Table of Contents

Volume 1

PART I. BASIC CONCEPTS

CHAPTER 1. SOURCES

I. DEFINITION OF CONSTITUTIONAL LAW

§ 1:1 Definition of constitutional law

II. CONSTITUTION ACT, 1867

§ 1:2 Constitution Act, 1867

III. CONSTITUTION ACT, 1982

§ 1:3 Constitution Act, 1982

IV. CONSTITUTION OF CANADA

§ 1:4 Constitution of Canada

V. IMPERIAL STATUTES

§ 1:5 Imperial statutes

VI. CANADIAN STATUTES

§ 1:6 Canadian statutes

VII. PARLIAMENTARY PRIVILEGE

§ 1:7 Parliamentary privilege

VIII. CASE LAW

§ 1:8 Case law

IX. PREROGATIVE

§ 1:9 Prerogative

X. CONVENTIONS

- § 1:10 Definition of conventions
- § 1:11 Conventions in the courts

^{© 2021} Thomson Reuters, Rel. 1, 7/2021

- § 1:12 Convention and usage
- § 1:13 Convention and agreement
- § 1:14 Convention and law
- § 1:15 Convention and policy

CHAPTER 2. RECEPTION

I. RULES OF RECEPTION

§ 2:1 Rules of reception

II. SETTLED COLONIES

- § 2:2 Date of reception
- § 2:3 Exclusion of unsuitable laws
- § 2:4 Amendment of received laws

III. CONQUERED COLONIES

- § 2:5 General rules of reception
- § 2:6 Ontario and Quebec

IV. CONFEDERATION

§ 2:7 Confederation

V. ADMISSION OF NEW PROVINCES AND TERRITORIES

- § 2:8 Section 146 of the B.N.A. Act
- § 2:9 Territories and prairie provinces
- § 2:10 British Columbia
- § 2:11 Prince Edward Island
- § 2:12 Newfoundland

VI. IMPERIAL STATUTES

§ 2:13 Imperial statutes

CHAPTER 3. INDEPENDENCE

I. BONDS OF EMPIRE

§ 3:1 Bonds of Empire

II. COLONIAL LAWS VALIDITY ACT, 1865

§ 3:2 Colonial Laws Validity Act, 1865

III. STATUTE OF WESTMINSTER, 1831

§ 3:3 Statute of Westminster, 1931

IV. CANADA ACT, 1982

§ 3:4 Canada Act 1982

V. PATRIATION OF THE CONSTITUTION

- § 3:5 Definition of patriation
- § 3:6 Canada Act 1982
- § 3:7 Autochthony
- § 3:8 Termination of imperial authority
- § 3:9 Autonomy

CHAPTER 4. AMENDMENT

I. HISTORY OF AMENDMENT

- § 4:1 Imperial amendment
- § 4:2 The search for a domestic amending procedure
- § 4:3 The failure to accommodate Quebec

II. PART V OF THE CONSTITUTION ACT, 1982

- § 4:4 Summary of Part V
- § 4:5 Comparison with Australia and United States
- § 4:6 Constitution of Canada
- § 4:7 Charter of Rights

III. GENERAL AMENDING PROCEDURE (S. 38)

- § 4:8 Section 38(1)
- § 4:9 Proclamation
- § 4:10 Initiation
- § 4:11 Opting out
- § 4:12 Compensation for opting out
- § 4:13 Revocation of assent or dissent
- § 4:14 Section 42
- § 4:15 "Regional veto" statute

IV. UNANIMITY PROCEDURE

§ 4:16 Unanimity procedure (s. 41)

V. SOME-BUT-NOT-ALL-PROVINCES PROCEDURE

§ 4:17 Some-but-not-all-provinces procedure (s. 43)

VI. FEDERAL PARLIAMENT ALONE

§ 4:18 Federal Parliament alone (s. 44)

VII. PROVINCIAL LEGISLATURE ALONE

§ 4:19 Provincial Legislature alone (s. 45)

VIII. FUTURE AMENDMENTS

§ 4:20 Forces of change

- § 4:21 Division of powers
- § 4:22 Central institutions
- § 4:23 Criticism of amending procedures

CHAPTER 5. FEDERALISM

I. DISTRIBUTION OF GOVERNMENTAL POWER

- § 5:1 Federalism
- § 5:2 Confederation
- § 5:3 Legislative union
- § 5:4 Special status
- § 5:5 Dominion and provinces
- § 5:6 Regions
- § 5:7 Subsidiarity

II. REASONS FOR FEDERALISM

§ 5:8 Reasons for federalism

III. FEDERALISM IN CANADA

- § 5:9 The terms of the Constitution
- § 5:10 Early federal dominance
- § 5:11 Judicial interpretation of the distribution of powers
- § 5:12 Federal-provincial financial arrangements
- § 5:13 Disallowance
- § 5:14 Appointment of Lieutenant Governors
- § 5:15 Appointment of judges
- § 5:16 Educational appeals
- § 5:17 Declaratory power
- § 5:18 Conclusion

IV. SUPREMACY OF THE CONSTITUTION

§ 5:19 Supremacy of the Constitution

V. ROLE OF THE COURTS

- § 5:20 Development of judicial review
- § 5:21 Limitations of judicial review
- § 5:22 Alternatives to judicial review

VI. AMENDING POWER

§ 5:23 Amending power

VII. SECESSION

- § 5:24 The power to secede
- § 5:25 Secession by amendment
- § 5:26 Secession by unilateral act

xliv

VIII. COOPERATIVE FEDERALISM

§ 5:27 Cooperative federalism

CHAPTER 6. FINANCIAL ARRANGEMENTS

I. CONFEDERATION ARRANGEMENTS

§ 6:1 Confederation arrangements

II. DEVELOPMENT OF DIRECT TAXATION

§ 6:2 Development of direct taxation

III. TAX RENTAL AGREEMENTS: 1941-1962

§ 6:3 Tax rental agreements: 1941–1962

IV. TAX COLLECTION AGREEMENTS: 1962-PRESENT

§ 6:4 Tax collection agreements: 1962-present

V. TAX ABATEMENTS

§ 6:5 Tax abatements

VI. EQUALIZATION PAYMENTS

§ 6:6 Equalization payments

VII. CONDITIONAL FEDERAL GRANTS

§ 6:7 Conditional federal grants

VIII. SPENDING POWER

§ 6:8 Federal power

§ 6:9 Provincial power

IX. CONCLUSIONS

§ 6:10 Conclusions

CHAPTER 7. COURTS

I. PROVINCIAL COURTS

- § 7:1 Establishment of provincial courts
- § 7:2 Appointment and payment of provincial judges
- § 7:3 Tenure of provincial judges: s. 99
- § 7:4 Tenure of provincial judges: s. 11(d)
- § 7:5 Inferior courts
- § 7:6 Court Martial
- § 7:7 Jury

 $^{^{\}odot}$ 2021 Thomson Reuters, Rel. 1, 7/2021

- § 7:8 Inferior courts of civil jurisdiction
- § 7:9 Administrative tribunals

II. FEDERAL COURTS

- § 7:10 Supreme Court of Canada
- § 7:11 Federal Court of Canada
- § 7:12 Tax Court of Canada
- § 7:13 Territorial courts
- § 7:14 Appointment, payment and tenure of federal judges

III. IMPLICATIONS OF CONSTITUTION'S JUDICATURE SECTIONS

- § 7:15 Separation of powers
- § 7:16 Inferior courts
- § 7:17 County or district courts
- § 7:18 Superior courts
- § 7:19 Administrative tribunals
- § 7:20 Privative clauses

CHAPTER 8. SUPREME COURT OF CANADA

I. IN GENERAL

- § 8:1 Establishment of Court
- § 8:2 Abolition of Privy Council appeals
- § 8:3 Composition of Court
- § 8:4 Appointment of judges

II. APPELLATE JURISDICTION

- § 8:5 Constitutional basis of jurisdiction
- § 8:6 Civil appeals
- § 8:7 Criminal appeals

III. REFERENCE JURISDICTION

- § 8:8 Federal references
- § 8:9 Provincial references
- § 8:10 Constitutional basis
- § 8:11 Advisory character
- § 8:12 Proof of facts

IV. PRECEDENT; REFORM OF COURT

- § 8:13 Precedent
- § 8:14 Reform of Court

CHAPTER 9. RESPONSIBLE GOVERNMENT

I. RESPONSIBLE GOVERNMENT

§ 9:1 Definition of responsible government

Table of Contents

- § 9:2 History of responsible government
- § 9:3 Law and convention

II. THE EXECUTIVE BRANCH

- § 9:4 The ministry
- § 9:5 The cabinet and the Privy Council
- § 9:6 The Prime Minister
- § 9:7 Ministerial responsibility

III. THE LEGISLATIVE BRANCH

- § 9:8 The Parliament
- § 9:9 The House of Commons
- § 9:10 The Senate
- § 9:11 The Governor General
- § 9:12 The cabinet

IV. DEFEAT OF THE GOVERNMENT

- § 9:13 Withdrawal of confidence
- § 9:14 Dissolution of Parliament
- § 9:15 Resignation or dismissal

V. THE GOVERNOR GENERAL'S PERSONAL PREROGATIVES

- § 9:16 The principle
- § 9:17 Appointment of Prime Minister
- § 9:18 Dismissal of Prime Minister
- § 9:19 Dissolution of Parliament
- § 9:20 Fixed election dates
- § 9:21 Prorogation of Parliament
- § 9:22 Appointments to Senate and bench
- § 9:23 The justification for a formal head of state
- § 9:24 The monarchy

CHAPTER 10. THE CROWN

I. DEFINITION OF THE CROWN

§ 10:1 Definition of the Crown

II. CROWN AGENCY

- § 10:2 Public corporations
- § 10:3 Agent at common law
- § 10:4 Agent by statute

III. PROCEEDINGS AGAINST THE CROWN

- § 10:5 Generally
- © 2021 Thomson Reuters, Rel. 1, 7/2021

IV. CROWN PRIVILEGE

- § 10:6 Definition of Crown privilege
- § 10:7 Judicial review of claims of Crown privilege
- § 10:8 Class claims of Crown privilege
- § 10:9 Oral testimony

V. LIABILITY OF CROWN IN CONTRACT

§ 10:10 Liability of Crown in contract

VI. CROWN SERVANTS

§ 10:11 Crown servants

VII. LIABILITY OF CROWN IN TORT

§ 10:12 Liability of Crown in tort

VIII. STATUTES BINDING THE CROWN

- § 10:13 Common law immunity
- § 10:14 Effect of Interpretation Acts
- § 10:15 Exceptions to immunity

IX. FEDERAL COMPLICATIONS

- § 10:16 Scope of presumption
- § 10:17 Meaning of the Crown
- § 10:18 Constitutional limitations
- § 10:19 Provincial laws binding federal Crown
- § 10:20 Provincial laws binding other provinces
- § 10:21 Federal laws binding provincial Crown

CHAPTER 11. TREATIES

I. DEFINITION OF TREATY; POWER TO MAKE TREATIES

- § 11:1 Definition of treaty
- § 11:2 Power to make treaties

II. PROCEDURE FOR MAKING TREATIES

- § 11:3 Signing
- § 11:4 Ratification
- § 11:5 Role of Parliament

III. IMPLEMENTING TREATIES

- § 11:6 The need for legislation
- § 11:7 The federal problem
- § 11:8 The United States

xlviii

§ 11:9 Australia

IV. IMPLEMENTING TREATIES IN CANADA

- § 11:10 Section 132 of the Constitution Act, 1867
- § 11:11 Labour Conventions case
- § 11:12 Evaluation of Labour Conventions case

V. PROVINCIAL TREATY-MAKING

§ 11:13 Provincial treaty-making

CHAPTER 12. PARLIAMENTARY SOVEREIGNTY

I. SOVEREIGNTY IN THE UNITED KINGDOM

§ 12:1 Sovereignty in the United Kingdom

II. SOVEREIGNTY IN CANADA

- § 12:2 Federalism
- § 12:3 Charter of Rights
- § 12:4 Constitutional amendment
- § 12:5 Extraterritorial competence
- § 12:6 Delegation
- § 12:7 Retroactive legislation
- § 12:8 Wisdom or policy of legislation

III. SELF-IMPOSED RESTRAINTS ON LEGISLATIVE POWER

- § 12:9 Substance of future laws
- § 12:10 Manner and form of future laws

CHAPTER 13. EXTRATERRITORIAL COMPETENCE

I. EXTRATERRITORIAL LAWS

§ 13:1 Extraterritorial laws

II. FEDERAL PARLIAMENT

§ 13:2 Federal Parliament

III. PROVINCIAL LEGISLATURES

- § 13:3 Territorial limitation
- § 13:4 Territory of province
- § 13:5 Impairment of extraprovincial rights
- § 13:6 Regulation of extraprovincial activity
- § 13:7 Conferral of extraprovincial capacity

^{© 2021} Thomson Reuters, Rel. 1, 7/2021

IV. THE CROWN

§ 13:8 The Crown

V. COURTS

- § 13:9 Conflict of laws and the Constitution
- § 13:10 Jurisdiction

VI. RECOGNITION OF JUDGMENTS

- § 13:11 The Morguard Case
- § 13:12 Foreign judgments
- § 13:13 Class actions

VII. CHOICE OF LAW

§ 13:14 Choice of law

CHAPTER 14. DELEGATION

I. POWER OF DELEGATION

- § 14:1 Introduction to delegation
- § 14:2 United Kingdom Parliament
- § 14:3 Provincial Legislatures
- § 14:4 Federal Parliament

II. LIMITATIONS IMPOSED BY CONSTITUTION

- § 14:5 Delegation of legislative power
- § 14:6 Delegation of judicial power
- § 14:7 Classification of laws
- § 14:8 Office of Lieutenant Governor or Governor General
- § 14:9 Requirement of a Legislature or Parliament

III. FEDERAL INTER-DELEGATION

- § 14:10 Legislative inter-delegation
- § 14:11 Administrative inter-delegation

IV. REFERENTIAL LEGISLATION

- § 14:12 Incorporation by reference
- § 14:13 Anticipatory incorporation by reference
- § 14:14 Independent validity of incorporated law

V. CONDITIONAL LEGISLATION

- § 14:15 Conditions as delegations
- § 14:16 Conditions as administrative inter-delegations
- § 14:17 Conditions as legislative inter-delegations

VI. DELEGATION BY ACQUIESCENCE

§ 14:18 Delegation by acquiescence

VII. CONCLUSIONS ON FEDERAL INTER-DELEGATION

§ 14:19 Conclusions on federal inter-delegation

PART II. DISTRIBUTION OF POWER

CHAPTER 15. JUDICIAL REVIEW ON FEDERAL GROUNDS

I. SCOPE OF CHAPTER

§ 15:1 Scope of chapter

II. PRIORITY BETWEEN FEDERAL AND CHARTER GROUNDS

§ 15:2 Priority between federal and Charter grounds

III. PROCEDURE AND REASONING OF JUDICIAL REVIEW

- § 15:3 Procedure of judicial review
- § 15:4 Reasoning of judicial review

IV. CHARACTERIZATION OF LAWS

- § 15:5 "Matter"
- § 15:6 Singling out
- § 15:7 Double aspect
- § 15:8 Purpose
- § 15:9 Effect
- § 15:10 Efficacy
- § 15:11 Colourability
- § 15:12 Criteria of choice
- § 15:13 Presumption of constitutionality

V. SEVERANCE; READING DOWN

- § 15:14 Severance
- § 15:15 Reading down

VI. INTERJURISDICTIONAL IMMUNITY

- § 15:16 Definition of interjurisdictional immunity
- § 15:17 Federally-incorporated companies
- § 15:18 Federally-regulated undertakings
- § 15:19 Other federal matters
- § 15:20 Rationale of interjurisdictional immunity
- § 15:21 Provincial subjects

VII. INTERPRETATION OF CONSTITUTION

- § 15:22 Relevance
- $^{\circ}$ 2021 Thomson Reuters, Rel. 1, 7/2021

§ 15:23	Exclusiveness
§ 15:24	Ancillary power
§ 15:25	Concurrency
§ 15:26	Exhaustiveness
§ 15:27	Progressive interpretation
§ 15:28	Unwritten constitutional principles
§ 15:29	Legislative history
§ 15:30	Precedent

CHAPTER 16. PARAMOUNTCY

I. PROBLEM OF INCONSISTENCY

§ 16:1 Problem of inconsistency

II. DEFINITION OF INCONSISTENCY

§ 16:2 Definition of inconsistency

III. EXPRESS CONTRADICTION

§ 16:3 Impossibility of dual compliance § 16:4 Frustration of federal purpose

IV. NEGATIVE IMPLICATION

- § 16:5 Covering the field
- § 16:6 Express extension of paramountcy

V. OVERLAP AND DUPLICATION

- § 16:7 Constitutional significance § 16:8 Double criminal liability
- § 16:9 Double civil liability

VI. EFFECT OF INCONSISTENCY

§ 16:10 Effect of inconsistency

CHAPTER 17. PEACE, ORDER, AND GOOD GOVERNMENT

I. RESIDUARY NATURE OF POWER

§ 17:1 Residuary nature of power

II. THE "GAP" BRANCH

§ 17:2 The "gap" branch

III. THE "NATIONAL CONCERN" BRANCH

§ 17:3 History of national concern

Table of Contents

- § 17:4 Definition of national concern
- § 17:5 Distinctness
- § 17:6 Newness

IV. THE "EMERGENCY" BRANCH

- § 17:7 The non-emergency cases
- § 17:8 War
- § 17:9 Apprehended insurrection
- § 17:10 Inflation
- § 17:11 Temporary character of law

V. RELATIONSHIP BETWEEN NATIONAL CONCERN AND EMERGENCY

§ 17:12 Relationship between national concern and emergency

CHAPTER 18. CRIMINAL LAW

I. DISTRIBUTION OF POWERS

§ 18:1 Distribution of powers

II. DEFINITION OF CRIMINAL LAW

§ 18:2 Definition of criminal law

III. FOOD AND DRUGS

- § 18:3 Food and drug standards
- § 18:4 Illicit drugs
- § 18:5 Tobacco

IV. HEALTH

§ 18:6 Health

V. ENVIRONMENTAL PROTECTION

§ 18:7 Environmental protection

VI. ABORTION

§ 18:8 Abortion

VII. ASSISTED HUMAN REPRODUCTION

§ 18:9 Assisted human reproduction

VIII. GENETIC DISCRIMINATION

§ 18:10 Genetic Discrimination

IX. COMPETITION LAW

§ 18:11 Competition law

X. SUNDAY OBSERVANCE LAW

- § 18:12 Federal power
- § 18:13 Provincial power

XI. GUN CONTROL

§ 18:14 Gun control

XII. PREVENTION OF CRIME

- § 18:15 Prevention in general
- § 18:16 Young offenders

XIII. CRIMINAL LAW AND CIVIL REMEDY

- § 18:17 Federal power generally to create civil remedies
- § 18:18 Criminal law power to create civil remedies

XIV. CRIMINAL LAW AND REGULATORY AUTHORITY

§ 18:19 Criminal law and regulatory authority

XV. PROVINCIAL POWER TO ENACT PENAL LAWS

§ 18:20 Provincial power to enact penal laws

CHAPTER 19. CRIMINAL JUSTICE

I. DISTRIBUTION OF POWER

§ 19:1 Distribution of power

II. COURTS OF CRIMINAL JURISDICTION

- § 19:2 Establishment of criminal court
- § 19:3 Investment with criminal jurisdiction
- § 19:4 Application of s. 96 to indictable offences
- § 19:5 Application of s. 96 to Parliament

III. PROCEDURE; EVIDENCE

- § 19:6 Procedure
- § 19:7 Evidence

IV. POLICING

- § 19:8 Provincial power
- § 19:9 Provincial police forces
- § 19:10 R.C.M.P. policing contracts
- § 19:11 R.C.M.P. policing of territories
- § 19:12 R.C.M.P. policing of national security
- § 19:13 R.C.M.P. policing of federal statutes

V. PROSECUTION

- § 19:14 Provincial power
- § 19:15 Federal power

VI. PUBLIC INQUIRIES

§ 19:16 Public inquiries

VII. PUNISHMENT

- § 19:17 Distribution of powers
- § 19:18 Imprisonment
- § 19:19 Parole
- § 19:20 Probation

CHAPTER 20. TRADE AND COMMERCE

I. RELATIONSHIP TO PROPERTY AND CIVIL RIGHTS

§ 20:1 Relationship to property and civil rights

II. INTERPROVINCIAL OR INTERNATIONAL TRADE AND COMMERCE

- § 20:2 In the Privy Council
- § 20:3 In the Supreme Court of Canada

III. GENERAL TRADE AND COMMERCE

§ 20:4 General trade and commerce

IV. SPECIFIC TOPICS

§ 20:5 Specific topics

CHAPTER 21. PROPERTY AND CIVIL RIGHTS

I. IN GENERAL

- § 21:1 Importance of property and civil rights
- § 21:2 History of property and civil rights
- § 21:3 Civil liberties
- § 21:4 Local or private matters

II. INSURANCE

- § 21:5 Reasons for regulation
- § 21:6 Provincial power
- § 21:7 Federal power

III. BUSINESS IN GENERAL

- § 21:8 Business in general
- © 2021 Thomson Reuters, Rel. 1, 7/2021

IV. PROFESSIONS AND TRADES

§ 21:9 Professions and trades

V. LABOUR RELATIONS

- § 21:10 Provincial power
- § 21:11 Federal power

VI. MARKETING

- § 21:12 Reasons for regulation
- § 21:13 Federal power
- § 21:14 Provincial power

VII. SECURITIES REGULATION

- § 21:15 Provincial power
- § 21:16 Federal power

VIII. PROPERTY

- § 21:17 General
- § 21:18 Foreign ownership
- § 21:19 Heritage property

IX. DEBT ADJUSTMENT

§ 21:20 Debt adjustment

X. CONSUMER PROTECTION

§ 21:21 Consumer protection

XI. EXTRATERRITORIAL COMPETENCE

§ 21:22 Extraterritorial competence

CHAPTER 22. TRANSPORTATION AND COMMUNICATION

I. DISTRIBUTION OF POWER

§ 22:1 Distribution of power

II. WORKS AND UNDERTAKINGS

§ 22:2 Works and undertakings

III. TRANSPORTATION AND COMMUNICATION

§ 22:3 Transportation and communication

IV. CONNECTION WITH ANOTHER PROVINCE

§ 22:4 Connection with another province

V. UNDIVIDED JURISDICTION

§ 22:5 Undivided jurisdiction

VI. CONTINUOUS AND REGULAR SERVICE

§ 22:6 Continuous and regular service

VII. RELATED UNDERTAKINGS

- § 22:7 Common ownership
- § 22:8 Common management
- § 22:9 Dependency

VIII. WORKS FOR THE GENERAL ADVANTAGE OF CANADA

§ 22:10 Works for the general advantage of Canada

IX. TRANSPORTATION BY LAND

§ 22:11 Transportation by land

X. TRANSPORTATION BY WATER

§ 22:12 Transportation by water

XI. TRANSPORTATION BY AIR

- § 22:13 Basis of legislative jurisdiction
- § 22:14 Intraprovincial aeronautics
- § 22:15 Provincial jurisdiction

XII. COMMUNICATION BY RADIO

- § 22:16 Basis of legislative jurisdiction
- § 22:17 Intraprovincial broadcasting
- § 22:18 Content regulation

XIII. COMMUNICATION BY TELEVISION

- § 22:19 Broadcast television
- § 22:20 Cable television
- § 22:21 Pay television

XIV. COMMUNICATION BY TELEPHONE

§ 22:22 Communication by telephone

XV. COMMUNICATION BY OTHER MEANS

- § 22:23 Film
- § 22:24 Theatre
- § 22:25 Literature

CHAPTER 23. COMPANIES

I. INCORPORATION OF COMPANIES

- § 23:1 Distribution of powers
- § 23:2 Territorial limitation
- § 23:3 Functional limitation
- § 23:4 Federal power
- § 23:5 Conclusion

II. REGULATION OF CORPORATE ACTIVITY

§ 23:6 Regulation of corporate activity

III. THE "STATUS AND ESSENTIAL POWERS" IMMUNITY

- § 23:7 Scope of immunity
- § 23:8 Taking a federal company's assets
- § 23:9 Immunity of provincial companies

CHAPTER 24. FINANCIAL INSTITUTIONS

I. FEDERAL POWER OVER BANKING

§ 24:1 Federal power over banking

II. DEFINITION OF BANKING

- § 24:2 Functional test
- § 24:3 Institutional test

III. PROVINCIAL REGULATION OF FINANCIAL INSTITUTIONS

- § 24:4 Banks
- § 24:5 Non-bank financial institutions

IV. INCORPORATION OF BANKS

§ 24:6 Incorporation of banks

V. INCORPORATION OF OTHER FINANCIAL INSTITUTIONS

§ 24:7 Incorporation of other financial institutions

CHAPTER 25. BANKRUPTCY AND INSOLVENCY

I. SECTION 91(21)

§ 25:1 Section 91(21)

lviii

II. BANKRUPTCY LEGISLATION

§ 25:2 Bankruptcy legislation

III. MEANINGS OF BANKRUPTCY AND INSOLVENCY

- § 25:3 Meaning of bankruptcy
- § 25:4 Meaning of insolvency

IV. ADJUSTMENT OF DEBTS

- § 25:5 Federal power
- § 25:6 Provincial power
- § 25:7 Interest adjustment
- § 25:8 Principal and interest adjustment
- § 25:9 Moratorium

V. PRIORITY OF DEBTS

- § 25:10 Federal power
- § 25:11 Statutory lien
- § 25:12 Statutory trust
- § 25:13 Statutory set-off

VI. VOLUNTARY ASSIGNMENTS

§ 25:14 Voluntary assignments

VII. FRAUDULENT PREFERENCES

§ 25:15 Fraudulent preferences

CHAPTER 26. CITIZENSHIP

I. IMMIGRATION

§ 26:1 Immigration

II. NATURALIZATION AND ALIENS

§ 26:2 Naturalization and aliens

III. CITIZENSHIP

§ 26:3 Citizenship

CHAPTER 27. THE FAMILY

I. DISTRIBUTION OF POWERS

§ 27:1 Distribution of powers

II. CRIME AND DELINQUENCY

§ 27:2 Crime and delinquency

 $[\]odot$ 2021 Thomson Reuters, Rel. 1, 7/2021

III. MARRIAGE

- § 27:3 Formation of marriage
- § 27:4 Consequences of marriage

IV. DIVORCE

§ 27:5 Generally

V. CUSTODY AND SUPPORT OF CHILDREN

- § 27:6 Custody of children
- § 27:7 Support of children

VI. SUPPORT OF SPOUSE

§ 27:8 Support of spouse

VII. DIVISION OF PROPERTY

§ 27:9 Division of property

VIII. CONFLICT BETWEEN ORDERS MADE UNDER FEDERAL AND PROVINCIAL LAW

- § 27:10 General principles
- § 27:11 Variation under provincial law of orders under Divorce Act
- § 27:12 Orders under provincial law where no order under Divorce
- § 27:13 Variation under Divorce Act of orders under provincial law

IX. JURISDICTION OF FAMILY COURTS

- § 27:14 Fragmentation of jurisdiction
- § 27:15 Federal courts
- § 27:16 Provincial courts invested by province
- § 27:17 Provincial courts invested by Dominion

CHAPTER 28. ABORIGINAL PEOPLES

I. FEDERAL LEGISLATIVE POWER

- § 28:1 Section 91(24)
- § 28:2 Indians
- § 28:3 Lands reserved for the Indians
- § 28:4 Canadian Bill of Rights
- § 28:5 Charter of Rights
- § 28:6 Treaties

II. PROVINCIAL LEGISLATIVE POWER

- § 28:7 Application of provincial laws
- § 28:8 First exception: singling out

Table of Contents

- § 28:9 Second exception: Indianness
- § 28:10 Third exception: paramountcy
- § 28:11 Fourth exception: Natural Resources Agreements
- § 28:12 Fifth exception: section 35

III. SECTION 88 OF THE INDIAN ACT

- § 28:13 Text of s. 88
- § 28:14 Laws of general application
- § 28:15 Paramountcy exception
- § 28:16 Treaty exception

IV. NATURAL RESOURCES AGREEMENTS

§ 28:17 Natural resources agreements

V. ABORIGINAL RIGHTS

- § 28:18 Recognition of aboriginal rights
- § 28:19 Definition of aboriginal rights
- § 28:20 Aboriginal self-government
- § 28:21 Aboriginal title
- § 28:22 Extinguishment of Aboriginal rights

VI. TREATY RIGHTS

- § 28:23 Introduction
- § 28:24 History
- § 28:25 Definition of treaty
- § 28:26 Interpretation of treaty rights
- § 28:27 Extinguishment of treaty rights

VII. THE NEED FOR CONSTITUTIONAL PROTECTION

§ 28:28 The need for constitutional protection

VIII. SECTION 35

- § 28:29 Text of s. 35
- § 28:30 Outside Charter of Rights
- § 28:31 "Aboriginal peoples of Canada"
- § 28:32 "Aboriginal and treaty rights"
- § 28:33 "Existing"
- § 28:34 "Recognized and affirmed"
- § 28:35 Application to treaty rights
- § 28:36 Application to extinguishment
- § 28:37 Application to provincial laws
- § 28:38 Duty to consult Aboriginal people
- § 28:39 Jurisdiction of the provincial courts
- § 28:40 Remedies for breach of s. 35

IX. SECTION 25

- § 28:41 Section 25
- © 2021 Thomson Reuters, Rel. 1, 7/2021

X. SECTION 35.1

§ 28:42 Section 35.1

XI. CHARLOTTETOWN ACCORD

§ 28:43 Charlottetown Accord

CHAPTER 29. PUBLIC PROPERTY

I. DISTRIBUTION OF PUBLIC PROPERTY

§ 29:1 Distribution of public property

II. LEGISLATIVE POWER OVER PUBLIC PROPERTY

§ 29:2 Legislative power over public property

III. EXECUTIVE POWER OVER PUBLIC PROPERTY

§ 29:3 Executive power over public property

IV. LEGISLATIVE POWER AND PROPRIETARY INTERESTS

§ 29:4 Legislative power and proprietary interests

V. EXPROPRIATION

- § 29:5 Federal power
- § 29:6 Provincial power
- § 29:7 Crown property
- § 29:8 Compensation

CHAPTER 30. NATURAL RESOURCES

I. ONSHORE MINERALS: PROVINCIAL POWERS

- § 30:1 Provincial public property
- § 30:2 Private property
- § 30:3 Pipelines

II. ONSHORE MINERALS: FEDERAL POWERS

- § 30:4 Federal public property
- § 30:5 Private property
- § 30:6 Peace, order, and good government
- § 30:7 Trade and commerce
- § 30:8 Works and undertakings
- § 30:9 Taxation
- § 30:10 Uranium

III. OFFSHORE MINERALS

§ 30:11 International law and constitutional law

lxii

Table of Contents

- § 30:12 B.C. Offshore Reference
- § 30:13 Newfoundland Offshore Reference
- § 30:14 Basis of federal jurisdiction

IV. FORESTRY

- § 30:15 Forestry industry
- § 30:16 Provincial public property
- § 30:17 Federal public property
- § 30:18 Private property
- § 30:19 Navigation conflicts
- § 30:20 Fisheries conflicts

V. FISHERIES

- § 30:21 Section 91(12)
- § 30:22 Right to fish
- § 30:23 Provincial public property
- § 30:24 Federal public property
- § 30:25 Private property
- § 30:26 Preservation of fish
- § 30:27 Marketing of fish

VI. ELECTRICITY

- § 30:28 Hydro-electricity
- § 30:29 Other kinds of electricity
- § 30:30 Section 92A

VII. ENVIRONMENTAL PROTECTION

- § 30:31 Divided jurisdiction
- § 30:32 Federal power
- § 30:33 Provincial power

CHAPTER 31. TAXATION

I. DISTRIBUTION OF POWERS

- § 31:1 The primary powers
- § 31:2 For provincial purposes
- § 31:3 The provincial licensing power
- § 31:4 Limitations on the powers
- § 31:5 Paramountcy

II. THE MEANING OF DIRECT TAXATION

- § 31:6 Mill's definition
- § 31:7 Rationale for restricting provincial power

III. SPECIFIC TYPES OF TAXES

- § 31:8 Customs and excise duties
- © 2021 Thomson Reuters, Rel. 1, 7/2021

§ 31:9	Income taxes
§ 31:10	Business taxes
§ 31:11	Property taxes
§ 31:12	Sales taxes
§ 31:13	Death taxes
§ 31:14	Resource taxes

IV. TAXES AND CHARGES

§ 31:15	Proprietary charges
§ 31:16	Regulatory charges

V. TERRITORIAL LIMITATION

3 31:17	General
§ 31:18	Persons
§ 31:19	Property
§ 31:20	Transactions and benefits

VI. INTERJURISDICTIONAL TAXATION

§ 31:21	The Crown
§ 31:22	Ministers, officials, judges
\$ 31:23	Business activity outside regulatory control

VII. SECTION 125

$\S 31:24$	General
31:25	Taxation
§ 31:26	Lands or property
§ 31:27	Commercial activity

VIII. UNCONSTITUTIONAL TAXES

§ 31:28 Unconstitutional taxes

CHAPTER 32. HEALTH

I. PROVINCIAL POWER OVER HEALTH

§ 32:1 Provincial power over health

II. FEDERAL POWER OVER HEALTH

§ 32:2 Federal power over health

III. CANADA HEALTH ACT

§ 32:3 Canada Health Act

IV. UNIVERSALITY OF PUBLIC HEALTH CARE

§ 32:4 Universality of public health care

lxiv

V. COMPREHENSIVENESS OF PUBLIC HEALTH CARE

§ 32:5 Comprehensiveness of public health care

VI. ACCESSIBILITY OF PUBLIC HEALTH CARE

§ 32:6 Accessibility of public health care

CHAPTER 33. SOCIAL SECURITY

I. LEGISLATIVE POWER OVER SOCIAL SECURITY

§ 33:1 Legislative power over social security

II. UNEMPLOYMENT INSURANCE

§ 33:2 Unemployment insurance

III. OLD AGE PENSIONS

§ 33:3 Old age pensions

IV. WORKERS' COMPENSATION

§ 33:4 Workers' compensation

V. SOCIAL ASSISTANCE

§ 33:5 Social assistance

Volume 2

PART III. CIVIL LIBERTIES

CHAPTER 34. CIVIL LIBERTIES

I. DEFINITIONS OF CIVIL LIBERTIES

§ 34:1 Definition of civil liberties

II. COMMON LAW

§ 34:2 Common law

III. STATUTE

§ 34:3 Human rights codes

§ 34:4 Statutory bills of rights

IV. CONSTITUTION ACT, 1867

§ 34:5 Express guarantees

© 2021 Thomson Reuters, Rel. 1, 7/2021

- § 34:6 Distribution of powers
- § 34:7 Implied bill of rights

V. CONSTITUTION ACT, 1982

§ 34:8 Constitution Act, 1982

CHAPTER 35. CANADIAN BILL OF RIGHTS

I. HISTORY OF BILL OF RIGHTS

§ 35:1 History of Bill of Rights

II. APPLICATION TO FEDERAL LAWS

§ 35:2 Application to federal laws

III. EFFECT OF INCONSISTENT STATUTES

- § 35:3 Meaning of s. 2
- § 35:4 Effect on earlier statutes
- § 35:5 Effect on later statutes
- § 35:6 Conclusions

IV. CONTENTS OF BILL OF RIGHTS

§ 35:7 Contents of Bill of Rights

V. JUDICIAL INTERPRETATION

§ 35:8 Judicial interpretation

VI. SCRUTINY BY MINISTER OF JUSTICE

§ 35:9 Scrutiny by Minister of Justice

CHAPTER 36. CHARTER OF RIGHTS

I. IN GENERAL

- § 36:1 History of Charter
- § 36:2 Protection of civil liberties
- § 36:3 Enhancement of national unity

II. EXPANSION OF JUDICIAL REVIEW

- § 36:4 New grounds of review
- § 36:5 Vagueness of concepts
- § 36:6 Role of s. 1
- § 36:7 Role of s. 33

III. DIALOGUE WITH LEGISLATIVE BRANCH

§ 36:8 The idea of dialogue

lxvi

Table of Contents

- § 36:9 Second look cases
- § 36:10 Remedial discretion
- § 36:11 Dialogue within government

IV. POLITICAL QUESTIONS

§ 36:12 Political questions

V. CHARACTERIZATION OF LAWS

- § 36:13 Comparison with federalism review
- § 36:14 Purpose or effect
- § 36:15 Trivial effects
- § 36:16 Severance
- § 36:17 Reading down

VI. INTERPRETATION OF CHARTER

- § 36:18 Progressive interpretation
- § 36:19 Generous interpretation
- § 36:20 Purposive interpretation
- § 36:21 Process as purpose
- § 36:22 Hierarchy of rights
- § 36:23 Conflict between rights
- § 36:24 English-French discrepancies
- § 36:25 Interpretation of exceptions

VII. SOURCES OF INTERPRETATION

- § 36:26 Pre-Charter cases
- § 36:27 American cases
- § 36:28 International sources
- § 36:29 Legislative history

VIII. PRIORITY BETWEEN FEDERAL AND CHARTER GROUNDS

§ 36:30 Priority between federal and Charter grounds

IX. COMMENCEMENT OF CHARTER

§ 36:31 Commencement of Charter

X. UNDECLARED RIGHTS

§ 36:32 Undeclared rights

CHAPTER 37. APPLICATION OF CHARTER

I. BENEFIT OF RIGHTS

§ 37:1 The issue

- § 37:2 Everyone, any person
- § 37:3 Individual
- § 37:4 Citizen
- § 37:5 Permanent resident

II. BURDEN OF RIGHTS

- § 37:6 Both levels of government
- § 37:7 Parliament or Legislature
- § 37:8 Statutory authority
- § 37:9 Amending procedures
- § 37:10 Government
- § 37:11 Courts
- § 37:12 Common law
- § 37:13 Private action
- § 37:14 Extraterritorial application

III. WAIVER OF RIGHTS

- § 37:15 Definition of waiver
- § 37:16 Rationale of waiver
- § 37:17 Waiver of presumption of innocence
- § 37:18 Waiver of right to silence
- § 37:19 Waiver of unreasonable search and seizure
- § 37:20 Waiver of right to counsel
- § 37:21 Waiver of speedy trial
- § 37:22 Waiver of right to jury
- § 37:23 Waiver of right to interpreter
- § 37:24 Waiver by contract

CHAPTER 38. LIMITATION OF RIGHTS

I. OVERVIEW OF S. 1

- § 38:1 Introduction to s. 1
- § 38:2 Rationale of s. 1
- § 38:3 Relationship between s. 1 and rights

II. BURDEN OF PROOF

§ 38:4 Burden of proof

III. PRESUMPTION OF CONSTITUTIONALITY

§ 38:5 Presumption of constitutionality

IV. LIMITS

§ 38:6 Limits

V. PRESCRIBED BY LAW

§ 38:7 Definition of prescribed by law

lxviii

- § 38:8 Discretion
- § 38:9 Vagueness

VI. REASONABLE AND DEMONSTRABLY JUSTIFIED

- § 38:10 Introduction
- § 38:11 Oakes test

VII. SUFFICIENTLY IMPORTANT OBJECTIVE

- § 38:12 Identification of objective
- § 38:13 Importance of objective
- § 38:14 Quebec's distinct society
- § 38:15 Inadmissible objectives
- § 38:16 Shifting objectives
- § 38:17 Cost

VIII. RATIONAL CONNECTION

- § 38:18 Definition
- § 38:19 Causation

IX. LEAST DRASTIC MEANS

- § 38:20 Minimum impairment
- § 38:21 Margin of appreciation

X. PROPORTIONATE EFFECT; APPLICATION TO EQUALITY RIGHTS

- § 38:22 Proportionate effect
- § 38:23 Application to equality rights

XI. APPLICATION TO QUALIFIED RIGHTS

- § 38:24 Scope of s. 1
- § 38:25 Section 7
- § 38:26 Section 8
- § 38:27 Section 9
- § 38:28 Section 11
- § 38:29 Section 12
- § 38:30 Section 23

XII. APPLICATION TO COMMON LAW

§ 38:31 Application to common law

XIII. APPLICATION TO DISCRETIONARY DECISIONS

- § 38:32 Application to discretionary decisions
- § 38:33 Emergency measures

CHAPTER 39. OVERRIDE OF RIGHTS

I. SECTION 33

§ 39:1 Section 33

II. HISTORY OF S. 33

§ 39:2 History of s. 33

III. RIGHTS THAT MAY BE OVERRIDDEN

§ 39:3 Rights that may be overridden

IV. FIVE-YEAR LIMIT

§ 39:4 Five-year limit

V. SPECIFICITY OF DECLARATION

§ 39:5 Specificity of declaration

VI. RETROACTIVE EFFECT

§ 39:6 Retroactive effect

VII. JUDICIAL REVIEW

§ 39:7 Judicial review

VIII. EVALUATION OF S. 33

§ 39:8 Evaluation of s. 33

CHAPTER 40. ENFORCEMENT OF RIGHTS

I. SUPREMACY CLAUSE

0 10 1	~	
§ 40:1	Section	52(1)

- § 40:2 Section 24(1) compared
- § 40:3 Nullification
- § 40:4 Temporary validity
- § 40:5 Severance
- § 40:6 Reading in
- § 40:7 Reading down
- § 40:8 Constitutional exemption
- § 40:9 Reconstruction
- § 40:10 Limitation of actions

II. REMEDY CLAUSE

- § 40:11 Section 24(1)
- § 40:12 Applicable to Charter only

lxx

Table of Contents

- § 40:13 Non-exclusive remedy
- § 40:14 Standing
- § 40:15 Apprehended infringements
- § 40:16 Court of competent jurisdiction
- § 40:17 Range of remedies
- § 40:18 Declaration
- § 40:19 Damages
- § 40:20 Costs
- § 40:21 Exclusion of evidence
- § 40:22 Remedies outside s. 24(1)
- § 40:23 Supervision of court orders
- § 40:24 Appeals
- § 40:25 Limitation of actions

III. ADMINISTRATIVE TRIBUNALS

- § 40:26 With power to decide questions of law
- § 40:27 Without power to decide questions of law
- § 40:28 Preliminary inquiry judge
- § 40:29 Provincial court judge

IV. SCRUTINY BY MINISTER OF JUSTICE

§ 40:30 Scrutiny by Minister of Justice

V. LEGISLATIVE ENFORCEMENT

§ 40:31 Legislative enforcement

CHAPTER 41. EXCLUSION OF EVIDENCE

I. SCOPE OF CHAPTER

§ 41:1 Scope of chapter

II. ORIGIN OF S. 24(2)

§ 41:2 Origin of s. 24(2)

III. TEXT OF S. 24(2)

§ 41:3 Text of s. 24(2)

IV. CAUSATION

§ 41:4 Causation

V. BURDEN OF PROOF

§ 41:5 Burden of proof

VI. REASONABLE PERSON TEST

§ 41:6 Reasonable person test

 $^{\odot}$ 2021 Thomson Reuters, Rel. 1, 7/2021

VII. DEFINITION OF DISREPUTE

§ 41:7 Definition of disrepute

VIII. NATURE OF EVIDENCE

§ 41:8 Nature of evidence

IX. NATURE OF OFFICIAL CONDUCT

- § 41:9 Deliberate violations
- § 41:10 Extenuating circumstances
- § 41:11 Good faith

X. NATURE OF CHARTER BREACH

§ 41:12 Nature of Charter breach

XI. EFFECT OF EXCLUDING EVIDENCE

§ 41:13 Effect of excluding evidence

XII. CONCLUSION

§ 41:14 Conclusion

CHAPTER 42. RELIGION

I. DISTRIBUTION OF POWERS

§ 42:1 Distribution of powers

II. SECTION 2(A) OF THE CHARTER

§ 42:2 Section 2(a) of the Charter

III. FREEDOM OF CONSCIENCE

§ 42:3 Freedom of conscience

IV. FREEDOM OF RELIGION

§ 42:4 Freedom of religion

V. SUNDAY OBSERVANCE

§ 42:5 Sunday observance

VI. OTHER RELIGIOUS PRACTICES

§ 42:6 Other religious practices

VII. WAIVER OF RELIGIOUS PRACTICE

§ 42:7 Waiver of religious practice

lxxii

VIII. RELIGION IN PUBLIC SCHOOLS

§ 42:8 Religion in public schools

IX. DENOMINATIONAL SCHOOLS

§ 42:9 Denominational schools

X. RELIGION IN PUBLIC BODIES OTHER THAN SCHOOLS

§ 42:10 Religion in public bodies other than schools

XI. RELIGIOUS MARRIAGE

§ 42:11 Religious marriage

CHAPTER 43. EXPRESSION

I. DISTRIBUTION OF POWERS

- § 43:1 Classification of laws
- § 43:2 Political speech
- § 43:3 Provincial power
- § 43:4 Federal power

II. SECTION 2(B) OF THE CHARTER

§ 43:5 Section 2(b) of the Charter

III. COMPARISON WITH FIRST AMENDMENT

§ 43:6 Comparison with first amendment

IV. REASONS FOR PROTECTING EXPRESSION

§ 43:7 Reasons for protecting expression

V. MEANING OF EXPRESSION

- § 43:8 Definition of expression
- § 43:9 Criminal expression
- § 43:10 Violence
- § 43:11 Content neutrality

VI. WAYS OF LIMITING EXPRESSION

- § 43:12 Prior restraint
- § 43:13 Border control
- § 43:14 Penal prohibition
- § 43:15 Civil prohibition
- § 43:16 Forced expression
- § 43:17 Language requirement

	Constitutional Law of Canada
-	Search of press premises Disclosure of journalists' sources Time, manner and place
VII.	COMMERCIAL EXPRESSION
§ 43:22 § 43:23 § 43:24	Protection of commercial expression Language requirements Advertising restrictions Signs Prostitution
VIII.	PICKETING; HATE PROPAGANDA; DEFAMATION
§ 43:27	Picketing Hate propaganda Defamation
IX. P	PORNOGRAPHY
§ 43:29	Pornography
X A	CCESS TO PUBLIC PROPERTY

§ 43:30 Access to public property

XI. ACCESS TO COURTS

§ 43:31 Fair trial concerns § 43:32 Restrictions on reporting § 43:33 Restrictions on access

XII. ACCESS TO LEGISLATIVE ASSEMBLY

§ 43:34 Generally

CONTEMPT OF COURT; PUBLIC SERVICE; XIII. MANDATORY LETTERS OF REFERENCE

- § 43:35 Contempt of court § 43:36 Public service
- § 43:37 Mandatory letters of reference

XIV. ELECTION EXPENDITURES; VOTING

- § 43:38 Election expenditures
- § 43:39 Voting

XV. ACCESS TO GOVERNMENT; ACCESS TO GOVERNMENT DOCUMENTS

- § 43:40 Access to government
- § 43:41 Access to government documents

lxxiv

CHAPTER 44. ASSEMBLY AND ASSOCIATION

I. DISTRIBUTION OF POWERS

§ 44:1 Distribution of powers

II. FREEDOM OF ASSEMBLY

§ 44:2 Freedom of assembly

III. FREEDOM OF ASSOCIATION

- § 44:3 Section 2(d) of Charter
- § 44:4 Formation of association
- § 44:5 Purpose of association
- § 44:6 Exercise of constitutional rights
- § 44:7 Exercise of non-constitutional rights
- § 44:8 Freedom not to associate

CHAPTER 45. VOTING

I. VOTING

- § 45:1 Pre-Charter law
- § 45:2 Section 3 of Charter
- § 45:3 One person, one vote
- § 45:4 Regulation of elections
- § 45:5 Contested elections

II. CANDIDACY

§ 45:6 Candidacy

III. DURATION OF LEGISLATIVE BODIES

§ 45:7 Duration of legislative bodies

IV. ANNUAL SITTINGS OF LEGISLATIVE BODIES

§ 45:8 Annual sittings of legislative bodies

CHAPTER 46. MOBILITY

I. PERSONS

- § 46:1 Section 6(1) of Charter
- § 46:2 International movement
- § 46:3 Interprovincial movement
- § 46:4 Gaining a livelihood
- § 46:5 Property ownership
- § 46:6 Corporations

II. GOODS

§ 46:7 Section 6(2) of Charter

^{© 2021} Thomson Reuters, Rel. 1, 7/2021

- § 46:8 Section 121 of Constitution Act, 1867
- § 46:9 Interprovincial transportation, trade and commerce
- § 46:10 Product standards

III. SERVICES

§ 46:11 Services

IV. CAPITAL

- § 46:12 Section 6(2) of Charter
- § 46:13 Federal powers over capital
- § 46:14 Restrictions on mobility
- § 46:15 Conclusions

CHAPTER 47. FUNDAMENTAL JUSTICE

I. DISTRIBUTION OF POWERS OVER LEGAL RIGHTS

§ 47:1 Distribution of powers over legal rights

II. SECTION 7 OF CHARTER

§ 47:2 Section 7 of Charter

III. APPLICATION OF S. 1

§ 47:3 Application of s. 1

IV. BENEFIT OF S. 7

- § 47:4 Corporations
- § 47:5 Immigrants
- § 47:6 Foetus

V. BURDEN OF S. 7

§ 47:7 Burden of s. 7

VI. LIFE

§ 47:8 Life

VII. LIBERTY

- § 47:9 Physical liberty
- § 47:10 Economic liberty
- § 47:11 Political liberty

VIII. SECURITY OF THE PERSON

§ 47:12 Security of the person

IX. PROPERTY

§ 47:13 Property

lxxvi

X. FUNDAMENTAL JUSTICE

- § 47:14 Procedure and substance
- § 47:15 Definition of fundamental justice

XI. ABSOLUTE AND STRICT LIABILITY

- § 47:16 Categories of offences
- § 47:17 Absolute liability offences
- § 47:18 Strict liability offences

XII. MURDER

§ 47:19 Murder

XIII. UNFORESEEN CONSEQUENCES

§ 47:20 Unforeseen Consequences

XIV. INVOLUNTARY ACTS

- § 47:21 Automatism
- § 47:22 Duress
- § 47:23 Intoxication

XV. OVERBROAD LAWS

§ 47:24 Overbroad laws

XVI. DISPROPORTIONATE LAWS

§ 47:25 Disproportionate laws

XVII. ARBITRARY LAWS

§ 47:26 Arbitrary laws

XVIII. VAGUE LAWS

- § 47:27 Void for vagueness
- § 47:28 Standard of precision
- § 47:29 Application to other Charter rights

XIX. WRONG LAWS

§ 47:30 Wrong laws

XX. RIGHT TO SILENCE

§ 47:31 Right to silence

XXI. FAIR TRIAL

- § 47:32 The right to a fair trial
- § 47:33 Full answer and defence

- § 47:34 Pre-trial disclosure by the Crown
 § 47:35 Pre-trial disclosure by third parties
 § 47:36 Preservation of evidence
 § 47:37 Statutory limits on pre-trial disclosure
- XXII. FAIR ADMINISTRATIVE PROCEDURES

§ 47:38 Fair administrative procedures

CHAPTER 48. UNREASONABLE SEARCH OR SEIZURE

I. SECTION 8 OF CHARTER

§ 48:1 Section 8 of Charter

II. COMMON LAW OF SEARCH AND SEIZURE

§ 48:2 Common law of search and seizure

III. FOURTH AMENDMENT OF U.S. CONSTITUTION

§ 48:3 Fourth amendment of U.S. Constitution

IV. SEARCH OR SEIZURE

- § 48:4 Definitions of search and seizure
- § 48:5 Reasonable expectation of privacy
- § 48:6 Electricity records
- § 48:7 Thermal imaging
- § 48:8 Sniffer dog
- § 48:9 Rented locker
- § 48:10 Hospital records
- § 48:11 Government records
- § 48:12 Computer and cellular phone
- § 48:13 Gathering evidence
- § 48:14 Plain view
- § 48:15 Abandonment

V. ELECTRONIC SURVEILLANCE

- § 48:16 Third party surveillance
- § 48:17 Participant surveillance

VI. PRODUCTION OF DOCUMENTS

- § 48:18 Licences and permits
- § 48:19 Business records
- § 48:20 Foreign documents

VII. REASONABLENESS

§ 48:21 Requirement of warrant

lxxviii

§ 48:22	Warrantless searches
§ 48:23	Search incident to arrest
§ 48:24	Search incident to investigative detention
§ 48:25	Safety search
§ 48:26	Search of vehicle
§ 48:27	Diminished expectation of privacy
§ 48:28	Border searches
§ 48:29	Public buildings
§ 48:30	Regulatory inspections
§ 48:31	Search of law office
§ 48:32	Preventative searches or seizures
§ 48:33	Writs of assistance
§ 48:34	Illegal searches
§ 48:35	Consensual searches

VIII. REMEDY FOR BREACH OF S. 8

§ 48:36	Exclusion of evidence
§ 48:37	Return of property

CHAPTER 49. ARBITRARY DETENTION OR IMPRISONMENT

I. SECTION 9 OF CHARTER

§ 49:1 Section 9 of Charter

II. DETENTION OR IMPRISONMENT

§ 49:2 Detention or imprisonment

III. ARBITRARINESS

A. REQUIREMENT OF STANDARDS

- § 49:3 Roadside stops
- § 49:4 Mental disorder
- § 49:5 Dangerous offenders
- § 49:6 Arrest
- § 49:7 Investigative detention
- § 49:8 Rational standards

B. ILLEGALITY

- § 49:9 Illegality
 - C. PROCEDURAL UNFAIRNESS
- § 49:10 Procedural unfairness

D. DURATION OF IMPRISONMENT

- § 49:11 Duration of imprisonment
- © 2021 Thomson Reuters, Rel. 1, 7/2021

CHAPTER 50. RIGHTS ON ARREST OR DETENTION

I. SECTION 10 OF CHARTER

§ 50:1 Section 10 of the Charter

II. ARREST OR DETENTION

- $\S~50:2$ Requirement of compulsion
- § 50:3 Requirement of restraint

III. RIGHT TO REASONS

§ 50:4 Right to reasons

IV. RIGHT TO COUNSEL

- § 50:5 Section 10(b) of Charter
- § 50:6 Fifth amendment of U.S. Constitution
- § 50:7 Timeliness of warning
- § 50:8 Content of warning
- § 50:9 Comprehension of warning
- § 50:10 Comprehension of extent of jeopardy
- § 50:11 Opportunity to exercise right
- § 50:12 Duty to refrain from questioning
- § 50:13 Waiver of right
- § 50:14 Choice of counsel
- § 50:15 Legal aid
- § 50:16 Exclusion of evidence

V. RIGHT TO HABEAS CORPUS

§ 50:17 Right to habeas corpus

CHAPTER 51. RIGHTS ON BEING CHARGED

I. PERSON CHARGED WITH AN OFFENCE

- § 51:1 Opening words of s. 11
- § 51:2 Charged
- § 51:3 Offence

II. SPECIFIC INFORMATION

§ 51:4 Specific information (s. 11(a))

III. TRIAL WITHIN REASONABLE TIME

§ 51:5 Trial within reasonable time (s. 11(b))

IV. NON-COMPELLABILITY (S. 11(C))

§ 51:6 Section 11(c)

lxxx

- § 51:7 Rule against self-incrimination
 § 51:8 Adverse inference from accused's silence
 § 51:9 Compulsion of other evidence
- $\S 51:10$ Compulsion in other proceedings
- § 51:11 Application to corporations
- § 51:12 Application of s. 7 to compelled testimony

V. PRESUMPTION OF INNOCENCE (S. 11(D))

- § 51:13 Section 11(d)
- § 51:14 Reverse onus clauses
- § 51:15 Fair and public hearing
- § 51:16 Independent and impartial tribunal
- § 51:17 Waiver of presumption of innocence

VI. REASONABLE BAIL (S. 11(E))

§ 51:18 Reasonable bail (s. 11(e))

VII. TRIAL BY JURY (S. 11(F))

- § 51:19 Section 11(f)
- § 51:20 Punishment
- § 51:21 Application to corporations
- § 51:22 Waiver of right
- § 51:23 Jury
- § 51:24 Offence under military law
- § 51:25 Role of judge

VIII. RETROACTIVE OFFENCES (S. 11(G))

§ 51:26 Retroactive offences (s. 11(g))

IX. DOUBLE JEOPARDY (S. 11(H))

- § 51:27 Section 11(h)
- § 51:28 Two proceedings
- § 51:29 Previous acquittal or conviction
- § 51:30 Identity of offences

X. VARIATION OF PENALTY (S. 11(I))

§ 51:31 Variation of penalty (s. 11(i))

CHAPTER 52. TRIAL WITHIN REASONABLE TIME

I. SECTION 11(B) OF CHARTER

§ 52:1 Section 11(b) of Charter

II. PURPOSE OF RIGHT

§ 52:2 Purpose of right

© 2021 Thomson Reuters, Rel. 1, 7/2021

III. APPLICATION TO CORPORATIONS

§ 52:3 Application to corporations

IV. APPLICATION TO REGULATORY OFFENCES

§ 52:4 Application to regulatory offences

V. REASONABLENESS OF DELAY

§ 52:5 Reasonableness of delay

VI. LENGTH OF DELAY

- § 52:6 Pre-charge delay
- § 52:7 Appellate delay
- § 52:8 Sentencing delay

VII. WAIVER OF DELAY

§ 52:9 Waiver of delay

VIII. REASONS FOR DELAY

- § 52:10 Types of delay
- § 52:11 Inherent delay
- § 52:12 Crown delay
- § 52:13 Defence delay
- § 52:14 Systemic delay

IX. PREJUDICE TO ACCUSED

§ 52:15 Prejudice to accused

X. NEW FRAMEWORK FOR S. 11(B)

- § 52:16 Remedy for delay
- § 52:17 New framework for s. 11(b)

CHAPTER 53. CRUEL AND UNUSUAL PUNISHMENT

I. SECTION 12 OF CHARTER

§ 53:1 Section 12 of Charter

II. TREATMENT OR PUNISHMENT

§ 53:2 Treatment or punishment

III. CRUEL AND UNUSUAL

§ 53:3 Cruel and unusual

IV. MINIMUM SENTENCE

§ 53:4 Minimum sentence

lxxxii

V. INDETERMINATE SENTENCE

§ 53:5 Indeterminate sentence

VI. PRISON CONDITIONS

§ 53:6 Prison conditions

VII. DEATH PENALTY

§ 53:7 Death penalty

VIII. MANDATORY VICTIM SURCHARGE

§ 53:8 Mandatory Victim Surcharge

CHAPTER 54. SELF-INCRIMINATION

I. SECTION 13

§ 54:1 Section 13

II. INVOKING THE RIGHT

§ 54:2 Invoking the right

III. APPLICATION TO ACCUSED

§ 54:3 Application to accused

IV. COMPELLED AND VOLUNTARY EVIDENCE

§ 54:4 Compelled and voluntary evidence

V. INCRIMINATING EVIDENCE

§ 54:5 Incriminating evidence

VI. OTHER PROCEEDINGS

§ 54:6 Non-criminal proceedings

§ 54:7 Re-trial

VII. CROSS-EXAMINATION

§ 54:8 On previous testimony

§ 54:9 On knowledge of s. 13

VIII. DERIVATIVE EVIDENCE

§ 54:10 Derivative evidence

IX. PERJURY

§ 54:11 Perjury

^{© 2021} Thomson Reuters, Rel. 1, 7/2021

CHAPTER 55. EQUALITY

I. IN GENERAL

- § 55:1 Distribution of powers
- § 55:2 Canadian Bill of Rights
- § 55:3 American Bill of Rights
- § 55:4 Section 15 of Charter

II. APPLICATION OF S. 15

- § 55:5 Individual
- § 55:6 "Law" in s. 15
- § 55:7 Private action

III. EQUALITY

- § 55:8 Four equalities of s. 15
- § 55:9 Absolute equality
- § 55:10 Aristotle's definition
- § 55:11 Similarly situated
- § 55:12 Formal and substantive equality
- § 55:13 Reasonable classification
- § 55:14 Valid federal objective
- § 55:15 Early applications of s. 15

IV. DISCRIMINATION

§ 55:16 Discrimination

V. LISTED OR ANALOGOUS GROUNDS

- § 55:17 Requirement of a listed or analogous ground
- § 55:18 Addition of analogous grounds

VI. HUMAN DIGNITY

- § 55:19 Ambiguity in Andrews
- § 55:20 Impairment of human dignity
- § 55:21 The factor of correspondence
- § 55:22 Discrimination without human dignity

VII. DISADVANTAGE

- § 55:23 Selection of comparator group
- § 55:24 Requirement of disadvantage
- § 55:25 Objective and subjective disadvantage
- § 55:26 Human dignity and disadvantage
- § 55:27 Group disadvantage

VIII. DIRECT AND INDIRECT DISCRIMINATION

§ 55:28 Substantive equality

lxxxiv

§	55:29	Uninten	ded discrimi	inat	tion
~		_		_	

§ 55:30 Reasonable accommodation

IX. JUSTIFICATION UNDER S. 1; AFFIRMATIVE ACTION

- § 55:31 Justification under s. 1
- § 55:32 Affirmative action

X. DISCRIMINATION PERMITTED BY CONSTITUTION

- § 55:33 Age in ss. 23, 29, 99
- § 55:34 Race in s. 91(24)
- § 55:35 Religion in s. 93
- § 55:36 Province of residence in ss. 91, 92
- § 55:37 Citizenship in s. 6
- § 55:38 Language in ss. 16-23

XI. RACE; RELIGION

- § 55:39 Race
- § 55:40 Religion

XII. SEX

- § 55:41 Direct discrimination
- § 55:42 Systemic discrimination
- § 55:43 Section 28

XIII. OTHER GROUNDS OF DISCRIMINATION

- § 55:44 Age
- § 55:45 Mental or physical disability
- § 55:46 Citizenship
- § 55:47 Marital status
- § 55:48 Sexual orientation
- § 55:49 Place of residence
- § 55:50 Occupation

CHAPTER 56. LANGUAGE

I. LANGUAGE IN CANADA

§ 56:1 Language in Canada

II. DISTRIBUTION OF POWERS OVER LANGUAGE

§ 56:2 Distribution of powers over language

III. LANGUAGE OF CONSTITUTION

§ 56:3 Language of Constitution

IV. LANGUAGE OF STATUTES

§ 56:4 Constitutional requirements

© 2021 Thomson Reuters, Rel. 1, 7/2021

§ 56:5 Quebec's Charter of the French Language
§ 56:6 Manitoba's Official Language Act
§ 56:7 Incorporation by reference
§ 56:8 Delegated legislation

V. LANGUAGE OF COURTS

§ 56:9 Constitutional requirements
§ 56:10 Definition of courts
§ 56:11 Language of process
§ 56:12 Language of proceedings
§ 56:13 Right to interpreter

VI. LANGUAGE OF GOVERNMENT

§ 56:14 Section 16 of Charter § 56:15 Section 20 of Charter

VII. LANGUAGE OF COMMERCE

§ 56:16 Language of commerce

VIII. LANGUAGE OF EDUCATION

- § 56:17 Section 93 of Constitution Act, 1867 § 56:18 Mackell case § 56:19 Section 23 of the Charter § 56:20 Mother tongue of parent Language of instruction of parent in Canada § 56:21 § 56:22 Language of instruction of child in Canada § 56:23 Where numbers warrant § 56:24 Denominational schools
- CHAPTER 57. EDUCATION

Supervision of remedial orders

§ 57:1 Section 93

§ 56:25

§ 57:2 Protection against constitutional amendments

II. FEDERAL POWER OVER EDUCATION

PROVINCIAL POWER OVER EDUCATION

- § 57:3 Federal power generally
- § 57:4 Federal spending power
- § 57:5 Federal power to enact remedial laws

III. RIGHTS AND PRIVILEGES PROTECTED BY S. 93

§ 57:6 Rights and privileges protected by s. 93

IV. PREJUDICIAL EFFECT

§ 57:7 Benign laws

lxxxvi

§ 57:8	Neutral laws
§ 57:9	Regulation
§ 57:10	Withdrawal of management
§ 57:11	Withdrawal of exclusivity
§ 57:12	Reduction in funding
§ 57:13	Expropriation of resources

V. EFFECT OF CHARTER OF RIGHTS ON EDUCATION

§ 57:14	Application of Charter to education
§ 57:15	Religious instruction
§ 57:16	Language of instruction
§ 57:17	Students with disabilities
§ 57:18	Law enforcement in schools

PART IV. PRACTICE

CHAPTER 58. EFFECT OF UNCONSTITUTIONAL LAW

I. INVALIDITY OF UNCONSTITUTIONAL LAW

§ 58:1 Invalidity of unconstitutional law

II. STAY OF PROCEEDINGS

§ 58:2 Stay of proceedings

III. NOTICE REQUIREMENTS IN LITIGATION

§ 58:3 Notice requirements in litigation

IV. ACTS DONE UNDER UNCONSTITUTIONAL LAW

§ 58:4 Acts done under unconstitutional law

V. RES JUDICATA

§ 58:5 Res judicata

VI. DE FACTO OFFICERS

§ 58:6 De facto officers

VII. JUDGES BY NECESSITY

§ 58:7 Judges by necessity

VIII. UNCONSTITUTIONAL TAXES

§ 58:8 Unconstitutional taxes

IX. WHOLESALE INVALIDATION OF LAWS

§ 58:9 The Manitoba Language Rights Reference

^{© 2021} Thomson Reuters, Rel. 1, 7/2021

The Bilodeau case § 58:10 § 58:11 The Mercure case § 58:12 The Paquette case The Sinclair case § 58:13

CHAPTER 59. PROCEDURE

I. PROCEDURE IN CONSTITUTIONAL CASES

§ 59:1 Procedure in constitutional cases

II. STANDING

- Definition of standing § 59:2 § 59:3 Exceptional prejudice § 59:4 Role of the Attorney General
- Discretionary public interest standing § 59:5 § 59:6 Enforcing other people's rights

III. MOOTNESS

- § 59:7 Definition of mootness § 59:8 Bar to proceedings § 59:9 Discretion to decide
- IV. RIPENESS

§ 59:10 Ripeness

V. ALTERNATIVE GROUNDS OF DECISION

§ 59:11 Alternative grounds of decision

VI. INTERVENTION

§ 59:12 Intervention by Attorney General § 59:13 Intervention by private party

VII. COSTS

- § 59:14 Costs awards in constitutional cases
- § 59:15 Advance costs
- § 59:16 Special costs
- § 59:17 Costs as a Charter remedy

VIII. **LIMITATION PERIODS**

- § 59:18 Declaratory relief
- § 59:19 Personal relief

CHAPTER 60. PROOF

I. LEGISLATIVE HISTORY

§ 60:1 Definition of legislative history

lxxxviii

§ 60:2	Classification of statutes
§ 60:3	Interpretation of Constitution Act, 1867
§ 60:4	Interpretation of Constitution Act, 1982
§ 60:5	Originalism
§ 60:6	Progressive interpretation
§ 60:7	Weight of legislative history

II. EVIDENCE

§ 60:8	Modes of proof
§ 60:9	Brandeis briefs in the United States
§ 60:10	Social-science briefs in references
§ 60:11	Social-science briefs in appeals
§ 60:12	Social-science briefs in trials
§ 60:13	Standard of proof

APPENDICES

Appendix A.	Constitution Act, 1867
Appendix B.	Canada Act 1982
Appendix C.	Constitution Act, 1982
Appendix D.	Canadian Bill of Rights
Appendix E.	American Bill of Rights
Appendix F.	International Covenant on Civil and Political Rights
Appendix G.	Optional Protocol to International Covenant on Civil and Political Rights

Bibliography

Table of Cases

Index