Index

ABORIGINAL RIGHTS

Rights not affected by Charter, **48:1** to **48:3**

ACADEMIC WRITINGS

See also INTERPRETATION, AIDS TO Relevance of, **5:43**

ACCESS TO COURTS

Generally, **3:12** Right to seek remedy, **3:12**

ADMINISTRATIVE BODIES

Application of Charter to, 2:5 Declarations of invalidity by, 3:5, 3:13 Inefficiency of, relevance to s. 7, 17:10 Jurisdiction to consider Charter, 3:13 Orders of, whether law under s. 1, 6:20 Precedential value of Charter rulings, 3:13 Unfair administrative structure, 17:22

ADMINISTRATIVE PROCEEDINGS

Imprisonment as a result of, **17:26** Nature of, reasonableness under s. 8, **18:24 to 18:27** Protection against self-incrimination, **17:18**

AMERICAN AUTHORITIES

See also INTERPRETATION, AIDS TO Freedom of expression, **9:19** Freedom of religion, **7:15**

AMERICAN AUTHORITIES —Cont'd

Principles of interpretation, **5:39** Public arena cases, **9:19**

APPEALS

See also APPEALS AS OF RIGHT TO SUPREME COURT; LEAVE TO APPEAL TO SUPREME COURT Criminal appeals, **3:9** Denial of pre-trial relief, from, **3:8**, **3:9** Interlocutory matters, **3:8**, **3:9** Mootness, **4:36** Notice of Appeal extension of time to file, **4:4** time to file, **4:4** Procedural requirements, **4:24** Right of, as principle of fundamental justice, **17:41**

APPEALS AS OF RIGHT TO SUPREME COURT Generally, 4:1, 4:3 Statutory provisions, 4:4

APPELLATE DELAYS Generally, 17:44, 25:35

APPLICATION OF CHARTER See also CORPORATIONS; ECO-NOMIC RIGHTS; GOVERN-MENT, MEANING OF; GOVERNMENTAL ACTION; LEGITIMACY OF JUDICIAL REVIEW and headings for specific Charter sections Administrative branch, to, 2:5 Bibliography, 2:4 Cabinet decisions, to, 17:14

APPLICATION OF CHARTER —Cont'd

Common law, to, 2:7 Constitutional conventions, 2:16 Decided cases, 2:3 Equality rights (s. 32(2)), 2:14 Executive branch. to. 2:5. 2:11 Extraterritorial effect, **2:12** Foreign legal proceedings, to, 2:12 General introduction, 2:2 Government, meaning of, 2:5 Governmental action by-laws as, 2:6 delegated legislation as, 2:6 discretionary acts of executive branch as, 2:6 foreign government's activities as, 2:6 generally, 2:6 orders in council as, 2:6 regulations as, 2:6 statutes as, 2:6 Hospital retirement policies, 2:5 Justiciability, **2:11** Limitation periods in personam remedies, 2:17 in rem remedies, 2:17 Other parts of Constitution, to, 2:13 Override provision (s. 33), 2:15 Private functions, exercise by government, 2:5 Private litigation, to, 2:9 Prospective application, **47:51** Relevance of invocation of Charter rights of third persons, 2:9 public motivation of actor, 2:5 Retrospective application, 2:10, 47:51 Royal prerogative, to, **17:14** s.11 see CHARGED WITH AN OFFENCE, MEANING OF State action see governmental action, supra

APPLICATION OF CHARTER -Cont'd Text of relevant sections. 2:1 University retirement policies, 2:5 **ARBITRARINESS** Fundamental justice, 17:3, 17:22 Meaning of, s. 9, **19:6 ARBITRARY, MEANING OF** See ARBITRARY DETENTION **ARBITRARY DETENTION** Arbitrary, meaning of, **19:6** Arrest powers and, **19:8** Bibliography, **19:5** Charging an accused, delay in, 19:3 Decided cases, 19:3 Detained, meaning of, 19:7 Detention of insane persons, 17:22, 17:23 Detention without review, 17:22, 17:23.19:6 Discretion without criteria, **19:6** Fingerprinting, 19:3 Fundamental justice and, 17:22, 17:23, 19:6 General introduction, **19:2** Indeterminate detention, 19:3 Random stopping of vehicles, 19:3, 19:6 Reasonable grounds, 19:6 Requirement of identifiable class of offenders, 19:6 statutory authorization, 19:6 Text of s. 9. 19:1 **ASSEMBLY, FREEDOM OF** See FREEDOM OF ASSEMBLY; FREEDOM **ASSOCIATION, FREEDOM OF**

See FREEDOM OF ASSOCIA-TION; FREEDOM

AUTHORIZATION FOR SEARCHES AND SEIZURES See SEARCHES AND SEIZURES

BAIL, RIGHT TO

Generally, **32:6** Decided cases, **32:3** Denial of, just cause to, **32:7** General considerations, **32:5** General introduction, **32:2** Text of s. 11(e), **32:1**

BARS TO ASSERTION OF CHARTER CLAIM

See CONDUCT OF COMPLAIN-ANT; DILIGENCE OF COMPLAINANT IN ASSERTING RIGHT; UNLAWFULNESS; WAIVER OF RIGHTS

BILL OF RIGHTS, CANADIAN

As interpretive aid, **5:34**, **5:44** Charter of Rights, distinguished from, **5:44** Rejection under Charter of interpretive approach, **5:44** purely effects-based approach, **5:8** rights-privileges distinction, **5:21** Relevance of cases to cruel and unusual punishment, **5:44** detention, meaning of, **20:5** equality, **40:17** religious freedom, **7:8**, **7:16**

BODY SEARCHES See SEARCHES AND SEIZURES

BRITISH AUTHORITIES

See also INTERPRETATION, AIDS TO Relevance of, **5:41**

CAUSATION

Causal link required under s. 24(2), 47:32

CAUSATION—Cont'd General requirement of, 4:29 CHARGED WITH AN OFFENCE, **MEANING OF** Bibliography, 23:6 Charged, by what government, 23:2 Corporations, and s. 11 rights, 23:7 Dangerous offender proceedings, 23:2 Disciplinary proceedings, 23:2 Earned remission of sentence, forfeiture of. 23:3 Extradition proceedings, 23:2 General introduction, 23:1 Offences what proceedings involve offences, 23:2 when present, 23:5

Prison disciplinary proceedings, 23:2 Public welfare offences, 23:8

Regulatory offences, 23:8 Solitary confinement, 23:3 Tests by nature, 23:4 true criminal offences, 23:8 true penal consequences, 23:3

CITIZENSHIP RIGHTS Mobility rights, 16:8 Voting rights, 13:1

COMMERCIAL SPEECH See FREEDOM OF EXPRESSION

COMMON LAW

Application of Charter to, 2:7 Double jeopardy and, 34:5 Interpret in accordance with Charter, 2:7 Justification of common law rules, 6:27 Relevance to principles of fundamental justice, 17:18 remedies under Charter, 47:8

COMPELLABILITY OF PERSON IN PROCEEDINGS AGAINST THAT PERSON FOR AN OFFENCE

Corporations, applicability to, **26:7** Decided cases, **26:3** General introduction, **26:2** Purpose of Charter protection, **26:5** Relationship with other Charter sections, **26:6** Text of s. 11(c), **26:1**

CONDUCT OF COMPLAINANT

See also DILIGENCE OF COMPLAINANT IN ASSERTING RIGHT; UNLAWFULNESS; WAIVER OF RIGHTS Relevance of unlawfulness, **5:15**, **9:7**

CONSCIENCE, FREEDOM OF See FREEDOM OF CON-SCIENCE; FREEDOM

CONSTITUTION ACT, 1867

Application of Charter to, **2:13** Relationship with s. 23, **46:9** Religious freedom granted under, **7:11**

CONSTITUTIONAL CONVENTIONS Application of Charter, 2:16

CONSTITUTIONAL EXEMPTIONS Generally, 47:44

CONSTITUTIONAL QUESTIONS See STATING CONSTITUTIONAL QUES-TIONS

CONTEXTUAL APPROACH TO INTERPRETATION OF CHARTER

See also INTERPRETATION, PRINCIPLES OF

CONTEXTUAL APPROACH TO INTERPRETATION OF CHARTER—Cont'd Abstract method and, 5:7 Freedom of expression cases, in, 9:15 CORPORATIONS See also ECONOMIC RIGHTS Advertising and commercial speech, 9:17 Applicability of s. 2(a), 7:13 s. 7, 17:6

s. 11(c), **26:7** s. 15, **40:18**

Bankruptcy and s. 7, **17:9** Corporate representatives compellability, **26:3**, **26:7** rights against self-incrimination, **17:6** s. 7, ability to claim under, **17:6** Whether government, **2:5** Winding-up proceedings and s. 7, **17:9**

COUNSEL, RIGHT TO

Bibliography, 21:5 Decided cases, 21:3 Detained, meaning of, 21:6 Duties imposed on police circumstances affecting, 21:17 to 21:21 dangerous circumstances, during, 21:17 generally, 21:9 lack of diligence by detainee in exercising right, 21:10, 21:19 reimposition of upon police, 21:21 to afford access to counsel without delay, 21:13 to explain rights to detainee, 21:12

COUNSEL, RIGHT TO—Cont'd Duties imposed on police-Cont'd to inform detainee of rights, 21:10 to provide opportunity to exercise right, **21:12** to stop obtaining evidence, **21:14** to stop questioning, **21:14** urgent circumstances, during, 21:17 waiver of right, 21:18 Duty not to undermine solicitorclient relationship, 21:15 Duty to cease questioning in absence of counsel, 21:14 Duty to inform detainee of rights change in nature of jeopardy facing detainee, 21:10 close factual connection test. 21:10 content of, 21:11 generally, 21:10 later detention, **21:10** reimposition of duty, 21:10 General introduction. 21:2 Justification under s. 1, 21:23 Lack of diligence in exercising right, 21:19 Onus of proof, 21:22 Plea discussions, necessity of counsel being present, 21:16 Purpose of, 21:8 Reimposition of duties upon police, 21:21 Relationship between ss. 8 and 10 rights, 18:41 Suspension of the right during searches, 21:20 Text of s. 10(b), 21:1 Urgent or dangerous circumstances, 21:12, 21:13, 21:17 Utility of the right, relevance of, 21:24 Waiver of right by detainee, **21:18** When right to counsel arises, 21:7

COUNSEL, RIGHT TO-Cont'd When right to inform arises, 21:10 Without delay, meaning of, **21:13** COURT OF COMPETENT JURISDICTION See JURISDICTION COURT ORDERS Governmental action, as, 2:2, 2:6 **CRIMINAL COURTS** Availability of civil remedies in, 3:10 CRIMINAL LAW RIGHTS See also BAIL, RIGHT TO: LESSER PUNISHMENT, RIGHT TO BENEFIT OF; CHARGED WITH AN OFFENCE, MEANING OF; COMPELLABILITY OF PERSON IN PROCEEDINGS AGAINST THAT PERSON FOR AN OFFENCE: DOUBLE JEOPARDY. **RIGHT AGAINST: FAIR** HEARING, RIGHT TO; INDEPENDENT TRIBUNAL, RIGHT TO: INFORMED OF OFFENCE WITHOUT DELAY, RIGHT TO BE; JURY TRIAL, RIGHT TO; PRESUMPTION OF INNOCENCE, RIGHT TO: PUBLIC HEARING, RIGHT

BE TRIED UNDER; TRIAL WITHIN REASONABLE TIME, RIGHT TO Bibliography, **23:6**

TO; RETROSPECTIVE

OFFENCES, RIGHT NOT TO

LAWS ENACTING

CRUEL AND UNUSUAL PUNISHMENT, RIGHT AGAINST

Bibliography, **37:5** Corporations, application to, **37:6**

CRUEL AND UNUSUAL PUNISHMENT, RIGHT AGAINST—Cont'd Criteria for cruel and unusual, **37:7** Decided cases. 37:3 Effect of punishment on accused, 37:8 "Everyone," 37:6 General introduction. 37:2 Pre-Charter history, relevance of, 37:13 Punishment, meaning of, 37:14 Relevance of cases under s. 2(b), Bill of Rights, **5:44** change in sentencing provision, 37:12 other Charter sections, **37:10** parole process, 37:11 prosecutorial discretion, 37:9 Text of s. 12, 37:1 Treatment, meaning of, 37:14

DECLARATION OF INVALIDITY

Administrative bodies, by, 3:5, 3:13
Delayed effect of, 47:41
Interpretation to avoid Charter breaches, 47:37
Jurisdiction of provincial courts to grant, 3:3
Prosecutorial discretion as reason for denial of, 47:42
Text of s. 52, Constitution Act, 1982, 47:1
Unusual declarations, 47:43

DELAY

Appellate, 25:35
Arbitrary detention, delay in charging, 19:3
Lower courts, review of exercise of discretion, 25:34
Procedural delay, 17:10, 17:23
Relevance of pre-charge delay, s. 11(b), 25:17 pre-Charter delay, s. 11(b), 25:18

DELAY—Cont'd Trial within reasonable time, right to, 25:1 to 25:33 Without delay, in s. 10, 21:13

DEMOCRATIC RIGHTS See FREEDOM OF EXPRESSION; PARLIAMENTARY SIT-TINGS, FREQUENCY OF; TERM OF PARLIAMENT; VOTING RIGHTS

DENOMINATIONAL SCHOOLS

Non-derogation of existing Constitutional rights and privileges, **52:1 to 52:3**

DEPENDENT PROVISIONS, VALIDITY OF Generally, 47:41

DETAINED, MEANING OF

Generally, **19:7**, **20:5**, **21:3**, **21:6** Approach by police officer, **20:5** Bill of Rights cases, in, **20:5** Breathalyzer demand, **20:5** Customs search, **20:5** Legal jeopardy, situation of, **20:5** Moral constraint, **20:5** Psychological compulsion, **20:5**

DETENTION, RIGHT TO HAVE VALIDITY DETERMINED Bibliography, 22:6 Decided cases, 22:3

General introduction, **22:2** Habeas corpus, availability of, **22:5** Text of s. 10(c), **22:1**

DILIGENCE OF COMPLAINANT IN ASSERTING RIGHT

See also CONDUCT OF COMPLAINANT; WAIVER OF RIGHTS Lack of diligence in asserting right to counsel, **21:10**, **21:19** right to jury trial, **33:9**

DISCLOSURE, PRE-TRIAL DUTY OF CROWN

Exercise of discretion by Crown, review of, **29:9** General right, **29:5** Informer's privilege, and, **29:11** Lost evidence, and, **29:12** Obligation, **29:12** lost evidence and, **29:12** Principles of fundamental justice, **17:34** Remedies for improper disclosure, **29:10** Scope of right, **29:6** Timing of, **29:8**

DISCRIMINATION See EQUALITY RIGHTS

DOUBLE JEOPARDY, RIGHT AGAINST

Decided cases, **35:3** Finally acquitted, meaning of, **35:7** General introduction, **35:2** Pending cases, **35:4** Relationship with common law principles, **35:5** other Charter sections, **35:6** s. 7, **17:17** Same offence, **35:8** Text of s. 11(h), **35:1**

ECONOMIC RIGHTS

Business regulation, 6:15
Charter sections generally do not include, 5:36
Commercial advertising, 9:10, 9:17
Economic expression, 9:9
Expropriation, 17:57
Property rights, 17:57
Prostitution, 17:10, 17:11
Religious freedom, 7:12
Right to transact business, 17:3, 17:11
s. 7, 17:57 ECONOMIC RIGHTS—Cont'd Socio-economic cases, general approach of Court in, 6:2 EDUCATIONAL RIGHTS, MINORITY LANGUAGE GROUPS Bibliography, 46:5 Court-ordered implementation, 46:15 Decided cases. 46:3 Facilities, 46:13 General introduction, **46:2** Implementation of right court order, through, 46:15 legislation, through, 46:14 Legislative implementation, 46:14 Management and control of schools, 46:12 Method of interpretation, 46:7 Purpose of the right, 46:6 Relationship with other Charter sections, 6:26, 46:8 rights in Constitution Act, 1867, 46:9 Right of minority to manage and control schools, 46:12 Where numbers warrant meaning of, 46:10 particular cases, 46:11

ENGLISH VERSION OF CHARTER See also INTERPRETATION, PRINCIPLES OF Authority of, **5:46**

ENUMERATED AND ANALOGOUS GROUNDS APPROACH See EQUALITY RIGHTS

EQUALITY, MEANING OF See EQUALITY RIGHTS

EQUALITY RIGHTS Affirmative action, 40:12, 40:13 generally, 40:12

EQUALITY RIGHTS—Cont'd

Affirmative action, **40:12**, **40:13** -Cont'd particular cases, **40:13** Analysis, 40:5 differential treatment, existence of, 40:6, 40:7 generally, **40:6** particular cases, 40:7 discriminatory grounds, 40:7 generally, **40:8** particular cases, 40:9 discriminatory purpose/effect, 40:10, 40:11 generally, 40:10 particular cases, **40:11** Application of Charter (s. 32(2)), 2:14 Bibliography, 40:21 Claimants corporations, **40:18** general. 40:18 Contractual waiver of. 40:19 Decided cases, 40:3 Differential treatment see analysis Discrimination, see also analysis claim, relevance to division of power analysis, **40:20** Enumerated and analogous grounds approach, 40:10, 40:11, 40:16 Evidentiary considerations, 40:15 General introduction, **40:2** Laws, meaning of, 40:14 Legislative objective and justification, **6:7** Purpose of the right, **40:4** Purposive and contextual approach, 40:2 Relationship with justification under s. 1, 6:23, 40:16 Relationship with s. 2(b), 9:8 Relevance of Bill of Rights cases, 40:17

EOUALITY RIGHTS—Cont'd Relevance of-Cont'd equality principle in Charter interpretation, 5:16 s. 28, 5:3, 51:1 to 51:3 Text of s. 15, **40:1** Waiver of. **40:19 EUROPEAN AUTHORITIES** See also INTERPRETATION. AIDS TO Relevance of in interpretation, 5:40 **EVERYONE, MEANING OF** See also CORPORATIONS; SEC-TION 7 Generally, 17:6 **EVIDENCE, EXCLUSION OF** Before trial, 3:8 Bring the administration of justice into disrepute, meaning of, 47:24 to 47:31 Causal link under s. 24(2), 47:32 Disrepute, meaning of, 47:24 Evidence obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, meaning of, 47:22 Factors relevant to admissibility of evidence dangerous circumstances, 47:30 degree to which rights violated, 47:28 effect of excluding evidence, 47:31 fairness of the trial, **47:14, 47:26** general, 47:14, 47:25 integrity of justice system, 47:14 police conduct, 47:29 seriousness of the Charter violation. 47:27 urgent circumstances, 47:30 Jurisdiction, preliminary hearing magistrate, 3:4 Onus of proof, 47:19 Particular cases, **47:20**

EVIDENCE, EXCLUSION OF -Cont'd Purpose of s. 24(1), 47:4, 47:14 Purpose of s. 24(2), 47:33 Reviewability of decisions by SUPREME COURT. 47:34 Standing to make claim, 47:35 Text of ss. 24(1), (2), 47:1 Threshold for exclusion, **47:21 EVIDENTIARY** CONSIDERATIONS See also EVIDENCE, EXCLU-SION OF Generally, 4:30 to 4:35, 6:19 Adjudicative facts, 4:31, 4:32 Admissibility of compelled testimony, **17:32** derivative evidence, 17:32 empirical studies, 4:32 evidence derived from compelled evidence. 17:32 Law Reform Commission reports, **4:32** legislative debates, **4:32** legislative history, **4:32** ministerial statements, 6:19 Parliamentary Committee reports, 4:32 Royal Commission reports, **4:32** social science studies, 4:32 Admissible evidence, types of, **4:32** Applications, 4:31 Authorization for search or seizure, evidence in support of, 18:33 Bibliography, 4:35 Derivative evidence, **17:32** Documentary production and fundamental justice, **17:32** Equality rights cases, 6:19, 40:5 Evidence derived from compelled evidence, 17:32 Evidential burden to show religious tenet, 7:10 unreasonable delay cases, on Crown. 25:10

EVIDENTIARY CONSIDERATIONS—Cont'd Extrinsic evidence, weight to be attached to, 4:33 Factual record required applications, in, 4:31 generally, 4:31, 6:19 justification, for, 4:34, 6:12, 6:19 pressing and substantial objective, for, 6:7 rights violation, for, 4:31 Freedom of the press (s. 2(b)), 10:8 Fresh evidence, application by intervenor, 4:30 Impartial tribunal (s. 11(d)), 28:8 Insufficient record, mootness, 4:36 Judicial notice, 4:31, 6:19, 10:8 Justification under s. 1 generally, 6:12, 6:19 obvious or self-evident steps, 6:9, 6:19 Legislative facts, 4:31 Placing facts before Supreme Court, 4:24, 4:30 Principle of fundamental justice documents, production of, 17:32 evidence and fair trial. 17:23. 17:38 evidence and truth-finding function. 17:38 evidence required, 17:18 Provisions of Act and Rules for placing evidence before Supreme Court, 4:24 s. 7. 17:15 Speculation, courts will not engage in. 5:26 Weight to be attached by Court legislative debates, to, 4:33 Parliamentary Committee reports, to, 5:35 **EXECUTIVE BRANCH** Applicability of Charter to, 2:5, 17:14

EXECUTIVE BRANCH—Cont'd

Deference to decisions by, **5:26**, **17:14** Extradition matters, **5:26**, **17:14**

Reviewability of decisions by, 2:5, 5:26, 17:14

EXPRESSION, FREEDOM OF

See FREEDOM OF EXPRESSION; FREEDOM; FREEDOM OF THE PRESS

EXTRADITION PROCEEDINGS Generally, 2:12, 5:18, 5:26, 6:7, 16:3, 17:3, 23:2

EXTRATERRITORIAL EFFECT OF CHARTER

See also INTERSTATE RELA-TIONS

Generally, **2:12** Availability of remedies for persons outside Canada, **47:9**

FACTS

See EVIDENTIARY CONSIDERATIONS

FACTUMS

Concise statement of facts in, **4:30** Provisions of Rules for, **4:24** Reply factums, **4:26** Social science evidence in, **4:30**

FAIR HEARING, RIGHT TO

Decided cases, **29:3** Disclosure by Crown see DISCLOSURE, PRE-TRIAL DUTY OF CROWN Fairness of the trial, effect of admissibility of evidence, **47:26** General introduction, **29:2** Laws of evidence and, **17:38** s. 7 and fair hearing, **17:23** Text of s. 11(d), **29:1**

FINGERPRINTING

Arbitrary detention, **19:3** Fair trial, **29:3** FINGERPRINTING—Cont'd Fundamental justice, 17:29 Right of non-compellability, 26:3

FLEXIBLE APPROACH TO JUSTIFICATION See JUSTIFICATION

FORCED ASSOCIATIONS, FREEDOM FROM Generally, 12:9

FRAMERS' INTENTION AS INTERPRETIVE APPROACH See also INTERPRETATION, AIDS TO; INTERPRETA-TION, PRINCIPLES OF Generally, 5:5, 5:34

FREE AND DEMOCRATIC SOCIETY Foreign law, relevance of, 6:4

Meaning of, **5:37, 6:4** Significance in justification test, **6:5**

FREEDOM

Absence of coercion or constraint, **7:6** Affirmative duties on state, **7:6** Coercion, **7:6** Economic burdens on, **7:8** Freedom not to exercise freedom, **7:8, 9:14** Indirect burdens on freedom of religion, **7:8** Negative freedoms, **7:6, 12:9** Positive freedoms, **7:6** Relationship with freedoms under Bill of Rights, **7:8**

FREEDOM OF ASSEMBLY

See also FREEDOM Decided cases, **11:3** General introduction, **11:2** Text of s. 2(c), **11:1**

FREEDOM OF ASSOCIATION See also FREEDOM FREEDOM OF ASSOCIATION -Cont'd Bibliography, 12:5 Community interest vs. individual interest, 12:6 Decided cases. 12:3 Forced associations. 12:9 General introduction. 12:2 Group right, as, **12:8** Importance of, 12:6 Purpose of. 12:6 Relevance of, 12:7 Right to bargain collectively, 12:7 strike, 12:7 Scope of, 12:7 Text of s. 2(d), 12:1 FREEDOM OF CONSCIENCE See also FREEDOM Bibliography, 8:4 Conscientious beliefs, meaning of, 8:3 Decided cases, 8:3 General introduction. 8:2 Meaning of, 8:3 Text of s. 2(a), 8:1 FREEDOM OF EXPRESSION See also FREEDOM: FREEDOM OF THE PRESS American cases, relevance of, 9:19 Bibliography, 9:5 Chilling effects on press expression, relevance of. 10:9 Commercial speech, 9:17 Content of expression, relevance of, 9:11 Contextual approach, and, 9:15 Decided cases, 9:3 Expression ballot casting of, 9:10

child pornography, **9:10** choice of language, **9:10** commercial advertising as, **9:10** contributions, **9:10** FREEDOM OF EXPRESSION -Cont'd Expression—Cont'd defamatory libel, 9:10 loudspeakers, 9:10 meaning of, 9:9 to 9:11 obscenity, 9:10 picketing as, 9:10 restrictions on political expenditures, 9:10 Forced speech, 9:14 General introduction, 9:2 Justification under s. 1, 6:16, 6:18, 9:15 Language choice as expression, 9:10, 9:18 Listeners' rights, 9:13 Participation in the community, 9:9 Picketing as expression, 9:10 Political activity as expression, 9:16 Political expression generally, 9:6, 9:16 justification and, 6:18 Press and media, enhanced role of, 10:10 Public arena, access to airports, 9:25 elections, 9:28 government installations, 9:26 internal government offices, 9:26 introduction, 9:20 libraries. 9:23 limits on, 9:32, 9:33 property, private, 9:27 rationales, 9:21 requirements of law and order. 9:32 streets and parks, 9:24 time, place and manner restrictions, 9:33 transportation, public, 9:30 types of, 9:22 utility poles, 9:29 Purpose of s. 2(b) generally, 9:6

FREEDOM OF EXPRESSION -Cont'd Purpose of s. 2(b)—Cont'd self-development, 9:6 truth. 9:6 Purpose or effect must be to restrict expression, 9:12 Recipients' rights, 9:13 Relationship with justification under s. 1, 6:16, 6:18, 9:15 other Charter sections, 9:8 s. 15, **9:8** s. 27, 9:8 Relevance of content of expression, 9:11 Standard of proof, 6:18, 9:15 Text of s. 2(b), 9:1 Tied to content requirement, 9:12 Unlawfulness and illegality, effect of, 9:7 FREEDOM OF RELIGION See also FREEDOM Application of, 7:13 Bibliography, 7:5 Conflicts with other rights, resolution of. 7:9 Decided cases. 7:3 Economic burdens on, 7:8 Economic interests, protection of, 7:8, 7:12 Freedom, meaning of, 7:6 Freedom to abstain from religious practices, 7:8 General introduction, 7:2 Group right, as, 7:18 Indirect burdens on, 7:8 Justification, 6:16, 7:17 Laws establishing religion, 7:19 Method of assessing legislation against guarantee, 7:9 Privilege, religious communications, 7:20 Purpose of s. 2(a), 7:7

FREEDOM OF RELIGION -Cont'd Relationship with Constitution Act, 1867, 2:13, 7:11 democratic and political tradition, 7:7 equality, 7:7 other Charter sections, 7:14 s. 1. 7:17 Relevance of American cases, 7:15 Bill of Rights cases, 7:16 Constitution Act, 1867, 2:13, 7:11 Religion, meaning of, 7:7, 7:10 Same sex marriage, 7:9 Scope of protection, 7:8 Shifting purpose doctrine, rejection of. 7:9 Text of s. 2(a). 7:1 Trivial costs or burdens on, 7:8 Who can claim freedom, 7:13 **FREEDOM OF SPEECH** See FREEDOM OF EXPRESSION: FREEDOM FREEDOM OF THE PRESS See also FREEDOM OF EXPRES-SION Bibliography, 10:5

Chilling effects on, **10:9** Decided cases, **10:3** Enhanced role of press, **10:10** Evidentiary considerations, **10:8** General introduction, **10:2** Justification, **10:9** Purpose of, **10:6** Scope of, **10:7** Search and seizure, **10:11, 18:46** Text of s. 2(b), **10:1** When violated, **10:8**

FRENCH TEXT OF CHARTER See also INTERPRETATION, PRINCIPLES OF

FRENCH TEXT OF CHARTER —Cont'd Authority of, 5:46

FUNDAMENTAL JUSTICE, PRINCIPLES OF See also PROCEDURAL PROTEC-TIONS: SECTION 7 Components of principles aboriginal status, 17:52 appeal rights, 17:41 arbitrariness, 17:22 arbitrary detention, 17:22, 17:23 case to be met, 17:46 children, protection of, 17:49 codified laws, 17:40 compelling testimony, 17:32 control of one's own case, 17:35 counsel, right to, 17:42 cross-examination of adverse witnesses. 17:31 disclosure rights, 17:34 evidence laws, 17:38 fair trial rights, **17:23** fingerprinting, **17:29** full answer and defence, right to make. 17:47 generally, 17:19 to 17:55 guilty mind requirement for conviction. 17:19 human dignity and, 17:45 illusory defences, 17:27 impartial decision-maker, 17:39 imprecision of legislation, 17:28 imprisonment by administrative body, 17:26 insane accused cannot be convicted. 17:36 mens rea requirement for conviction. 17:19 moral voluntariness requirement for conviction, 17:20 natural justice, 17:18 notice. 17:25 obstructing finding of truth in cases. 17:38

FUNDAMENTAL JUSTICE, PRINCIPLES OF—Cont'd Components of principles-Cont'd pre-charge delay, 17:37 procedural protections, 17:23 providing adequate notice, 17:25 punishment for relevant reasons, 17:24 punishment under proper law, 17:30 reopening of case by Crown, limits on. 17:46 review of detention, 17:22, 17:23 right to silence, 17:33 Sault Ste. Marie requirement, 17:19 self-incrimination, 17:18, 17:32 sentence, change in service of, 17:43 silence, right to, **17:32** solicitor-client privilege, 17:48 unfairness, 17:22 vagueness of legislation, 17:28 Definition of. 17:18 Evidence required to establish existence of, 17:18 General considerations, 17:18 Gross disproportionality, 17:51 Natural justice, 17:18 Procedural due process, 17:56 Relationship with common law principles, 17:18 justification under s. 1, 6:22. 17:12 other rights in Charter, 17:18 s. 24(2), 17:18, 17:32 Relevant factors ability of police to investigate crime, 17:29 bringing administration of justice into disrepute, s. 24(2), 17:18, 17:32 generally, 17:18 interests of the state, 17:18 vary according to context, 17:18

FUNDAMENTAL JUSTICE, PRINCIPLES OF—Cont'd Relevant factors-Cont'd violation of other rights, 17:21 Source of principles common law, 17:18 foreign law, **17:18** framers' intention. 17:18 historical experience, 17:18 interests of the state, 17:18 legislation of other countries, 17:18 other rights in Charter, 17:18 s. 24(2), 17:18, 17:32 Substantive due process, **17:56** Use of, by Crown, 17:18 Variance according to context, 17:18 **GOVERNMENT, MEANING OF** Airlines. 2:5 Cabinet. 2:5 Executive branch, 2:5 General. 2:5 Hospitals, 2:5 Municipalities, 2:5 Railroads, 2:5 RCMP. 2:5 Schools, 2:5 Universities. 2:5 **GOVERNMENTAL ACTION** By-laws, 2:6 Court orders, as, 2:6 Delegated legislation, 2:6 Discretionary acts of executive, 2:6 Foreign government's activities, 2:6 Municipal powers, 2:6 Orders in council, 2:6 Regulations, 2:6 Schools, 2:6

Statutes, 2:6 GROUP RIGHTS

Freedom of association, **12:8** Justification of breaches of, **6:23** GROUP RIGHTS—Cont'd Religious freedom, 7:18 HABEAS CORPUS, AVAILABILITY OF Generally, 22:5 HOSPITALS Government, as, 2:5 ILLUSORY DEFENCES Violation of fundamental justice, as, 17:27 **IMPARTIAL TRIBUNAL, RIGHT** TO Decided cases, 30:3 Distinguished from independent tribunal, 28:9 Evidentiary requirements, **30:3** General introduction. 30:2 Impartial, meaning of, **30:5** Reasonable apprehension of bias, test for. 30:1 Text of s. 11(d), 30:1 Threatened violations, **30:3**

INDEPENDENT TRIBUNAL, RIGHT TO

Administrative tribunals, 28:11 Appearance of independence, 28:8 Decided cases, 28:3 Distinguished from impartial tribunal, 28:9 Financial security executive branch, independence from, 28:6 generally, 28:6 salaries established by law, 28:6 General introduction. 28:2 Independent, meaning of, 28:4, 28:9 Institutional independence allocation of court rooms, 28:7 assignment of judges to cases, 28:7 direction of administrative staff, 28:7

INDEPENDENT TRIBUNAL, RIGHT TO—Cont'd Institutional independence—Cont'd discretionary benefits, 28:7 generally, 28:7 military system of justice, 28:7 preparation of court lists, **28:7** scheduling of hearings, 28:7 Military system of justice, 28:7 Objective independence, importance of, 28:4 Provincial judge, removal of, 28:7 Purpose of the right, 28:10 Reasonable apprehension of bias. 28:8 Security of tenure executive branch, independence from, 28:5 generally, 28:5 Test for independence, 28:8 Text of s. 11(d), 28:1

INFORMED OF OFFENCE WITHOUT DELAY, RIGHT TO BE

Bibliography, **24:4** Decided cases, **24:3** General introduction, **24:2** Text of s. 11(a), **24:1**

INFORMED OF REASONS FOR ARREST OR DETENTION, RIGHT TO BE

See REASONS FOR ARREST OR DETENTION, RIGHT TO BE INFORMED OF UPON DETENTION

INJUNCTIONS

See also REMEDIES Interlocutory, **47:45** Mandatory, **47:46**

INSUBSTANTIAL EFFECTS ON RIGHTS, ACTIONABILITY OF

See TRIVIAL BREACHES OF CHARTER RIGHTS INTERLOCUTORY RELIEF See PRE-TRIAL RELIEF; REME-DIES **INTERPRETATION, AIDS TO** Academic authorities, 5:43 American authorities, 5:39, 9:19 Bibliography, 5:58 Bill of Rights authorities, 5:34, 5:44 British authorities, 5:41 Community opinion, 5:48 European authorities, 5:40 European Convention on Human Rights, 5:34, 5:40 Framers' intention, 5:34 Free and democratic society, 5:37, 6:4, 6:5 Headings and margin notes, 5:33 International law, 5:52 International treaties, 5:52 Law Reform Commission materials. 5:49 Legislative committee proceedings, 5:34 Legislative debates, 5:35 Legislative history, **5:51** Margin notes and headings, 5:33 Minutes of Proceedings and Evidence of Special Joint Committee on the Constitution. 5:34 Other Charter provisions, 5:36 Other countries' authorities, **5:42** Philosophical insights, 5:50 Preamble to Charter, 5:2, 5:3 Previous drafts of Charter sections, 5:35 Purpose of Charter, 5:47 Right, meaning of, **5:38, 17:8** Royal Commission materials, **5:49** s. 21, 5:2 s. 22, 5:2 s. 25, 5:2 s. 26, 5:2 s. 27, 5:2, 5:3, 7:14

INTERPRETATION, AIDS TO -Cont'd s. 28. 5:2 s. 29, 5:2, 5:3, 7:11 s. 30, **5:2** s. 31. 5:2 Text of Charter, **5:2, 5:46** United Nations materials, 5:45 Unwritten constitutional principles, 5:53 **INTERPRETATION, PRINCIPLES** OF Abstract method, 5:7 Absurdity is to be avoided, 5:22 Aids to interpretation, 5:33 to 5:57 All portions of text to be given meaning, 5:17 Analysis of rights infringement and justification, distinction between, **5:10**, **6:14**, **17:12** Arbitrary distinctions are to be avoided, 5:22 Broad interpretation, 5:23 Burden on Charter complainant to be lessened, 5:28 Common law to be interpreted in accordance with Charter, 2:7 Constitutionalism and the rule of law. 5:56 Contextual method, 5:7, 9:16 Democracy, 5:55 Equality, interpretation consistent with. 5:16 Federalism, 5:54 Framers' intention, 5:5 General approaches to interpretation, 5:4 to 5:7 Illegal conduct of complainant, relevance of, 5:15, 9:7 Inflexible categorizations, **5:12** Interstate relations, interpret to avoid interference with, 5:18, 5:26 Introduction to, 5:1

INTERPRETATION, PRINCIPLES OF—Cont'd Language rights cases, 5:19, 41:7, 44:7, 46:7 Legislation, proper interpretive approach to, 2:8, 5:8 Legislative powers not extended, 54:1 to 54:3 Less ambiguous version of Charter to be adopted, 5:30 Living tree principle, 5:20 Multicultural heritage, interpretation in accordance with, **50:1** to 50:3 Narrow and technical interpretations. 5:11 Other Charter provisions, relevance of. 5:13 Particular principles of interpretation. 5:9 to 5:32 Practical considerations, relevance of. 5:14 Presumption of constitutionality, 5:25 Privilege and rights, distinction between, 5:21 Promotion of certainty of rights, 5:27 Protection of minorities. 5:57 Purposive approach, 5:4 Relationship to non-Charter rights and freedoms, 49:1 to 49:3 Specific sections governing interpretation, 5:2, 5:3 Statutory defences not owed deference. 5:29 Territories included in references to provinces, 53:1 to 53:3 Textual approach, 5:6, 5:17, 5:46 Trivialization of Charter to be avoided. 5:29 Waiver of rights, 5:24 **INTERPRETER, RIGHT TO**

Administrative proceedings, **39:14** Bibliography, **39:5**

INTERPRETER, RIGHT TO —Cont'd

Breach of right, test for, **39:7** Civil proceedings, **39:13** Components of right inadequate assistance, **39:9** lapse in interpretation material, **39:10** need for assistance, **39:8** non-existent assistance, **39:9** Decided cases, **39:3** General introduction, **39:2** Purpose of, **39:6** Remedies for breach, **39:12** Test for breach of right, **39:7** Text of s. 14, **39:1** Waiver of right, **39:11**

INTERRELATIONSHIP OF CHARTER SECTIONS

Generally, 4:2, 5:10, 5:13, 5:17, 5:36 Fundamental justice and other rights, 17:17, 17:21 Fundamental justice and s. 1, 6:22 Generally, 4:2 s. 2(a) and other rights, 7:11, 7:14 s. 2(a) and s. 1, 7:17 s. 2(b) and other rights, 9:8 s. 2(b) and s. 1, 5:10, 9:15 s. 6 and s. 1, 5:10, 6:24 s. 7 and other rights, **5:36**, **17:17** s. 7 and s. 1, 5:10, 17:12 s. 8 and s. 1, 5:10, 6:25 s. 8 and s. 10, 18:41 s. 10 and s. 1, 21:23 s. 11(b) and other rights, 5:36 s. 11(d) and other rights, **5:36, 27:7** s. 11(d) and s. 1, 5:10 s. 11(h) and other rights, 35:6 s. 12 and other rights, 37:10 s. 13 and other rights, 5:36, 38:11 s. 13 and s. 1, 38:14 s. 15 and other rights, 5:36

s. 15 and s. 1, 6:23, 40:16

INTERRELATIONSHIP OF CHARTER SECTIONS —Cont'd

s. 19 and other rights, **44:8** s. 23 and other rights, **5:36**, **46:8**

s. 24(1) and s. 24(2), **5:36**

Violation of other rights, effects on fundamental justice, **17:21**

INTERSTATE RELATIONS

Compelling witness to testify, **17:16** Deference to decisions concerning, **5:26** Extradition matters, **17:16** Interpret to avoid interference with, **5:18** s. 7 and, **17:16 INTERVENTION** Applications to adduce fresh evidence by, **4:30** Bibliography, **4:21**

Interest in the proceedings, **4:18**

Relevant considerations, 4:20

Status in lower courts, **4:20**

Useful and different submissions, 4:19

INTIMATE SAMPLES, SEIZURES OF

See SEARCHES AND SEIZURES

JUDICIAL NOTICE

See EVIDENTIARY CONSIDERATIONS

JURISDICTION

See also PRE-TRIAL RELIEF Administrative tribunals, **3:13** Arbitrators, **3:13** Bodies other than courts, **3:13** Civil remedies in criminal court, granting of, **3:10** Complainants outside Canada, **3:9** Court of competent jurisdiction, meaning of, **3:2** Effect of Charter violation on, **3:11**

JURISDICTION—Cont'd

Exclusion of evidence before trial. 3:8 preliminary hearing magistrate, by, **3:4** reviewability of discretion by Supreme Court, 47:34 Federal court. 3:14 Introduction. 3:1 Lives, safety of persons at risk, **3:9** Loss of, by Charter violation, 3:11 No gaps in, **3:12** Preference for trial court generally, 3:7 unreasonable delay cases, 25:31 Preliminary hearing magistrates, 3.4 Pre-trial relief appeals from denial of, 3:8, 3:9 final order. 3:9 lives, safety of persons at risk, 3:9 prerogative relief from superior courts, **3:8** Principles of, 3:2 Provincial courts. 3:3 Scope of remedies in criminal courts. 3:10 Superior courts concurrent jurisdiction, 3:6 discretion of, to decline, 3:7 generally, 3:5 original jurisdiction, 3:5 prerogative relief before trial, 3:8 provincial. 3:14

JURY TRIAL, RIGHT TO

Benefit, meaning of, **33:6** Bibliography, **33:4** Decided cases, **33:3** General introduction, **33:2** Historical basis of, **33:5** Importance of, **33:5** Military exemption, **33:10** Purpose of the right, **33:5**

JURY TRIAL, RIGHT TO-Cont'd Reasonable diligence in exercise of right, **33:9** Right to a non-jury trial, 33:7 Text of s. 11(f). 33:1 Waiver of the right, **33:8** JUSTICIABILITY Generally, 2:11 Speculation, courts not to engage in, 5:26 JUSTIFICATION See also MINIMAL IMPAIRMENT TEST; PRESCRIBED BY LAW: PRESSING AND SUBSTANTIAL OBJECTIVE: PROPORTIONALITY BETWEEN EFFECTS OF MEASURES AND IMPORTANCE OF LEGISLATIVE OBJECTIVE Access to public arena, relationship with, 9:20, 9:32, 9:33 Analysis of, relationship with analysis whether right violated, 6:14 Bibliography, 6:3 Cases subject to flexible approach, 6:15

Common law rules, 6:27

tion, 6:18, 6:23

Equality, role of s. 28, 5:3

flexible approach, 6:9

generally, 4:34, 6:19

ing of, 5:37, 6:4

with, 6:16, 9:15

General introduction, 6:2

with, 6:22

General trends, 6:2

6:15

Flexible approach", 6:9

Evidence

Equality, relationship with justifica-

Free and democratic society, mean-

Freedom of expression, relationship

Fundamental justice, relationship

Government as singular antagonist,

.IUSTIFICATION—Cont'd Group rights, 6:23 Language of flexibility and reasonableness, 6:11 Law. 6:20 Legislative deference, 6:11, 6:20 Less reluctance for Supreme Court to use s. 1, 6:10 Limit. 6:21 Measures rationally connected to achievement of objective, 6:7 Minimal impairment test and flexible approach, **6:11**, **6:13** generally, 6:8, 6:11, 6:13, 6:18 Minority language educational rights, 6:26 Mobility rights, relationship with, 6:24 Objective of sufficient importance, 6:6 Onus of proof, 6:17 Prescribed by law, 6:20 Press freedom and justification, 10:9 Proportionality between effects of measures and importance of legislative objective, 6:16 Rational connection test. 6:7 Religious freedom, relationship with, 7:17 Right to counsel, relationship with, 21:23 s. 7, relationship with, 17:12 s. 13, relationship with, **38:14** s. 28, relationship with, 5:3 Search and seizure rights, relationship with, 6:25 Socio-economic cases, 6:15 Standard of proof equality cases, 6:18 generally, 6:18 minimal impairment test, 6:8 pressing and substantial objective, s. 15 cases, **6:6** s. 2(b) cases, 6:18, 9:15

JUSTIFICATION—Cont'd Test for, **6:5** Text of s. 1, 6:1 LANGUAGE GROUPS, RIGHT TO MINORITY LANGUAGE **EDUCATION** See EDUCATIONAL RIGHTS. MINORITY LANGUAGE GROUPS LANGUAGE RIGHTS Bibliography s. 16, 41:5 s. 16.1, **41:5** s. 17, 42:5 s. 18. 43:4 s. 19. 44:5 s. 20, **45:4** Choice of language and s. 2(b), 9:18 Decided cases s. 16, 41:2 s. 16.1, **41:2** s. 17, 42:3 s. 18, 43:3 s. 19, 44:3 s. 20. 45:3 Freedom of expression distinguished from, 9:8 General introduction s. 16, 41:2 s. 16.1, **41:2** s. 17, 42:2 s. 18, 43:2 s. 19. 44:2 s. 20, 45:2 Interpretive principles, 5:19, 41:7, 44:7 Minority language groups, educational rights see EDUCATIONAL RIGHTS, MINORITY LANGUAGE GROUPS Purpose of s. 16, 41:6

LANGUAGE RIGHTS—Cont'd

Purpose of—Cont'd s. 16.1, **41:6** s. 19, **44:6** Relationship of s. 19 with other rights, **44:8** Text of s. 16, **41:1**

- s. 16.1, **41:1**
- s. 18. **43:1**
- s. 19, **44:1**

LEAVE TO APPEAL TO SUPREME COURT

Generally, **4:2**, **4:3** Criteria for granting leave, **4:5 to 4:12** Deficient factual record, **4:31** Denial of leave by Court of Appeal, effect of, **4:4** Extradition court, **4:4** Lives, safety of persons at risk, **4:4** Statutory provisions, **4:4**, **4:24** Time for service of application, **4:4**

LEGISLATION, PROPER INTERPRETIVE APPROACH TO

Generally, **2:8**, **5:8** Relevance of purpose and effect of legislation, **4:4**

LEGISLATIVE DEFERENCE, LANGUAGE OF

See also LEGITIMACY OF JUDICIAL REVIEW Decisions by executive branch, **5:26** Deference to legislature in applying minimal impairment test, **6:8** assessing importance of objective, **6:16** Protection only within limits of reasons, **5:47**

s. 1, justification under, 6:11

LEGITIMACY OF JUDICIAL REVIEW See also LEGISLATIVE DEFER-ENCE, LANGUAGE OF Generally, 2:11, 5:23, 5:26, 6:2 Economic legislation, 5:26, 6:11, 6:15 Social policy matters, 5:26, 6:11, 6:15 LIBERTY, RIGHT TO See also SECTION 7 Compelling witness to testify, 17:11 Decisions fundamental personal decisions, 17:11 reproduction, 17:11 termination of pregnancy, **17:11** Deprivation of ability to escape persecution, 17:11 Dignity. 17:11 Fines, 17:11 Fingerprinting, 17:11 Imprisonment, **17:11** Meaning of, 17:11 Relationship with s. 1, 5:37 Relevance of external threats. 17:11 government's interests, 17:11 interstate relations, 17:11 public interest, **17:11**, **17:12** rights of others, **17:11**, **17:12** Right to transact business, 17:3, 17:11 Suicide, assisted, 17:11

LIFE, RIGHT TO See also SECTION 7 Generally, **17:9**

See also JUSTIFICATION Generally, **6:21** provision regarding a right in all circumstances, **6:21**

MAJORITARIAN OR COMMUNITY OPINION See also INTERPRETATION,

AIDS TO Bring the administration of justice into disrepute (s. 24(2)), meaning of, **47:24**

Relevance of, **5:48**

MANNER OF SEARCH AND SEIZURE See SEARCHES AND SEIZURES

MENS REA, LEVEL CONSTITUTIONALLY REQUIRED FOR CONVICTION

Generally, 17:19

MINIMAL IMPAIRMENT TEST

See also JUSTIFICATION Deference to legislative choices, **6:8** Evidentiary considerations, **6:8** Standard of proof, **6:8**

MOBILITY RIGHTS

Banishment, 16:6 Bibliography, 16:5 Citizenship requirements, 16:3 Decided cases. 16:3 Exile. 16:6 Extradition. 16:3. 16:6 General introduction, 16:2 Interprovincial sale of products, 16:3 Limitations on the right (s. 6(3)), 16:9 Relationship with Bill of Rights, s. 2(a), 5:44 s. 1, 6:24 Right to enter, remain in and leave Canada (s. 6(1)), 16:6 move to and take up residence in any province (s. 6(2)(a)), 16:7

MOBILITY RIGHTS—Cont'd Right to—Cont'd

pursuit of a livelihood in any province (s. 6(2)(b)), **16:8** Text of s. 6, **16:1**

MOOTNESS

Academic, whether issue, **4:37** Bibliography, **4:39** Discretion to hear moot appeal, **4:38** Generally, **4:36** When moot, **4:37**

NON OBSTANTE PROVISION See OVERRIDE PROVISION

NOTICE, PROVISION OF Generally, 17:25

OBJECTIVES, LEGISLATIVE See JUSTIFICATION; PRESSING AND SUBSTANTIAL OBJECTIVE

OFFENCE, MEANING OF See CHARGED WITH AN OFFENCE, MEANING OF

ONUS OF PROOF

Alteration of onus, mixing analysis of rights violation and justification, 6:17, 17:12, 40:16

Establishing rights violation, **4:28** Exclusion of evidence, **47:20** Generally, **4:28** Jurisdiction, demonstrating need for immediate relief, **3:7**

s. 1, justification under, 4:28, 6:17

- s. 8, **18:39**
- s. 10, **21:22**
- s. 24(2), **47:20**

OVERRIDE PROVISION

Formal requirements, **2:15** Omnibus enactments, **2:15** Retrospective effect, **2:15** Substantive requirements, **2:15**

PARLIAMENTARY SITTINGS, FREQUENCY OF

Bibliography, **15:5** Decided cases, **15:3** General introduction, **15:2** Text of s. 5, **15:1**

PERIPHERAL BREACHES OF CHARTER RIGHTS

See also TRIVIAL BREACHES OF CHARTER RIGHTS Generally, 6:14

POLITICAL QUESTIONS DOCTRINE Generally, 2:11

Generally, **2.11**

POLITICAL RIGHTS

See VOTING RIGHTS; TERM OF PARLIAMENT; PARLIAMENTARY SIT-TINGS, FREQUENCY OF; FREEDOM OF EXPRES-SION

PRACTICE AND PROCEDURE

Causation. 4:29 Compliance with procedural requirements, 4:22 constitutional questions, stating, 4:25 dispensing with requirements, 4:23 factums, **4:26** notice of constitutional question, 4:27 Rules, 4:24 Supreme Court Act, 4:24 Evidence admissible evidence, 4:32 bibliography, 4:35 extrinsic evidence, weight to be attached to, 4:33 facts, placement of before the Court, **4:30** full factual record, requirement of, **4:31**

PRACTICE AND PROCEDURE -Cont'd Evidence—Cont'd justification under s. 1, factual record required for, 4:34 General introduction, 4:1 Initiating the claim. 4:2 Leave to appeal, obtaining, 4:3 criteria. 4:5 to 4:12 case well presented, 4:11 facts of case appropriate, 4:10 genuine dispute between parties, **4:7** legal principles being uncertain or requiring reassessment, 4:6 merits of case, **4:12** national importance, 4:5 pressing need for resolution, 4:9 public interest, dispute of, 4:8 statutory provisions, 4:4 Mootness. 4:36 bibliography, 4:39 consideration by Court of whether issue academic. 4:37 discretion, exercise of by Court, 4:38 Onus of proof, 4:28 Prior decisions, 4:41 Raising of Charter claim for first time in Supreme Court, 4:40 Standing, 4:13 to 4:21 challenging provisions under which accused charged, 4:15 impending infringement or denial of rights of party, 4:14 infringement or denial of rights of party, **4:13** intervention in appeal by interested party, 4:17 public interest litigation, 4:16 third party rights, reliance on, 4:22

PRE-CHARTER HISTORY

Relevance to assessment of rights violation, 2:10 granting of remedies, 2:10

PREFERENCE FOR TRIAL COURT JURISDICTION Generally, 3:7 Unreasonable delay cases, 25:31

PRELIMINARY HEARING MAGISTRATES Jurisdiction of, 3:4

PREMISES, SEARCHES OF See SEARCHES AND SEIZURES

PRESCRIBED BY LAW

See also JUSTIFICATION Law, meaning of common law rules, **6:20** discretion, official exercise of, **6:20** orders of administrative body, **6:20** Legislation has no intelligible standard, **6:20** Meaning of, **6:20** Plenary discretion, **6:20** Vagueness, **6:20** Vagueness and overbreadth distinguished, **6:20** What is law to be justified, **6:20**

PRESS FREEDOM See FREEDOM OF THE PRESS

PRESSING AND SUBSTANTIAL OBJECTIVE

See also JUSTIFICATION Burden on government, s. 15 cases, **6:6** Changing circumstances altering assessment of, **6:6** Deference to legislature's choice,

6:6

PRESSING AND SUBSTANTIAL OBJECTIVE—Cont'd

Insufficient objectives administrative convenience, **6:6**, **17:12** complete denial of rights, **6:6**

convenience and expediency, **6:6**, 17:12

cost saving, **6:6** elimination of purpose behind Charter, **6:6** True objective of legislation vs. plausible objective, **6:6**

PRESUMPTION OF CONSTITUTIONALITY Generally, 5:25, 47:38

PRESUMPTION OF INNOCENCE, RIGHT TO

Bibliography, 27:4 Decided cases, 27:3 General introduction, 27:2 Public welfare and regulatory offences, relationship with, 27:8 Purpose of right, 27:5 Reasonable doubt. 27:6 Regulatory and public welfare offences, relationship with, 27:8 Relationship with other rights, 27:7 s. 7, 17:17, 27:7 Scope of, 27:6 Text of s. 11(d), 27:1 What must be proven beyond a reasonable doubt common law excuses. 27:6 defences, 27:6 elements essential to offence. 27:6 elements essential to verdict, 27:6 factual presumptions, 27:6

PRE-TRIAL RELIEF

Appeals from denial of, **3:8**, **3:9** Exclusion of evidence, **3:8** Generally, **3:8** Motion before provincial court judge, **3:3** Preference for trial court, **3:7** Preliminary hearing magistrate, jurisdiction of, **3:3** Prerogative relief from superior courts, **3:8**

PRIOR AUTHORIZATION FOR SEARCHES AND SEIZURES See SEARCHES AND SEIZURES

PRIVACY INTERESTS

Meaning of (s. 8), **18:9** Strength of, relevance to s. 8 reasonableness, **18:12 to 18:27** Unreasonable delay, **25:15**

PRIVATE LITIGATION

Application of Charter to, 2:9

PRIVILEGE Religious communications, 7:20

PROCEDURAL PROTECTIONS

See also FUNDAMENTAL JUSTICE, PRINCIPLES OF; **SECTION 7** Administrative inefficiency, 17:10 Arbitrariness, 17:22 Bodily integrity, **17:10** Compelling witness to testify, 17:10, 26:3, 26:5, 26:6 Delay, 17:3, 17:10, 17:23 Disclosure of case, 17:3, 17:23 Evidence and fair trial, 17:23, 17:38 Evidence and truth-finding function, 17:38 Ex parte injunctions, 17:3, 17:25 Fair hearing, 17:23 Generally, 17:18, 17:23 Imprisonment by administrative body, 17:3

PROCEDURAL PROTECTIONS -Cont'd Jury hearing, 17:3, 17:23, 33:3, 33:5, 33:8 Knowledge before plea, 17:3, 17:23.17:25 Lack of uniformity of treatment, 17:3.17:22 Lower level of, investigative proceedings as compared to adversarial proceedings, 17:18 Natural justice, 17:18, 17:23 Notice requirements, 17:3, 17:23, 17:25 Opportunity to state one's case, 17:3, 17:23 Procedural delay, 17:10 Psychological trauma, 17:10, 17:23 Right to adduce defence evidence, 17:38 confront adverse witnesses, 17:3, 17:31, 17:38 cross-examine, 17:3, 17:31 protection against self-incrimination, 17:3, 17:32 review of detention, 17:22, 17:23 silence. 17:3 Unfairness. 17:22 PROCEDURAL **REQUIREMENTS,** SUPREME COURT Dispensing with requirements, 4:23 Factums. **4:26**

Generally, 4:22

Notice of constitutional question, provision of, **4:27**

Provisions of Act and Rules, **4:24** Reply factums, **4:26** Stating constitutional questions,

4:25

PROPER ROLE OF THE COURT See LEGITIMACY OF JUDICIAL REVIEW

PROPERTY RIGHTS Generally, 17:57

PROPORTIONALITY BETWEEN EFFECTS OF MEASURES AND IMPORTANCE OF LEGISLATIVE OBJECTIVE

See also JUSTIFICATION Characterization of objective, effect on proportionality test, **6:16** Importance of freedom of expression, **6:16**

PROSECUTIONS

Discretion to prosecute declarations, relevance to granting of, **47:42** fundamental justice and, **17:22** s. 12 cases, relevance to, **37:9** Misconduct, prosecutorial, **25:34**

PROVINCIAL COURTS Jurisdiction of, **3:3**

PUBLIC ARENA, ACCESS TO See FREEDOM OF EXPRESSION

PUBLIC FORUM, ACCESS TO See FREEDOM OF EXPRESSION

PUBLIC HEARING, RIGHT TO Decided cases, 31:3 General introduction, 31:2 Importance of, 31:3 Text of s. 11(d), 31:1

PUBLIC INTEREST LITIGATION Intervention, 4:17 Standing to commence, 4:16

PUNISHMENT, RIGHT AGAINST CRUEL AND UNUSUAL See CRUEL AND UNUSUAL PUNISHMENT, RIGHT AGAINST

PUNISHMENT, RIGHT TO BENEFIT OF LESSER Decided cases, 36:3 PUNISHMENT, RIGHT TO BENEFIT OF LESSER —Cont'd General introduction, 36:2 Text of s. 11(i), 36:1

PUNISHMENT OF ACCUSED Effective law prescribing, 17:30 Relevance of reasons for. 17:24

PURPOSE OF CHARTER Generally, 5:47

PURPOSIVE APPROACH TO INTERPRETATION OF CHARTER See also INTERPRETATION, PRINCIPLES OF Generally, 5:4

RAISING CHARTER CLAIMS FOR THE FIRST TIME IN THE SUPREME COURT Generally, 4:40

RATIONAL CONNECTION TEST See JUSTIFICATION

READING CONSTITUTIONAL STANDARDS INTO LEGISLATION Generally, 47:38

READING LEGISLATION DOWN Generally, **47:38**

REASONABLE APPREHENSION OF BIAS Test for, 28:8, 30:6

REASONABLENESS OF SEARCH OR SEIZURE See SEARCHES AND SEIZURES

REASONS FOR ARREST OR DETENTION, RIGHT TO BE INFORMED OF UPON DETENTION

Components of right, **20:7** Decided cases, **20:3**

REASONS FOR ARREST OR DETENTION, RIGHT TO BE INFORMED OF UPON DETENTION—Cont'd

Detained, meaning of, **20:5** General introduction, **20:2** Purpose, **20:6** Text of s. 10(a), **20:1** What the accused must be told, **20:7**

REGULATORY PROCEEDINGS

See ADMINISTRATIVE PROCEEDINGS

RELIGION, MEANING OF

See also FREEDOM OF RELIGION Generally, **7:10** Agnostics, **7:10** Requirement of moral compulsion of individual, **7:10** sincerely held religious beliefs, **7:10**

RELIGIOUS FREEDOM See FREEDOM OF RELIGION

REMEDIES

See also ACCESS TO COURTS; DECLARATION OF INVA-LIDITY; EVIDENCE, EXCLUSION OF; JURISDIC-TION; PRE-TRIAL RELIEF; READING CONSTITUTIONAL STAN-DARDS INTO LEGISLA-TION: READING LEGISLA-TION DOWN: SEVERANCE OF INVALID PROVISIONS; STANDING: STAY OF PROCEEDINGS Access to court for remedy, 3:12 Availability of, for persons outside Canada, 47:9 Bibliography, **47:3** Complainants outside Canada, 3:9 Constitutional exemptions, 47:44

REMEDIES—Cont'd Court of competent jurisdiction, 3:1 to 3:13, 47:13 Damages, 47:16 Declaration of invalidity constitutional exemptions, 47:44 delayed effect of, 47:41 generally, 47:36 to 47:50 interpretation to avoid Charter breaches. 47:37 prosecutorial discretion as reason for denial of, **47:42** sentencing discretion as reason for denial of, 47:42 text of s. 52. Constitution Act. 1982. **47:1** unusual declarations, 47:43 Declaratory orders, 47:15 Dependent provisions, validity of, 47:40 Discretionary, standard of review, 47:12 Exclusion of evidence generally, 47:05, 47:14 preliminary hearing, 3:3 General introduction. 47:2 Injunctions generally, 47:14, 47:45, 47:46 interlocutory prohibitory injunction. 47:45 mandatory injunction, 47:46 Jurisdiction to grant remedy complainants outside Canada, 3:9 generally, 3:1 to 3:12 prerogative relief, 3:3, 3:8 pre-trial relief, 3:8, 3:9 where lives, safety at risk, 3:9 Limitation periods, 2:17 Methodology of granting remedies, 47:4 New trial, 47:11 Of no force or effect, 47:36 to 47:50 Presumption of constitutionality, 5:25, 47:37, 47:38

INDEX

REMEDIES—Cont'd Preventative measures, unreasonable delay, 25:31 Purpose of remedies, 47:4 Purpose of s. 24, 47:4 Reading down, 47:38 Reading in, 47:38 Relationship between common law and Charter remedies. 47:8 remedy and right, 47:6 s. 24 of Charter and s. 52 of Constitution Act, 1982, 47:52 Relevance of pre-Charter history, 2:9 Right to a remedy, 47:5 Scope of, in criminal courts, **3:10** Sentence reduction, 47:17 Severing invalid provisions, 47:39 Standing to seek remedy, 4:13 to 4:21, 47:35 Stay of proceedings criminal proceedings, 47:10 pending constitutional challenge, 47:47 unreasonable delay cases, 25:30 Text of s. 52. Constitution Act. 1982. 47:1 Threatened violations, 4:14, 17:10, 17:13.47:7 Unreasonable delay, 25:30 RETROSPECTIVE **APPLICATION OF**

APPLICATION OF CHARTER Generally, 2:10

RETROSPECTIVE LAWS ENACTING OFFENCES, RIGHT NOT TO BE TRIED UNDER Ascernability of the law, 34:6

Ascernability of the law, **34:0** Decided cases, **34:3** General introduction, **34:2** Purpose of section, **34:5** Text of s. 11(g), **34:1** RIGHT, MEANING OF Generally, 5:38, 17:8

RIGHT OF ACCESS TO COURTS See ACCESS TO COURTS

RIGHT TO ADVERTISE Generally, 9:10

RIGHT TO BARGAIN COLLECTIVELY Generally, 12:7

RIGHT TO EDUCATE ONE'S OWN CHILDREN Generally, 17:3

RIGHT TO ENTER, REMAIN IN AND LEAVE CANADA See MOBILITY RIGHTS

RIGHT TO MOVE TO AND TAKE UP RESIDENCE IN ANY PROVINCE See MOBILITY RIGHTS

RIGHT TO PICKET Generally, **9:10**

RIGHT TO PURSUE THE GAINING OF A LIVELIHOOD IN ANY PROVINCE See MOBILITY RIGHTS

RIGHT TO STRIKE Generally, 12:7

RIGHT TO TRANSACT BUSINESS Generally, 17:3, 17:11

RULES OF THE SUPREME COURT Intervention, 4:17 Procedural Rules, 4:24 Stating constitutional questions, 4:25

SEARCHES AND SEIZURES

Authorizations challenging of, 18:42 evidence in support of, **18:33** failure to disclose facts in supporting sworn evidence, 18:34 generally, 18:28 mistaken facts in supporting sworn evidence, 18:35 prior authorization. 18:30 procedures for, 18:31 standards for. 18:32 Authorized by law, 18:29 Bibliography, 18:5 Body searches, 18:12 Challenging authorizations cross-examination of deponents, 18:45 disclosure of material offered in support of authorization, 18:44 reviewing discretion of authorizing judge, 18:43 Consent to. 18:47 Decided cases, 18:3 General introduction, 18:2 Item being searched or seized intimate samples, 18:12 relevance to reasonableness. 18:12 to 18:23 Manner of search and seizure, 18:36 Meaning of search and seizure, 18:8 Measures to preserve privacy, 18:28 Minimalization, 18:30 Nature of the proceedings, **18:24 to** 18:27 Onus of proof under s. 8, **18:39** Others, reliance on s. 8 rights of, 18:55 Premises, searches of, 18:13 Privacy interests definition. 18:9

SEARCHES AND SEIZURES -Cont'd Privacy interests-Cont'd strength of, 18:12 to 18:27 airport. 18:23 body searches, 18:12 bus terminals, 18:21 commercial documents. 18:15 electronic media, 18:22 hospitals, 18:16 law offices, 18:20 media premises, 18:14 motor vehicles, 18:18 other persons' premises, 18:17 premises, 18:13 schools. 18:19 third persons, of, **18:9**, **18:37** Reasonableness, relevant factors generally, 18:11 to 18:38 item being searched or seized. 18:12 to 18:23 law enforcement needs, 18:38 measures to preserve privacy, 18:28 nature of the proceedings, 18:24 to 18:27 premises, type of, 18:13 privacy interests, strength of, 18:12 to 18:27 scope of search and seizure, 18:37 societal needs, 18:38 urgent or dangerous circumstances, 18:36 Regulatory law enforcement needs of, 18:51 legislation, nature of, 18:49 location of, 18:53 manner of, 18:52 scope of, 18:50 what is being searched or seized, 18:54 Relationship with s. 1, 5:10, 6:25 s. 2(b), 10:11, 18:46

INDEX

SEARCHES AND SEIZURES —Cont'd Relationship with—Cont'd s. 10, 18:41 Reliance on the s. 8 rights of others, 18:55 Scope of protection under s. 8, 18:6, 18:7 Self-incrimination, principle against, 18:10 Standard of proof under s. 8, 18:40 Text of s. 8, 18:1 Unreasonable, 18:11 SECTION 1

See JUSTIFICATION SECTION 2(A) See FREEDOM OF CON-SCIENCE; FREEDOM OF RELIGION

SECTION 2(B) See FREEDOM OF EXPRESSION; FREEDOM OF THE PRESS

SECTION 2(C) See FREEDOM OF ASSEMBLY

SECTION 2(D) See FREEDOM OF ASSOCIA-TION

SECTION 3 See VOTING RIGHTS

SECTION 4 See TERM OF PARLIAMENT

SECTION 5 See PARLIAMENTARY SIT-TINGS, FREQUENCY OF

SECTION 6 See MOBILITY RIGHTS

SECTION 7

See also LIFE, RIGHT TO; LIB-ERTY, RIGHT TO; SECU-RITY OF THE PERSON, SECTION 7—Cont'd RIGHT TO: FUNDAMENTAL JUSTICE: PRINCIPLES OF; PROCEDURAL PROTEC-TIONS: SELF-INCRIMINA-TION, RIGHT AGAINST: SILENCE, RIGHT TO Access to beneficial medical treatment. 17:10 Administrative convenience, **17:12** Administrative inefficiency, **17:10** Bibliography, 17:5 Bodily integrity, **17:10** Cabinet decisions and the royal prerogative, **17:14** Compelling witness to testify, 17:10 Decided cases, 17:3 Deprivation of ability to escape persecution, 17:10 Double jeopardy, 17:17 Economic rights, 17:57 Equality rights, 2:14 Everyone, meaning of, 17:6 Evidence, 17:15 Expropriation, 17:57 Freedom from physical punishment, 17:10 Fundamental justice general considerations, 17:18 what are principles of, 17:19 to 17:55 General introduction. 17:2 Health, impairment of, 17:10 Interstate relations, 17:10, 17:16 Natural justice. 17:18 Preliminary considerations, 17:7 Priorities and aspirations of individual, 17:10 Procedural delay, 17:10 Procedural due process, 17:56 Property rights, 17:57 Psychological trauma, 17:10, 17:23 Relationship with cruel and unusual punishment, 17:17

SECTION 7—Cont'd Relationship with-Cont'd other sections. 17:17 presumption of innocence, 17:17 right against self-incrimination, 17:17 right to counsel, 17:17 right to silence, 17:17 s. 1, **17:12** trial within reasonable time, 17:17 Relevance of rights of others, public interest, 17:10, 17:12 Right, meaning of, 17:8 Right to liberty, meaning of, **17:11** Right to life, meaning of, **17:9** Right to security of the person, meaning of, 17:10 Self-respect, 17:10 Substantive due process, 17:56 Text of s. 7, 17:1 Threat of impairment of health, 17:10, 17:13 physical punishment, 17:10, 17:13 Waiver of right, 17:58

SECTION 8

See SEARCHES AND SEIZURES

SECTION 9 See ARBITRARY DETENTION

SECTION 10(A) See REASONS FOR ARREST OR DETENTION, RIGHT TO BE INFORMED OF UPON DETENTION

SECTION 10(B) See COUNSEL, RIGHT TO

SECTION 10(C) See DETENTION, RIGHT TO HAVE VALIDITY DETERMINED SECTION 11, APPLICATION OF See CHARGED WITH AN OFFENCE, MEANING OF

SECTION 11(A) See INFORMED OF OFFENCE WITHOUT DELAY. RIGHT TO BE

SECTION 11(B) See TRIAL WITHIN REASON-ABLE TIME, RIGHT TO

SECTION 11(C) See COMPELLABILITY OF PERSON IN PROCEEDINGS AGAINST THAT PERSON FOR AN OFFENCE

SECTION 11(D)

See PRESUMPTION OF INNOCENCE, RIGHT TO; FAIR HEARING, RIGHT TO; PUBLIC HEARING, RIGHT TO; IMPARTIAL TRIBUNAL, RIGHT TO; INDEPENDENT TRIBUNAL, RIGHT TO

SECTION 11(E) See BAIL, RIGHT TO

SECTION 11(F) See JURY TRIAL, RIGHT TO

SECTION 11(G) See RETROSPECTIVE LAWS ENACTING OFFENCES, RIGHT NOT TO BE TRIED UNDER

SECTION 11(H) See DOUBLE JEOPARDY, RIGHT AGAINST

SECTION 11(I) See BENEFIT OF LESSER PUNISHMENT, RIGHT TO SECTION 12 See CRUEL AND UNUSUAL PUNISHMENT, RIGHT AGAINST

SECTION 13 See SELF-INCRIMINATION, RIGHT AGAINST

SECTION 14 See INTERPRETER, RIGHT TO

SECTION 15 See EQUALITY RIGHTS

SECTION 16 See LANGUAGE RIGHTS

SECTION 16.1 See LANGUAGE RIGHTS

SECTION 17 See LANGUAGE RIGHTS

SECTION 18 See LANGUAGE RIGHTS

SECTION 19 See LANGUAGE RIGHTS

SECTION 20 See LANGUAGE RIGHTS

SECTION 23 See EDUCATIONAL RIGHTS, MINORITY LANGUAGE GROUPS

SECTION 24 See ACCESS TO COURTS; EVI-DENCE, EXCLUSION OF; JURISDICTION; REMEDIES

SECTION 28 Role in Charter, 5:3

SECTION 32 See APPLICATION OF CHARTER

SECTION 33 See OVERRIDE PROVISION **SECTION 52, CONSTITUTION** ACT, 1982 See also DECLARATION OF **INVALIDITY; REMEDIES** Standing to challenge charging provisions. 4:15 SECURITY OF THE PERSON. **RIGHT TO** See also SECTION 7 Access to beneficial medical treatment. 17:10 Administrative inefficiency, 17:10 Administrative law, 17:10 Bodily integrity, 17:10 Compelling witness to testify, 17:10 Escaping persecution, 17:10 Freedom from physical punishment, 17:10 Impairment of health, 17:10 Individual priorities and aspirations, 17:10 Procedural delay, 17:10 Psychological trauma, 17:10 Relevance of external threats, 17:10 interstate relations, 17:10 rights of others, public interest, 17:10, 17:12 Threat of impairment of health, 17:10, 17:13 physical punishment, 17:10, 17:13 SELF-INCRIMINATION, RIGHT AGAINST Any other proceedings, meaning of, 38:9

38:9 Bibliography, 38:5 Civil proceedings, 38:9 Commissions of inquiry, 38:7 Compellability see COMPELLABILITY OF PERSON IN PROCEED-INGS AGAINST THAT

SELF-INCRIMINATION, RIGHT AGAINST—Cont'd Compellability-Cont'd PERSON FOR AN OFFENCE Compelling of testimony and s. 7, 17:11 Cross-examination on witnesses knowledge of s. 13, **38:16** Decided cases, 38:3 General introduction, 38:2 Impeaching credibility, **38:10** Incriminate, meaning of, 38:10 Irrelevant considerations, 38:13 Justification under s. 1, 38:14 Principles, 18:10 Proceedings, meaning of, 38:7 Purpose of the right, **38:6** Relationship with Canada Evidence Act. 38:15 fundamental justice, 17:3, 17:18, 17:32, 17:33 other rights, 38:11 s. 7, 17:17, 17:32, 17:33, 38:11 s. 11(c), **38:11** Text of s. 13. 38:1 When s. 13 operates, 38:12 Witness, meaning of, 38:8

SEVERANCE OF INVALID PROVISIONS Generally, 47:39

SHIFTING PURPOSE DOCTRINE Generally, 7:9

SILENCE, RIGHT TO Fundamental justice, 17:3, 17:33 Relationship with s. 7, 17:17 Right to liberty, 17:11

SOCIAL SCIENCE EVIDENCE, ADMISSIBILITY OF See EVIDENTIARY CONSIDERATIONS

STANDARD OF PROOF

Minimal impairment test, **6:8** s. 1, **6:18** s. 8, **18:40** To establish objective in s. 15 cases, **6:23**

STANDING

Accused challenges charging provision, **4:15** Employees' association in s. 2(d) claim, **4:16** Generally, **4:13 to 4:21** Intervention, **4:17** Public interest litigation, **4:16** Rights infringed or denied, **4:13** Threatened rights violations, **4:14** To claim religious freedom, **7:13**

STATE ACTION See GOVERNMENTAL ACTION

STATING CONSTITUTIONAL QUESTIONS

Importance of, **4:25** Rules of Supreme Court, **4:24** When refused, **4:25**

STAY OF PROCEEDINGS

Pending constitutional challenge, 47:47 Unreasonable delay cases, 25:30

SUBSTANTIVE DUE PROCESS Generally, 17:56

SUPERIOR COURTS

Concurrent jurisdiction, **3:6** Jurisdiction of, **3:5** Original jurisdiction, **3:5** Preference for trial court jurisdiction, **3:7**

TERM OF PARLIAMENT

Bibliography, **14:5** Decided cases, **14:3** General introduction, **14:2** Text of s. 4, **14:1** TEXT OF CHARTER American Constitution, different from, 5:39, 7:15 Complete text, 1:1 s. 1, 6:1 s. 2(a), 7:1, 8:1 s. 2(b), 9:1, 10:1 s. 2(c), 11:1 s. 2(d), 12:1 s. 3, 13:1 s. 4, 14:1 s. 5, 15:1 s. 6, 16:1 s. 7. 17:1 s. 8, 18:1 s. 9, 19:1 s. 10(a), 20:1 s. 10(b), 21:1 s. 10(c), 22:1 s. 11(a), 24:1 s. 11(b), 25:1 s. 11(c), 26:1 s. 11(d), 27:1, 28:1, 29:1, 30:1, 31:1 s. 11(e), 32:1 s. 11(f), 33:1 s. 11(g), 34:1 s. 11(h), 35:1 s. 11(i), **36:1** s. 12, 37:1 s. 13, 38:1 s. 14, 39:1 s. 15, 40:1 s. 16, 41:1 s. 16.1, **41:1** s. 17, 42:1 s. 18, 43:1 s. 19, 44:1 s. 20, 45:1 s. 21, 5:2, 5:3 s. 22, 5:2, 5:3 s. 23, 46:1 s. 24, 47:1 s. 25, 5:2, 5:3

TEXT OF CHARTER—Cont'd s. 26, 5:2, 5:3 s. 27, 5:2, 5:3 s. 28, 5:2, 5:3 s. 29, 5:2, 5:3 s. 30, 5:2, 5:3 s. 31, 5:2, 5:3 s. 32, 2:1 s. 33, 2:1 THREATENED VIOLATIONS OF **CHARTER RIGHTS** Generally, 4:14, 17:10, 17:13, 47:7 Commissions of inquiry, 17:13 TRIAL WITHIN REASONABLE TIME, RIGHT TO Appeals, delay in, 25:6 Bibliography, 25:4 Burden of proof, 25:32 Decided cases, 25:3 Delay by foreign authorities, 25:19 Evidential burden on Crown, 25:32 General introduction, 25:2 Impairment accused's interests, of factors relevant to. 25:15 arising as a result of what factors, 25:23 interests, of which persons, 25:24 types of, 25:15 Institutional or systemic delay, 25:12 Irrebuttable presumption of prejudice, 25:21 Jury deliberation delay, 25:29 Length of delay, 25:8 running of time, 25:9 Preventative measures, 25:31 Purpose of, 25:5 Relevance of actual prejudice to accused's interests, 25:21 charged, mere fact of being, 25:23 civil consequences, 25:20

TRIAL WITHIN REASONABLE TIME, RIGHT TO—Cont'd

Relevance of-Cont'd delays by accused, 25:14 delays by court, 25:14 delays by Crown, 25:14 fair trial interest, impairment of, 25:22 family, effects on, 25:16, 25:24 length of delay, 25:25 limits on institutional resources, 25:11 non-physical factors, 25:16 position of accused in community, 25:23 pre-charge delay, 25:17 pre-Charter delay, 25:18 privacy, loss of, 25:16 prosecutorial misconduct. 25:33 psychological effects on accused, 25:16 stigmatization of accused, 25:16 stress of accused. 25:16 Remedies generally, 25:30 preference for trial court to grant, 25:31 preventative measures, 25:31 stay of proceedings, 25:30 Systemic delay, 25:12 Test for unreasonableness, 25:7 Text of s. 11(b), 25:1 Time inherent in nature of the case, 25:11 Trial, meaning of, 25:6 Waiver by accused consent to delay, 25:14 exercising right to counsel, 25:14 general, 25:14 inaction or acquiescence, 25:14 right to make full answer and defence, 25:14 unrepresented accused, 25:14 When application can be brought, 25:31

TRIAL WITHIN REASONABLE TIME, RIGHT TO—Cont'd When time starts running, 25:9 Whose delays by accused, 25:13 by Crown, 25:10 TRIVIAL BREACHES OF **CHARTER RIGHTS** Generally, 5:9 **UNFAIRNESS** Fundamental justice, 17:22 Self-incrimination and fundamental justice, 17:32 UNITED NATIONS MATERIALS See also INTERPRETATION. AIDS TO Relevance of, 5:45 UNIVERSITIES Whether government, 2:5 **UNLAWFULNESS** See also CONDUCT OF COMPLAINANT Economic pressure. 9:7 Generally, 5:15, 9:7 Inducing breach of contract, 9:7 Interference with Charter rights of others, 9:7 No Charter protection for, 9:7 UNREASONABLE DELAY See TRIAL WITHIN REASON-ABLE TIME, RIGHT TO **URGENT OR DANGEROUS** CIRCUMSTANCES Admissibility of evidence, **47:30** Factor to be considered under s. 1. 21:23 Reasonableness of search, 18:36 Right to counsel, 21:12, 21:13,

VAGUENESS Fundamental justice, 17:28

21:17

INDEX

VAGUENESS—Cont'd

Whether legislation is prescribed by law, **6:20**

VOTING RIGHTS

Bibliography, **13:5** Decided cases, **13:3** Deference to legislative policies, **13:7** Effective representation, **13:6**, **13:7** General introduction, **13:2** Parity of voting power, **13:7** Purpose, **13:6** Role of history in, **13:8** Text of s. 3, **13:1**

WAIVER OF RIGHTS

Equality rights, **40:19** Generally, **5:24** Interpreter, use of, **39:11** Lack of diligence in asserting right to counsel, **21:10**, **21:19** right to jury trial, **33:9** Right to counsel, **21:18** Right to jury trial, **33:8** s. 7 rights, **17:58** Unreasonable delay claims, **25:14**

WITHOUT DELAY, MEANING OF

See COUNSEL, RIGHT TO