Index

BORIGINAL PEOPLES	ABORIGINAL PEOPLES—Cont'd
Changes, substantive	Changes, substantive—Cont'd
generally, 6:8 to 6:54	recent developments in law—Cont'd
recent developments in law	criminal law—Cont'd
generally, 6:11 to 6:46	sentencing circles—Cont'd
criminal law	principles employed in use of,
generally, 6:12 to 6:46	6:45
adult diversion, 6:46	Aboriginal ancestry, significance of, 6:45
Criminal Code, s. 718.2(e)	participation of complainant,
generally, 6:12 to 6:44	6:45
decision in R. v. Gladue	Royal Commission on Aboriginal
generally, 6:12 to 6:44	Peoples, Report of
guidelines for sentencing	generally, 6:9 , 6:10
judges, 6:12 to 6:44	domestic conflict
overrepresentation of	generally, 6:10
Aboriginals in penal	community action, voluntary, 6:10
institutions, 6:12 to 6:44	public denunciation and inclusion,
systemic and background	6:10
factors, 6:12 to 6:44	safety, issue of, 6:10
types of appropriate sentenc-	significance of recommendations,
ing procedures and sanc-	6:10
tions, 6:12 to 6:44	zero tolerance, 6:10
decision in R. v. Hunter	overview, 6:9
generally, 6:12 to 6:44	service delivery
funding of treatment program	generally, 6:47 to 6:54
discontinued, 6:12 to 6:44	community initiatives
particular circumstances of	generally, 6:51 to 6:54
offender and com-	agencies, 6:53 elders, 6:54
munity, 6:12 to 6:44	shelters, 6:52
decision in R. v. Wells	legal service delivery
generally, 6:12 to 6:44	generally, 6:47 to 6:50
principles of restorative	Aboriginal Courts
justice and factual cir-	generally, 6:48
cumstances, 6:12 to	advantages, 6:48
6:44	non-Aboriginal court, difficul-
three-part inquiry by sentenc-	ties inherent in, 6:48
ing inquiry, 6:12 to 6:44	witness preparation program,
domestic conflict, 6:12 to 6:44	6:48
particular circumstances of	Aboriginal court workers, 6:49
Aboriginal offender, 6:12	law enforcement, 6:50
to 6:44	indigenization programs, 6:50
sentencing circles	tribal police forces in non-urban
generally, 6:45	reserves, 6:50

ABORIGINAL PEOPLES—Cont'd	ABORIGINAL PEOPLES—Cont'd
Framework, current	Framework, current—Cont'd
generally, 6:2 to 6:7	legal system in Canada—Cont'd
constitutional overview, 6:2 to 6:7	proposals for reform—Cont'd
post-Confederation	Law ReCommission Report, 6:7
generally, 6:3 to 6:5	special status of Aboriginal
Constitution Act, 1867, 6:3	peoples, recognition of,
constitutional amendments, 1982	6:7
generally, 6:4	Royal Commission on Aboriginal Peoples, Report of, 6:7
Charter of Rights and Freedoms	legislation
Aboriginal self-government,	generally, 6:6
6:4	Indian Act, 6:6
protection of existing rights	band council, election of, 6:6
(s. 25), 6:4	discriminatory regime for women,
proposals for constitutional	6:6
amendment, 6:5	provincial legislation, 6:6
Meech Lake Accord and	court-ordered protection, 6:2 to
"distinct society," 6:5	6:7
pre-Confederation, 6:2	Metis Betterment Act, 6:6
The Royal Proclamation, 1763, 6:2, 6:7	Overview
legal system in Canada	generally, 6:1
generally, 6:7	"Aboriginal peoples" defined, 6:1
Aboriginal title, 6:7	Aboriginal women, abuse of, 6:1
crisis of confidence, reasons for	_
	criminality, impact on, 6:1
generally, 6:7	physical violence, 6:1
Aboriginal witnesses and lack of eye contact, 6:7	psychological battering, 6:1
formal structure of court room, 6:7	Royal Commission on Aboriginal
	Peoples, Report of
language differences, 6:7	generally, 6:1
principles guiding Aboriginal attitudes, 6:7	denial of family violence, 6:1
Crown-Aboriginal fiduciary relation-	general silence in communities, 6:1
ship, 6:7	***
overrepresentation of Aboriginals in	under-reporting, 6:1 social problems, 6:1
Canadian prisons	
generally, 6:7	funding limited for programs, 6:1
causes of overrepresentation, 6:7	isolation and remoteness, 6:1
Royal Commission on Aboriginal	residential schools, 6:1
Peoples, Report of, 6:7	ABUSE GENERALLY
overincarceration, reasons for,	Cycle of abuse, APP 1A § 1A:4, 1:20
6:7	Defined, 1:2
proposals for reform	Duluth Domestic Abuse Intervention Proj-
generally, 6:7	ect Model Wheel, APP 1A § 1A:1
Cawsey Report, 6:7	Elders, of, 10:1 to 10:4
Aboriginal justices of the peace,	Questionnaire, APP 1A § 1A:2, 1:20, 9:3
appointing, 6:7	
Aboriginal justice systems,	ABUSE OF ELDERS
developing, 6:7	See ELDER ABUSE AND NEGLECT

ALLEGATIONS AGAINST PRACTITIONERS	BAIL
Generally, 9:7.70	See JUDICIAL INTERIM RELEASE
•	BATTERED WOMAN'S SYNDROME
ALTERNATIVE DISPUTE	Generally, 1:1, 1:20, 4:37 to 4:54
RESOLUTION	Criminal Code, s. 34, 4:45 to 4:54
Generally, 9:8	Criticism of, 4:49 to 4:54
Applied to domestic conflict, 9:10	Expert evidence, 4:49 to 4:54
Appropriateness in domestic conflict cases, 9:10	Four considerations, 4:49 to 4:54
Collaborative family law, 9:8	Lavallee decision, 4:49 to 4:54
Duties of mediator, 9:10, 9:12	Learned helplessness, 4:49 to 4:54 Non-restrictive approach, encouraging,
Limitations of ADR process, 9:11	4:49 to 4:54
Mandatory mediation, 9:8, 9:15	Reluctance to disclose abusive relation-
Mediator training, 9:12	ship, 4:49 to 4:54
Risk of harm in domestic conflict cases,	Self-defence review, 4:49 to 4:54
9:10	Social science writings, reliance on, 4:49
Safety planning, 9:14	to 4:54
Screening for domestic violence, 9:10 , 9:13	CANADIAN POLICE INFORMATION COMPUTER (CPIC)
ASSAULT AND BATTERY	Investigative process, 4:1
See also CIVIL RECOVERY AND DOMESTIC CONFLICT, torts, type	Registration of restraining orders on, 2:104
of	CAUSAL THEORIES
Common offences pursuant to Criminal	Behavioural explanations, 1:12
Code	bad temper or substance abuse, 1:12
generally, 4:8 to 4:36	mental illness, 1:12
assault, 4:32	Structural explanations, 1:12
assault causing bodily harm, 4:32 Defences	male-dominated hierarchy, 1:12
generally, 4:37 to 4:60	CHARTER OF RIGHTS AND
self-defence, 4:45 to 4:54	FREEDOMS
battered woman's syndrome, 4:49 to 4:54	Aboriginal peoples, 6:4 Aboriginal self-government, 6:4
release pending appeal, 4:7	protection of existing rights (s. 25), 6:4
Trespass against person	Court-ordered protection, ex parte
generally, 3:3 to 3:37	application for, APP A2, 2:5
assault, 3:6 to 3:9	review process, 2:5
battery, 3:10 to 3:32	right to life, liberty and security, right
elders, of, 10:6	to due process, 2:5
exemplary damages, 3:10 to 3:32	CHILDREN AND DOMESTIC
intentional infliction of nervous shock,	CONFLICT
3:33	Generally, 1:3 to 1:11
post-traumatic stress disorder, 3:10 to 3:32	child protection services, 1:3 to 1:11 impact of domestic conflict on children
sexual assault, 3:35	generally, 5:1 to 5:9
sexual abuse of children, 3:35	awareness of domestic conflict, 5:1
venereal disease, tortious infliction of,	to 5:9
3:36	physical repercussions, 5:1 to 5:9
wrongful death, 3:34	type of harm, 5:1 to 5:9

CHILDREN AND DOMESTIC	CHILDREN AND DOMESTIC
CONFLICT—Cont'd	CONFLICT—Cont'd
Generally, 1:3 to 1:11—Cont'd	Custody and access: practical application,
impact of domestic conflict on children	5:16 to 5:108
—Cont'd	access, 5:90 to 5:108
ways in which harmed, 5:1 to 5:9	risk of harm to custodial parent and
Child welfare duties, 5:186	child, 5:90 to 5:108
Custody and access: legal framework	during transfers of access, 5:90 to
generally, 5:10 to 5:15	5:108
best interests of child	specified access, 5:106
generally, 5:11	supervised access
American legislation, 5:11	generally, 5:107
domestic conflict as factor, 5:11	based on certain facts, 5:107
Canadian case law, 5:11	disadvantages to supervision
abusive parent denied custody,	generally, 5:107
5:11	expense limiting availability,
Canadian legislation, 5:11	5:107
absence of directive concerning domestic conflict, 5:11	false picture of relationship with
Divorce Act, APP A4 , 5:11	abusive parent, 5:107
English Court of Appeal	lack of training of professional
generally, 5:11	access supervisors, 5:107
abusive fathers and access applica-	supervised access centres, 5:108
tions, 5:11	suspension of access, 5:91 to 5:105
contemporary framework for	custody
lower courts, 5:12	generally, 5:17 to 5:89
effect of domestic violence on	joint custody
applications, 5:11	generally, (b), 5:11, 5:18 to 5:25
change in circumstances and court pro-	American legislation prohibiting,
cess	5:11, 5:18 to 5:25
generally, 5:14	exposure to domestic conflict,
case management to minimize	5:18 to 5:25
repeated applications, use of,	shared parenting incompatible
5:14	with relationship marred by
child used as battlefield of repeated	domestic conflict, 5:18 to
applications, 5:14 custody issues used to control	5:25
intimidated partner, 5:14	Special Joint Committee on
Divorce Act, 5:14	Custody recommendations,
variation applications as mechanism	5:18 to 5:25
to harass abused parent, 5:14	trend favouring joint custody,
conduct of parties	5:12, 5:18 to 5:25
generally, 5:13	parallel parenting, 5:89
minimization of abusive conduct by	shared custody, 5:77 to 5:88
abusers, 5:13	sole custody, 5:26 to 5:76
past abusive conduct and parenting	•
abilities, 5:13	CIVIL LAW COURT-ORDERED
timing of disclosure of abuse allega-	PROTECTION
tions, 5:13	See also LAW AND DOMESTIC
maximum contact, presumption of,	CONFLICT GENERALLY and
5:12	CRIMINAL LAW AND DOMES- TIC CONFLICT, Protective orders
"friendly parent rule" vs. "best interest of the child test." 5:12	Aboriginal people 6.6

CIVIL LAW COURT-ORDERED PROTECTION—Cont'd	CIVIL LAW COURT-ORDERED
Charter of Rights and Freedoms	PROTECTION—Cont'd Legislation—Cont'd
generally, APP A2, 2:5	provincial legislation—Cont'd
division of powers, APP A1, 2:4	Northern Canada—Cont'd
constitutionality of court-ordered	Yukon
protection, 2:4	Family Violence Prevention
ex parte application for court-ordered	Act, 2:88 to 2:93
protection	emergency intervention
generally, 2:5	order, 2:88 to 2:93
review process, 2:5	Victim's Assistance Order,
right to life, liberty and security,	2:88 to 2:93
2:5	Ontario
right to due process, 2:5	generally, 2:66 to 2:75 Domestic Violence Protection Act,
Constitutional framework, 2:3 to 2:5	2000, APP J1, 2:66 to 2:75
Introduction, 2:1	emergency intervention order,
Legislation	2:66 to 2:75
generally, 2:6 to 2:96	intervention order, 2:66 to 2:75
federal legislation, 2:94 to 2:96	Quebec, 2:76
Divorce Act, 2:94 to 2:96	Saskatchewan
provincial legislation	generally, 2:27 to 2:33
generally, 2:6 to 2:93	Victims of Domestic Violence Act,
Alberta, 2:22 to 2:26	APP L1, 2:27 to 2:33
Protection Against Family	ex parte application, 2:27 to 2:33
Violence Act, APP B1, 2:22	question of seriousness or
to 2:33	urgency, 2:27 to 2:33
Atlantic Canada, 2:77 to 2:87	Legislative enactments
Victims of Family Violence Act, APP K1, 2:77 to 2:87	generally, 2:2 to 2:96
· · · · · · · · · · · · · · · · · · ·	overview, 2:2
British Columbia, 2:7 to 2:21	comparative table of legislative rem-
Family Relations Act, APP C1 , 2:7 to 2:21	edies, APP 2A § 2A:1, 2:2
Manitoba	court-ordered protection, 2:2
generally, 2:34 to 2:65	broad base of support, 2:2
Domestic Violence and Stalking	rapid service delivery, 2:2
Act, APP D1, 2:34 to 2:65	remedies under one umbrella stat- ute, 2:2
Domestic Violence and Stalking	Other types of court-ordered protection
Regulation, APP D2	generally, 2:97 to 2:112
stalking, tort of, 2:34 to 2:75	exclusive home possession orders,
Northern Canada	2:109
generally, 2:88 to 2:93	restraining orders, 2:97 to 2:108
Northwest Territories	generally, 2:97 to 2:108
Protection against Family	enforcement, 2:105 to 2:108
Violence Act, 2:88 to 2:93	civil contempt of court applica-
distinct from Alberta legisla-	tions, 2:108
tion, 2:88 to 2:93	Criminal Code, s. 127 of, 2:107
emergency protection order,	warrantless arrest, 2:106
2:88 to 2:93	evidence required, 2:100 to 2:102
protection order 2.88 to 2.93	accault APP 2A 8 2A · 2

CIVIL LAW COURT-ORDERED	CIVIL RECOVERY AND DOMESTIC
PROTECTION—Cont'd	CONFLICT—Cont'd
Other types of court-ordered protection	Elder abuse, 10:7
—Cont'd	legislative response, 10:8
restraining orders, 2:97 to 2:108	adult protection, 10:11
—Cont'd	dependent adults, 10:10
evidence required, 2:100 to 2:102	domestic conflict, 10:9
—Cont'd	other, 10:12
harassment/stalking, APP 2A	Floodgates, 3:56
§ 2A:3	
past and present conduct, 2:100 to	Joinder of actions, 3:54
2:102	Limitation periods, APP 3A § 3A:1, 3:52
reasonable apprehension of fear	Other considerations
for life or safety, 2:100 to	generally, 3:51 to 3:58
2:102	awards of damages
jurisdiction, 2:98	generally, 3:55
· ·	exemplary or punitive damages, 3:55
order, form of, APP 2A § 2A:4,	periodic payments, 3:55
2:103	quantum of damages, 3:55
parties, 2:99	table of damage awards, APP 3A
registration on CPIC, 2:104	§ 3A:2
information submitted with order,	criminal compensation recovery
APP 2A § 2A:5, 2:104	legislation, 3:57, 10:6
CHAIL DECOMEDIA AND DOMESTIC	Procedural considerations
CIVIL RECOVERY AND DOMESTIC	
CONFLICT	generally, 3:51 to 3:58
Causes of action against third parties	bankruptcy, impact of, 3:51 to 3:58
generally, 3:59 to 3:64	divorce or tort or both, 3:51 to 3:58
law enforcement agencies	limitation period, 3:51 to 3:58
generally, 3:60 to 3:63	nature of recovery, 3:51 to 3:58
American case law, 3:60 to 3:63	Res judicata and issue estoppel, 3:53
,	Torts, interspousal, 3:2 to 3:58
failure to protect civil rights, 3:60 to 3:63	historically, 3:2
***************************************	doctrine of unity, 3:2
Canadian case law, 3:60 to 3:63	Torts, types of
duty of care to protect, 3:60 to	generally, 3:3 to 3:50
3:63	
failure to warn women, 3:60 to	harassment, 3:38, 3:39
3:63	conduct considered actionable, 3:38,
Lavoie Commission Report, 3:60 to	3:39
3:63	Criminal Code, s. 264, 3:38, 3:39
background events, 3:60 to 3:63	other types of tortious conduct, 3:40 to
cycle of abuse, 1:20 , 3:60 to 3:63	3:45
recommendations, 3:60 to 3:63	denial of access, 3:40 to 3:45
others, 3:64	fraud, 3:40 to 3:45
domestic conflict service providers,	tortious interference in custodial
3:64	relations, 3:40 to 3:45
claim by plaintiff or defendant,	trespass against person, 3:3 to 3:37
3:64	assault, 3:6 to 3:9
	battery, 3:10 to 3:32
Civil recovery generally, 3:1	· ·
application of tort law to domestic	exemplary damages, 3:10 to 3:32
conflict, 3:1	post-traumatic stress disorder,
advantages and disadvantages, 3:1	3:10 to 3:32

CIVIL RECOVERY AND DOMESTIC	CRIMINAL LAW AND DOMESTIC
CONFLICT—Cont'd	CONFLICT—Cont'd
Torts, types of—Cont'd	Common offences pursuant to Criminal
trespass against person, 3:3 to 3:37	Code—Cont'd
—Cont'd	evidentiary considerations—Cont'd
intentional infliction of nervous	hearsay evidence—Cont'd
shock, 3:33	expert witnesses, 4:12
sexual assault, 3:35	lay witnesses, 4:11
sexual abuse of children, 3:35	witnesses, types of, 4:24 to 4:26
venereal disease, tortious infliction	children, 4:26
of, 3:36	spouses, 4:25
wrongful death, 3:34	forcible confinement, 10:2
COLLABORATIVE FAMILY LAW	forgery, 10:2
Generally, 9:8	harassment: stalking
COLIDT ODDEDED DDOTECTION	generally, 4:34
COURT-ORDERED PROTECTION	American experience, 4:34
See CIVIL LAW COURT-ORDERED PROTECTION	Criminal Code, s. 264, 4:34
	four categories of prohibited acts
CRIMINAL LAW AND DOMESTIC	4:34
CONFLICT	indictment or summary convic-
See also LAW AND DOMESTIC	tion, 4:34
CONFLICT GENERALLY and	problematic in gathering evidence,
SENTENCING	4:34
Common offences pursuant to Criminal	type of conduct, 4:34
Code	types of harassers, 4:34
generally, APP A3, 4:8 to 4:36	homicide, 4:35
assault, 4:32	attempted murder, 4:35
break and enter with intent to commit	firearms, 4:35:30 to 4:35:70
an indictable offence, 4:36	domestic violence, 4:35:50
evidentiary considerations	international comparisons,
generally, 4:8 to 4:31	4:35:70
after-the-fact conduct, 4:13 to 4:23	type used in homicide, 4:35:30
break & enter, 4:36	manslaughter, 4:35
credibility of witnesses, 4:8 to 4:31	murder, 4:35
disclosure	post-offence conduct, 4:13 to 4:23
generally, 4:8 to 4:31	release pending appeal, 4:7
Crown obligation: R. v. Stinchcombe, 4:8 to 4:31	requirement to provide necessities of
privacy issues, and, 4:8 to 4:31	life, 10:2
records, medical and therapeutic,	sexual assault, 10:2
4:8 to 4:31	similar fact evidence, 4:9
remedies for failure to disclosure,	theft, 10:2
4:8 to 4:31	· · · · · · · · · · · · · · · · · · ·
third party records	threats, utter/convey, 4:33, 10:2
procedural mechanism under	witnesses
Criminal Code, 4:8 to 4:31	children as, 4:26
two-part mechanism for produc-	spouse as, 4:25
tion, R. v. O'Connor, 4:8	Defences, advanced
to 4:31	generally, 4:37 to 4:60
hearsay evidence	automatism
generally, 4:8 to 4:31	generally, 4:37 to 4:44, 4:56

RIMINAL LAW AND DOMESTIC CONFLICT—Cont'd	CRIMINAL LAW AND DOMESTIC CONFLICT—Cont'd
Defences, advanced—Cont'd	Introduction—Cont'd
automatism—Cont'd	criminal law process, 4:1
battered woman's syndrome, 4:37 to	advantages, 4:1
4:44	court's ability to levy sanctions,
complete defence, 4:56	4:1
domestic conflict, and, 4:56	eliminating need for complainant
evidence required: R. v. Stone, 4:56	to give evidence, 4:1
explanation, legally acceptable, 4:37 to 4:44	removal of perpetrator or complainant, 4:1
mental vs. non-mental automatism, 4:56	appearance notice, APP 4A § 4A:1
non-mental automatism defined:	promise to appear, APP 4A § 4A:2
R. v. Rabey, 4:56	recent developments, 4:1
PMS defence, 4:37 to 4:44	countercharging, 4:1
policy considerations, 4:56	mandatory charging policies, 4:1
two-step test, 4:56	"no drop" policies, 4:1
provocation	investigative process, importance of,
generally, 4:37 to 4:44, 4:55	4:1
commentary unfavourable, 4:55	forensic tools such as access to
"defence of anger," 4:55	CPIC, 4:1
charge to jury impugned, 4:55	foundation for successful prosecu-
defence problematic in domestic	tion, 4:1
conflict, 4:55	Protective orders pursuant to Criminal Code
"double benefit," 4:55	generally, 4:2 to 4:7
objective elements, 4:55	compared to civil law court-ordered
onus on Crown to prove there was no	protection, 4:2
provocation, 4:55	advantages of protective orders, 4:2
reduction from murder to man-	cost borne by society, 4:2
slaughter, 4:55	enforcement of orders, 4:2
subjective element, 4:55 self-defence	putting into place quickly, 4:2
generally, 4:37 to 4:54	disadvantages of protective orders,
battered woman's syndrome	4:2
generally, 4:37 to 4:44, 4:49 to	types of orders
4:54	generally, 4:3 to 4:7
criticism of, 4:49 to 4:54	judicial interim release: no contact
expert evidence, 4:49 to 4:54	conditions, 4:3
four considerations, 4:49 to 4:54	recognizance, APP 4A § 4A:6, 4:3
Lavallee decision, 4:49 to 4:54	recognizance entered into before
learned helplessness, 4:49 to 4:54	officer in charge, APP 4A
non-restrictive approach,	§ 4A:3, 4:3
encouraging, 4:49 to 4:54	undertaking to justice or judge,
reluctance to disclose abusive rela-	APP 4A § 4A:5, 4:3
tionship, 4:49 to 4:54	undertaking to officer in charge,
self-defence review, 4:49 to 4:54	APP 4A § 4A:4, 4:3
social science writings, reliance	peace bonds, 4:6
on, 4:49 to 4:54	Criminal Code, s. 810, 4:6
Introduction	situations where used, 4:6
generally, 4:1	weapons prohibition, 4:6

CRIMINAL LAW AND DOMESTIC CONFLICT—Cont'd	ELDER ABUSE AND NEGLECT —Cont'd
Protective orders pursuant to Criminal	Dependency, effect of, 10:5
Code—Cont'd	Dependent adults legislation, 10:10
types of orders—Cont'd	Domestic conflict legislation, 10:9
review of detention orders, 4:4	Frequency of, 10:1 to 10:4 (b)
R. v. Bleile: guidelines on bail	Indicia of abuse, 10:2
review, APP 9A § 9A:2, 4:5	Institutions, abuse by, 10:4
DEFENCES	reporting, lack of, 10:4
See CRIMINAL LAW AND DOMESTIC	Introduction, 10:1
CONFLICT	Legal response to
	generally, 10:5 to 10:12
DIVERSION	child welfare model, 10:5, 10:11
See also SENTENCING	civil law response
Adult Aboriginals, diversion of, 6:46	legislation
Diversion programs, 4:123	generally, 10:8
DOMESTIC VIOLENCE PROTECTION	adult protection, 10:11
ACT, 2000 (ONTARIO)	dependent adults, 10:10
Generally, APP J1, 2:66 to 2:75	domestic conflict, 10:9
ELDER ABUSE AND NEGLECT	other, 10:12
	criminal law, 10:6
Abuse Questionnaire, 10:2	sentencing, effect on, 10:6
Adult protection legislation, 10:11	victim compensation, 3:57, 10:6
Age classification, 10:3	crisis intervention, 10:5
Caregivers, abuse by, 10:4 reporting, lack of, 10:4	limitation of, 10:5
Civil law response	Legislation, 10:8
generally, 10:7 to 10:12	adult protection, 10:11
legislation, 10:8	dependent adults, 10:10
adult protection, 10:11	domestic conflict, 10:9
dependent adults, 10:10	other, 10:12
domestic conflict, 10:9	Outreach programs, 10:15
other, 10:12	Parties affected by, 10:3
Community responses, 10:13 to 10:16	Perpetrators, 10:3
outreach programs, 10:15	caregivers, 10:4 family members, 10:3
public legal education, 10:15	institutional, 10:4
seniors shelters, 10:14	physicians' neglect, 10:4
Conduct, examples of, 10:2	Public legal education, 10:15
Criminal law response, 10:6	Reporting
sentencing, effect on, 10:6	importance of, 10:11
victim compensation, 3:52, 10:6	lack of, 10:1, 10:4
Crisis intervention, 10:5	statutory obligation, 10:4
limitation of, 10:5	Seniors shelters, 10:14
Definitions, 10:2	Types of
elderly abuse, 10:1 to 10:4 (b)	generally, 10:2
elder mistreatment, 10:2	emotional abuse, 10:2
financial abuse, 10:1 to 10:4 (b)	failure to provide essentials, 10:2
granny bashing, 10:2	financial abuse, 10:2
neglect, 10:2	neglect, 10:2
senior abuse, 10:2	physical abuse, 10:2
	* *

ELDER ABUSE AND NEGLECT IMMIGRATION AND DOMESTIC —Cont'd CONFLICT—Cont'd Types of—Cont'd Convention refugee, conflict incidental to sexual abuse, 10:2 status as-Cont'd constitutional framework-Cont'd unique to elderly, 10:2 legislation, 11:3 to 11:134 Vulnerability (greatest), 10:3, 10:5 credibility, 11:61 to 11:103 age, 10:3 documentary evidence, 11:104 to gender, 10:3 11:107 **EVIDENCE** other, 11:107 See CRIMINAL LAW AND DOMESTIC port-of-entry notes, 11:105 CONFLICT psychological reports, 11:106 other issues, 11:108 to 11:137 **FINANCIAL ABUSE** children resident in Canada, Abuse questionnaire, APP 1A § 1A:2, 7:1 11:109 to 11:131 Agreements, 7:10 countries of origin, particular, Examples of financially abusive conduct, 11:132 7:1 delay by applicant, 11:108 Introduction, 1:18, 7:1 section 96, 11:13 to 11:60 Necessaries of life, legal obligation to provide, 7:1 gender guidelines, 11:14 Practical considerations state protection, presumption of, generally, 7:1 11:15 to 11:58 financial information of parties, discre-Person in need of protection, conflict tion in gathering, 7:1 incidental to status as, 11:2 to 11:134 financial interests of client, protecting, constitutional framework, 11:2 7:1 legislation Property generally, 11:3 to 11:134 generally, 7:2 to 7:6 children resident in Canada, 11:109 division of property, 7:5 to 11:131 exclusive use and possession of propcountries of origin, particular, 11:132 erty, 7:3 credibility, 11:61 to 11:103 preservation of property, 7:4 delay by applicant, 11:108 Support obligations documentary evidence, 11:104 to generally, 7:7 to 7:9 11:107 Divorce Act, APP A4, 7:7 to 7:9 other, 11:107 enforcement of support orders, 7:9 port-of-entry notes, 11:105 entitlement to spousal support, 7:8 psychological reports, 11:106 delay in prosecuting spousal support, Immigration and Refugee Protection Act. 11:3 to 11:12 disclosure of assets and income, 7:8 other issues. 11:108 to 11:137 IMMIGRATION AND DOMESTIC section 97, 11:13 to 11:60 **CONFLICT** gender guidelines, 11:14 state protection, presumption of, Generally, 11:1 11:15 to 11:58 Convention refugee, conflict incidental to Removal, conflict incidental to status as generally, 11:133 to 11:137 generally, 11:2 to 11:134 constitutional framework applicant perpetrator, 11:135 automatic bar to appeal, calculation of generally, 11:2 pretrial custody, 11:137 Immigration and Refugee Protection Act, 11:3 to 11:12 constitutional framework, 11:2

IMMIGRATION AND DOMESTIC IMMIGRATION AND DOMESTIC CONFLICT—Cont'd CONFLICT—Cont'd Removal, conflict incidental to-Cont'd Removal, conflict incidental to-Cont'd Immigration and Refugee Protection status, person in need of protection Act, 11:134 —Cont'd legislation, 11:3 to 11:134—Cont'd legislation section 97, 11:13 to 11:60 generally, 11:3 to 11:134 gender guidelines, 11:14 children resident in Canada, 11:109 state protection, presumption to 11:131 of. 11:15 to 11:58 countries of origin, particular, 11:132 JUDICIAL INTERIM RELEASE delay by applicant, 11:108 See also CRIMINAL LAW AND section 96, 11:13 to 11:60 DOMESTIC CONFLICT, protective gender guidelines, 11:14 orders pursuant to Criminal Code state protection, presumption Bail opposition form, standardized, 8:3 to of, 11:15 to 11:58 8:7 credibility, 11:61 to 11:103 Bail review documentary evidence, 11:104 to R. v. Bleile: guidelines on bail review, 11:107 APP 9A § 9A:2, 4:5, 9:4 Immigration and Refugee Protec-Crown prosecutors, role of, 8:10 tion Act, 11:3 to 11:12 preparation for bail applications, 9:4 other, 11:107 risk assessment, 9:5 Bleile form on risk assessment, APP port-of-entry notes, 11:105 9A § 9A:2, 9:5 psychological reports, 11:106 Defence counsel, role of, 8:11 other issues. 11:108 to 11:137 No contact conditions pretrial custody, calculation of, generally, 4:3 automatic bar to appeal, 11:137 sentencing following conviction, recognizance, APP 4A § 4A:6, 4:3 removal as consequence of, recognizance entered into before officer 11:136 in charge, APP 4A § 4A:3, 4:3 status, convention refugee, 11:2 to release appending appeal, 4:7 11:134 undertaking to justice or judge, APP status, person in need of protection 4A § 4A:5, 4:3 generally, 11:2 to 11:134 undertaking to officer in charge, APP 4A § 4A:4, 4:3 constitutional framework, 11:2 legislation, 11:3 to 11:134 LAVALLEE DECISION credibility, **11:61 to 11:103** See BATTERED WOMAN'S documentary evidence, 11:104 to **SYNDROME** 11:107 LAVOIE COMMISSION REPORT other, 11:107 port-of-entry notes, 11:105 Background events, 3:60 to 3:63 Cycle of abuse, 1:20, 3:60 to 3:63 psychological reports, 11:106 Defence counsel, role of, 8:11 Immigration and Refugee Protection Act, 11:3 to 11:12 Multi-level response, 8:2, 8:3 to 8:7 other issues, 11:108 to 11:137 Recommendations children resident in Canada, generally, APP 8A § 8A:1, 3:60 to 11:109 to 11:131 3:63, 8:2 countries of origin, particular, civil restraining orders, APP 8A § 8A:1 11:132 Community and Youth Corrections, **APP ŠA § 8A:1** delay by applicant, 11:108

child protection services, 1:3 to 1:11

LAW AND DOMESTIC CONFLICT LAVOIE COMMISSION REPORT —Cont'd **GENERALLY—Cont'd** Recommendations—Cont'd Types of domestic conflict recognized at Family Violence Court, APP 8A law, 1:15-Cont'd § 8A:1 sexual. 1:18 legal profession, APP 8A § 8A:1 Criminal Code offences, 1:18 public awareness, APP 8A § 8A:1 LAW ENFORCEMENT social allowances, APP 8A § 8A:1 See also SERVICE PROVIDERS social service agencies, APP 8A § 8A:1 Generally, **8:3 to 8:7** Winnipeg Police Service, APP 8A Empirical evidence suggesting fewer § 8A:1 arrests for domestic assaults, 8:3 to Woman's Advocacy Program, APP 8A § 8A:1 Factors affecting decision whether to arrest, 8:3 to 8:7 LAW AND DOMESTIC CONFLICT Factors impeding ability to take effective GENERALLY steps, 8:3 to 8:7 Identification of domestic conflict, 1:20 Lavoie Commission Report abuse questionnaire, APP 1A § 1A:2, background, 8:3 to 8:7 1:20 bail opposition form, standardized, 8:3 cycle of abuse, APP 1A § 1A:4, 1:20 to 8:7 Duluth Domestic Abuse Intervention police intervention, 8:3 to 8:7 Project Model Wheel, APP 1A recommendations, APP 8A § 8A:1, 8:3 § 1Ă:1 to 8:7 Overview Perpetrator of domestic conflict, as, 8:3 to generally, 1:13 8:7 nexus between family law and criminal Policy on Domestic Violence by Police law, 1:14 Officers, 8:3 to 8:7 complainant in civil law suit vs. Recent developments, 4:1 criminal law suit, 1:14 countercharging, 4:1, 8:3 to 8:7 failure to lay charges, 1:14 mandatory charging policies, 4:1, 8:3 complainant's failure to disclose to 8:7 domestic conflict, 1:14 "no drop" policies, 4:1, 8:9 law enforcement agencies, 1:14 Screening of agents, 8:3 to 8:7 mandatory charging policies, 1:14 Specialized units, 8:6 terms of release after arrest or Training, proper, 8:3 to 8:7 charges, 1:14 Victim assistance units, 8:7 Prevalence of domestic conflict, 9:9 MANDATORY MEDIATION Types of domestic conflict recognized at Generally, 9:8, 9:14 law, 1:15 emotional, 1:17 NEGLECT Criminal Code offences, 1:17 See ELDER ABUSE AND NEGLECT Divorce Act. 1:17 **OVERVIEW** financial, 1:19 Battered woman's syndrome, 1:1, 1:20 physical, 1:16 Financial cost, 1:1 Criminal Code offences, 1:16 Human cost, 1:1 Divorce Act, APP A4, 1:16 PARTIES AFFECTED cruelty, **1:16** minor criminal assault insufficient, Aboriginal peoples, 1:3 to 1:11 1.16 Children, 1:3 to 1:11

reconciliations, 1:16

PARTIES AFFECTED—Cont'd	PREVALENCE OF DOMESTIC
Ethnic and cultural groups, 1:3 to 1:11	CONFLICT
Men	Generally, 9:9
generally, 1:3 to 1:11	PROPERTY
more likely to report abuse, 1:3 to 1:11 Socioeconomic levels of society, all, 1:3	See FINANCIAL ABUSE
to 1:11	PROTECTION
Women	See CIVIL LAW COURT-ORDERED
facing greatest risk, 1:3 to 1:11	PROTECTION, and CRIMINAL
married women, 1:3 to 1:11	LAW AND DOMESTIC
PRACTICE CONSIDERATIONS	CONTRACTS, Protective Orders
Practitioner's duties, 9:2 to 9:7.50	PROTECTION AGAINST FAMILY
general overview, 9:2	VIOLENCE ACT (ALBERTA)
abused spouse, difficulty in obtaining	Generally, APP B1, 2:22 to 2:33
instructions from, 9:2	RELEASE OF INFORMATION
offender, problematic in acting for, 9:2	Generally, APP 1A § 1A:3
role of counsel, 9:3	RESTRAINING ORDERS
Crown prosecutor, 9:4	See also CIVIL LAW AND DOMESTIC
preparation for bail applications,	CONFLICT
9:4	Generally, 2:97 to 2:108
R. v. Bleile: guidelines on bail	Criticisms of, 2:2
review, APP 9A § 9A:2, 4:5 ,	Enforcement
9:4 Duty of confidentiality 0:7.50	generally, 2:105 to 2:108
Duty of confidentiality, 9:7.50 duty to caution, 9:6	civil contempt of court applications,
Code of Professional Conduct, 9:6	2:108
future crime exception, 9:6	Criminal Code, s. 127 of, 2:107 warrantless arrest, 2:106
solicitor-client privilege, 9:6	Evidence required
public safety outweighing privi-	generally, 2:100 to 2:102
lege, 9:6	assault, APP 2A § 2A:2
factors considered, 9:6	harassment/stalking, APP 2A § 2A:3
family law lawyers	past and present conduct, 2:100 to
Family Law Domestic Conflict	2:102
Checklist, APP 9A § 9A:1 , 9:3	physical and/or emotional harm, 2:100 to 2:102
limitations of, 9:3	reasonable apprehension of fear for life
obligation to adequately deal with domestic conflict, 9:3	or safety, 2:100 to 2:102
identification of domestic conflict,	violence or threat of violence, 2:100 to
APP 1A § 1A:2, 9:4	2:102 Ex parte applications, 2:97 to 2:108
investigative strategies, APP 1A § 1A:2, 9:3	Form of injunctive relief, as, 2:97 to 2:108
legal aid lawyers, 9:3	Form of order, APP 2A § 2A:4, 2:103
risk assessment, APP 9A § 9A:2, 9:5	Jurisdiction, 2:98
factors to be assessed, 9:5	Lavoie Commission Report, APP 8A
safety planning, 9:7	§ 8A:1
Model Safety Plan, APP 9A	Order, form of, APP 2A § 2A:4, 2:103
§ 9A:3, 9:7	Parties, 2:99

RESTRAINING ORDERS—Cont'd SENTENCING—Cont'd Registration on CPIC, 2:104 Criminal Code, s. 718.2(e)—Cont'd decision in R. v. Wells-Cont'd information submitted with order, APP 2A § 2A:5, 2:104 sentencing circles, 6:45 principles employed in use of, RISK OF HARM USING ADR 6:45 **PROCESSES** Aboriginal ancestry, signifi-Generally, 9:10 cance of, **6:45** Risk assessment, 9:13 participation of complainant, Safety planning, 9:14 6:45 three-part inquiry by sentencing ROYAL COMMISSION ON inquiry, 6:12 to 6:44 ABORIGINAL PEOPLES, REPORT domestic conflict, 6:12 to 6:44 OF particular circumstances of See ABORIGINAL PEOPLES Aboriginal offender, 6:12 to SAFETY PLANNING factors, **4:61 to 4:73** Model Safety Plan, APP 9A § 9A:3, 9:7 Overview of relevant Criminal Code sec-Role of counsel, 9:7 tions, **4:61 to 4:73** Release pending appeal, 4:7 SELF-REPRESENTED LITIGANTS Sentencing principles and domestic See UNREPRESENTED LITIGANTS violence, 4:61 to 4:116 aggravating factors, nature of, 4:61 to SENTENCING 4:116 Generally, **4:61 to 4:73** abuse of elders. 10:6 Aboriginal peoples, 6:12 to 6:46 breach of trust, 4:74 to 4:116 Adult diversion, 6:46 lack of remorse not aggravating fac-Criminal Code, s. 718.2(e) tor, **4:74 to 4:116** generally, 6:12 to 6:44 denunciation, 4:74 to 4:116 decision in R. v. Gladue deterrence, 4:74 to 4:116 generally, 6:12 to 6:44 general societal deterrence, 4:74 to 4:116 guidelines for sentencing judges, paramount consideration, 4:74 to 6:12 to 6:44 4:116 overrepresentation of Aboriginals in specific deterrence, 4:74 to 4:116 penal institutions, 6:12 to 6:44 mitigating factors, 4:61 to 4:116 systemic and background factors, zero tolerance, 4:74 to 4:116 6:12 to 6:44 Types of sentences types of appropriate sentencing procedures and sanctions, 6:12 generally, 4:117 to 4:126 to 6:44 conditional and absolute discharges, decision in R. v. Hunter 4:122 dangerous offender status generally, **6:12 to 6:44** funding of treatment program appeal, **4:122** discontinued, 6:12 to 6:44 court discretion, 4:124 particular circumstances of offender high risk to re-offend, 4:124 and community, 6:12 to 6:44 pattern of abusive conduct, 4:124 decision in R. v. Wells procedure for finding (s. 752(5)), generally, 6:12 to 6:44 4:124 procedure for making determination principles of restorative justice and factual circumstances, 6:12 to (s. 753.1), **4:124**

diversion program, 4:123

6:44

SENTENCING—Cont'd	SERVICE PROVIDERS—Cont'd
Types of sentences—Cont'd	Administration of justice, 8:3 to 8:15
factors determining type and duration,	—Cont'd
4:117 to 4:126	law enforcement
nature and gravity of offence, 4:117	generally, 8:3 to 8:15
to 4:126	empirical evidence suggesting fewer
fines, 4:120	arrests for domestic assaults,
guidelines, 4:117 to 4:126	8:3 to 8:7
imprisonment	factors affecting decision whether to
generally, 4:118 conditional sentences, 4:119	arrest, 8:3 to 8:7
factors, 4:119	factors impeding ability to take effective steps, 8:3 to 8:7
maximum sentence, 4:118	Lavoie Commission Report
parole eligibility, 4:118	background, 8:3 to 8:15
"stark horror," concept of, 4:118	bail opposition form, standardized
long-term offender status	8:3 to 8:7
generally, 4:124	police intervention, 8:3 to 8:7
appeal, 4:122	recommendations, APP 8A
court discretion, 4:124	§ 8A:1, 8:3 to 8:15
high risk to re-offend, 4:124	recent developments, 4:1
pattern of abusive conduct, 4:124	countercharging, 4:1 , 8:3 to 8:7
procedure for finding (s. 752(5)),	mandatory charging policies, 4:1 ,
4:124	8:3 to 8:7
procedure for making determination	"no drop" policies, 4:1, 8:9
(s. 753.1), 4:124	screening of agents, 8:3 to 8:7
probation	specialized units, 8:6
generally, 4:123	training, proper, 8:3 to 8:7
appropriate in domestic conflict cir- cumstances, 4:123	victim assistance units, 8:7
banishment condition, and, 4:123	training issues and working conditions,
commitment of offender to change	8:9
critical, 4:123	Community intervention projects, 8:2
diversion programs, and, 4:123	awareness of domestic conflict
mandated treatment, 4:123	programs, 8:2
rehabilitation of secondary	evaluation process, 8:2
importance, 4:123	evaluator, selection of, 8:2
suspended sentences, 4:121	key elements, 8:2
weapon's prohibitions, 4:125	limitations, 8:2
SERVICE PROVIDERS	multi-level response, 8:2
Administration of justice, 8:3 to 8:15	advantages of, 8:2
Crown prosecutors, 8:10	Lavoie Commission Report, APP 8A
complainants and domestic conflict	§ 8A:1, 8:2, 8:3 to 8:15
cases, attitude towards, manda-	limitations to existing system, 8:2
tory charging policy, 8:9	need for, 8:2
"no drop" policies, 8:9	outreach programs, 10:15
defence counsel, role of	seniors shelters, 10:14
generally, 8:11	Community services
Code of Professional Conduct, 8:10	shelters, 8:16
judicial interim release, 8:10	treatment programs, 8:17
Lavoie Commission Report, 8:10	Introduction, 8:1, 8:2

SERVICE PROVIDERS—Cont'd

Seamless web of service delivery, **8:1, 8:2** limitations, **8:1, 8:2**

disclosure not acted upon, **8:1, 8:2** non-disclosure of existence of conflict, **8:1, 8:2**

Specialized courts, 8:12

Witness relocation programs, 8:13

STALKING

Criminal harassment: stalking, **4:34**American experience, **4:34**Criminal Code, s. 264, **4:34**

four categories of prohibited acts, 4:34

indictment or summary conviction, 4:34

problematic in gathering evidence, **4:34** type of conduct, **4:34**

types of harassers, 4:34

Domestic Violence and Stalking Act (Manitoba), APP D1, 2:34 to 2:65

Domestic Violence and Stalking Regulation, APP D2

tort of, 2:34 to 2:75

Restraining order, 2:97 to 2:108

evidence required, 2:100 to 2:102 harassment/stalking, APP 2A § 2A:3

SUPPORT

See FINANCIAL ABUSE

TERMINOLOGY

Acts of unwanted aggression, control and/or domination

numerous terms, 1:2

Domestic conflict, 1:2

acts of aggression, 1:2

TERMINOLOGY—Cont'd

Domestic conflict, 1:2—Cont'd beyond physical abuse, 1:2 why term preferred, 1:2 Gender-neutral language, 1:2

TORTS, INTERSPOUSAL

See CIVIL RECOVERY AND DOMESTIC CONFLICT

UNREPRESENTED LITIGANTS

Generally, 9:16 to 9:21

Abusive litigant, 9:17

Demographic profile, 9:16

Domestic conflict, and, 9:17

Duty of judiciary towards, 9:17

Increasing numbers, 9:16

Overview, 9:16

Practice considerations

generally, 9:17

commencement of proceedings, 9:19

communication, 9:18

court applications, 9:20

judgments, 9:21

law society rules, and, 9:17

orders, 9:21

provincial codes of conduct, and, 9:17

Reasons for self-representation

cost of litigation, 9:16

inability to retain counsel, 9:16

obsession with case, 9:16

prior negative experience, 9:16

Vexatious litigant, 9:16, 9:17

VICTIMS OF DOMESTIC VIOLENCE ACT (SASKATCHEWAN)

Generally, APP L1, 2:27 to 2:33