of, 8.750-8.890

psychiatric examination of, 2.50-2.155

right to counsel of. *See* Right to counsel on arrest or detention

right to remain silent. *See* Right to remain silent

self-serving evidence of, 10.1850

state of mind of. *See* Voluntariness

subnormal, 5.800-5.810

testimony at voir dire by, 6.460-6.480, 8.100-8.120

videotaped statement of, broadcasting, 6.890-6.900

written apology by, 2.1415-2.1418

**Administration of justice, disrepute and,** 7.430-7.450, 7.470, 7.500-7.520,  
7.610-7.630, 7.850

## **Admissibility ruling**

judge may reverse to restore fairness, 6.580

**Admission against penal interest,** 10.1700, 10.1768-10.1775

## ADMISSIBILITY OF STATEMENTS

### **Agent of State**

agreed statement of facts, 10.1846  
effect on s. 13 Charter, 10.1846  
physician as, 2.270  
private citizens, 5.249.12  
security guards, as, 8.1085-8.1087  
test re, 8.1010-8.1030, 8.1140

**Agent provocateur**, 10.530, 10.531

### **Alibi**

false, inferring guilt from, 4.282  
notice of, 1.405  
right to silence and, 4.267, 4.280  
timely disclosure, failure to make, 4.282.1

### **Arrest or detention, meaning of**

ASD demand, 5.41  
attendance at police station with counsel, 5.130  
border/customs search context, 5.62, 5.210-5.235  
borderline cases, 5.160-5.180  
breath sample context, 5.20-5.56  
demand or direction, 5.110  
detention vs. investigation —  
    breath sample context, 5.20-5.56  
    line between, 5.160-5.180  
duration of detention for questioning, 2.1190  
entry of dwelling, 5.292  
entry re 911 call, right of, 5.297-5.298  
good faith of police, 5.260  
identification, request for, 5.70-5.80, 7.550-7.560  
immigration and customs context, 5.70  
intimidation, subjective sense of, 5.190  
investigative detention, 5.237-5.247, 5.95  
invitation to police station, 5.120  
length of detention, 5.250-5.260  
objective test of detention, 5.42  
pedestrian, 5.80-5.87  
police officer's safety concerns, 5.209.1  
private investigators and non-governmental persons, detention by, 5.290-5.300  
psychological detention, 5.200-5.206, 5.294  
questioning at home, 5.150

**Arrest or detention, meaning of** — *Continued*  
 questioning in course of investigation, 5.135-5.140  
 request to attend police headquarters, 5.100  
     second or subsequent request, 5.208-5.209  
 school context, 5.46  
 urgency or necessity, 5.260  
 vehicle stops, 5.250

**Audio/Video.** *See* Recording interrogation sessions

**Breathalyzer testing**

arrest or detention and, 5.50-5.56  
 compulsion of statute and, 10.2090

**Canada Evidence Act.** *See* Prior inconsistent statements; Spousal communications; Voluntariness

**Capacity.** *See* State of mind of accused

**Caution.** *See* Warning

**Charter of Rights and Freedoms**

appeal, raising Charter violation for first time on, 7.1190-7.1220  
 application procedure, 7.03-7.07  
 Charter relief as personal claim, 7.877, 7.878  
 economic regulation schemes and criminal charges, 10.2130-10.2160  
 exclusion of evidence. *See* Exclusion of evidence  
 extradition hearing, 7.365  
 extraterritorial application of, 7.1090-7.1185  
     full answer and defence, 7.1185  
     participant surveillance and, 9.580-9.680  
     right to counsel, 7.1090-7.1130  
     search and seizure, unreasonable, 7.1140-7.1160  
 full answer and defence, right to make, 7.1185, 10.930-10.950  
 fundamental justice —  
     compelled testimony and, 10.2550, 10.2610  
     statements under Income Tax Act, 10.2120-10.2220  
     statements under motor vehicle legislation, 10.2100-10.2110  
 Income Tax Act prosecutions, 10.2120-10.2220  
 remedies under, *see also* Exclusion of evidence,  
     vicarious liability of government, 5.300  
 right against self-incrimination at trial, 4.260  
 right to counsel. *See* Right to counsel

## ADMISSIBILITY OF STATEMENTS

### **Co-accused**

cross-examination of, 6.600, 8.10, 10.2020  
incriminating statement by, 8.1230  
joint trial of, 6.600

**Community shock test**, 7.530, 7.570

**Community standards test**, 7.420

### **Compelled testimony**

balanced interests, 10.2550  
compellability discussed, 10.2590  
derivative evidence, use of, 10.2555  
derivative use immunity, 10.2570  
dominant purpose test, 10.2205  
fundamental justice and, 10.2550, 10.2610  
legitimate public purpose requirement, 10.2580  
limited conditions for, 10.2600  
professional bodies, power re, 10.2610  
Revenue Canada, statements to, 10.2120-10.2160

### **Compulsion of statute, statements by**

breath sample demand, 10.2090  
Income Tax Act, 10.2120-10.2220  
provincial legislation, 4.325  
voluntariness —  
    not necessary to be proved, 10.2050, 10.2070, 10.2090  
    proof of required, 10.2060, 10.2080

### **Confessions**

body of rules re, 1.90-1.100  
employee receiving, 2.290  
inducement to obtain, 1.248  
investigator's skill and, 1.80-1.90  
jailhouse, 8.1170-8.1200  
lying to induce, 8.530, 8.710  
operating mind, by person with, 2.1070  
polygraph, use of to induce, 9.330-9.347  
post-Charter violation, 5.740  
proof before jury, 6.540  
publication ban re undercover methods of obtaining, 6.830-6.860  
recording. *See* Recording interrogation sessions  
Reid Technique and false, 1.406-1.407.2  
reliance on only one of two, 6.360

**Consciousness of guilt**, 6.482-6.492.3  
 calm and uninterested, 6.491.1  
 changing appearance, 6.492.3  
 demeanour as evidence of, 6.491.1-6.491.1  
 failure to co-operate with police, 6.490.3-6.490.5  
 false alibi as evidence of, 6.492-6.492.2  
 false statement, 6.482-6.490.1  
 jury instruction, 6.490.5  
 lack of hesitation before flight from scene, 6.491.3  
 level of guilt, determining, 6.490.5  
 neutral evidence - unusual quietness, 6.490.1  
 post-offence conduct, 6.482-6.491.7

**Counsel**

belittling of counsel by police, 5.531  
 denigration of counsel by police, 5.526  
 effective assistance, 6.576  
 ineffective assistance, 6.577  
 notes written in prison to, 10.910  
 obligation of police to answer questions relating to breathalyzer, 5.945  
 police impersonation of, 7.860  
 production of notes for defence, 10.60-10.90  
 right of counsel to be present during interrogation, 2.925  
 right to. *See* Right to counsel  
 voluntariness and right to, 1.220-1.230  
 waiver of voir dire by. *See* Voir dire

**Cross-examination**

co-accused, of, 6.600, 8.10, 10.2020  
 impeachment vs. incrimination, 10.1790  
 maker of statement, of, 6.600-6.699  
 police re identity of informer, of, 10.520  
 prior inconsistent statements, 10.1240-10.1250, 10.1845  
 voir dire, on, 6.460-6.480

**Crown**

disclosure by, 10.93-10.156, 10.219-10.219.1  
 onus on to show voluntariness, 8.140, 8.160  
 police and, privilege re, 10.160-10.180, 10.920  
 vicarious liability, 5.300

**Customs searches**, 5.62-5.68, 5.210-5.230

## ADMISSIBILITY OF STATEMENTS

### **Demeanour, facial expression as inference**

failure to show grief at child's injuries, 6.491.1

**Detention.** *See* Arrest or detention, meaning of security guard, by, 5.249.13

**Diagrams.** *See* Notes, use of

### **Disclosure**

adequacy of, 10.93

alibi disclosure rule, 4.270

compensation, 10.249

cost of disclosure, 10.249

costs award re failure, 10.240-10.247

Crown, by, 10.93-10.155

defence, by, 10.250-10.280

delayed by Crown, 10.219-10.219.1

due diligence onus on defence, 10.140

electronic disclosure, 10.97

evidence of police misconduct, 10.159

inadvertent disclosure by prosecution, 10.614

investigative techniques, 6.880

legal advice by Crown counsel, of, 10.160-10.195

notes, of. *See* Notes, use of

peripheral issues, non-disclosure by Crown, 10.156

police conduct investigations, 10.2420

police-informer, 10.530, 10.570

    setting aside protection order, 10.615

pretrial disclosure re agent provocateur, 10.530, 10.531

software, 10.97

stay of proceedings for failure re, 10.200-10.216

third party, by, 10.120

third party disclosure, 10.159

third party records, of, 10.198

whereabouts of two officers not disclosed, 10.155

### **DNA evidence**

discarded straw, from —

    no expectation of privacy in, 5.59.1, 9.858.3

sampling orders, *see* DNA Order

standard of proof for consent to sample, 5.59.2

### **DNA Order**

ex parte orders for DNA, 5.61.1

**DNA Order** — *Continued*

post conviction and sentence — young offenders, 3.432  
 stay pending conviction appeal, 5.61.3  
 upon conviction, 5.60

**DNR**

interception, constitutionality of, 9.741

**Dog sniff**, 5.642-5.645

bus depot, 5.645  
 school, 5.89.4

**Duncan instruction**, 1.402**Dying declarations**

admissibility —  
     circumstances re, 10.670  
     procedure re, 10.730-10.740  
 general principle re, 10.660  
 homicide cases, 10.680  
 inculpatory statements, 10.690-10.720  
 limitation on admission, 10.690  
 settled and hopeless expectation of immediate death, 10.660-10.670  
 trustworthiness, 10.720

**English rules**

exclusion of evidence, re, 7.110, 7.220-7.260

**Entrapment**

Crown privilege and, 10.613.2  
 generally, 10.614.1-10.614.3.2  
 “random virtue testing”, 6.781.1  
 solicitor-client privilege and, 6.788, 10.1045

**Evidence**

Charter violation, of, 5.890-5.895  
 conscriptive vs. non-conscriptive, 7.790-7.871, 7.910-7.920  
 derivative, 7.970-7.1020, 9.230, 10.2550  
 exclusion of. *See* Exclusion of evidence  
 loss of, 10.150, 10.200  
 police report as, 10.370  
 preservation of evidence dilemma, 7.660-7.670  
 psychiatric, 8.1140-8.1160  
 real, 7.630, 7.770, 7.820, 7.920

## ADMISSIBILITY OF STATEMENTS

### **Evidence** — *Continued*

right to remain silent at trials as, 2.265  
s. 715.1 of Criminal Code and, 10.1590-10.1600, 10.1766  
self-serving. *See* Self-serving evidence

### **Exclusion of evidence**

American rule, 7.270-7.365  
appeal, raising Charter violation for first time on, 7.1190-7.1220  
Canadian Committee on Corrections report, 7.370  
Charter caselaw, 5.257.1, 5.258.1, 6.23, 7.410-7.1060, 8.1090-8.1095,  
8.1125  
    administration of justice, disrepute and, 7.430-7.450, 7.470, 7.500-  
    7.520, 7.610-7.630, 7.850, 8.1125  
    appellate function, 7.540  
    causal connection with violation, 7.880, 7.920  
    civil proceedings, 7.785  
    Collins, rules in, 7.490  
    community shock test, 7.530, 7.570  
    community standards test, 7.420  
    conscriptive vs. non-conscriptive evidence, 7.790-7.860, 7.910-7.920  
    crime-scene re-enactment, 7.915  
    derivative evidence, 7.880-7.920, 7.970-7.1020  
    detention context, 7.540-7.546  
    discretionary aspect of remedy, 7.480  
    early cases, 7.410-7.480  
    inadvertent breach of rights, 7.580  
    investigating accused on remand —  
        removal from state to police custody, 5.258.1  
    jeopardy, understanding one's, 7.930  
    limited purposes admission of evidence, 7.1070  
    personal diary, 8.1090-8.1095  
    police bad faith as factor in s. 24(2) exclusion, 1.180  
    police good faith as factor, 5.257.1 11.140-11.170  
    police urgency vs. accused's rights, 7.970  
    preliminary inquiry, at, 6.23  
    preservation of evidence dilemma, 7.640-7.670  
    real evidence question, 7.630, 7.770, 7.820, 7.920  
    s. 24(2), operation of, 7.470, 7.785, 7.1060  
    Stillman, application of, 7.840-7.860  
    subjective test of s. 24, 7.410, 7.430  
    surveillance of residence, warrantless, 7.1030  
    test for exclusion, 7.490, 7.680-7.780, 7.960  
    unfair trial assessment, 7.490-7.570, 7.830



**Exclusion of evidence** — *Continued*Charter caselaw — *Continued*

- vehicle, expectation of privacy re, 5.257.05, 7.1040-7.1050

## English rule, 7.110, 7.220-7.260

- caution used, wording of, 7.250

- inferences from accused's silence, 7.250-7.260

## extradition hearing, 7.365

- improper police conduct, as means of discouraging, 7.400, 7.580-7.600

## judicial discretion —

- Baldree* case, 10.1765.3

- criteria of necessity and reliability satisfied, when to exclude, 10.1746

- discovery of physical evidence confirming statement, 7.60

- exclude when criteria of necessity and reliability satisfied, to, 10.1747-10.1765.3

- infringement of constitutional right, 7.10

- prejudice vs. probative value, 10.176.3

- statements generally, 7.10-7.367

- statements to informants, 7.150

- Law Reform Commission of Canada's report, 7.380

- Miranda, rule in, 7.300-7.367, 8.890

- post-violation confession, 5.740

- pre-Charter discretion, 7.10-7.210

- English practice, 7.110

- integrity of criminal justice system, 7.150-7.170

- judge's confessions rule, 7.180-7.200

- probative value vs. unfairness, 7.20-7.100, 7.200

- St. Lawrence rule, 7.130-7.140

**Exculpatory statements**

- admissibility for/against accused, 6.385

**Expectation of privacy**

- airline passenger list, 9.940

- ambulance, 9.880

- briefcases, 5.648

- bus depot lockers, 5.637

- cell phone records, 9.855

- chewing gum, 9.866

- computer, contents of, 5.649.7

- detention centre phone calls, 9.958.1

- discarded straw, 5.59.1, 9.858.3

- driveway entry, 9.860

- electrical consumption, 9.950

## ADMISSIBILITY OF STATEMENTS

### **Expectation of privacy** — *Continued*

garbage left for collection, 9.890-9.930  
greenhouses, 9.930  
hand-held communications device, 5.649.5  
heat, odours leaving a private place, 5.644-5.647  
home partially converted to place of business, 9.959.1  
Internet service provider, 9.980  
laptop computer provided by school, 9.970  
outbuildings, 9.858.2  
parking garage, 9.858  
police service record, 9.853-9.854  
public place, street, 9.865  
residence used for selling narcotics, 9.859  
sniffer dogs, 5.642  
text messages, 9.355.1  
utility records, 5.649.1  
vehicle, less in, 5.257.05  
video files, 5.649.7, 9.975

### **False statements**, 1.350-1.380

accused, by, 4.110-4.120  
factor in determining voluntariness of entire statement, 8.90  
post-offence behaviour, and, 6.482-6.489  
wrongful convictions, incidence of false statements on, 1.408  
young person, by, 3.270

### **Fundamental justice**. *See* Charter of Rights and Freedoms

**Hearsay**, 9.280, 10.1190, 10.1350-10.1410, 10.1430, 10.1510, 10.1630-10.1650, 10.1700, 10.1765.3

admission against penal interest exception, 10.1768-10.1775

*Baldree* case, 10.1765.3

admission of, reasons for, 10.1755, 10.1767

co-conspirator's exception, 10.1776, 10.1777

*Khelawon* criteria and beyond, 10.1765.3-10.1765.3.1

res gestae exception, re, 10.1950-10.1995, 10.2045

**Hypnosis**, 1.120-1.160, 1.262, 8.150-8.155, 8.1240-8.1260

**Immigration**, 5.68

**Inducements**, 2.900-2.910, 2.1380, 4.140-4.180, 8.720, 9.345

promise of release if alibi verified, 4.281

spiritual, 2.1420-2.1425

**Inducements** — *Continued*

temporal connection, 5.328

**Informers**

credibility of, 10.652-10.654  
 cross-examination re identity of, 10.520  
 jailhouse, 2.170, 2.220  
 privilege. *See* Police-informer privilege

**Infra-red cameras (FLIR) technology**, 9.845

**Innocence at stake exception and professional misconduct of prosecutor**,  
 10.975

**Intercepted communications.** *See* Recording interrogation sessions;  
 Spousal communications

**Interpreters**, 2.1020-2.1040

accredited by Attorney General, 2.437

**Interrogation**, *see also* Young persons, statements by; Recording  
 interrogation sessions  
 audio/visual recording of, 9.350, 9.351  
 failure to record, 5.529  
 obligation under s. 10(a) Charter, 2.575  
 unfair techniques, 8.1260-8.1290

**Intimidation**, 5.190, 8.250-8.340

**Intoxication**, 8.170-8.240, 8.350

**Investigations.** *See* Police inquiries/investigations

**Jail cell**

police attempting to overhear conversation, 8.1205  
 youth offender confiding to undercover officer in cell, 3.550

**Jailhouse confessions**, 8.1170-8.1180

**Judges**

apprehended bias on part of, 6.700-6.781  
 confessions rule, 7.180-7.200  
 English Judges' Rules, 1.410-1.450  
 interference by, 6.780-6.781  
 obligation to provide translation, bilingual jury, 2.1065

## ADMISSIBILITY OF STATEMENTS

### **Judges** — *Continued*

self-serving evidence, power re, 10.1870-10.1880  
voir dire, role on. *See* Voir dire  
voluntariness as question of fact for, 8.20, 8.60

### **Jury**

proof of confession before, 6.540  
voir dire and. *See* Voir dire

### **Language**, *see also* Interpreter

right to counsel and, 2.950-2.1060, 5.470-5.490  
warning and, 2.950-2.1100

### **Legal aid**

ability to apply for, 2.580  
right to legal aid counsel at trial, 5.1175

**Lie detector.** *See* Polygraph

**Mental capacity.** *See* State of mind of accused

**Miranda rule**, 7.300-7.365, 8.890

### **Motor vehicle legislation, statements under**

fundamental justice and, 10.2100-10.2110

**Narcoanalysis.** *See* Voluntariness

### **Necessity and Reliability**, 10.1610

*Baldree* case, 10.1765.3

*Khelawon* criteria and beyond, 10.1765.3

police notes – notes transposed, 10.365

prior consistent statements of accused, 10.1115

privacy rights and interference with accused's integrity or dignity, 7.872

### **Notes, use of**

admissibility question, 10.30

completeness, 10.50

contemporaneity requirement, 10.310-10.340

criteria for, 10.10

disclosure requirement —

    application re, 10.210

    costs of, 10.210

    Crown, by, 10.100-10.110

    loss of evidence, 10.200

**Notes, use of** — *Continued*disclosure requirement — *Continued*

police, by, 10.140-10.180

privacy in child pornography case, 10.210

solicitor-client privilege and, 10.180

third party, by, 10.120

independent recollection requirement, 10.40

police-informer. *See* Police-informer privilege

production for examination by defence counsel, 10.60-10.90

revival of memory function, 10.280-10.360

transcription of notes, 10.360

**Operating mind**, 1.213, 2.1040-2.1050, 8.390-8.430, 8.460-8.500, 9.170-9.180**Oppression**

generally, 1.230-1.260

voluntariness and, 8.280-8.335

warning re, 2.1145

**Pedestrian**

identification of, 5.80-5.87

**Persons in authority**

ambulance attendant, 2.260

bank manager/director, 2.290

burdens of proof re admissibility, 2.410

Charter violation and. *See* right to remain silent and, *infra*

confessions rule and, 2.340-2.360

defined, 2.10-2.20

detention officials, 2.280

employee receiving confession, 2.290

father, 2.290

foreign attorneys, 2.395.1

informer in jail, 2.170, 2.220

insurance adjuster, 2.400

masters and servants, 2.40

miscellaneous examples, 2.290

mother of thirteen-year-old boy, 2.250

Mr. Big strategy, 2.395.2, 2.396.2

parents and guardians, 2.250

parents, relatives and friends of victim, 2.300-2.360

persons capable of controlling corrupt police, 2.397

## ADMISSIBILITY OF STATEMENTS

### **Persons in authority** — *Continued*

physician not functioning as agent of State, 2.270  
police informants, 2.170-2.245  
police officer, undercover, 2.200, 2.370  
“protected statements”, Criminal Code provision re, 2.105  
psychiatrist examining accused in custody, 2.50-2.155  
raising issue at trial, importance of, 2.320-2.340  
right to remain silent and, 2.210, 2.230  
social workers, 2.160  
stepfather, 2.300-2.310  
undercover officers, 2.370-2.398  
victim as, 2.290  
victim’s parents, etc., 2.300-2.360  
voir dire, evidence triggering, 2.340-2.350, 2.398  
youth workers, 2.165

### **Police conduct/misconduct investigations**

American practice, 10.2460-10.2490  
Charter protection for police, 10.2240, 10.2270-10.2280, 10.2360,  
10.2390, 10.2440  
    “use of force report”, 10.2495  
confidentiality and disclosure requirement, 10.2420  
co-operation requirement, 10.2390-10.2400  
counsel, right of officer to consult, 10.2395  
discipline, 10.2240-10.2250  
duty statements, 10.2380, 10.2410, 10.2450, 10.2510  
impersonating counsel, 7.1080  
inappropriate behaviour by police during interview of accused, 7.1085  
legal advice, reliance/non-reliance on, 10.950-10.960  
Mr. Big strategy, 2.395.1, 2.396.2-2.396.3  
Ontario Police Act disciplinary proceedings, 10.2280  
ordered statements, 10.2300-10.2310, 10.2440  
police officer’s notes for SIU  
    preparation and vetting with counsel, 10.2395  
reform re, 10.2500-10.2520  
    Charter application to, 10.2270, 10.2360  
    incriminating statements, 10.2360  
    investigation provisions, 10.2320, 10.2370  
    right to silence, 10.2340  
stay of proceedings, 10.220-10.228  
voir dire, 10.2350

**Police inquiries/investigations**, *see also* Arrest or detention, meaning of accused on remand —

- removal to police custody, 5.258.1
- approaching youth in school yard, 5.89.3
- assessments vs. suspicions, 11.35
- assistance in making choices, 2.920
- attendance at police station with counsel, 5.130
- belittling accused's lawyer, 5.520-5.525
- counsel, right to, 5.100, 5.210-5.235
- detention, 5.89.3
- duties re right to counsel, 2.640, 5.810, 5.1290-5.1300
- foreign nationals, re, 2.930
- good faith, 5.260
- guidelines for police conduct, 5.410-5.415
- investigation, stages of, 2.500
- misconduct, discouraging, 7.400, 7.580-7.600
- police informer privilege, *in camera* procedure, 9.488-9.489.6
- police plants, 8.750-8.890
- public interest privilege and, 10.655, 10.656
- questioning after counsel consulted, 5.1030-5.1040
- questions, right to ask, 2.540
- re-enactment, 2.1468
- recording/videotaping interviews, 2.1460
- role in administration of justice, 11.30
- solicitor-client privilege re Crown law officer, 10.160-10.180, 10.920
- state of investigation, information re, 2.1230
- undercover, 2.200, 2.370, 8.1120-8.1130
- vehicle stops, 5.250

**Police report, use as evidence**, 10.370

**Police-informer privilege**

- absolute nature of, 10.570
- adequacy of information to obtain warrant (ITO), 10.505-10.507
- agent provocateur, pretrial disclosure re, 10.530, 10.531
- claiming prior to production of notes, 10.390
- disclosure requirements and, 10.530, 10.570
- disclosure to commission of inquiry, 10.440-10.450
- editing of notes, 10.470-10.500
- exceptions to, 10.380, 10.365
- full answer and defence argument, 10.460
- fundamental importance of, 10.365
- identity of informer

## ADMISSIBILITY OF STATEMENTS

### **Police-informer privilege** — *Continued*

identity of informer — *Continued*

cross-examination of police re, 10.520

defence counsel has no right to seek out, 10.614.4

setting aside order protecting, 10.615

“innocence at stake” exception, 10.550-10.600

paid informers, role of, 10.510

patient information by physician, 10.400-10.430

public duty not to inform, 10.400-10.430

reliability of informers, 10.620-10.650

reliance on hearsay, 10.507

rule of law explained, 10.380

### **Polygraph**

abuse of, 9.140

accuracy of, scientific view, 9.290-9.300

adverse inference from refusal, 9.143

alternatives to, 9.305

civil cases and, 9.260-9.280

confession, use to induce, 9.330-9.347

counsel advice re, non-admissibility of, 9.310

credibility, as instrument for testing, 9.20-9.100

derivative evidence and, 9.230

examination sessions, recording, 9.350-9.369

clandestine recording, 9.358-9.363

privacy, expectation of, 9.352-9.367

value of, 9.350

examiner not entitled to speculate on reliability, 9.308

future of, 9.369-9.371

hearsay, rule against, 9.280

inducement or threat, use as, 9.110, 9.345

informational requirements at pre-interview, 9.145

investigative technique, use as, 9.310

oath helping, rule on, 9.63-9.80

operating mind test, 9.170-9.180

paucity of caselaw, 9.10

polygraph officer, role of, 9.320

post-polygraph statement, admissibility of, 9.150

probative weight of, 9.190-9.220

“psychological rubber hose”, as, 9.330

refusal to submit to, 9.240

relevance of, 9.346

reliability, scientific comment on, 9.290



**Polygraph** — *Continued*

right to counsel and, 9.150-9.160  
 statement, use to induce, 9.110-9.140  
 test results not admissible, 9.100

**Prior inconsistent statements**

adverse witness —

adverse vs. hostile, 10.1130-10.1150  
 meaning of, 10.1130  
 necessity of declaration, 10.1710

Canada Evidence Act provision re —

s. 9(1), 10.1140  
 s. 9(2), 10.1150, 10.1220, 10.1300  
 s. 10 statement of witness, 10.1160-10.1190  
 text, 10.1120

cross-examination on —

credibility, re, 10.1250  
 leave for, 10.1240

evidence admitted under s. 715.1 of Criminal Code, 10.1590-10.1600,  
 10.1766

jury instruction re, 10.1845

new rule, 10.1330-10.1470 —

application of, 10.1480-10.1560  
 flexibility, 10.1520  
 hearsay dangers and, 10.1350-10.1410, 10.1430, 10.1510  
 necessity, 10.1420-10.1440, 10.1610, 10.1660-10.1690  
 principled exception to hearsay rule, 10.1630-10.1650  
 reliability, 10.1340-10.1410, 10.1470, 10.1690-10.1700  
 s. 9 of Canada Evidence Act and, 10.1450  
 voir dire, role of trial judge on, 10.1460-10.1470

orthodox rule —

cases reaffirming, 10.1320  
 described, 10.1280  
 Estey J.'s rejection of, 10.1290-10.1300  
 reform to, 10.1330-10.1470

police report or notes, 10.1160-10.1170, 10.1200, 10.1220

self-incrimination and. *See* Self-incrimination, privilege against reform

judicially led, 10.1570

legislative, 10.1580

recommendations for, 10.1260

witness statement —

hearsay, vs., 10.1190

implicating accused, recanting, 10.1765.4, 10.1765.6

ADMISSIBILITY OF STATEMENTS

**Prior inconsistent statements** — *Continued*

witness statement — *Continued*

voir dire to determine whether made, 10.1210

**Privacy**

blood samples taken at hospital, 9.870

child pornography case, in, 10.210

expectation of, 9.352-9.357, 9.785-9.858, *see also* Expectation of privacy

high school, in, 9.795

right to counsel and. *See* Right to counsel on arrest or detention

vehicle, in, 7.1040-7.1050

**Privilege**

Crown privilege, 10.613.2

observation post, 6.880

parent and child communication, 3.436

police informer. *See* Police-informer privilege

priest, communications to, 10.1080

psychologist, communications to, 10.1090-10.1100

self-incrimination, against. *See* Self-incrimination

solicitor-client. *See* Solicitor-client communications

spouses. *See* Spousal communications

**Psychiatric evidence**, 8.1140-8.1160, 10.2530-10.2535

statements made under s. 672.21 of Criminal Code, protected, 2.105-2.155, 10.2530

**Psychiatrists**, 2.50-2.155

**Psychological detention**, 5.200-5.206

**Psychologist, communications to**, 10.1090-10.1110

**Publication bans**, 6.830, 10.1040

police methods re obtaining confessions, 6.830-6.860

videotaped statement of accused, 6.890-6.900

**Quid pro quo**, 1.249

**Reasons to support decisions.** *See also* Voir dire, judge

admission of hearsay, re, 10.1767

**Recording interrogation sessions**

confessions, audio/video recording of, 9.460, 9.780-9.840

clandestine, 9.780

**Recording interrogation sessions** — *Continued*

- confessions, audio/video recording of — *Continued*
  - police line-up, 9.830
  - practice of, 9.350, 9.351
  - privacy, expectation of, 9.785-9.840
  - unreasonable search and seizure, as, 9.785-9.790
  - value of, 9.780
  - verification of, 9.840
  - viewing of by juries, 9.782
- failure to inform accused of videotaping, 9.759
- intercepted communications —
  - authorized, 9.775
  - cellphones, 9.745
  - consent re, 9.570-9.580, 9.710-9.740
  - exclusion for Charter violation, 9.630-9.670
  - message on paging service, 9.690
  - participant surveillance, 9.680
  - undercover police in prison, 9.700
  - unreasonable search and seizure, as, 9.580-9.620
- non-use of available video facilities, 9.750-9.757
- photograph of accused, 9.760-9.770
- police failure to use available equipment, 9.750
- tape recording —
  - access to, 9.530-9.535
  - admissibility procedure, 9.380, 9.470
  - Code of Practice (U.K.), 9.410
  - exhibits, records as, 9.530
  - police not required to notify accused, 9.348
  - refreshing memory on basis of, 9.684
  - safeguards in preserving recordings, 9.490-9.520
  - studies and reports on, 9.390
  - surreptitious use of, 9.348, 9.480
  - use of, 9.375, 9.390-9.410
  - voir dire re admissibility, 9.540
- videotaping —
  - confessions, of, 9.460
  - criminal record, reference to —
    - during interrogation, 2.1465
  - disclosure of statement, 6.890, 10.93
  - editing, 2.1320, 2.1465
  - pilot project, 9.450
  - police interviews, 2.1460
  - recommendations re, 9.420-9.440

ADMISSIBILITY OF STATEMENTS

**Recording interrogation sessions** — *Continued*

videotaping — *Continued*

statement of accused, 2.1465, 6.890-6.900

viewing results of by jury, 9.535-9.537, 9.782

**Reid Technique**, 1.406-1.407.2

**Remedies.** *See* Exclusion of evidence

**Res gestae**, 10.1950-10.1995

**Retrial on same indictment**

s. 13 Charter, 10.1843

**Re-warning**, 2.1110-2.1130, 5.800, 5.830, 5.900-5.940, 5.1210-5.1220,  
5.1240-5.1250, 7.890

**Right to counsel at trial**, 5.1050-5.1070

**Right to counsel on arrest or detention**

adequate advice from counsel, 5.321

arrest or detention, meaning of. *See* Arrest or detention, meaning of  
arrival of counsel, no requirement to wait for, 5.1104

attempting to reach counsel, 5.270-5.286

Automatic Roadside Prohibition Regime (ARP) and, 5.56.2.1

belittling accused's lawyer by police, 5.520-5.525

breathalyzer demand, grounds for —

police not required to disclose, 5.947

broad interpretation of, 5.520

burden of establishing violation, 5.449

change in circumstances, 2.680

Charter text re, 5.10

common law, at, 5.10

contradictory evidence, 5.440

co-ordination test, request for, 5.57

“counsel”, meaning of, 5.10

counsel of choice, 5.442-5.449

customs searches, 5.62-5.70

delay in advising, 2.820

detention, meaning of. *See* Arrest or detention, meaning of  
diligence in exercising, 5.750-5.797

DNA analysis, request for sample for, 5.58

duty counsel, availability of, 2.610-2.650

entry of dwelling, 5.292

**Right to counsel on arrest or detention** — *Continued*

- entry re 911 call, right of, 5.297-5.298
- evidence of violation, 5.890-5.895
- exclusion of evidence where violation of, 5.740-5.770
- extraterritorial application of Charter, 7.1090-7.1130
- failure to exercise rights diligently, 5.760
- government obligation re providing counsel, 2.800-2.810
- guidelines re exercise of, 5.1180-5.1300
- holding for questioning, 5.240-5.260
- informational vs. implementational duties, 2.860
- informed of specific offences, Charter s. 10(a), 5.30.3
- informed without delay, 5.310-5.320
  - exigencies of investigation and, 5.310
  - U.K. provisions re, 5.320
- interval between caution and questioning, 5.940
- investigative detention, 5.237-5.249.11, 5.95, 5.96
  - common law search power during, 5.95, 5.96
- language difficulties, 2.1040-2.1090
- legal aid. *See* Legal aid
- 911 call, entry after, 5.297-5.298
- non-governmental person, detention by, 5.290
- obligation to explain, 5.400
- obstructive accused, 5.750
- opportunity to exercise, 5.340-5.440, 5.650-5.970
  - abuse of right, 5.420
  - components of, 5.340-5.360
  - counsel of choice, 5.442-5.448
  - credibility, 5.440
  - due diligence, 5.750-5.797
  - guidelines for police conduct, 5.410-5.415
  - increased seriousness of charges, 5.430-5.435, 7.950
  - no questioning after assertion of right, 5.350-5.380
  - onus on accused, 5.400
  - unsuccessful attempt to contact, 5.390
- passengers, questioning of, 5.90
- pedestrian identification, 5.80-5.87
- police duties re, 2.640, 5.810, 5.1290-5.1300
- police interference or advice, 2.527
- police officer's safety concerns, 5.209.1
- police searches, 5.210-5.247
- police station attendance, request re, 5.100, 5.208-5.209
- polygraph and, 9.150-9.160
- privacy requirement, 2.700-2.720, 5.530-5.635, 5.710, 5.880

**Right to counsel on arrest or detention** — *Continued*

privacy requirement — *Continued*

- airline passenger list, 5.649
- breath sample cases, 5.550
- briefcases, 5.648
- commencement of, 5.730
- computer, contents of, 5.649.7
- emergency situations, 5.635
- hand-held communications device, in, 5.649.5
- hospital, telephone calls in, 5.633
- inherent in right to privacy, 5.660
- laptop computer provided by school, in, 5.649.2
- locker in bus depot, 5.637
- origins of, 5.540
- overhearing by police, 5.590, 5.633, 5.635, 5.670-5.700
- request required of accused, 5.570-5.580, 5.720, 5.780
- sniffer dogs, 5.642
- utility records, digital recording ammeter, 5.649.1
- video files, 5.649.7
- visual privacy, 5.590-5.630
- waiver of, 5.560
- questioning after counsel consulted, 5.526.1, 5.980-5.1170
  - accused's choice, 5.1040, 5.1080, 5.1103, 5.1200, 5.1270
  - Charter, impact of, 5.1020
  - counsel directing police questioning, 5.1100
  - counsel interfering with investigation, 5.1190, 5.1260
  - counsel's presence at questioning, 5.526.1, 5.526.2, 5.1102
  - factors for consideration, 5.980
  - high onus on police, 5.1030-5.1040
  - post-investigative stage, as, 5.1110
  - pre-Charter jurisprudence, 5.990-5.1010, 5.1160
- questioning prior to exercise of, 5.710, 5.1090, 5.1120-5.1140, 5.1230
- refusal of request for, 2.760, 5.420
- reinforming accused of right, police duty re, 5.530.3, 5.800, 5.830, 5.900-5.940, 5.1210-5.1220, 5.1240-5.1250, 7.890
- remand in custody, on, 5.258.1
- repeat offender, 5.820
- re-warning, obligation re, 2.1120, 5.820
- right to have counsel throughout police interview, 5.526.1, 5.526.2
- roadside screening, 5.50-5.56
- Rowbotham order, 5.1175
- search as part of on-going investigation, 5.90
- self-incrimination, relation to, 5.375

**Right to counsel on arrest or detention** — *Continued*

- serious charges contemplated, where, 5.430-5.435
- statements not result of police questioning, 5.270-5.286
- subnormal accused, 5.800-5.810
- subsequent statements, tainting of, 5.323-5.335
- summary re, 5.1170
- toll-free number requirement, 2.610-2.650, 2.730-2.740
- unsuccessful attempt to contact counsel, 5.950-5.975
- vehicle stop, 5.250
- violation of right —
  - evidentiary requirement, 5.890
  - onus of establishing, 5.449
  - vicarious liability of government, 5.300
- voluntariness and, 1.220-1.230
- waiver of, 2.590-2.600, 2.660, 5.450-5.525, 5.840-5.870
  - “awareness of consequences” test, 5.450
  - Crown’s burden of establishing, 2.840
  - informed waiver, 5.483-5.487, 5.860-5.870, 7.950
  - injured accused, 5.460
  - intoxicated accused, 5.450
  - privacy, 5.560-5.635
  - refusal to contact counsel suggested by police, 5.510
  - understandable language requirement, 5.470-5.490
- warning, contents of. *See also* Warning
  - “against you”, avoidance of wording, 2.1100
  - counsel of choice and informational component, 2.855
  - generally, 2.580, 2.860-2.890
  - inducements, previously made, 2.900-2.910
  - language difficulty, where, 2.950-2.1060
  - lawyer not to act as interpreter, 2.1020-2.1040
  - operating mind test, 2.1040-2.1050, 2.1080
  - touching person after entry of dwelling, 5.292-5.296
  - understanding of right, ensuring, 5.800
- young persons, 3.120, 3.356, 5.1180
- Youth Criminal Justice Act, 3.440-3.490

**Right to remain silent**, *see also* Alibi, Self-incrimination, privilege against alibi disclosure rule and, 4.280

- appeal —
  - introducing different positions on, 4.360
  - raising issue for first time on, 4.340-4.355
- “at large”, while, 4.330
- comments of counsel re, 4.240-4.250

## ADMISSIBILITY OF STATEMENTS

### **Right to remain silent** — *Continued*

confession to cellmate acting as agent of State, 8.1200  
consciousness of guilt, silence not to be used as evidence of, 8.824  
debate re, 1.10-1.50  
importance of, 1.70  
incriminating conversations, in face of, 4.10-4.210  
    contemporaneous requirement, 4.70  
    express adoption requirement, 4.50-4.60  
    false statement, 4.110-4.120  
    incriminating written statement, 4.40  
    induced by hope of advantage, 4.140-4.180  
    natural reaction assumption, 4.80-4.100  
    offer to plead guilty, 4.130  
    reasonable opportunity to reply, 4.10-4.30  
off the record statements, 4.220-4.235  
operating mind requirement, 1.212  
persons in authority and, 2.210  
post-conviction stage, 4.285  
pretrial, 4.252-4.259  
recent possession, doctrine of and, 8.830  
SIU investigations, 4.323  
specific offences, right to be informed of, 5.30.3  
statutory requirement to provide information, where, 4.290-4.327  
trial, at, 2.460, 4.265-4.278  
    alibi context, 4.267  
    as distinct piece of evidence, 2.265  
    jury vs. judge, before, 4.266

### **Roadblocks**

conditions justifying stopping all cars, 5.254

### **Searches**

blood samples taken at hospital, 9.870  
customs, 5.62-5.68, 5.210-5.230  
hand-held communication devices, 5.649.5  
investigative detention and, 5.239, 5.90, 5.95  
on-going investigation and, 5.90  
pat-down search, 5.95-5.96  
school context, 5.45, 5.649.2  
unreasonable, 7.1140-7.1160, 9.580-9.620, 9.785-9.790, 10.652-10.654

### **Self-incrimination, privilege against**

prior inconsistent statements and —



**Self-incrimination, privilege against** — *Continued*prior inconsistent statements and — *Continued*

case law, 10.1780

cross-examination to impeach vs. to incriminate, 10.1790

perjury, exception for, 10.1843

statements inadmissible due to Charter violation, 10.1800-10.1820

right to remain silent and. *See* Right to remain silent**Self-serving evidence**

evidence from 911 call, 10.1995

evidence obtained on cross-examination of co-accused, 10.2020

judge's power re, 10.1870-10.1880

possession of recently stolen goods, 10.1900, 10.1920-10.1940

recent fabrication, 10.2000-10.2010

res gestae, statement as part of, 10.1950-10.1995, 10.2045

rule re use of by accused, 10.1850

statement as evidence for or against maker, 10.2040-10.2043

weight, use for, 10.2030

**Silence.** *See* Right to remain silent**Solicitor-client privilege**

actus reus of crime, 10.980

confidence requirement, 10.980

Crown law officer advice to police, 10.160-10.180, 10.920, 10.950, 10.951

draft documents, protection of, 10.925

entrapment and, 6.788, 10.1045

inadvertent disclosure, 10.614

innocence at stake, principle of, 10.930-10.950

law office searches, 10.1073-10.1077

s. 487 definition of "law office", 10.1077

legal advice requirement, 10.880

limitation on privilege, 10.880-10.890

plea negotiations, 10.1050-10.1060

psychiatric assessment, 10.900, 10.990

public safety exception, 10.990-10.1030

purpose of privilege, 10.870

seizure of notes written in prison to counsel, 10.910

seizure under s. 488.1 of Criminal Code, 10.1070

**Special Investigations Unit (SIU), 4.323****Spiritualist, 8.745**

## ADMISSIBILITY OF STATEMENTS

### **Spousal communications**

Canada Evidence Act provision re —

purpose of, 10.780

s. 4(1) not offending s. 15(1) of Charter, 10.821

s. 4(3), 10.810

s. 4(4), 10.820

s. 4(5), 10.850-10.860

text, 10.760

Federal Law Reform Commission report re, 10.770

intercepted communications: spouse and counsel, 10.826

intercepted private communication, 10.800-10.810, 10.824-10.826

marital reconciliation, statements during, 10.830-10.840

overheard communication, 10.790, 10.823

post-divorce/annulment statements, 10.850-10.860

**State of mind of accused.** *See* Voluntariness

### **Statements**

agreed

witness recanting, 10.1765.4-10.1765.6

alibi notice as, 1.405

broadcasting videotaped statement of accused, 6.890-6.900

caution, inadequate, 2.915

circumstances of taking formal statements, 2.1140

confronting suspect with exhibit, 2.940

conversations, recording of, 2.1210

criminal record of accused, referring to —

in videotaped interrogation, 2.1465

cross-examination during course of, 4.190

false. *See* False statements

form of, 2.1280-2.1480

editing, 2.1320, 2.1465

illegal detention and, 2.1350

narrative form, 2.1280-2.1290

oral statements, 2.1300

questions, type of, 2.1340

time taken for, 2.1330

videotaped, 2.1465-2.1480

functional equivalent of interrogation, 9.148

gestures as, 1.400

good faith factor, 11.140-11.160

illegal detention and, 2.1350

Income Tax Act, under, 10.2120-10.2220

**Statements** — *Continued*

incomplete statements, admissibility of, 6.810  
 incriminating vs. exculpatory, 1.340  
 inducement, 2.1380, 4.140-4.180  
     spiritual, 2.1420-2.1425  
 intimidation, 2.1430  
 lengthy detention, 2.1180-2.1185, 2.1330  
 off-the-record statements, 4.220-4.235  
 overheard statements, non-contextual, 6.820-6.825  
 police role in administration of justice, 11.30  
 preliminary questions by police, 11.10-11.20  
 prior inconsistent. *See* Prior inconsistent statements  
 protected statements —  
     Criminal Code, provision re, 2.105-2.130  
     under s. 672.21 of Criminal Code, 10.2530-10.2535  
 quality of counsel's advice, no requirement to ensure, 2.923  
 re-enactment, 2.1468  
 reading back by accused, 4.200  
 recollection of past conversation with accused, 2.1220  
 recording officer and witness, role of, 2.1160-2.1210  
 reform proposals, 11.40-11.130  
 signing by accused, 4.210  
 stage of investigation, 2.1400-2.1440  
 subsequent statements, tainting of, 5.323-5.337  
 tainted statement, temporal connection, 7.605  
 taking, 2.10-2.1460  
 warning, inadequate, 2.915  
 weight and admissibility, 6.800  
 witness statement. *See* Prior inconsistent statements  
 written form, 2.1140  
 wrong to edit statement, 6.386-6.387

**Stay of proceedings**, 10.200

arbitrary detention or imprisonment, 10.228  
 costs awarded against Crown for non-disclosure, 10.240-10.245  
 destruction of evidence, and, 10.227.5  
 entitlement to have issue litigated, 10.230  
 non-disclosure, for, 10.200-10.216  
 police misconduct, 10.227, 10.227.2  
 police behaviour, 10.220-10.225  
 police erasing tapes, 10.227.2  
 trial not within reasonable time, 10.227.4

## ADMISSIBILITY OF STATEMENTS

### **Surveillance**

intercepted communications, 9.680-9.750  
participant surveillance, Charter issues and, 9.580-9.680  
police-installed probes, 9.775  
residence, of, 7.1030

**Tape recording.** *See* Recording interrogation sessions

### **Telewarrant**

impracticality requirement, 5.649.7

**Threats and promises,** 1.265-1.330, 9.345

**Tricks and stratagems.** *See* Voluntariness

**Undercover police,** 2.200, 2.370, 8.1120-8.1130, 9.700  
person in authority, as, 2.370-2.398  
publication bans on operational methods re confessions, 6.830

### **Vehicles**

expectation of privacy in, 5.257.05  
random stops of vehicles, 5.56.3  
record of previous vehicle stop by police, 10.158

**Video tapes.** *See also* Youth Criminal Justice Act, use of video tape  
broadcasting accused's videotaped statement, 9.485  
face of accused not visible, 9.465  
made within a reasonable time (s. 715.1 Code), 9.575  
playing part of complainant video at trial, 9.532  
quality of videotape, 9.465  
TV/Radio Broadcasting of accused's statement, 9.485

### **Videotaping of statements**

children's statements, 3.400-3.430  
generally. *See* Recording interrogation sessions

### **Voir dire**

absence of, 6.115  
abuse of process and, 6.770  
allegation of recent fabrication, 6.370  
appeal against ruling on, right of, 6.790  
bias on part of judge, apprehended, 6.700-6.781  
    remedies, 6.760-6.781  
burdens of proof, 2.410

**Voir dire** — *Continued*

- Charter protection against self-incrimination, 6.630-6.699, 10.1780-10.1843
  - perjury trial, exception for, 6.695, 10.1843
- co-accused, joint trial of, 6.600
- confessions, reliance on only one of two, 6.360
- consciousness of guilt. *See* Consciousness of guilt
- contested evidence, introduction of other, 6.380
- cross-examination —
  - accused, of, 6.460
  - co-accused, of, 6.600
  - maker of statement, of, 6.600-6.699
- described, 6.20
- evidence other than statements, 6.380
- exceptions to requirement for —
  - misleading statement in public mischief charge, 6.40
  - res gestae statements, 6.90
  - statement of refusal to take blood test, 6.30
  - statements made prior to commission of offence, 6.60-6.80
  - statements under Police Services Act, 6.50
- exculpatory post-arrest statements, 6.375
- inadmissible statements not to be used at trial, 6.585, 6.586
- ineffective assistance of counsel, 6.577
- intervention by judge, 6.700-6.790
- introducing statement, timing of, 6.270-6.325
- investigatory vs. arrest statement, distinction between, 6.170
- judge —
  - control of proceedings by, 6.700-6.780
  - reasons —,
    - duty to give, 6.782-6.787.5
    - lack of, 6.590
  - role of, 6.115, 10.1460-10.1470
  - ruling not binding another judge, 6.605-6.620
  - sitting alone, role of, 6.500-6.530
- jury —
  - assessment of authenticity of statement by, 6.800
  - charge to re waiver, 6.260
  - exclusion of, 6.495
  - proof of admitted confession, 6.540
  - “obviously voluntary” test, 6.170
  - order of introduction of statements, 6.350
  - police conduct investigations and, 10.2350
  - post-offence conduct. *See* Consciousness of guilt

## ADMISSIBILITY OF STATEMENTS

### **Voir dire** — *Continued*

- preliminary inquiry, at, 6.23, 6.493
  - admissibility ruling not binding at trial, 6.493.1
- purpose of, 6.10, 6.90
- random virtue testing, 6.781.1
- self-incrimination protection, awareness of, 6.696
- summary rulings with reasons to follow, 6.587
- testifying at, 6.330-6.480
  - accused, by, 6.460-6.480
  - introduction of statements in chronological order, 6.350
  - police responsibility, 6.330-6.340
  - witnesses required to be called, 6.390-6.450
- testimony from, use at trial, 6.550-6.580
- uniformed policeman, whether “person in authority”, 6.140-6.160
- victim’s motive to fabricate, asking accused about, 6.492.4
- voluntariness —
  - necessity of voir dire to determine, 6.100-6.200
  - standard of proof, 6.494
- waiver by counsel, 6.210-6.265
  - charge to jury and, 6.260
  - judge’s ultimate duty re, 6.265
  - proper form of, 6.250
- weight and admissibility, 6.800
- witnesses —
  - correctional authorities, 6.417
  - Crown witness at defence’s disposal, 6.420
  - non-absolute rule re, 6.400
  - peripheral, 6.430
  - production of, 6.390

### **Voluntariness**

- burden of proof, 8.120
- Canada Evidence Act protection, 8.80
- co-accused, cross-examination of accused by, 8.10
- compulsion of statute. *See* Compulsion of statute, statements by
- custodial delay, 8.30-8.50
- defined, 1.110-1.261
- delusions, and, 8.370
- exaggerating evidence, 8.335
- English Judges’ Rules, 1.410-1.450
- false admission of crime not committed, 8.90
- hypnosis and narcoanalysis, 1.120-1.160, 8.150, 8.1240-8.1260
  - American cases, 8.1250, 8.1340-8.1360

**Voluntariness** — *Continued*hypnosis and narcoanalysis — *Continued*

- consensual vs. unconsented, 8.1300
- interrogation techniques, unfair, 8.1260-8.1290
- paucity of caselaw, 8.1240
- reliability problem, 8.1320-8.1330
- voluntariness, 8.1280-8.1290, 8.1310

## Ibrahim rule, 1.110-1.120

## instruction of counsel, mental ability and, 8.430

## investigative custody, nature of, 8.30

## jury not concerned with, 8.60

## mental condition and ability to instruct counsel, 8.430

## onus on Crown to show, 8.140, 8.160

## oppression and, 1.230-1.260, 8.280-8.335, 8.1130

## physical gestures, 8.335

## question of fact for judge, 8.20, 8.60

## reasonable doubt burden of proof, 8.160

## right to counsel and, 1.220-1.230

## skin search, effect of, 8.280-8.330

## standard of proof, 6.494

## state of mind of accused, 1.170-1.190, 8.170-8.510

## awareness of consequences test, 8.450

## drug consumption, 8.340-8.360

## insanity or mental abnormality, 8.370-8.380, 8.460

## intimidation or oppression, 8.250-8.335

## intoxication, 8.170-8.240, 8.350

## operating mind test, 8.390-8.430, 8.450-8.510

## voir dire within voir dire, 8.170

## stratagems or tricks, 8.520-8.1230

## judicial discretion and, 8.640

## post-Charter cases, 8.730-8.1230

## abuse of process and, 8.1220

## actively eliciting admissions, 8.750-8.829

## agent of State —

## Charter protection for statements to, 8.970

## ruse practised by manager as, 8.1210

## security guards as, 8.1085-8.1087

## test re, 8.1010-8.1030, 8.885, 8.1140

## befriending accused to obtain admission, 8.910

## casual remarks to off-duty police, 8.1110

## co-accused, incriminating statement by, 8.1230

## community shock test, 8.1120

## confession to psychiatrist under Criminal Code, s. 537, 8.1140

ADMISSIBILITY OF STATEMENTS

**Voluntariness** — *Continued*

stratagems or tricks — *Continued*

post-Charter cases — *Continued*

Criminal Code curative provision, 8.1040  
girlfriend, recorded conversation with, 8.1100  
good faith of police, 8.1125  
inmates obtaining information for police favours, 8.950  
jailhouse confessions, 8.1170-8.1190  
lawful vs. dirty tricks, 8.740, 8.1210  
observation vs. elicitation, 8.810-8.890, 8.990-8.1000  
police artifice, 8.850  
police plants in accused's cell, 8.750-8.990  
post-arrest right to silence, 8.750-8.820  
psychiatric evidence, 8.1140-8.1160  
sex, use of, 8.910-8.940  
sleeping accused, 8.1050-8.1060  
subjective belief of accused, 8.1130  
subjective nature of exclusion tests, 8.730  
subterfuge, 8.1170  
tricks vs. dirty tricks, 8.1220  
truthfulness of accused's statement, 8.1080  
undercover police, statements to, 8.1120-8.1130  
voluntary informants, 8.950-8.960  
volunteered information, 8.1100-8.1110

pre-Charter cases, 8.520-8.720

accomplices, statements of, 8.650-8.680  
deliberate lying to induce confession, 8.530, 8.710  
false affidavit, 8.560  
impersonations, 8.570-8.600, 8.620-8.640  
inducement, 8.605  
lie re presence of witness at scene of offence, 8.610  
seriousness of charge trick, 8.520  
showing accused evidence, 8.650-8.700  
untrue suggestion, 8.550  
voluntariness test, 8.540

testimony of accused at voir dire —

credibility, questions going to, 8.110-8.120  
permitted questions, 8.100-8.110

threats, inducements and promises, 1.265-1.330

truthfulness, determination of, 8.30

“voluntary”, meaning of, 8.140

weight vs. admissibility, 8.210



**Waiver**

right to counsel. *See* Right to counsel on arrest or detention  
 voir dire. *See* Voir dire  
 young offenders and, 3.200, 3.310

**Waiver of protection under s. 672.21 of Criminal Code, 10.2540****Warning**

arrest or detention and, 2.430-2.490  
 Charter rights and, 2.450-2.480, 2.510-2.555  
 confession by person with operating mind, 2.1070-2.1105  
 contents of, 2.560  
 demand or direction, 2.490  
 exaggerating evidence, 2.1155  
 English rule, 7.250  
 foreign nationals, re, 2.930  
 inadequate, 2.915  
 informational component, 2.850-2.855  
 investigation period, during, 2.500  
 language difficulties, 2.950-2.1100  
 nature of, 2.560-2.570  
 oppression and, 2.1145  
 physical contact, 2.1145  
 police assistance re choices, 2.920, 2.923  
 printed form of, 2.570  
 proximity to accused, 2.1145  
 purpose of, 2.430  
 quality of counsel's advice, no requirement to ensure, 2.923  
 re-warning, obligation re, 2.1110-2.1130, 5.800, 5.830, 5.900-5.940,  
 5.1210-5.1220, 5.1240-5.1250, 7.890  
 right to counsel and. *See* Right to counsel  
 suggested forms of, 2.860, 2.1150  
 suspicion vs. accusation, 2.500  
 test for requirement, 2.430  
 voluntarily coming to police station, 2.510

**Witnesses**

adverse. *See* Prior inconsistent statements  
 hostile. *See* adverse, *supra*  
 recanting agreed statement implicating accused, 10.1765.4-10.1765.6  
 voir dire, required. *See* Voir dire  
 witness statement. *See* Prior inconsistent statements

## ADMISSIBILITY OF STATEMENTS

**Young offenders.** *See* Young persons, statements by

### **Young persons, statements by**

Charter, effect of, 3.80, 3.356

common law, at, 3.40-3.110

compulsion, 3.50

“guidelines”, conformity with, 3.40

person in authority, 3.70

presence of parent, 3.80

voluntariness, test of, 3.60

videotaped statement of child, 3.400-3.430

“detention” and, 3.355

Young Offenders Act provisions re, 3.10-3.35

ambulance attendant, statements to, 3.195

Criminal Code, where conflict with, 3.300, 3.357

effect of, 3.130

explanation of rights, 3.210-3.260, 3.355, 3.356

false statements, 3.270

mandatory nature of, 3.110

misapprehension of age by police, 3.340

opportunity to consult with parent, 3.290

“person in authority”, meaning of, 3.190-3.195

problematic aspects, 3.90-3.100, 3.280

“spontaneous”, meaning of, 3.360-3.375

“statement”, meaning of, 3.380-3.390

subsequent statements, tainting and, 3.348

transfer to adult court —

    requirement to mention possibility, 3.330, 3.350

voluntariness, 3.245, 3.330

waiver, 3.200, 3.310, 3.345, 3.346

“young person”, meaning of, 3.150-3.180

Youth Criminal Justice Act, 3.440-3.490

burden of proof, 3.500

waiver, 3.500

### **Youth Criminal Justice Act**

curative proviso of s. 146(6), Y.C.J.A., 3.600

use of video tape, s. 715.1, Criminal Code, 3.431