

TABLE OF CONTENTS

Preface	v
<i>Chapter 1</i> Demystifying the Law and Fostering Effective Working Relationships	1
How This Book Can Help You.....	2
Why This Book Was Written.....	2
Sustaining Engagement in Collaborative Initiatives.....	3
The Theme of Demystification of the Law	6
1. Demystifying Changes in the Law	7
2. Demystifying the <i>Canadian Charter of Rights and Freedoms</i>	8
3. Demystifying the Impact of Technology on Investigations.....	9
The Theme of Early Investigator-Prosecutor Contact.....	10
1. When to Contact Prosecutors.....	10
Figure 1-1: Investigator-Prosecutor Contact.....	11
2. Managing Investigator-Prosecutor Contact.....	12
Key Points.....	15
Further Reading.....	16
<i>Chapter 2</i> Finding and Interpreting the Law	21
Basic Principles for Interpreting Any Law	21
Figure 2-1: Steps to Interpreting a Law Flow Chart.....	23
Four Tricks of Interpretation.....	24
1. Interpretation Trick #1: Look for Definitions Right in the Act or Regulation.....	24
2. Interpretation Trick #2: Recognize the Difference between “And” and “Or”	25
3. Interpretation Trick #3: Use an English or French Dictionary.....	26
4. Interpretation Trick #4: Don’t Assume the Act or Regulation Was Perfectly Drafted	26
Where to Find the Law That Will Help You Most.....	27
1. Why Focus on Legislative Sources.....	28
2. Embracing the Internet Research Revolution.....	29

Interpreting the Impact of the <i>Charter</i>	32
1. A Quick <i>Charter</i> Primer Right-by-Right	33
a. The Reasonable Limits of Section 1	33
b. The Fundamental Freedoms of Section 2	34
c. The Ever Expanding Scope of Section 7.....	34
d. The Reasonableness of Section 8	35
e. The Not Arbitrary Nature of Section 9	35
f. Elaborating on Section 10.....	36
g. The Late Engagement of the Wordy Section 11	36
h. The Sentencing Limits of Section 12	37
i. The Immunities of Section 13.....	38
j. The Challenges of Implementing Section 14.....	39
k. The Future of Section 15	40
l. Will Sections 25, 27 and 28 Ever Become Investigation or Prosecution Factors?	40
m. The Applicability of Section 32	41
n. The Long Reach of Section 35.....	42
2. Understanding <i>Charter</i> Legal Risks According to Type of Remedy.....	43
a. Working Towards Protecting the Right, Not Towards Surviving the Remedy	43
b. The Constitutional Invalidity Remedy	44
c. The Evidence Exclusion Remedy	44
d. The Open-Ended Remedy	45
e. The Underlying Theory of <i>Charter</i> Remedy Choice	46
3. Understanding Civil Liability Consequences of <i>Charter</i> Breaches	47
4. Ensuring Investigative Actions Are Taken in Good Faith.....	47
a. The Value of Good Faith	48
b. Staying Current with Legal Developments.....	49
c. Addressing Investigative Good Faith through Investigator Training	49
Key Points.....	51
Further Reading	52
<i>Chapter 3</i> The Importance of Note-Taking	61
How to Freeze Moments in Time.....	62
The Rise of the Note-Taking Obsession.....	62
Answering Qualifying Questions for the Use of Notes	65
1. Why Personally Make Notes	66
2. Why Make Contemporaneous Notes	67
3. Why Track Additions or Deletions to Notes	68

4. Why Maintain a Recollection of Events Independent from Your Notes	70
5. Why You Must Require Your Notes to Refresh Your Memory	71
Adopting Effective Note-Taking Procedures	72
1. Why Follow a Particular Format and System of Note-Taking	72
2. Why Notes Must Be Legible	74
3. Why Include the Details in Your Notes.....	75
4. Why Seek Clarity in Note-Taking.....	76
5. Why Attempt to Preserve Rough Notes.....	78
6. Why Protect Privileged Information	79
7. Why Follow Agency Note-Taking Policies	79
8. Why Prepare Will-Says and Can-Says.....	81
Figure 3-1: Sample Witness Can-Say/Will-Say Statement.....	82
Giving Effective Testimony From Your Notes	83
1. Why Testimony Inconsistent with Notes Hurts Credibility.....	83
2. Why Stick to “Dids” Rather than “Would Haves”	85
Key Points.....	87
Visual Observations Checklist.....	88
Further Reading	90
 <i>Chapter 4</i> The Use and Protection of Informers	93
The Value and Challenges of Informers.....	94
Carefully Guarding Informer Privilege	95
1. Informer Privilege Rule #1: The Privilege Effectively Belongs to the Informer.....	95
2. Informer Privilege Rule #2: The “Innocence at Stake” Exception Takes Precedence.....	96
3. Informer Privilege Rule #3: Agents Are Informers But Informers Are Not Always Agents	98
Distinguishing Investigation Informers from Charge Informers	100
Figure 4-1: Just and Informer or Also an Agent Determination Flow Chart	101
How Offering Inducements to Informers Affects Credibility.....	102
Dealing with Assistance and Immunity Agreements	103
1. How to Draft Assistance and Immunity Agreements.....	103
2. A Deal Is a Deal.....	105
3. Why Investigators Cannot Grant Immunity	106
4. Factors Used in Deciding If Immunity Should Be Granted.....	107
5. Choosing between Testimonial and Transactional Immunity	108
6. Maintaining Informer Credibility After an Assistance or Immunity Agreement	109
7. Ensuring Voluntariness of Agreements with Informers	111

3. The Forms That Information Demands and Their Responses Can Take	147
4. Reasonable Time Limits for Compliance with Information Demands	149
The Scope and Limits of Inquiries.....	149
1. How Inquiries Are Different.....	149
2. Inquiry Powers in Action	150
3. The Legal Challenges of Inquiries	152
Ensuring Proper Appointment of Regulatory Investigators.....	153
The Special Position of Military Investigators	155
1. How the Special Structure of Military Investigations and Regulations Affects Powers	155
2. The Person- and Territory-Specific Jurisdiction of Military Investigators	156
3. How the Predominant Purpose Test Affects Military Investigations	157
The Not-So-Special Position of Private Security Personnel.....	158
1. Private Security Powers of Arrest.....	158
2. Private Security Powers of Questioning	159
3. Private Security Regulation.....	159
The Rise of Administrative Monetary Penalty Systems (Amps) as Replacements for Minor Regulatory Offences	160
When It Makes Sense to Exercise Restraint in the Use of Regulatory Powers of Intrusion and Compulsion	162
Key Points.....	163
Further Reading	165
<i>Chapter 6</i> General Principles for Ensuring Search and Seizure Results Are Not Later Excluded at Trial	167
The Changed Landscape of Search and Seizure.....	168
Three Questions to Answer Before Searching or Seizing	169
Determining the Purpose of the Search.....	170
Picking From the Five Authorities for Search and Seizure.....	171
1. Search by Search Warrant.....	171
2. Search Incidental to Arrest	173
a. Permissible Intrusiveness and Breadth of Search Linked to Purpose of Arrest.....	174
b. Prefer a Warrant for an Intrusive or Broad Post-Arrest Search	175
c. Examples of Valid and Invalid Searches Incidental to Arrest	175
d. Cell Phone and Other Portable Electronic Media Seizure and Search Incidental to Arrest	176

3.	Seizure in Plain View.....	180
a.	Why Investigators Need to Have Authority to Be in Plain View Premises.....	180
b.	Why the Illegality or Evidentiary Value of an Item Must Be Plain from a Mere View	181
c.	How Sometimes Plain View Really Is Obvious.....	182
d.	Why Abandoned Things Involve Implicitly Renouncing Privacy Rights	182
4.	Search on Consent.....	183
a.	The Risks Inherent in Consent Searches.....	183
b.	The Conditions That Must Be Met for a Valid Consent Search	184
5.	Search in Exigent Circumstances	186
Steps to Take Before and During a Search and Seizure		188
1.	The Two Most Important Classes of Evidence to Search and Seizure	188
2.	Focus on Relevance, Reliability and Necessity	189
a.	The Difference among Being Clearly Relevant, Possibly Relevant and Not Relevant	189
b.	The Onerous Burden of Establishing Reliability and Continuity	190
c.	Figure 6-1: Maintaining an Evidence Continuity Chain.....	191
c.	Necessity Is Not Really Necessary.....	195
Steps to Take After a Seizure.....		196
1.	File the Return to a Justice and Secure a Detention Order.....	197
2.	Comply with the Burdens and Lengths of Detention.....	199
a.	Securing an Initial Detention Order.....	199
b.	Applying to Extend the Initial Detention Period.....	199
c.	How to Remedy a Failure to File a Detention Application	201
3.	Respond to Applications for Return of and Access to Seized Things.....	202
4.	Don’t Assume a Power of Seizure Includes a Power of Destruction.....	203
a.	Discretionary Powers to Forfeit Perishable Things	203
b.	Disposing of Inherently Illegal Goods.....	204
c.	Disposing of Goods No One Is Lawfully Entitled to Possess.....	205
Key Points.....		205
Further Reading.....		207
<i>Chapter 7</i>	Choosing the Right Warrant for Your Case	211
Starting with a Warrant Category.....		212

Moving to a Review of Types of Warrants.....	212
Figuring Out How a Warrant Authority Operates.....	214
1. Warrants to Search for and Seize Physical Things in Normal Places.....	214
2. Warrants to Gather Unusual Evidence in Unusual Places	216
a. Section 487.01 <i>Criminal Code</i> General Warrants.....	216
b. Section 487.012 <i>Criminal Code</i> Production Orders.....	218
c. General Warrants and Production Orders Applied to Resting and Travelling Electronic Data	219
3. Warrants Limited to One Type of Offence or One Class of Things.....	223
a. Weapon, Ammunition and Explosives Warrants	224
b. Betting Offence and Common Bawdy House Warrants	225
c. Hate Propaganda Warrants	226
d. Electronic Hate Propaganda Warrants.....	226
e. Obscene Material Warrants	227
f. Electronic Child Pornography Warrants.....	229
g. Valuable Mineral Warrants	230
The Usefulness of Telewarrants.....	230
Proceeds of Crime Seizure, Restraint and Forfeiture	232
1. Special Search Warrants and Restraint Orders	233
2. Management Orders to Take Care of Tangible and Intangible Property	235
3. Forfeiture as the Consolation Prize to Conviction	236
a. Forfeiture Independent of Charges under Any Act.....	236
b. Forfeiture of Proceeds of Crime as Part of the Trial Process...	237
Challenges of Searching For and Seizing Electronic Data	238
1. Powers Aiding Electronic Data Seizure	238
a. Are Warrant Authorities Broad Enough to Include Data and Computer Operation?	238
b. How Assistance Orders Can Aid Computer Searches	239
c. Have Production Orders Revolutionized Electronic Data Search and Seizure?.....	240
2. Competing Challenges of Limiting Electronic Data Seizure Scope and Preserving Continuity	241
3. The Six Modes of Electronic Data Searches	241
4. Personnel Necessary for Electronic Data Seizure.....	243
5. Types of Data Searches	243
Provincial and Territorial Powers of Search and Seizure	244
Key Points.....	246
Further Reading	247

<i>Chapter 8</i>	Drafting and Executing a Bullet-Proof Warrant	249
	The Three Duties of Investigators Seeking Warrants	250
	What “Reasonable and Probable Grounds” Really Means	251
	1. “Reasonable” and “Reasonable and Probable” Mean the Same Thing	251
	2. RPG Means Less Than Certainty and More Than Suspicion.....	252
	3. RPG Has a Subjective and an Objective Component	253
	Nine Fundamental Principles for Search Warrant Drafting	254
	1. Draft Defensively for the Trial, Not Just for the Search.....	254
	2. State the Basis for Your Belief by Setting Out Facts, Not Just Conclusions.....	255
	3. Use as Many Words as Necessary to Include All Relevant Details.....	256
	4. Establish the Basis for Reliability of All Informers	257
	5. Make It Readable	260
	6. Spelling and Grammar Count.....	262
	7. Include and Abide by Other Details.....	263
	a. Time of Execution: Keep Your Eye on the Clock	263
	b. Place of Execution: Get the Description Right	264
	c. Naming Place and Things to be Searched for When Electronic Data is Sought.....	267
	d. Name Persons Authorized under the Warrant	268
	e. Detail is Needed in the List of Things to Be Searched For.....	270
	f. Properly Describe the Offences	271
	8. Use the Right Form and Statutory Provisions.....	271
	9. Consider Sealing and Assistance Orders	272
	a. The Impermanency of Sealing Orders	272
	b. The Propriety of Assistance Orders.....	274
	How to Avoid Drafting Confusion.....	275
	Techniques for Spotting Warrant Errors	277
	Properly Executing the Warrant.....	282
	Key Points.....	283
	Reasonable and Probable Grounds (RPG) Threshold Checklist.....	285
	Search and Warrant and Information to Obtain Checklist	286
	Further Reading	288
<i>Chapter 9</i>	Correctly Approaching Special Places for Search and Seizure	291
	The Special Place of the Human Body	292
	1. Consent to Seizure of Bodily Substances	293
	2. Warrant Requirements for Bodily Impressions and DNA.....	294
	a. Bodily Print or Impression Warrants	294

b. DNA Warrants.....	295
3. The Impairment Exception to Warrant Requirements for Breath and Blood Samples.....	298
4. Impaired Driving Blood Sample Warrants.....	299
The Special Place of the Bank.....	300
The Special Place of the Law Office	301
1. Where Does Solicitor-Client Privilege Originate?.....	302
2. How to Know If a Record Is Protected by Solicitor-Client Privilege.....	303
3. The Procedure to Follow When a Solicitor-Client Privilege Claim Is Made	304
4. The Risky and Frustrating Road of Privilege Claim Negotiations	306
The Special Place of the International Border and Airport.....	306
The Special Place of the Internet	309
Other Special Places.....	310
1. Searching Other Professional Offices	310
2. Searching Media Offices.....	311
3. Searching Government Offices	313
Key Points.....	315
Further Reading.....	317
 <i>Chapter 10</i> Defining Privacy Interests and Justifying Intrusive Electronic Surveillance	319
Making an Informed Decision to Pursue Electronic Surveillance	320
Is Prior Judicial Authorization Needed?.....	320
Do the Facts and Procedures Meet the Threshold for a Wiretap?	325
1. Does the Offence Being Investigated Qualify?	326
2. Does Investigative Necessity Exist?.....	328
3. Is There a Designated Wiretap Agent Available to Make the Application?.....	329
4. Is the Application Being Brought before the Appropriate Court?.....	330
5. Have the Persons Whose Communications Are to Be Intercepted Been Particularized?.....	330
a. How to Construct a Basket Clause for Unknown Persons Subject to Interception.....	331
b. The Benefits and Goals of Specificity in Naming Targets.....	331
c. Focusing the Wiretap on People.....	332
d. Naming and Factually Justifying the Inclusion of Everyone in the Supporting Affidavit.....	333

xx The Investigator's Legal Handbook

6. Have the Places Where Interceptions Can Occur Been Particularized?	333
a. Disclosure of Places That Become Known.....	334
b. Mobile Communications and Places of Interception	335
c. Affidavit Support for Places of Interceptions.....	336
7. Has the Time Period During which the Authorization Is Valid Been Specified?.....	336
8. Have the Types of Communications, Manner of Interception and Ways Privacy Intrusions Will Be Minimized Been Specified?.....	337
9. Has the Affidavit Been Drafted in a Way That Sufficiently Supports the Authorization?	338
a. Avoiding Over Mixing of Your Affidavit	339
b. Ensuring the Affidavit is Factually Complete.....	339
c. Avoiding the Dreaded Boilerplate.....	340
The Very Limited Exigent Circumstances Wiretap.....	341
Think Twice Before Investing Resources in Pursuing Wiretaps.....	342
Less Intrusive Forms of Electronic Surveillance.....	343
1. Why Consent Intercepts Are Different.....	344
a. Using Consent Intercepts as Officer Protection Kits	345
b. Use of Consent Intercepts by Private Parties.....	346
c. Proof of Voluntariness in Consent Intercepts	347
2. Why Tracking Devices Are Minimally Intrusive.....	348
a. The Reasonable Suspicion Standard for Tracking Devices.....	349
b. How to Particularize Necessary Tracking Warrant Powers.....	350
3. Why Number Recorders Are Minimally Intrusive	351
4. How General Search Warrants Also Facilitate Electronic Surveillance	353
5. Why Video Warrants Are Subject to Many of the Same Standards as Wiretaps.....	353
a. The Less Onerous Conditions for Video Surveillance.....	354
b. The Importance of Not Confusing the Purpose of Different Court Authorizations	354
Key Points.....	356
Electronic Surveillance Checklist.....	357
Further Reading	359
<i>Chapter 11</i> Making Sound Decisions about Detention, Arrest and Release.....	361
The Challenge of Defining Detention and Arrest.....	362
1. The Broad Definition of Detention.....	362
2. The Equally Broad Definition of Arrest.....	366

Navigating the Uncertainty of Investigative Detention.....	367
1. The Articulate Cause or Reasonable Suspicion Standard	367
2. Investigative Detention Is Not a Search or Questioning Authority.....	368
How to Exercise Powers of Arrest.....	370
1. Justifying Arrest without a Warrant.....	371
a. Reasons Justifying Arrest without a Warrant by Anyone	371
b. Reasons Justifying Arrest without a Warrant by a Peace Officer	372
c. Why s. 494 Arrest Powers Can Be Better Than s. 495 Arrest Powers	374
2. Justifying Arrest with a Warrant	374
3. Justifying Arrest in Regulatory Investigations Including for Provincial Offences.....	377
4. The Contents of an Arrest Warrant	379
Use of Force in Making an Arrest.....	380
Avoiding Abusive Detention or Arrest	384
Adapting Detention or Arrest Procedure to Place	387
1. The Easiest Procedure of Detention or Arrest in Public Places	387
2. The Relatively Easy Procedure of Detention and Arrest in a Business.....	389
3. The Challenging Procedure of Detention or Arrest in a Moving Vehicle.....	390
a. Compelling Justification Needed for Random Vehicle Stops	390
b. Roadblocks as Difficult to Justify Random Stops	392
c. Examples of How to and How Not to Conduct Vehicle Stops and Searches.....	394
d. Avoiding Mixed Purposes in Vehicle Stops	397
4. The Most Difficult Procedure of Detention and Arrest in a Dwelling Place	400
a. Reasons for Investigators to Be Inside a Dwelling Place When Making an Arrest	400
b. Exceptions to the Dwelling Place Warrant Requirement	403
Release Burdens, Reasons and Conditions	405
1. The Ladder System of Release	406
Figure11-1: Compelling Appearance, Arrest and Release Decision-making Matrix.....	408
2. Who Bears the Burden for Post-Arrest Release or Detention in Custody?	409
3. The Three Main Reasons for Post-Arrest Detention.....	409
4. Crafting Appropriate Bail Conditions	410

5. The Short and Sweet Bail Brief.....	411
Key Points.....	412
Further Reading.....	414
<i>Chapter 12</i> Taking and Using Great Statements	417
Meeting the Criteria for Statement Voluntariness.....	418
1. Avoiding Threats, Promises, Bad Treatment, or Intimidation.....	419
2. Ensuring the Mental and Physical Fitness of the Person Giving the Statement	421
3. Avoiding an Atmosphere of Oppression.....	422
4. Avoiding Conduct That Shocks the Community	423
5. Complying with the Four Special Requirements for Statements from Young Persons	423
Content and Timing of Rights and Cautions.....	425
1. The Role of the <i>Charter</i> in Statement Admissibility.....	425
2. The Content of the Rights and Cautions	426
3. Knowing When to Provide Rights and Cautions	427
Duties Accompanying Rights and Cautions	428
1. The Duty to Cease Questioning.....	429
2. The Duty to Facilitate Communication with Counsel of Choice.....	431
3. Giving Cautions and Taking Statements in an Understood Language	433
a. Situations Giving Rise to Language Problems	434
b. Dealing with People Who Hide Behind a Language Barrier...	435
c. Providing Quality Interpretation.....	436
d. Overcoming Statement Language Difficulties in Ways That Make for Good Evidence	437
Why Make a Record of All Statements.....	438
1. Electronic Solutions to the Challenge of Accurately Recording a Statement.....	438
2. The Burden on Investigators to Explain Why a Statement Was Not Recorded	440
The Use in Court That Can Be Made of a Statement	441
1. The Limits Imposed by the Hearsay Rule	441
2. The Admissibility of Video Recorded Hearsay for the Truth of Its Contents.....	442
Figure 12-1: Video Statement-Taking Room Set-up	444
3. The Limits Imposed by Statement Immunity	446
4. The Inadmissibility of Lie Detector Test Results	447
5. The Difficulty with Line-Up Evidence	449
The Enduring Value of Creativity in Questioning.....	453

Key Points.....	454
Detention, Arrest and Statement Rights to Counsel and Caution Checklist.....	455
Video Statement Checklist	457
Further Reading	459
Chapter 13 Advancing International Investigations	461
Online Communications and Commerce Driving International Investigations.....	462
Deemed Extraterritorial Application of Canadian Laws	464
Figure 13-1: Ways to Advance International Investigations	465
Options for Conducting Investigations Outside of Canada	467
1. Getting the Most Out of Mutual Legal Assistance Treaty (MLAT) Requests	467
2. How to Take Testimony Abroad through Commission Evidence	470
3. The Advantages of Evidence by Video or Audio Link	472
Foreign Investigations Inside Canada	475
1. Assisting with the Execution of International Search Warrants.....	476
2. Facilitating International Evidence Gathering Orders.....	477
a. Order to Give Evidence by Video or Audio Link.....	478
b. Arrest Warrant for Failure to Attend Evidence Gathering.....	479
c. Orders for Lending of Exhibits.....	479
Options for Return of Accused Located Outside of Canada.....	481
1. Inexpensive and Uncomplicated Voluntary Return with Canada-Wide Arrest Warrant	481
2. Playing the Extradition Waiting Game.....	481
a. Double Criminality and Minimum Available Punishment Requirements.....	483
b. The Requirement of Prosecution Only for the Offence Returned For.....	483
Options for Returning Foreign Fugitives Found in Canada	484
1. The First Step of Obtaining a Provisional Arrest Warrant.....	485
2. Respecting Time Limitations and Evidentiary Burdens for Extradition	487
Key Points.....	488
Further Reading	490
Chapter 14 Deciding to Charge, Drafting Charges, and Speaking to the Media.....	493
How to Make the Decision to Charge.....	494
1. Deciding If Charges Should Be Laid.....	494

a. The Two Charge Approval Factors	496
b. Reasons to Argue with the Prosecutor's Decision Not to Proceed.....	497
Figure 14-1: Charge Decision-Making Matrix	498
2. Deciding When Charges Should Be Laid	499
3. Avoiding Limitation Periods Contingent on Minister's Awareness of Offence.....	499
4. The Clock Starts Running Once Charges Are Laid.....	500
How to Draft the Charge	502
The Twelve Fundamental Principles of Charge Drafting	504
1. Charge Drafting Principle #1: Follow the Golden Rule of Charge Drafting.....	504
2. Charge Drafting Principle #2: Include the Who.....	504
3. Charge Drafting Principle #3: Include the Where.....	505
4. Charge Drafting Principle #4: Include the When.....	505
5. Charge Drafting Principle #5: Include the What	505
a. Getting the Citation Right	505
b. Getting the Wording of the Charge Right	506
6. Charge Drafting Principle #6: Usually Do Not Include the How	509
7. Charge Drafting Principle #7: Globalize Charges.....	509
8. Charge Drafting Principle #8: Charge Jointly	510
9. Charge Drafting Principle #9: Consider Multiple Offence Charging	512
10. Charge Drafting Principle #10: Exercise Charging Discretion Over Who to Charge	513
11. Charge Drafting Principle #11: Use the Simplest Language Possible	513
12. Charge Drafting Principle #12: Put It All Together	514
Deciding On and Drafting Conspiracy Charges	514
Compelling Court Attendance	516
The Notice of Intent to Seek Greater Punishment	517
Speaking to the Media	518
1. The Rise of Media-Friendly Communications Policies.....	519
2. The Inherent Dangers in Media Communications about an Ongoing Case.....	520
3. Developing a Joint Investigator-Prosecutor Media Strategy	522
4. Dealing with Social Media in Investigations and Prosecutions.....	524
Key Points.....	525
Charge Drafting Checklist	526
Further Reading	527

<i>Chapter 15</i>	Preparing a Complete Prosecution Brief That Still Makes Sense	529
	Minimum Prosecution Brief Contents	531
	1. Include a Summary of Facts	531
	2. Include a Witness List Specifying Roles Played	533
	3. Include Relevant Information on Officer Past Misconduct.....	533
	4. Include a List of All Exhibits	535
	5. Include Copies of All Investigator Notes.....	536
	6. Include Copies of Rough Notes of Investigators If Available.....	537
	7. Include “Can-Say” or “Will-Say” Statements for All Witnesses	537
	8. Include Copies of All Expert Reports	538
	9. Include Copies of All Statements Taken from Accused or Civilian Witnesses	540
	10. Include Copies of All Warrants and Other Judicial Investigative Authorizations	540
	11. Include Copies of All Key Evidence	541
	12. Include Records of Past Offences and Other Sentencing Range Information	542
	Exceptions to Inclusions in the Prosecution Brief.....	544
	1. The Privileged Material Exception	544
	2. The Internal Memoranda Exception	546
	What the Brief Should Look Like	547
	Being More Efficient Through Rolling Briefs and Protocols	548
	Key Points.....	549
	Prosecution Brief and Disclosure Package Checklist	550
	Further Reading	553
<i>Chapter 16</i>	Including Everything in the Disclosure Package Except the Irrelevant and the Privileged	555
	The One Simple Rule of Disclosure	557
	Allocating Sufficient Resources to Disclosure Preparation.....	558
	Similar Prosecution Briefs and Disclosure Packages.....	558
	Organized Disclosure Benefits Everyone.....	560
	Making Sure Disclosure is Complete.....	561
	Making Sure Disclosure is Timely	562
	Taking Care of Ongoing Disclosure Obligations.....	563
	Technical Issues of Disclosure to Consider	564
	1. Providing Disclosure in an Accessible Form.....	564
	2. Managing Disclosure Costs	566
	3. Formulating a Disclosure Strategy	567
	4. How to Disclose Documents	569
	5. How to Disclose Video or Audio Recordings	572

6. How to Disclose Physical Non-Documentary Evidence.....	575
7. How to Deliver Disclosure.....	575
Dealing With Pretrial Notices as Accompanying Disclosure.....	578
The Consequences of Non-Disclosure or Late Disclosure.....	579
Key Points.....	581
Further Reading.....	582
<i>Chapter 17</i> Working with the Prosecutor to Prepare for Trial: You Are All on the Same Team	585
The Necessity of Distinct Investigator and Prosecutor Roles.....	586
The Necessity of an Early Meeting with the Prosecutor.....	588
A Unified Theory of the Case: Keep It Simple and Sensible.....	589
The Necessity of Doing Pretrial Witness Interviews.....	591
1. Investigator-Led, Civilian-Witness Evidence-Confirmation Interviews.....	591
2. Prosecutor-Led, Witness-Rapport Interviews.....	592
The Necessity of Doing Follow-Up Investigation.....	593
The Necessity of Serving Subpoenas and Pretrial Notices.....	594
1. The Subpoena.....	595
2. The <i>Canada Evidence Act</i> Notice.....	596
3. The Expert Notices.....	597
a. Notice of Intention to Call an Expert Witness.....	597
b. Notice of CDSA Analyst.....	598
c. Notice of Blood-Alcohol Analyst.....	599
d. Notice of Weapons Analyst.....	602
4. The Wiretap Notice.....	602
Respective Roles in Discontinuing Proceedings.....	603
Key Points.....	605
Trial Preparation Checklist.....	607
Further Reading.....	609
<i>Chapter 18</i> Testifying at Trial: Being and Sounding Truthful and Precise	611
There is no Shame in Preparation.....	612
1. Preparation Is Not the Same as Witness Coaching or Collusion.....	612
2. Be Flexible in Your Preparation.....	614
3. Practice May Not Make Perfect, but It Makes Testimony a Whole Lot Better.....	615
The Two Fundamental Principles of Being a Good Witness.....	616
Do Not Use Your Notes as a Crutch.....	617
How to Deal with Defence Cross-Examination Tactics.....	618

Do Not Assume Knowledge	620
Do Not Speculate	621
Do Not Start an Answer with a “Yes” or “No”	622
Stick to Your Answer.....	623
Concede When You are Mistaken	624
Do Not Offer Hearsay Unless It Is Explicitly Asked For	626
Do Not Give Privileged Testimony.....	627
Do Not Get Too Hung Up on Titles.....	628
The Prosecutor Is Not Your Lawyer	628
Avoid Using Police-Speak When Testifying	629
Have Fun and Be Yourself When Testifying.....	630
Key Points.....	631
Further Reading	632
<i>Chapter 19</i> Working with the Prosecutor at Trial: You Are Still All on the Same Team	635
Staying Happy Assisting with an Appeal-Proof Trial.....	636
Assisting with the Preliminary Inquiry	637
The Rise of Criminal Discoveries.....	638
Assisting with the Pretrial Motions	638
Assisting with Jury Selection.....	640
Marshaling the Witnesses and Evidence While Communicating with the Prosecutor.....	641
Assisting with Electronic Case Presentation.....	643
Avoiding Exclusion of Assisting Investigators.....	645
Assisting with Sentencing Submissions After a Conviction.....	646
1. The Codification and Reform of Sentencing Principles.....	647
a. The Restorative and Transformative Justice Agenda	648
b. The Six Objectives of Sentencing.....	650
c. Offences against Children.....	651
d. Proportionality of Sentencing to Gravity and Responsibility...651	
e. Aggravating and Mitigating Factors in Sentencing	652
f. Comparability of Offences and Offenders.....	653
g. Exercising Restraint in Consecutive Sentences	653
h. Imprisonment as a Last Resort.....	654
i. The Unique Position of Aboriginal Offenders	654
j. Downwards and Upwards Incarceration Trends.....	656
k. Investigator Misconduct and Sentence Reduction.....	658
2. Choosing among Different Types of Sentences.....	658
a. Absolute and Conditional Discharges	658
b. Suspended Sentences and Probation	659
c. Fines.....	660

d. Conditional Sentences.....	662
e. Imprisonment	665
f. Organization Sentencing.....	667
Key Points.....	671
Trial Evidence Checklist.....	673
Further Reading	674
<i>Chapter 20</i> Looking After Post-Trial Procedures: Why a Case Is Never Really Finished	677
Taking the Long View	678
Figure 20-1: The Prosecution Court Process: Climbing the Mountain.....	679
Assisting with Appeal Preparation.....	680
Understanding Appeal Procedures.....	681
1. The Mostly Single Judge Summary Offence Appeal.....	682
2. The Three Judge Indictable Offence Appeal	683
3. The Nine Judge Supreme Court of Canada Appeal.....	683
a. Assisting with Supreme Court of Canada Grounds for Leave to Appeal	684
b. Attending Supreme Court of Canada Hearings	685
4. Bail Pending Appeal Applications	685
Understanding Prerogative Remedies	687
1. Quashing Decisions through Certiorari	688
2. Compelling Action through Mandamus.....	689
3. Stopping Action through Prohibition.....	689
4. Being Freed from Imprisonment through Habeas Corpus.....	690
Preserving the Evidence After Trial.....	690
Updating Sentencing Records After Conviction.....	693
Monitoring the Serving of a Sentence	694
Concluding Thoughts.....	695
Key Points.....	697
Prosecution Result Report Checklist.....	698
Further Reading	700
<i>Index</i>	703