

Table of Contents

CHAPTER 1. CRIMINAL LAW

I. GENERAL PRINCIPLES

- § 1:1 *Mens Rea*
- § 1:2 Causation
- § 1:3 Party Liability
- § 1:4 Accessory After the Fact
- § 1:5 Conspiracy
- § 1:6 Included Offences

II. OFFENCES

- § 1:7 Administration of Justice Offences—Public Mischief
- § 1:8 —Resisting or Obstructing Public or Peace Officer
- § 1:9 —Disobeying Court Order
- § 1:10 Assault
- § 1:11 Fraud
- § 1:12 Homicide-Related Offences—Murder
- § 1:13 —Attempted Murder
- § 1:14 —Failure to Provide Necessaries
- § 1:15 —Criminal Negligence Causing Death
- § 1:16 Motor Vehicle Offences—Dangerous Driving
- § 1:17 —Impaired Driving
- § 1:18 —Failure to Remain at the Scene of Accident
- § 1:19 —Refusing to Provide Breath or Blood Sample
- § 1:20 —Speeding
- § 1:21 Mischief
- § 1:22 Narcotics Offences—Importing and Exporting
- § 1:23 —Cannabis Regulation
- § 1:24 Sexual Offences—Sexual Assault
- § 1:25 —Sexual Interference
- § 1:26 —Child Luring
- § 1:27 —Prostitution-Related
- § 1:28 —Indecent Exposure
- § 1:29 Cruelty to Animals
- § 1:30 Firearms-Related Offences

III. DEFENCES

- § 1:31 Mental Disorder—NCR-MD

- § 1:32 —Procedures
- § 1:33 Entrapment
- § 1:34 Self-Defence
- § 1:35 Provocation
- § 1:36 Mistake of Law
- § 1:37 Mistaken Belief in Consent/Age in Sexual Offences
- § 1:38 Accident
- § 1:39 Res Judicata
- § 1:40 Act on Authority
- § 1:41 *De Minimis*
- § 1:42 Extreme Intoxication
- § 1:43 Intoxication
- § 1:44 Section 35 of the Constitution

CHAPTER 2. POLICING AND THE CHARTER

I. SECTION 7 – LIFE, LIBERTY AND SECURITY OF THE PERSON

- § 2:1 Generally

II. SECTION 8 – UNREASONABLE SEARCH AND SEIZURE

- § 2:2 Was There a Reasonable Expectation of Privacy
- § 2:3 Was the Search Authorized by Law?—Consent
- § 2:4 —Common Law
- § 2:5 —Statute
- § 2:6 Was the Law Itself Reasonable?
- § 2:7 Was the Manner of Search Reasonable?

III. SECTION 9 – ARBITRARY DETENTION

- § 2:8 Was there a Detention?
- § 2:9 Was the Detention Arbitrary?

IV. SECTION 10 – RIGHTS ON ARREST OR DETENTION

- § 2:10 Section 10(a)
- § 2:11 Section 10(b)

V. SECTION 11(B) — TRIAL WITHIN A REASONABLE TIME

- § 2:12 Generally

TABLE OF CONTENTS

VI. CHARTER REMEDIES

§ 2:13 Section 24(1)

§ 2:14 Section 24(2)

CHAPTER 3. EVIDENCE

I. WITNESSES AND PRESENTATION OF EVIDENCE

- § 3:1 Competence and Compellability—Child Testimony
Under s. 16.1 of the *Canada Evidence Act*
- § 3:2 Exhibits—Authentication and Proof of Electronic Documents
- § 3:3 Credibility & Reliability—Use of “Plausibility” in Credibility Assessment
- § 3:4 —General Credibility
- § 3:5 —Collusion
- § 3:6 —Impeachment of Witness via Judicial Findings:
The *Ghorvei* Rule
- § 3:7 —Cross-Examination of Witness on Criminal Record
- § 3:8 Cross-Examination of Witnesses—Trial Fairness
- § 3:9 Collateral Facts
- § 3:10 Fresh Evidence on Appeal

II. METHODS OF PROOF

- § 3:11 Confessions/Admissions—Voluntariness
- § 3:12 —“Mr. Big” Statements
- § 3:13 —Editing of Confessions
- § 3:14 Identification
- § 3:15 Circumstantial Evidence—After-the-Fact/Post-Offence Conduct
- § 3:16 —Available Inferences from Circumstantial Evidence
- § 3:17 Judicial Notice
- § 3:18 Need for Corroboration
- § 3:19 Sections 276 & 278—Section 278.92: Admissibility of “Records”
- § 3:20 —General ss. 276/278 Applications
- § 3:21 Formal Admissions
- § 3:22 Third Party Suspect Evidence

III. EXCLUSIONARY RULES

- § 3:23 Character Evidence—Similar Fact Evidence (*R. v. Handy*)

- § 3:24 —Evidence of Bad Character of the Accused
- § 3:25 Hearsay—The Principled Exception to the Hearsay Rule
- § 3:26 —Co-Conspirators Exception
- § 3:27 —Spontaneous Utterances & *Res Gestae*
- § 3:28 —Admissions
- § 3:29 —*K.G.B.* Statements
- § 3:30 —Business Records
- § 3:31 —Statutory Exceptions: Section 715.1 of the *Criminal Code*
- § 3:32 Opinion Evidence—Non-Expert Opinion
- § 3:33 —Expert Opinion
- § 3:34 Prior Consistent Statements
- § 3:35 Prior Inconsistent Statements
- § 3:36 Privilege—Informer Privilege

CHAPTER 4. CRIMINAL PROCEDURE

I. PRE-TRIAL PROCEDURE

- § 4:1 Jurisdiction
- § 4:2 Standing
- § 4:3 Bail
- § 4:4 Election
- § 4:5 Form of Indictment/Laying of Information
- § 4:6 Disclosure/Production
- § 4:7 Severance
- § 4:8 Pleas

II. TRIAL PROCEDURE

- § 4:9 Jury Selection
- § 4:10 Conduct of the Trial
- § 4:11 Reasonable Apprehension of Bias
- § 4:12 Trial Fairness
- § 4:13 Publication Bans and the Open Court Principle
- § 4:14 Language of Trial
- § 4:15 Address to Jury
- § 4:16 Charging the Jury

III. POST-TRIAL PROCEDURE

- § 4:17 Appeals by the Crown
- § 4:18 Appeals by the Accused—Unreasonable Verdicts
- § 4:19 —Errors of Law
- § 4:20 —Miscarriages of Justice

TABLE OF CONTENTS

§ 4:21 —Insufficient Reasons

§ 4:22 —Curative Proviso

CHAPTER 5. SENTENCING

I. SENTENCING PROCEDURES AND HEARINGS

§ 5:1 Sentence Suspension Awaiting Appeal

II. SENTENCING PRINCIPLES AND RULES

§ 5:2 The Proportionality Principle

§ 5:3 The Totality Principle

§ 5:4 Consecutive Versus Concurrent Sentences

§ 5:5 The Jump Principle

§ 5:6 Aggravating and Mitigating Factors—Guilty Pleas
and Remorse

§ 5:7 —Lack of Violence

§ 5:8 —First Time Offender

§ 5:9 —Mental Health

§ 5:10 —Good Character

§ 5:11 —Indigenous Victims

§ 5:12 —Criminal Record

§ 5:13 The Gap Principle

§ 5:14 Collateral Consequences—Immigration

§ 5:15 Pre-Trial Custody Sentencing Credit

§ 5:16 Departing from Sentencing Submissions—*Nahanee*

§ 5:17 —*Anthony-Cook*

§ 5:18 Mandatory Minimum Sentences—*Criminal Code*, ss.
163.1(4) and (4.1) (Possession and Access of Child
Pornography)

§ 5:19 —*Criminal Code*, s. 172.1 (Child Luring)

§ 5:20 —*Criminal Code*, s. 286.1(2)(a) (Communication for
Sexual Services)

§ 5:21 Aboriginal Sentencing Principles

III. SENTENCING OPTIONS

§ 5:22 Conditional Sentences

§ 5:23 Life Imprisonment

§ 5:24 Fine in Lieu of Forfeiture

§ 5:25 Section 320.24 Orders

§ 5:26 Section 161 Orders

§ 5:27 Sexual Offender Registries

§ 5:28 Parole Eligibility

IV. SENTENCING SPECIFIC OFFENCES

§ 5:29 Failure to Provide Necessaries

- § 5:30 Sexual Offences
- § 5:31 Criminal Negligence

V. DANGEROUS AND LONG-TERM OFFENDERS

- § 5:32 Dangerous Offenders—Designation
- § 5:33 —Indeterminate Sentences
- § 5:34 Long-Term Offenders

APPENDIX

Appendix A. Significant Legislative Developments

Table of Cases

Index