

# Table of Contents

## CHAPTER 1. BASIC CONCEPTS

### I. COMPETENCE AND COMPELLABILITY

#### A. COMPETENCE

- § 1:1 General Principles
- § 1:2 Child Witnesses
- § 1:3 Witnesses of Limited Mental Capacity
- § 1:4 Oath and Affirmation
- § 1:5 Procedure to Determine Competence
- § 1:6 The Competence of Accused Persons
- § 1:7 The Competence of Spouses of Accused Persons
- § 1:8 The Competence of Judges, Jurors and Lawyers

#### B. COMPELLABILITY

- § 1:9 General Principles
- § 1:10 The Compellability of Accused Persons
- § 1:11 The Compellability of Spouses of Accused Persons

### II. FUNDAMENTAL PRINCIPLES

- § 1:12 Relevance
- § 1:13 Materiality
- § 1:14 Admissibility
- § 1:15 Procedure to Determine Admissibility
- § 1:16 Discretionary Exclusion of Otherwise Admissible Evidence

### III. TYPES OF EVIDENCE

#### A. DIRECT EVIDENCE

- § 1:17 General Principles

#### B. CIRCUMSTANTIAL EVIDENCE

- § 1:18 General Principles
- § 1:19 Evidence of Opportunity
- § 1:20 Evidence of Means, Skill, Capacity and Expertise
- § 1:21 Evidence of Motive

§ 1:22 Evidence of After-the-Fact Conduct

### C. REAL EVIDENCE

- § 1:23 General Principles
- § 1:24 Photographs
- § 1:25 Audio Recordings
- § 1:26 Video Recordings
- § 1:27 Maps, Models, Duplicates and Diagrams
- § 1:28 Demonstrations
- § 1:29 Views

### D. DOCUMENTARY EVIDENCE

- § 1:30 General Principles
- § 1:31 The Best Evidence Rule
- § 1:32 Public and Judicial Documents
- § 1:33 Records of Financial Institutions
- § 1:34 Business Records
- § 1:35 Records and Documents in Possession of Accused

## IV. INFERENCES AND PRESUMPTIONS

### A. INFERENCES

- § 1:36 General Principles
- § 1:37 Inference of State of Mind
- § 1:38 Statutory Inferences

### B. PRESUMPTIONS

- § 1:39 General Principles

## V. JUDICIAL NOTICE

- § 1:40 General Principles
- § 1:41 Judicial Notice of Facts
- § 1:42 Judicial Notice of Law

## VI. PRIVILEGE

- § 1:43 General Principles
- § 1:44 Lawyer-Client Communication Privilege
- § 1:45 Marital Communication Privilege
- § 1:46 Other Confidential Relationships
- § 1:47 Public Interest Immunity

TABLE OF CONTENTS

- § 1:48 Police Informer Privilege
- § 1:49 Journalist-Journalistic Source Privilege

**VII. THE BURDEN AND STANDARD OF PROOF**

**A. THE BURDEN OF PROOF**

- § 1:50 General Principles
- § 1:51 Allocation of the Burden of Proof
- § 1:52 The Evidential Burden
- § 1:53 The Legal Burden of Proof

**B. THE STANDARD OF PROOF**

- § 1:54 General Principles of the Standard of Proof

**CHAPTER 2. THE EXAMINATION OF WITNESSES**

**I. PRELIMINARY MATTERS**

- § 2:1 Exclusion of Witnesses
- § 2:2 Interpreters
- § 2:3 The Prosecution Case
- § 2:4 The Defence Case

**II. EXAMINATION-IN-CHIEF**

- § 2:5 General Principles of Examination-in-Chief
- § 2:6 Leading Questions
- § 2:7 Bolstering Credibility
- § 2:8 Refreshing Memory
- § 2:9 Applications Under *CEA* Section 9(2)
- § 2:10 Adverse and Hostile Witnesses
- § 2:11 Prior Statements as Substantive Evidence
- § 2:12 Prior Consistent Statements
- § 2:13 Prior Convictions

**III. CROSS-EXAMINATION**

- § 2:14 General Principles of Cross-Examination
- § 2:15 Cross-Examination in Joint Trials
- § 2:16 Cross-Examination on Prior Statements
- § 2:17 Cross-Examination on Discreditable Conduct
- § 2:18 Cross-Examination on Previous Convictions
- § 2:19 Cross-Examination on Character

- § 2:20 Cross-Examination on Bias, Interest, and Corruption

#### **IV. RE-EXAMINATION**

- § 2:21 General Principles of Re-Examination

#### **V. RE-OPENING AND REPLY**

- § 2:22 General Principles of Re-Opening
- § 2:23 General Principles of Reply
- § 2:24 The Collateral Facts Rule

#### **VI. SURREBUTTAL**

- § 2:25 General Principles of Surrebuttal

### **CHAPTER 3. DISCLOSURE**

#### **I. PROSECUTORIAL DISCLOSURE**

- § 3:1 General Principles of Prosecutorial Disclosure
- § 3:2 Disclosure and Public Interest Immunity
- § 3:3 Disclosure of Third Party Records: Common Law and Statute

#### **II. DEFENCE DISCLOSURE**

- § 3:4 General Principles of Defence Disclosure
- § 3:5 Disclosure of Alibi
- § 3:6 Disclosure of Evidence of Mental State
- § 3:7 Disclosure of Records Relating to Complainant

### **CHAPTER 4. HEARSAY**

#### **I. IDENTIFICATION OF HEARSAY**

- § 4:1 General Principles of Hearsay Identification
- § 4:2 Implied Assertions as Hearsay
- § 4:3 Hearsay By Conduct

#### **II. HEARSAY EXCEPTIONS AT COMMON LAW**

- § 4:4 General Principles of the Common Law Exceptions
- § 4:5 Dying Declarations
- § 4:6 Declarations Against Pecuniary or Proprietary Interest

## TABLE OF CONTENTS

- § 4:7 Declarations Against Penal Interest
- § 4:8 Declarations in the Course of Duty
- § 4:9 Declarations of Bodily Feelings and Conditions
- § 4:10 Declarations of Mental or Emotional State
- § 4:11 Declarations Connected with a Relevant Act
- § 4:12 Spontaneous Exclamations
- § 4:13 Admissions
- § 4:14 Declarations in Furtherance of a Common Unlawful Design
- § 4:15 Prior Testimony

### **III. PRINCIPLED HEARSAY EXCEPTIONS**

- § 4:16 General Principles of Principled Hearsay Exceptions
- § 4:17 The Principle of Necessity
- § 4:18 The Principle of Reliability

## **CHAPTER 5. OPINION**

### **I. EXPERT OPINION**

- § 5:1 General Principles of Expert Opinion Evidence
- § 5:2 The Qualification of Experts
- § 5:3 Examination of Experts and Hypothetical Questions
- § 5:4 Expert Opinion Evidence and the Hearsay Rule
- § 5:5 Expert Opinion Evidence of Character and Disposition
- § 5:6 Expert Opinion Evidence of Mental Capacity or State of Mind
- § 5:7 Expert Opinion Evidence on Credibility
- § 5:8 New Scientific Evidence

### **II. LAY OPINION**

- § 5:9 General Principles of Lay Opinion Evidence
- § 5:10 Lay Opinion Evidence of Identity
- § 5:11 Lay Opinion Evidence of Handwriting
- § 5:12 Lay Opinion Evidence of Mental Capacity or State of Mind

## **CHAPTER 6. CHARACTER**

### **I. THE CHARACTER OF THE ACCUSED**

#### **A. EVIDENCE OF GOOD CHARACTER**

- § 6:1 General Principles of Evidence of Good Character

- § 6:2 Putting Character in Issue
- § 6:3 Rebuttal of Evidence of Good Character
- § 6:4 Expert Opinion Evidence of Good Character

## B. EVIDENCE OF BAD CHARACTER

- § 6:5 General Principles of Evidence of Bad Character
- § 6:6 Bad Character of Co-Accused
- § 6:7 Expert Opinion Evidence of Bad Character

## C. THE CHARACTER OF NON-ACCUSED PERSONS

- § 6:8 The Character of Non-Accused Witnesses
- § 6:9 The Character of Deceased Persons in Homicide Cases
- § 6:10 The Character of Victims and Complainants
- § 6:11 The Character of Sexual Offence Complainants
- § 6:12 The Character of Alleged Third Party Perpetrators

# CHAPTER 7. EVIDENCE OF SIMILAR ACTS AND EXTRINSIC MISCONDUCT

## I. EVIDENCE OF SIMILAR ACTS

- § 7:1 General Principles of Evidence of Similar Acts
- § 7:2 The Procedure to Determine Admissibility of Evidence of Similar Acts
- § 7:3 The Burden of Proof on Evidence of Similar Acts
- § 7:4 Jury Instructions on Evidence of Similar Acts

## II. EVIDENCE OF EXTRINSIC MISCONDUCT

- § 7:5 General Principles

# CHAPTER 8. ADMISSIONS AND CONFESSIONS

## I. ADMISSIONS

- § 8:1 Formal Admissions
- § 8:2 Informal Admissions
- § 8:3 Vicarious Admissions
- § 8:4 Adoptive Admissions
- § 8:5 Admissions By Conduct

TABLE OF CONTENTS

**II. CONFESSIONS**

- § 8:6 The Scope of the Confessions Rule
- § 8:7 Persons in Authority
- § 8:8 The Requirement of a *Voir Dire*
- § 8:9 Voluntariness
- § 8:10 The Onus and Standard of Proof
- § 8:11 Evidentiary Use of Confessions
- § 8:12 Cross-Examination on Confessions

**CHAPTER 9. CHARTER RIGHTS AND CHARTER EXCLUSION**

**I. CHARTER RIGHTS**

**A. THE RIGHT TO COUNSEL**

- § 9:1 General Principles of the Right to Counsel
- § 9:2 The Information Component of the Right to Counsel
- § 9:3 The Implementation Component of the Right to Counsel

**B. THE RIGHT TO SILENCE**

- § 9:4 General Principles of the Right to Silence
- § 9:5 Custodial Interrogation and the Right to Silence
- § 9:6 Physical Tests and the Right to Silence
- § 9:7 Undercover Operations and the Right to Silence

**C. THE RIGHT AGAINST SELF-CRIMINATION**

- § 9:8 General Principles of the Right Against Self-crimination
- § 9:9 Self-crimination by Witnesses
- § 9:10 Compellability of Accused Persons

**D. CHARTER EXCLUSION**

- § 9:11 General Principles of *Charter* Exclusion
- § 9:12 The *Charter Voir Dire*
- § 9:13 The Inquiry into the Seriousness of the *Charter*-infringing Conduct
- § 9:14 The Inquiry into the Impact of an Infringement on *Charter*-protected Interests

§ 9:15 Inquiry into Society's Interests in Adjudication on  
the Merits

## **APPENDICES**

Appendix A. CRIMINAL CODE

Appendix B. CANADA EVIDENCE ACT

Appendix C. CONTROLLED DRUGS AND SUBSTANCES ACT

Appendix D. YOUTH CRIMINAL JUSTICE ACT

**Table of Cases**

**Index**