

Index

ADJOURNMENT

- Charter and, **5:4, 5:5**
- Commencement unduly delayed, **5:5.30**
- General, **5:4**
- Length of, **5:4, 5:5**
- Non-communication direction during, **5:5.30**
- Place of detention, **5:5**
- Psychiatric remands, **5:6**
 - Criminal Code, **5:6**
 - provincial mental health legislation, **5:6**
- Purpose of, **5:4**
- Reasons for, **5:4**
- “Three clear days” defined, **5:5**
- Warrant (Form 19), **5:5**

APPEAL

- See BAIL PENDING APPEAL

APPEARANCE

- Compelling
 - generally, **2:12 to 2:17**
 - defects in process, **2:17**
 - justice, role of, **2:16**
 - notice (s. 500), **2:14**
 - summons (s. 509), **2:13**
 - undertaking (s. 501), **2:15**
- Forms of release, **2:12 to 2:17**
- Method of, **2:24**

ARREST

- See also POLICE BAIL
- Arrest without warrant
 - generally, **2:5 to 2:11**
 - citizen’s arrest, **2:10**
 - “finds committing an offence,” **2:9**
 - general powers (s. 495(1)), **2:6**
 - “has committed or is about to commit an indictable offence,” **2:8**
 - “reasonable grounds,” **2:7**
- Arrest with warrant
 - generally, **2:3 to 2:4**
- Duty not to arrest or detain (s. 495(2))
 - generally, **2:11**

ARREST—Cont’d

- Duty to take accused before justice
 - generally, **2:18 to 2:24**
 - in-province offences, **2:22**
 - out-of-province offences, **2:21**
 - places, arrest and offence in different, **2:20**
- Historical aspects, **2:2**

BAIL

- Historical sketch
 - “Age of Enlightenment” and Bail Reform Act, **1:5**
 - current legislative trends, **1:6**
 - early Canadian origins, **1:3**
 - early English origins, **1:2**
 - emergence of additional criteria, **1:4**
- Introduction, **1:1**
- Police, see also ARREST
 - generally, **2:1**

BAIL BONDSMAN

- See SURETIES

BAIL HEARING

- Adjournment, **5:4 to 5:6**
- Charter relief, **5:29**
- Commencement unduly delayed, **5:5.30**
- Evidentiary issues
 - credible and trustworthy evidence, **5:24**
 - establishing factual foundation, **5:25**
 - legislative framework, **5:22**
 - nature of bail hearing
 - general, **5:17**
 - physical presence and alternatives, **5:18**
 - relevance, **5:19**
 - specific relevant evidence, **5:23**
 - testimony of accused, **5:26**
 - testimony of sureties, **5:27**
- Forum, see FORUM
- General, **5:1**
- Non-communication orders during, **5:5.70**
- Onus of proof
 - general, **5:8**
 - impact of Charter, **5:16**

BAIL HEARING—Cont'd

- Onus of proof—Cont'd
 - reverse onus provisions, **5:9**
- Publication bans, see PUBLICATION BANS
- Reasons of justice or judge, **5:28**
- Standard of proof, **5:7**

BAIL PENDING APPEAL

- Background, **10:1**
- Conviction alone or conviction and sentence, appeal from
 - burden, **10:3**
 - commencing application, **10:5**
 - criteria for release
 - appeal not frivolous, **10:7**
 - general, **10:6 to 10:13**
 - public confidence, **10:11**
 - public interest, **10:9 to 10:11**
 - residual discretion to refuse application, **10:12**
 - safety, **10:10**
 - surrender into custody, **10:8**
 - custody, **10:2**
 - forum, **10:3**
 - materials to file, **10:5**
 - onus, **10:3**
 - orders for directions, **10:13**
 - timing of application, **10:4**
- Introduction, **10:1**
- New trial, see BAIL PENDING NEW TRIAL
- Sentence alone, appeal from
 - criteria for release
 - obtaining leave to appeal, **10:16**
 - public interest, **10:19**
 - sufficient merit, **10:17**
 - surrender into custody, **10:18**
 - unnecessary hardship, **10:17**
 - general, **10:14**
 - material to file, **10:20**
- Summary conviction proceedings, **10:29**
- Supreme Court of Canada proceedings
 - criteria for release, **10:27**
 - forum, **10:28**
 - timing of application, **10:26**

BAIL PENDING NEW TRIAL

- Background, **10:21**
- Criteria for release, **10:23**

BAIL PENDING NEW TRIAL—Cont'd

- Direction or reference by Minister, see RELEASE PENDING MINISTERIAL REVIEW
- Forum, **10:22, 10:23**
- Legislative clarification, **10:23**
- Onus of proof, **10:22, 10:23**
- Presumption of innocence, **10:22, 10:23**
- Previous legislation, **10:22**
- Public interest, **1:14, 10:22**
- Review of, **8:7**
- Revocation, **11:11**
- Successful Crown appeal and, **10:24**

BAIL REVIEW

- Administrative review where trial delayed, see ADMINISTRATIVE REVIEW
- Extradition proceedings, see EXTRADITION BAIL
- Forum, see FORUM
- Further reviews
 - appropriateness, **8:30**
 - forum, **8:34**
 - general, **8:29**
 - order under review, **8:31**
 - standard of review, **8:33**
 - subsequent reviews under s. 680, **8:35**
 - time limit between reviews, **8:32**
- General, **8:1**
- Hearing under s. 680
 - bifurcated process, **8:19**
 - bypassing s. 680, **8:26**
 - “review” vs. “rehearing,” **8:28**
 - “review” vs. “variation,” **8:27**
- evidence, **8:24**
- nature of review, **8:21 to 8:23**
 - generally, **8:21**
 - different approaches, **8:22**
 - Oland, **8:23**
- powers exercised by single Court of Appeal judge, **8:25**
- procedure, **8:24**
- Hearing under ss. 520 and 521
 - burden of proof, **8:11**
 - commencement, **8:9**
 - evidence, **8:16**
 - nature of review
 - appeal on record, **8:12**
 - de novo hearing, **8:13**
 - general, **8:10**

BAIL REVIEW—Cont'd

- Hearing under ss. 520 and 521—Cont'd
 - nature of review—Cont'd
 - “hybrid” model, **8:14**
 - preferred approach, **8:15**
 - onus, **8:11**
 - presence of accused, **8:17**
 - procedure, **8:16**
 - timing, **8:9**
- Release by court, judge or justice before whom accused is tried, **8:47**
- Review upon completion of preliminary inquiry, **8:48**
- Variation on consent, **8:49, 8:50**

CANCELLATION

- See REVOCATION OF BAIL

CASH BAIL

- Forfeiture and standing, **13:5**
- History, **1:5**
- Other valuable security, **6.3(d)**
- Present use of, **6.3(d), 6.3(f)**
- Reform, **1:5**

COLLATERAL ATTACKS

- See FORFEITURE PROCEEDINGS;
RELEASE ORDERS

COMMENCEMENT

- See FORUM

COMPLY, FAILURE TO

- Administrative review
 - generally, **8:39**
 - bill of rights and, **8:39**
- Charter and, **8:39**
- habeas corpus, **8:39**
- mandamus, **8:39**

CONDITIONAL SENTENCES

- Generally, **9:15**

CONDITIONS OF RELEASE

- See also RELEASE ORDERS
- Conclusion, **6:14 to 6:34**
- Forfeiture and, **13:7**
- Monetary conditions
 - amount, **6:13**
 - Charter and, **6:13**
 - determination, **6:13**
 - restraint and equality, **6:13**

CONDITIONS OF RELEASE—Cont'd

- Non-monetary conditions
 - enumerated conditions, **6:15 to 6:21**
 - deposit passport, **6:20**
 - geographical restrictions, **6:19**
 - limiting communication, **6:19**
 - notify of changes in address, **6:18**
 - notify of changes in employment, **6:18**
 - remain within territorial jurisdiction, **6:17**
 - reporting to peace officer, **6:16**
 - restricting use of firearms, weapons and explosives, **6:21**
 - general, **6:14**
 - non-enumerated, conditions, **6:22 to 6:33**
 - bail conditions affecting fundamental freedoms, **6:31**
 - control of drug or alcohol consumption, **6:26**
 - curfews, **6:23**
 - driving prohibitions, **6:27**
 - electronic monitoring, **6:25**
 - house arrest, **6:24**
 - “keep the peace and be of good behaviour,” **6:30**
 - medical treatment, **6:28**
 - possessing bail papers, **6:29**
 - substantive requirements, **6:34**
 - certainty of terms, **6:34**
 - delegation problem, **6:34**
- Sentencing and, **9:17 to 9:19**

CONSTITUTIONAL DIMENSIONS

- Canadian Bill of Rights, **1:8**
- Charter
 - appellate context, **1:14**
 - early cases, **1:9**
 - further applications, **1:15**
 - Pearson and Morales, **1:10**
 - R. v. Antic, **1:13**
 - R. v. Hall, **1:11**
- General, **1:7**

**CREDIT FOR PRE-TRIAL
DETENTION**

- See also SENTENCING
- Conditional sentences and, **9:15**
- Customary approach, **9:2**

**CREDIT FOR PRE-TRIAL
DETENTION—Cont'd**

Extent of pre-trial detention in Canada,
1:19

Mandatory minimums and, **9:14**

Probation orders, **9:16**

Truth in Sentencing Act

generally, **9:3 to 9:13**

bars to enhanced credit, **9:6, 9:7**

lesser punishment, **9:4**

provisions applied, **9:9**

retrospectivity, **9:4**

threshold test for increased credit, **9:5**

CRIMINAL RECORD

Effect on release, **10:5**

Evidence of (at bail hearing), **5:23**

Relevance of

generally, **5:23**

secondary ground, **3:11**

tertiary ground, **3:18**

Scope of cross-examination on, **5:23**

Surety having, **7:10**

CRITERIA FOR RELEASE

See DETENTION, JUST CAUSE FOR
Extradition proceedings, see EXTRADI-
TION BAIL

DELAY

See ADMINISTRATIVE REVIEW

DEPOSIT

See CASH BAIL

DETENTION, JUST CAUSE FOR

General, **3:1**

Primary ground

considerations

behaviour prior to apprehension (evi-
dence of flight), **3:7**

nature of offence and potential
penalty, **3:3**

record for compliance with previous
court orders, **3:6**

strength of evidence against accused,
3:4

ties of accused to community, **3:5**

general, **3:2 to 3:8**

Secondary ground

general, **3:9**

interference with administration of
justice, **3:15**

**DETENTION, JUST CAUSE FOR
—Cont'd**

Secondary ground—Cont'd

protection or safety of public

accused already on bail or probation,
3:12

criminal record of accused, **3:11**

general, **3:10**

nature of offence, **3:13**

stability of accused, **3:14**

strength of evidence, **3:13**

Tertiary ground

background to current provision

character of accused, **3:18**

nature and quality of accused's

alleged conduct, **3:18**

nature of community in which

offence took place, **3:18**

seriousness of offence, **3:18**

strength of evidence against accused,
3:18

constitutional attack

developments since Hall, **3:21**

R. v. Hall, **3:20**

R. v. Morales, **3:19**

general, **3:17**

generally, **3:29, 3:37**

2012 amendments, **3:30, 3:37**

just cause in youth context, **3:33**

methodology, proposed, **3:37**

onus, **3:32**

primary ground, **3:34**

secondary ground, **3:35**

tertiary ground, **3:36**

threshold for detention, **3:31**

DIRECT INDICTMENT

See FORUM

DIRECTION

See RELEASE PENDING MINISTE-
RIAL REVIEW

ELECTRONIC MONITORING

Generally, **1:20**

EMPIRICAL DIMENSIONS

Bail hostels, **1:20**

Bail information schemes, **1:20**

Dangerousness, prediction of, **1:22, 3:9**

Discrimination, **1:21**

Equality and bail, **1:21**

INDEX

EMPIRICAL DIMENSIONS—Cont'd

- Extent of pre-trial detention, **1:19**
 - adults, **1:19**
 - cost of, **1:19**
 - young offenders, **1:19**
- Forfeiture proceedings, **13:1**
- General, **1:18**
- Impact of pre-trial detention, **1:20**
 - Charter and, **1:20**
 - trial preparation, **1:20**
 - trial/sentencing outcomes, **1:20**
- Prediction, problems of, **1:22**

ESTREATMENT

- See FORFEITURE PROCEEDINGS

EVIDENCE

- See BAIL HEARING; BAIL REVIEW; EXTRADITION BAIL; FORFEITURE PROCEEDINGS

EXTRADITION

- Canadian Bill of Rights and, **1:8**

EXTRADITION BAIL

- Generally, **14:1**
- After committal
 - evidentiary considerations, **14:12**
 - forum, **14:11**
 - just cause for detention
 - appeal “not frivolous,” **14:14**
 - applicant will surrender into custody, **14:15**
 - public interest, **14:16**
 - procedural considerations, **14:12**
 - review of bail decisions, **14:17**
- Before committal
 - compelling appearance, **14:2**
 - evidentiary considerations, **14:3, 14:5**
 - forum, **14:2**
 - just cause for detention
 - primary ground, **14:7**
 - secondary ground, **14:8**
 - tertiary ground, **14:9**
 - onus, **14:3**
 - publication bans, **14:4**
 - review of bail decisions, **14:10**
- Review of decisions
 - after committal, **14:17**
 - before committal, **14:10**

FAIL TO APPEAR

- See OFFENCES

FAIL TO COMPLY

- See OFFENCES

FORFEITURE PROCEEDINGS

- Amount to be forfeited, determining
 - assisting accused in defaulting, **13:11**
 - bringing accused to justice after fact, **13:14**
 - day-to-day contact with accused, **13:12**
- forfeiture order, **13:17**
- general approach, **13:9**
- means of surety, **13:15**
- steps taken by surety, **13:13**
- Bail assignment, **13:5**
- Civil nature of, **13:1**
- Default
 - certificate of, **13:3**
 - determination of, **13:2**
- Empirical considerations, **13:1**
- Enforcement
 - “show cause” hearing, **13:19**
 - writ of fieri facias, **13:19**
- Estreatment defined, **13:1**
- Evidence, **13:6**
- Forum, **13:4**
- General, **13:1**
- Other considerations, **13:16**
- Preliminary objections
 - changes in original release order, **13:7**
 - recognizance, **13:7**
 - rule against collateral attacks, **13:7**
- Procedure, **13:6**
- Remedies, **13:18**
 - appeals, **13:18**
 - certiorari, **13:18**
 - reform (need for), **13:18**
- Standing
 - lawyer/assignee, **13:5**
 - lenders/creditors, **13:5**
 - sureties, **13:5**

FORUM

- Bail hearing
 - adults
 - non-s. 469 offences, **4:3**
 - s. 469 offences, **4:4**
 - general, **4:2**
- proceedings under Youth Criminal Justice Act
 - non-s. 469 offences, **4:5**

FORUM—Cont'd

- Bail hearing—Cont'd
 - proceedings under Youth Criminal Justice Act—Cont'd
 - s. 469 offences and adult sentences, **4:6**
 - recommencement
 - after direct indictment, **4:9**
 - after stay of proceedings, **4:8**
 - general, **4:7**
- Bail pending appeal
 - from conviction alone, **10:3**
 - from conviction and sentence, **10:3**
- Bail pending extradition, see EXTRADITION BAIL
- Bail pending Ministerial review, **10:30**
- Bail pending new trial, **10:22, 10:23**
- Bail pending proceedings in Supreme Court of Canada, **10:28**
- Bail review
 - adults
 - non-s. 469 offences, **8:3**
 - s. 469 offences, **8:4**
 - bail pending appeal, **8:7**
 - bail pending new trial, **8:7**
 - direct indictments, **8:8**
 - further reviews, **8:34**
 - recommencement following stay, **8:8**
 - young persons
 - non-s. 469 offences, **8:5**
 - s. 469 offences, **8:6**
- Extradition proceedings, see EXTRADITION BAIL
- Revocation of bail, **11:4**

GENDER DISCRIMINATION

See EMPIRICAL DIMENSIONS

HABEAS CORPUS

- Administrative reviews and, **8:39, 8:40**
- Availability, **4:10**
- Charter and, **4:10**
- Discharge from custody, **4:10**
- General, **4:10**
- Inherent jurisdiction and, **10:22**
- S. 459.1, **4:10**

HISTORY

- Early Canadian origins, **1:3**
- Early English origins, **1:2**

JUDICIAL REFERRAL HEARINGS:

SECTION 523.1

- Appropriate forum, **11:16**
- Commencing procedure, **11:15**
- Dismissal of any charges, **11:18**
- General, **11:14, 11:19**
- Options available to justice/judge, **11:17**

JURISDICTION

- Forum, see FORUM
- General, **4:1**
- Habeas corpus, see HABEAS CORPUS

MANDATORY MINIMUM SENTENCES

- Generally, **9:14, 9:18**

MENTAL DISORDER

- Adjournment for assessment, **5:6**
- Bail pending appeal, **10:1**
- Bail reviews, **8:47**
- Duration of release orders, **6:2**
- Just cause for detention, **3:14**

MISCONDUCT WHILE ON RELEASE

See REVOCATION OF BAIL

MURDER

- Effect on criteria for release
 - primary ground, **3:3**
 - secondary ground, **3:12, 3:13**
 - tertiary ground, **3:18, 3:21**
- Onus of proof, **5:9, 5:16**

NORMATIVE CONSIDERATIONS

- Charter and, **1:23**
- General, **1:23, 1:32**
- Normative principles
 - accessibility, **1:30**
 - accountability, **1:27**
 - clarity, **1:31**
 - coherence and rationality, **1:28**
 - efficiency, **1:29**
 - equality, **1:26**
 - fairness, **1:25**
 - restraint, **1:24**

OFFENCES

- General, **12:1**
- Non-compliance with release orders
 - common features, **12:2**

INDEX

OFFENCES—Cont'd

- Non-compliance with release orders
 - Cont'd
 - defences
 - defects in the confirmation of process, **12:7**
 - failure of accused to sign process, **12:9**
 - failure of justice to endorse confirmation on information, **12:8**
 - improper quoting of statutory warnings, **12:11**
 - insufficient specification of offence charged, **12:10**
 - lawful excuse, **12:6**
 - evidentiary issues
 - certificate of evidence, **12:12**
 - general, **12:12**
 - failure to appear, **12:3**
 - failure to attend for purposes of Identification of Criminals Act, **12:4**
 - failure to comply, **12:5**
 - general fault standards, **12:2**
- Obstruction of justice
 - acknowledging recognizance in false name, **12:15**
 - indemnification of sureties, **12:14**

OFFICER IN CHARGE

- See POLICE BAIL

ONUS

- See BAIL HEARING; BAIL REVIEW; BAIL PENDING APPEAL; BAIL PENDING NEW TRIAL; EXTRADITION BAIL

POLICE BAIL

- See ARREST

PRELIMINARY INQUIRY

- Review upon completion of, **8:48**

PRIMARY GROUND

- See DETENTION, JUST CAUSE FOR; EXTRADITION BAIL

PROTECTION AND SAFETY OF THE PUBLIC

- See DETENTION, JUST CAUSE FOR

PSYCHIATRIC REMANDS

- Criminal Code, **5:6**

PSYCHIATRIC REMANDS—Cont'd

- Provincial mental health legislation, **5:6**

PUBLICATION BANS

- Charter challenges, **5:3**
- Extradition proceedings, **14:4**
- Statutory provisions, **5:2**

PUBLIC INTEREST

- See BAIL PENDING APPEAL

RACE DISCRIMINATION

- See EMPIRICAL DIMENSIONS

RECOGNIZANCE

- Offences respecting, see OFFENCES
- Types, see POLICE BAIL; RELEASE ORDERS

RECOMMENCEMENT

- See FORUM

REFERENCE

- See RELEASE PENDING MINISTERIAL REVIEW

REFORM INITIATIVES

- See NORMATIVE CONSIDERATIONS

RELEASE ORDERS

- Charter and, **6:1**
- Collateral attacks on, **6:36**
- Conditions, see CONDITIONS OF RELEASE
- Duration
 - mental disorder provisions, **6:2**
 - new information/indictment, **6:2**
 - s. 469 vs. non-s. 469 offences, **6:2**
- General, **6:1**
- Release of “young person” to “responsible person,” **6:12**
- Types under Criminal Code
 - conditions, without (s. 515(1)), **6:5**
 - deposit, with (s. 515(2)(d), (e)), **6:9, 6:10**
 - financial obligations, without (s. 515(2)(a)), **6:6**
 - ladder principle, re, **6:11**
 - promise to pay, with (s. 515(2)(b)), **6:7**
 - sureties, with (s. 515(2)(c), (e)), **6:8, 6:10**

RELEASE PENDING MINISTERIAL REVIEW

- Generally, **10:30**

REVERSE ONUS

See BAIL HEARING

REVIEW OF DETENTION WHERE TRIAL DELAYED

Fixing date for hearing, **8:40**
 General, **8:36**
 Nature of hearing, **8:41 to 8:45**
 general, **8:41**
 giving directions, **8:44**
 onus, **8:43**
 role of delay, **8:42**
 Section 525
 consequences of failing to comply with, **8:45**
 restrictions on access to, **8:39**
 role of, **8:37**
 Triggering hearing, **8:38**

REVOCAION OF BAIL: SECTION 524

Appropriate forum, **11:4**
 Current provisions, **11:3**
 Further charges, **11:6**
 General, **11:2**
 Nature of hearing, **11:7**
 cancellation hearing, **11:8**
 consolidated hearings, **11:10**
 release hearing, **11:9**
 Pending appeal and pending new trial, **11:11**
 Review of, **11:13**
 Triggering procedure, **11:5**
 Youth matters, **11:12**

SECONDARY GROUND

See DETENTION, JUST CAUSE FOR;
 EXTRADITION BAIL

SENTENCING

Bail and, generally, **9:1**
 Bail conditions and
 general approach, **9:17**
 mandatory minimum sentences, **9:18**
 principles applied, **9:19**
 Pre-sentence custody and
 conditional sentences, **9:15**
 customary approach, **9:2**
 mandatory minimums, **9:14**
 probation, **9:16**
 Truth in Sentencing Act, **9:3 to 9:13**
 generally, **9:3**
 bars to enhanced credit, **9:6, 9:7**

SENTENCING—Cont'd

Pre-sentence custody and—Cont'd
 Truth in Sentencing Act, **9:3 to 9:13**
 —Cont'd
 “if circumstances justify it,” **9:8**
 lesser punishment, **9:4**
 provisions applied, **9:9**
 retrospectivity, **9:4**
 threshold test for increased credit, **9:5**

SUPREME COURT OF CANADA

See BAIL PENDING APPEAL

SURETIES

Forfeiture, see FORFEITURE
 PROCEEDINGS
 General, **7:1**
 Historical antecedents, **7:3**
 Obligations
 ensuring attendance in court, **7:4**
 general, **7:4**
 Powers
 common law, **7:6**
 Criminal Code, **7:7**
 general, **7:5**
 rendering accused, **7:8**
 substitution of sureties, **7:9**
 Recognizance and, see RELEASE
 ORDERS
 Suitability
 criteria, **7:10**
 determination, **7:11**

TERRITORIAL DIVISION

See POLICE BAIL

TERTIARY GROUND

See DETENTION, JUST CAUSE FOR;
 EXTRADITION BAIL

TRIAL

Bail during trial, see BAIL REVIEW
 Bail pending new trial, see BAIL PENDING NEW TRIAL

TRUTH IN SENTENCING ACT

See SENTENCING

UNDERTAKING

See RELEASE ORDERS

VALUABLE SECURITY

See CASH BAIL

INDEX

VARIATION

See BAIL REVIEW

WARRANT

Arrest with, **2:3 to 2:4**

Arrest without warrant

generally, **2:5 to 2:11**

citizen's arrest, **2:10**

"finds committing an offence," **2:9**

general powers (s. 495(1)), **2:6**

"has committed or is about to commit

WARRANT—Cont'd

Arrest without warrant—Cont'd
an indictable offence," **2:8**

YOUNG OFFENDERS

Extent of pre-trial detention, **1:19**

Forum

bail applications, **4:5, 4:6**

bail reviews, **8:5, 8:6**

Grounds for detention, see DETENTION,
JUST CAUSE FOR

Release to "responsible person," **6:12**

