

## Index to Actions

(All references are to paragraph numbers.)

- abuse of process**, 95, 162, 249
- accord and satisfaction**, 230
- actions in personam**, 21–24, *see also* **types of action**
- actions in rem**, 21–24, *see also* **types of action**
- agreements barring action**
  - accord and satisfaction, 230
  - approval of third party, need for, 224
  - consideration, 222
  - executor's powers re, 236
  - fraud/misrepresentation, 223
  - general, 217
  - illegal agreements, 225
  - illness of solicitor, effect of, 229
  - intention of parties, 219
  - joint debtors, 235
  - joint tortfeasors/multiple defendants, 234
  - merger in foreign judgment, 226
  - municipalities, binding of, 227
  - nondisclosure, effect of, 218
  - offer/acceptance, 221
  - payment into court, rules of court re, 233
  - sale of land, 232
  - setting aside agreement, grounds for, 217, 218
  - solicitor exceeding authority, 228, 231
  - unexpected results, effect of, 220
- appeals, as part of action**, 6, 17, 34
- applications**, 15
- arbitration rights/awards**, 43, 122–126, 135, 136, 138
- bankruptcy**, 134
- causes of action (accrual of)**
  - arbitration rights, effect of, 43, 122–126, 135, 136, 138
  - continuance of damage, 52, 53
  - continuing causes of action, 49–53
  - continuing injuries, 51
  - contract, breach of, 45
  - death, rights arising upon, 48
  - discoverability principle, 45, 46
  - guarantees, co-guarantors, 37
  - general, 38–43, 49
  - incest/assault, 46
  - judgment, action on, 44
  - negligence, 45
  - relation back, doctrine of, 42
- causes of action (conditions precedent to)**
  - arbitration rights, 43, 122–126, 135, 136, 138
  - consent/leave to sue, 134, 137
  - expiration of statutory time limit, 139
  - general, 132
  - notice of action, 133
- causes of action (dividing/multiplicity of)**
  - general, 54
  - loss of consortium, 58
  - negligence, 55, 56, 58
  - promissory notes, 57
- causes of action (examples)**
  - abuse of process, 95
  - arbitration rights/awards, 43, 122–126, 135, 136, 138
  - breach of statute/by-law, 96–105, 154, 155

## ACTIONS

---

- building/zoning by-laws, breach of, 88, 102
  - clerk of court, breach of duty, 104
  - crimes, 106–109
  - failure to perform corporate duty, 104
  - fatal accidents, 127–131
  - interference with contractual relations, 813
  - judgments, actions on, 110–116
  - judgments (foreign), actions on, 117–121
  - schools, against, 103
- causes of action (extinction), *see* agreements barring action; delay/laches; election of remedy; merger; res judicata; survival of actions**
- causes of action (general)**
- appeals, 6, 17, 34
  - creation of new causes, 34, 81
  - definition, 32
  - elements of, 32, 35–37
  - “reasonable” cause of action, 33
- causes of action (joinder of)**
- Alberta, 60, 72
  - British Columbia, 61
  - common questions to be determined, 66, 69
  - counterclaims, 72
  - discretion of court, 63
  - Federal Court, 73–79
  - general, 59
  - income tax, 78
  - Manitoba, 61
  - multiple causes/defendants, 66, 67, 69
  - onus on plaintiff, 65
  - partition actions, 70
  - patent actions, 79
  - prayer for relief/pleadings, 71
  - purpose of rules re, 64, 65
  - Saskatchewan, 62
  - wrongful dismissal/defamation, 68
- causes of action (ubi jus ibi remedium)**
- coercion, 82
  - damage, need for, 89
  - duty to protect own property, 84
  - general, 324, 80
  - intent of plaintiff, relevance, 82, 94
  - interference with contractual relations, 83
  - lawful exercise of rights, 80, 82
  - new/novel causes of action, 34, 81
  - personal injury, intentional, 86
  - zoning by-laws, 88
  - water rights/flooding, 85, 90
- champerty and maintenance**
- assignments of rights as, 258, 266–269
  - circumstances justifying maintenance, 255, 265
  - costs, 261
  - criminal offence, as, 271
  - defence to action, as, 259–262
  - definitions, 254, 256
  - enforceability of champertous agreements, 257
  - furnishing information/evidence, 270
  - right of action created by, 263–265
- claims fairly and justly resolved by or in court process, 2**
- classes of action, *see* actions in personam; actions in rem; local/transitory actions;**

- personal/real/mixed actions; penal actions**
- coercion**, 82
- commencement/determination of actions**
- appeals, effect of, 6, 17, 34
  - commencement, 13
  - determination, 17
  - fees, 14
  - pending actions, 15, 16
- concurrent actions in contract/tort, *see* personal/real/mixed actions**
- conditions precedent, *see* causes of action (conditions precedent to)**
- de minimis non curat lex**, 140
- death, *see* survival of actions**
- defences, *see* accord and satisfaction; causes of action (conditions precedent to); champerty and maintenance; de minimis non curat lex; delay/laches; election of remedy; ex turpi causa; limitation of actions; statutory authorization**
- definitions**
- action (judicial), 4–6
  - action (statutory), 7–10
  - cause of action, 32, 33
  - champerty, 256
  - determination of liability, 17
  - limitations legislation, 8, 9
  - maintenance, 254
  - pending, 15, 16
  - petition, 10
  - reasonable, 33
  - suit, 7, 11, 12
- delay/laches**, 247–250
- discoverability principle, *see* cause of action (accrual of); limitation of actions**
- election of remedy**
- cancellation vs. action on covenant, 252
  - general, 179, 251
  - seize or sue, 252, 253
- estoppel, *see* res judicata**
- ex turpi causa**
- annulment of marriage, 511
  - application of doctrine generally, 141, 142, 152
  - assault, 151
  - auto accidents/negligence, 150
  - common intention re criminal purpose, 149
  - conspiracy, 143
  - contracts (illegal), 145–147
  - evidence, effect of doctrine on, 154
  - fraudulent conveyances, 149
  - patent infringements, 143
  - public policy issues, 144
  - tax evasion, 149
- execution distinguished**, 5
- extinction of cause of action, *see* agreements barring action; delay/laches; election of remedy; merger; res judicata; survival of actions**
- fatal accidents**, 127–131, 139, *see also* survival of actions
- fees**, 14
- fines, *see* penal actions**
- flooding**, 85
- forfeiture, *see* penal actions**
- in forma pauperis**, 14

## ACTIONS

---

- interference with contractual relations**, 83
- joinder**, *see* **causes of action (joinder of)**
- judgment, effect of**, 5, 17
- legislation (interpretation of)**, 87
- limitation of actions**, *see also* **defences**
- definitions, 8, 9
  - discoverability principle, 45, 46
  - general, 8
  - penal actions, 30
  - renewal of execution, effect of, 9
  - res judicata, 203
  - steps in action, 9
- local/transitory actions**, 25–27, *see also* **types of action**
- maintenance**, *see* **champerty and maintenance**
- merger**
- agent/principal, actions against, 188
  - concurrent tortfeasors, 181
  - consent judgments, 178, 209
  - damage actions, 181, 182
  - default judgments, 191, 192
  - election of remedies, 179
  - foreign judgments, 190, 226
  - general, 176–178
  - grounds for not applying doctrine, 180
  - guarantors, 189
  - joint contractors, 82, 187
  - joint debtors, 178, 184
  - joint tortfeasors, 181, 182
  - mortgage actions, 185
  - promissory notes, 187
  - rules of court re, 191, 192
  - sale/conveyance of land, 186
- mixed actions**, *see* **personal/real/mixed actions**
- penal actions**, *see also* **types of action**
- general, 28–30
  - limitation of actions, 30
  - recovery of fines/forfeitures, 31
- pending**, *see* **definitions**
- personal/real/mixed actions**, 18–20, 37, *see also* **types of action**
- petition**, *see* **definitions**
- place of trial**, 25–27
- real actions**, *see* **personal/real/mixed actions**
- remedies and sanctions, proportionality of**, 3
- res judicata**
- changes in situation/facts, 197
  - common facts but distinct causes of action, 205
  - consent judgments, 77, 209
  - contracts, 206
  - criminal proceedings not barring civil ones, 198
  - decisions not based on merits, 202, 203
  - elements of estoppel, 199
  - finality of judgment creating res judicata, 208–211
  - general, 193–199
  - identity of issue, 200–207, 212
  - identity of parties, 212–216
  - matrimonial matters, 209, 215
  - matters pleaded but not dealt with, 195
  - mortgage actions, 210
  - motor vehicle accidents, 201, 216

## INDEX

---

- multiple plaintiffs against one defendant, 207
  - negligent misrepresentation, 206
  - procedural/interlocutory matters, 195
  - setting aside initial judgment, effect of, 211
  - third party proceedings, 196, 207
  - unjust enrichment/quantum meruit, 204
  - wills/estates, 204
- scope of title, 1**
- self help, 8**
- settlements, *see* agreements barring action**
- statutory authorization**
- general, 157, 158
  - imperative vs. permissive statutes, 160
  - implied authorization, 159
  - negligent exercise of statutory power, 161
  - nuisance, 157
  - Rylands v. Fletcher, 161
- stay of proceedings**
- abuse of process, 162
  - agreements suspending right of action, 166
- water rights/flooding, 85, 90**
- considerations governing, 167
  - criminal proceedings, pending completion of, 168–174
  - general, 163–167
  - jurisdiction of court, 166
  - legislature granting, 175
  - situations justifying (Alberta), 164
- suit, *see* definitions**
- survival of actions, *see also* causes of action; fatal accidents**
- Alberta, 237, 238
  - British Columbia, 239–241
  - general, 91–93
  - Manitoba, 242–244
  - Saskatchewan, 245, 246
- transitory actions, *see* local/transitory actions**
- trial, *see* place of trial**
- types of action, *see* actions in personam; actions in rem; local/transitory actions; personal/real/mixed actions; penal actions**

## Index to Administrative Law

*(All references are to paragraph numbers.)*

- |   |  |
|---|--|
| <p><b>governmental powers and functions immune from normal principles, 3</b></p> <p><b>judicial review and statutory powers</b></p> <ul style="list-style-type: none"> <li>• delay, 115–119</li> <li>• forum, 101–111</li> <li>• grounds for judicial review, 120–157           <ul style="list-style-type: none"> <li>•• categories, 120–122</li> <li>•• errors of law on face of record, 377–398</li> <li>•• errors which cause delegate to lose jurisdiction, 158–377               <ul style="list-style-type: none"> <li>••• abuse of discretion, 158–185                   <ul style="list-style-type: none"> <li>•••• abuse of acting on inadequate material, 168–170</li> <li>•••• abuse of fettering discretion, 182–185</li> <li>•••• abuse of improper intention, 162–167</li> <li>•••• abuse of improper result, 171–180                       <ul style="list-style-type: none"> <li>••••• discrimination, 175–177</li> <li>••••• general, 171</li> <li>••••• retroactivity, 178–179</li> <li>••••• uncertainty, 180</li> <li>••••• unreasonableness, 172–174</li> </ul> </li> <li>•••• abuse of misconstruing the law, 181                       <ul style="list-style-type: none"> <li>••••• general, 158–161</li> </ul> </li> </ul> </li> <li>••• breach of the duty to be fair, 186–376</li> <li>•••• introduction, 186–194</li> </ul> </li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>•••• right to hear the other side, 195–317           <ul style="list-style-type: none"> <li>••••• general, 195</li> <li>••••• hearing, 219–285</li> <li>••••• post-hearing process, 286–309</li> <li>••••• pre-hearing procedures, 196–218</li> <li>••••• rehearings/functus officio/res judicata, 310–317</li> </ul> </li> <li>•••• rule against bias, 318–376           <ul style="list-style-type: none"> <li>••••• evidence of bias, 368–371</li> <li>••••• financial matters, 326–331</li> <li>••••• general, 318–325</li> <li>••••• inappropriate comments/behaviour, 340–346</li> <li>••••• institutional bias, 347–367</li> <li>••••• legal effect of reasonable apprehension, 372–373</li> <li>••••• outside knowledge/previous involvement, 335–339</li> <li>••••• personal relationships, 332–334</li> <li>••••• waiver, 374–376</li> </ul> </li> <li>•• errors which prevent delegate from acquiring jurisdiction, 125–157           <ul style="list-style-type: none"> <li>••• examination of enabling statute, 125</li> <li>••• failure to comply with statutory requirements, 153–155</li> </ul> </li> </ul> |
|---|--|

## ADMINISTRATIVE LAW

---

- judicial review and statutory powers (*cont'd*)
  - failure to satisfy preliminary/collateral matters, 156-157
  - improper constitution of the delegate, 127-152
    - appointment of members of the delegate, 152
    - subdelegation, 138-151
    - technical requirements and quorum, 127-137
  - substantive ultra vires, 126
  - meaning and ambit of "jurisdiction", 123-124
  - standing, 112-114
- judicial review, legislative changes**, 5-6
- principles of administrative law, exclusions from**, 2
- relationship between administrative law and constitutional law**
  - administrative law and the division of powers, 9-24
  - degree of interconnection, 7
  - delegate's jurisdiction to decide constitutional issues, 25-29
  - delegate's jurisdiction to grant constitutional remedies, 30-33
  - impact of the Charter on administrative law, 34-57
    - examples of specific Charter provisions, 42-57
      - section 7, 42-50
      - section 8, 51-54
      - section 15, 55-57
    - to whom does the Charter apply, 34-41
- remedies**
  - costs, 638-652
  - delegate at first instance, 638-643
  - judicial review/statutory appeals, 644-652
  - prerogative remedies, 504-564
    - certiorari and prohibition, 511-522
    - discretionary nature, 559-564
    - general, 504-510
    - habeas corpus, 534-538
    - mandamus, 523-531
    - quo warranto, 532-533
    - standing to apply, 539-558
  - private law remedies, 565-637
    - damages, 566-593
      - actions for misfeasance in public office, 576-578
      - actions for negligence, 573-575
      - constitutional claims for, 579-580
      - Crown immunities, 587-593
      - introduction, 566-572
      - vicarious liability of Crown, 581-586
    - declarations, 617-635
      - general, 565
      - injunctions, 594-616
        - Crown immunity, 613-616
        - forms of, 602-610
        - final vs. interim, 604-610
        - mandatory vs. prohibitory, 602
        - structural, 603
        - general, 594-601
        - procedural and standing issues, 610-612
      - realtor actions, 636-637
    - statutory appeals, 458-503
      - alternatives to, 484-503

## INDEX

---

- remedies (*cont'd*)
  - office of Ombudsman, 500–503
  - reconsideration/reopening of matters, 484–495
  - stating a case, 496–499
  - collateral attacks, 478–483
  - discretionary decisions, 477
  - multiple forums, 468–471
  - no right to statutory appeal, 458
  - procedures, 459–467
  - scope, 472–475
  - standing, 476
- standards of review**
  - administrative appellate bodies, 451–454
  - different standards or standards applied differently, 447
  - different standards to different issues, 448
  - discretionary decisions, 449
  - distinction re content of duty of fairness, 455–456
  - distinction re delegate at first instance and courts, 445
  - general principles, 398–400
  - Pushpanathan factors, 415–444
    - expertise of delegate, 435–442
      - different types of expertise, 436–438
      - general, 435
      - relative expertise, 439–442
    - nature of the problem, 444
  - presence of absence of privative clause, 415–434
    - appeal provision, 429–434
    - constitutional limitations, 427–428
    - general, 415–416
  - types of privative clause, 417–426
    - elastic jurisdiction clauses, 426
    - exclusive jurisdiction clauses, 419
    - final and binding clauses, 417–418
    - full or true, 424–425
    - no-certiorari clauses, 420–423
  - purpose of Act and a whole/particular provision, 443
  - reasonableness and correctness, 401–414
  - standard applied by higher court to lower court's standard, 446
  - standard may change over time, 450
- statutory and prerogative regimes, 4**
- statutory delegation of governmental powers**
  - delegated duties vs. discretionary powers, 67–71
  - subordinate legislation, 72–100
    - challenging subordinate legislation, 88–100
    - general principles, 72–78
    - municipal bylaws, 84–87
    - regulations, 79–83
  - three functions of government, 64–66
  - three institutions of government, 58–63



## Index to Agency

(All references are to paragraph numbers.)

- actual authority of agents**
  - express authority, 63–65
  - general, 61–62
  - implied authority, 66–70
- admissibility of statement that another partner or principal, 6**
- agency, meaning of, 1**
- agents of disclosed principals and third parties**
  - breach of fiduciary duty, 389–91
  - contracts, 361–372
    - election, 371–372
    - personal liability of agent, 361–370
  - implied warranty of authority, 373–379
  - liability for money paid to agent by third person, 392–397
  - liability of third person to indemnify agent, 398–400
  - torts, 380–388
- apparent or ostensible authority, 71–82**
- burden of proof that agency exists, 3**
- creation of agency**
  - agency by estoppels, 44–51
  - agency from cohabitation, 58–60
  - agency of necessity, 52–57
  - express contract, 19–26
  - general, 15–18
  - implied contract, 27–28
  - ratification, 29–43
- disclosed principals and third parties**
  - admissions by agent, 355–357
  - attribution of agent’s knowledge to principal, 358–360
  - contracts entered into by agent, 322–342
    - contracts made by deed, 322–324
    - contracts not made by deed, 325–329
  - effect of misconduct by agent, 337–342
  - payment of agent by third party, 330–336
  - general principles, 317–321
  - offences by agent, 354
  - torts committed by agent, 343–353
    - fraudulent misrepresentation, 345–351
    - general principles, 343–344
    - negligence, 352–353
- distinguishing agents from independent contractors, 7, 9, 10**
- distinguishing agents from servants, 7, 8**
- duties of an agent**
  - accountability, 186–190
  - exercise care and skill, 143–149
  - loyalty, 150–198
    - act in good faith, 150–156
    - avoid conflicts of interest, 157–166
    - make full disclosure, 167–173
    - refrain from making secret profits, 174–185
  - obedience, 124–134
  - personal performance, 135–142
  - respect of principal’s property, 191–198

- existence of agency relationship at particular time, 4**
- general agents, 11, 12, 14**
- indemnification, right of agents to, 309–314**
- insurance agents, 100–110**
- lawyers, 95–96**
- lien, right of agents to, 315–316**
- mercantile agents, 97–99**
- power of attorney, 83–94**
- purpose and effect of relationship, 2**
- real estate agents, 111–123, 218–308**
  - remuneration at common law, 218–222
  - • disentitlement, 223–227
  - • effect of principal’s conduct, 273–290
  - • must be effective cause of sale, 228–243
  - • principal’s right to sell, 255–258
  - • ready, willing and able purchaser, 244–251
  - • relevance of time, 270–272
  - • sale not carried out, 259–269
  - • special and general employment, 252–254
  - remuneration under provincial legislation, 291–308
    - • provisions applicable to specific provinces, 299–308
    - • provisions common to several provinces, 291–298
- remuneration of agents**
  - disentitlement to commission, 203–205
  - effect of principal’s conduct, 212–217
  - right to commission, 199–202
  - time in relation to commission, 206–211
- special agents, 11, 13**
- termination of agency**
  - by act of parties, 431–435
    - • renunciation by agent, 434–435
    - • revocation by principal, 431–433
  - by operation of law, 425–430
    - • bankruptcy of principal or agent, 429
    - • death of principal or agent, 425–426
    - • frustration, 430
    - • incapacity of principal, 427–428
  - duration generally, 422–424
- undisclosed principals**
  - election, 413–417
  - limitations on principal’s rights, 405–409
  - rights and liabilities of agent, 410–412
  - scope of principal’s liability, 401–404
  - set-off, 418–421

## Index to Agriculture

(All references are to paragraph numbers.)

### **agencies (federal)**

- actions involving, 19
- arbitration, 20
- income stabilization, 15
- livestock feed assistance, 16
- National Farm Products Council, 17, 18

### **agricultural implements (actions re)**

- purchase price/damages, recovery of, 351–357
- repossession by vendor, 363–370, 375
- rescission/damages, 357–362

### **agricultural implements (Alberta)**

- consequential loss, contract conditions re, 306
- dealers, restrictions on, 305
- general, 309
- licensing of distributors, 305
- manufacturer's liability, 307

### **agricultural implements (contracts — Saskatchewan)**

- acceptance/use of implement, effect of, 342
- cancellation of contract, 327, 329
- duty of vendor to explain contract, 331
- form of contract, 322–325
- “new” implements, 345–347
- “rebuilt” machines, 348
- “recently built”, 349
- “second-hand” implements, 350
- possession of implement on default, 373, 374
- security interests, 322

- signing/delivery of contract, 326–329, 338

### **agricultural implements (Manitoba)**

- applicability of legislation, 308, 309
- assignment of earnings from use of implement, 337
- liens, 351
- “vendor”, 308

### **agricultural implements (Saskatchewan)**

- legislation governing, 302–304, 356
- persons/sales subject to legislation, 309, 310
- validity vs. legality of contracts, 311

### **agricultural implements (testing/development), 376**

### **agricultural implements (warranties)**

- acceptance/use, effect of, 342–344, 357–362
- breach by purchaser, 321
- contracting out of, 313, 314, 331
- delay in delivery/repair, 340, 341
- emergency repair parts, duty to provide, 315
- interpretation of warrant clauses, 318
- notice of defects/time for testing, 317, 320, 331–336, 339, 343, 357–362
- statutory (general), 312, 323, 325
- suitability for purpose, 316
- time for imposing warranty clause, 319

- use after notice of defects, 339
- “agricultural product”**, 59, 120
- “agriculture”**, 3
- animals (diseases)**
  - brucellosis, 62
  - compensation for destruction, 50–53
  - criminal liability re, 54–58
  - duty of Crown, 47
  - general, 46–48
  - moving animal or carcass, 57
  - powers re, 46
  - rabies, 53
  - salmonella, 48
  - trichinosis, 48
- animals (pedigrees)**
  - associations, 38, 43
  - “breed”, 40
  - Canadian Livestock Records Corporation, 41
  - identification certificates, 38
  - legislation, 39
  - offences re, 42
  - pedigree registers, 38
  - registration certificates, 38
  - semen/embryos, 44
- animals (research re)**, 45
- arbitration**, 20, *see also*  
**mediation (debts)**
- associations**, *see*  
**cooperatives/associations/  
societies**
- bankruptcy/insolvency**, 9, 10, 163, 183, 369, 370
- beekeeping**, 210
- brands**, *see also* **livestock**
  - Alberta, 206
  - British Columbia, 207, 208
  - Saskatchewan, 209
- “breed”**, 40
- breeder agreements**, 253
- Charter of Rights**
  - corporations, rights of, 203
  - discrimination, 14, 222
  - equality rights, 203
  - mobility rights, 70
  - search/seizure, 12, 13, 75, 119
  - standing, 203
- combines**, *see* **agricultural implements**
- constitutional jurisdiction**
  - “agriculture”, 3
  - bankruptcy/insolvency, 9, 10
  - concurrency, 49
  - delegation of powers, 5
  - feeds, 7
  - fertilizer, 7, 116
  - general, 1
  - grain, re, 88, 90, 111, 112, 395–398
  - inspections, Charter issues re, 12
  - interest, legislation re, 2
  - marketing/production, 4, 6, 11, 14, 68, 111, 224, 391
  - packaging/labelling, 8
  - search/seizure, 12, 13
- cooperatives/associations/societies**
  - agricultural societies, 178
  - arbitration of disputes, 181, 182
  - bankruptcy, 183
  - cattle associations, 189
  - dissolution/cancellation, 187
  - farmers’ and women’s institutes, 188
  - general, 176, 177
  - indoor management rule, 184
  - injunctions, 185
  - membership, 180

## INDEX

---

- powers, 179
- producer associations, 190
- redemption of shares, 183
- winding up of, 186
- credit programs (Alberta)**, *see also income stabilization*
  - Agricultural Financial Services Act, 191
  - Feeder Associations Guarantee Act, 192
- credit programs (British Columbia)**
  - crop insurance, 194
  - income assurance, 194
- credit programs (federal)**
  - advance payments for crops, 21
  - agricultural marketing programs, 23
  - Farm Credit Corporation, 25
  - farm improvement loans, 26
  - farm income protection, 24
  - mediation of disputes, 27–33
  - prairie grain advance payments, 22
- credit programs (Manitoba)**
  - Agricultural Credit Corporation Act, 196
  - Agricultural Producers' Organization Funding Act, 197
  - crop insurance, 198
  - grants, 195
  - income assurance, 198
- credit programs (Saskatchewan)**
  - Agri-Food Innovation Fund, 199
  - Agricultural Credit Corporation, 200–203
  - Family Farm Credit Act, 205
  - Farmers' Counselling and Assistance Act, 204
- crop insurance**, *see credit programs*
- crop payment agreements**
  - acceleration clauses, 151
  - application of legislation, 149
  - conditions precedent, 289
  - contribution rights, 152
  - execution, effect of, 152, 153, 284
  - general, 150, 291
  - interpretation of legislation, 149
  - landlord's distress, effect of, 281
  - parties bound by, 286
  - property interests in crop, 282–287
  - provincial jurisdiction, 148
  - severed vs. growing crops, 153, 282, 283
- dairy products**, *see also marketing (dairy products)*
  - Alberta, 219, 220
  - British Columbia, 221, 222
  - federal, 77–80
  - licensing (general), 218
  - Manitoba, 223
  - Saskatchewan, 224
- debtor/creditor**, *see bankruptcy/insolvency; credit programs; farm protection; mediation (debts)*
- diseases**, *see animals (diseases); horticulture*
- dogs, killing (British Columbia)**, 427
- dutch elm disease**, 301
- employment law**, 377, 378
- environmental protection**, *see pesticides/pests; weeds*
- execution**, *see agricultural implements;*

- bankruptcy/insolvency; farm protection; grain (provincial); mediation (debts)**
- experimental farms (federal)**, 130
- farm protection (Alberta)**, 160
- farm protection (Manitoba)**, 164,  
*see also* **bankruptcy/insolvency; mediation (debts)**
- bankruptcy, claims in, 163
  - leave to commence action, 162
  - purpose of legislation, 161
- farm protection (Saskatchewan)**,  
*see also* **bankruptcy/insolvency; mediation (debts)**
- action on covenant, bars to, 175
  - exemptions, 371, 372
  - homesteads, 168, 170, 171
  - impossibility of meeting obligations, 169
  - leave to commence action, 166
  - notice of intention/application, 167
  - purpose of legislation, 165
  - right to lease after foreclosure, 174
  - right to repurchase, farm owner's, 172, 173
- “farming”**, 28
- feeds**, *see also* **grain (federal)**
- constitutional jurisdiction re, 7
  - general, 102
  - livestock feed assistance, 16
  - registration of, 102, 103
- fences**, 153
- fertilizer**
- constitutional issues re, 7, 116
  - import/sale of, 116
  - Manitoba, 296
- fruit**, *see* **horticulture; marketing (horticulture)**
- funding**, *see* **credit programs**
- game farms**, 211
- grading**, *see* **inspection/grading**
- grain (federal)**, *see also* **feeds; marketing (grain)**
- Canadian Grain Commission, 84, 85
  - constitutional jurisdiction, 88, 90
  - elevators, 88, 93, 94, 96, 105, 112, 401–404
  - inspecting/grading, 95
  - licensing, 86, 92, 93, 97
  - offences re, 408–410
  - quotas, 99
  - regulations re, 89
  - seeds, 101
  - standards, 87, 97
  - storage/transport of, 104–107, 408, 410
  - transition payments, 108
- grain (provincial)**, *see also* **crop payment agreements; marketing (grain)**
- combining contracts, 226–235
  - execution against, 238–252
  - liens, thresher's, 254–266, 275, 276
  - priority of claims to, 273–280, 288
  - title to grain, 236, 237
- grazing leases**, 151
- horticulture (federal)**
- Bank Act, effect of, 114, 115
  - definition of, 114
  - fertilizers, 116
  - general, 114, 115
  - inspection/grading, 120–123
  - marketing, 124–127
  - plant protection legislation, 117–119

## INDEX

---

- potatoes, 123
- production, 116–119
- “products of agriculture”, as, 114
- research, 128
- seeds, 122
- trees, 119
- varieties, breeder’s rights re, 128
- horticulture (provincial)**
  - diseases/pests, 301
  - fruit (British Columbia), 420, 422, 423
  - general, 295–301
  - grading/standards, 292–294
  - orders/regulations, validity of, 300
  - potatoes, 298, 305
  - search/seizure, 297
  - taxation, 295
- importing, see marketing**
- income stabilization, see also credit programs**
  - federal, 15, 140
  - Saskatchewan, 216, 217, 225, 291
- income tax**
  - classes of farmers, 36
  - deductions, 35, 36
  - “farming”, 34
  - farming operation, 37
- inspection/grading**
  - Charter of Rights, 12, 13, 75, 119
  - First Nations, treaties with, 62
  - general, 60, 61
  - grain, 95
  - horticulture, 120–123
  - livestock, 213–215
- insurance, see credit programs**
- jurisdiction, see constitutional jurisdiction**
- labour, see employment law**
- land acquisition (provincial)**
  - crop payment agreements, 148–153
  - mortgage sales, 147
  - provincial purposes, for, 145
  - restrictions on, 154–156
  - subdivision (Saskatchewan), 146
- land preservation (provincial)**
  - Alberta, 157
  - British Columbia, 142, 143
  - Manitoba, 144
- land use/development (federal),** 129, 130, 141
- land use/development (provincial)**
  - British Columbia, 142
  - federal/provincial agreements re, 141
  - grazing leases, 158
  - Manitoba, 144
  - “special area” (Alberta), 157
- livestock, see also brands; marketing (livestock)**
  - beekeeping, 210
  - damage to/by, 426
  - disease control, 212
  - game farms, 211
  - inspection/grading, 213–215
  - transportation, 215
- livestock feed, see feeds**
- loans, see credit programs**
- machinery, see agricultural implements**
- margarine, 393**

- marketing (dairy products)**, *see also* **dairy products**
- British Columbia, 222, 387, 388, 391, 392
  - definitions, 386
  - egg marketing board, application for judicial review of, 74
  - federal, 81–83
  - Manitoba, 389
  - margarine, 393
  - Saskatchewan, 224, 390
- marketing (eggs)**, 71, 72
- marketing (federal)**
- agreements with producers, 63, 65
  - constitutional issues, 4, 6, 11, 14, 68
  - general, 59, 63
  - price pooling programs, 64
- marketing (grain)**, *see also* **grain**
- actions re, 405, 406
  - Canadian Wheat Board, 109, 110, 394
  - Canadian Wheat Board, general declarations of, 91
  - constitutional jurisdiction, 111, 112, 395–398
  - contracts, 399, 407
  - general, 99, 100, 109
  - licensing, 100
  - Manitoba, 400
  - marketing programs, 113
  - mustard seed, 399
- marketing (horticulture)**, *see also* **horticulture**
- Alberta, 414
  - British Columbia, 411, 415–423
  - delegation of federal powers, 125, 411
  - establishment of agencies, 126, 127
  - general, 124, 411
  - licensing, 411–413
  - powers of boards/agencies, 125, 411
  - provincial powers, 412
- marketing (interprovincial/intraprovincial)**
- constitutional jurisdiction, 68, 111, 224, 299, 391
  - general, 66, 67
  - importing, 76
  - levies/charges, 68, 69
  - licensing, 71, 72
  - powers of agencies, 71, 73
  - regulations, 70
- marketing (livestock)**, *see also* **livestock**
- boards/commissions, 379
  - cattle, 383, 384
  - hogs (Alberta), 381, 382
  - licence fees, 380
  - “marketing”, 385
  - purpose of legislation, 379
- meat**, *see* **livestock**
- mediation (debts)**, 27–33, *see also* **bankruptcy/insolvency; farm protection**
- milk**, *see* **dairy products; marketing (dairy products)**
- mustard seed**, 399
- Native persons**, 62
- noxious weeds**, *see* **weeds**
- nuisance**, 424
- packaging/labelling**, 8, 58
- pedigrees**, *see* **animals (pedigrees)**
- pesticides/pests (federal)**, *see also* **weeds**
- compensation for damage by, 138, 139



## INDEX

---

- Crown bound by legislation, 132
- general, 131
- negligent use of, 137
- railway lands, 439
- Registrar of Trademarks, 136
- registration/cancellation of products, 133, 134, 135
- pesticides/pests (provincial)**, 440–443, *see also* **weeds**
- plant protection**, *see* **horticulture**;  
**pesticides/pests**
- pollution**, 425, *see also*  
**pesticides/pests**
- potatoes**, 123, 126, 297, 298
- quotas**, *see* **marketing**
- search/seizure**, 12, 13, 75, 119
- seeds**, *see* **grain (general)**;  
**horticulture**
- societies**, *see*  
**cooperatives/associations/  
societies**
- trees**, *see* **horticulture**
- weeds**, *see also* **pesticides/pests**
  - assessment against land, 438
  - damages, recovery of, 435–437
  - general, 429–431
  - inspections, 429, 432
  - interpretation of legislation, 433, 434
  - liability of land purchaser for, 147
  - machines/vehicles, movement of, 430
  - order to destroy, 429
  - orders generally, 430
  - railway lands, 439
  - reclamation of land (Alberta), 431
- wild animals**, 428

## Index to Alternative Dispute Resolution

(All references are to paragraph numbers.)

### **arbitration**

- arbitration and conciliation, 14
- arbitration and valuation, 5–13
  - definitions, 6
  - distinction between, 5
  - factors considered, 8
  - factors indicating arbitration, 10
  - intention expressed in document, 12
  - valuation and arbitration, 7
  - where valuers considered arbitrators, 9
  - written agreement not determinative, 11
- definition, 3, 4

### **arbitration awards**

- declaration of invalidity, 580, 581
- making the award, 357–472
  - absence of arbitrator, 387–390
  - appeals from decision of arbitrator referee, 464–472
  - arbitrators exceeding powers, 403–413
  - correction of errors, 414–417
  - costs, 425–441
  - enforcement of award, 442–463
  - execution of award, 382–386
  - formalities of award, 418–424
  - interpretation, 391–402
  - publication, 375–381
  - scope and effect, 368–374
  - time for making, 357–367

- remission or setting aside of award, 473–579
  - costs, 579
  - grounds for setting aside award, 493–560
    - admission of mistake by arbitrator, 557, 558
    - arbitrator proceeding on wrong principle, 531–533
    - error in law, 511–530
    - fresh evidence, 559, 560
    - general, 493–510
    - misconduct of arbitrators, 534–552
    - not disposing of entire reference, 554–556
    - not taking evidence on oath, 553
  - jurisdiction of court, 473–492
  - remitting award for reconsideration, 568–578
    - discretion to remit, 577, 578
    - general, 568–576
  - time for moving to set aside award, 564–567
  - waiver of irregularities, 561–563

### **arbitration reference**

- arbitrator or umpire, 187–276
- appointment, 187–227
  - appointment by court, 215–220
  - appointment by parties, 208–214
  - appointment of expert or valuator, 221
  - disqualification for pecuniary interest, 202

## ALTERNATIVE DISPUTE RESOLUTION

---

- arbitration reference (*cont'd*)
  - duty of fairness and impartiality, 191–201
  - general, 187–190
  - other grounds for disqualification, 203–206
  - termination of arbitrator's mandate, 202–224
  - third arbitrator or umpire, 225–227
  - waiver of right to demand arbitration, 207
  - powers of arbitrator or umpire, 228–259
    - duration of powers, 250–259
    - extent of powers, 228–249
  - rights and liabilities of arbitrator or umpire, 260–276
    - enforcement of payment of fees, 262–268
    - liabilities of arbitrator, 269–272
    - removal of arbitrator or umpire, 273–276
    - remuneration, 260, 261
  - conduct of reference, 277–337
    - arbitrator's duty of full consideration, 333–337
    - basis of decision, 307–325
    - general, 277–281
    - presence of parties, 282–288
    - procedure, 289–306
    - responsibility of arbitrator, 326–332
  - questions of law, 338–342
    - appeal (British Columbia), 342
    - British Columbia Commercial Arbitration Act, 339
    - circumstances where considered, 338
      - leave to appeal, 340
      - standard of review, 341
  - references under order of court, 343–356
    - power to appoint arbitrator for reference, 343–346
    - powers of reference where whole action referred, 353–356
    - reference for trial, 347–352
    - stay of proceedings, 123–186
      - application to stay action, 123–137
      - arbitration as condition precedent to action, 148–154
      - time for application, 138–147
      - validity and enforceability of arbitration clause, 155–175
      - when court has jurisdiction, 176–178
      - when stay granted, 179–186
    - submission to arbitration, 15–122
      - nature and classification of submission, 15–117
        - application of legislation, 49–66
        - construction, 102–113
        - effect of arbitration clause, 83–85
        - form, 97–101
        - general, 15–22
        - intention of parties, 23–30
        - limitation periods, 31–35
        - matters which may be referred, 67–77
        - ouster of court's jurisdiction, 36–48
        - parties, 86–96
        - proceedings classified as arbitrations, 78–82

## INDEX

---

- arbitration reference (*cont'd*)
  - • revocation of submission, 118–122
  - • • void submissions, 114–117
- definition**, 1
- forms of**, 2
- international commercial arbitration and foreign arbitral awards**
  - Alberta, 617–619
  - British Columbia, 620–623
  - Canada, 624–626
  - enforcement of foreign arbitral awards, 646–650
  - general, 615, 616
  - Manitoba, 627
  - Ontario, 628–641
  - Saskatchewan, 642–645
- judicial dispute resolution**
  - Alberta, 667–678
    - • Court of Queen’s Bench Rules, 667–676
    - • Family Law Act, 677
    - • small claims rules, 678
  - British Columbia, 679–685
    - • family law rules, 684
    - • small claims rules, 685
  - • Supreme Court Civil Rules, 679–683
  - Federal Court, 709, 710
  - Manitoba, 686–693
    - • Court of Queen’s Bench Rules, 686–689
    - • family proceedings, 690–693
  - Ontario, 694–704
    - • family law proceedings, 703–704
    - • Rules of Civil Procedure, 694–702
    - Saskatchewan, 705–710
    - • Queen’s Bench Rules, 705, 706
    - • Small Claims Act, 708
- mediation**
  - binding mediation, 659, 660
  - definition, 651
  - enforcement of mediation, 665, 666
  - limitation periods, 661
  - mediation restrictions, 652–656
  - powers and duties of mediators, 657, 658
  - statutory mediation, 662–664
- statutory alternative dispute resolution**, 711
- statutory arbitration**
  - compulsory references, 582–592
    - • generally, 582–585
    - • specific statutes, 586–592
  - enforcing award on compulsory arbitration, 614
  - matters considered on appeal, 603–605
  - review of compensation award, 606–611
  - reviewing award, 593–602
  - setting aside award, 612, 613

## Index to Animals

(All references are to paragraph numbers.)

- agistment**, *see also* bailment
- contracts for, 58
  - definition, 55
  - duty of agister, 57–61
  - indemnification/subrogation rights, 62
  - lien rights, 56
  - negligence, 58–61
  - onus on agister, 60, 61
- “**agriculture**”, 113
- artificial breeding**, 5
- auctions**, *see* sale of animals
- bailment**, *see also* agistment; liens/mortgages
- damage to bailed animal, recovery for, 13, 31
  - definition, 30
  - general, 30
  - liability of bailee, 35–47, 63–66
  - liability of bailor, 31–34
  - wrongful killing, recovery by bailee for, 13
- bears**, 1
- bees**, 9, 67, 265, 445
- birds**, *see* wild birds
- brands**, *see* identification of animals
- “**breeding premises**” (Manitoba), 298
- BSE Recovery Program**, 207
- carriage of animals**, *see also* bailment
- animals in poor condition, 66
  - duties re unloading, 65
  - railways, on, 64, 65
- cattle-trespass**, *see* injuries by animals (cattle-trespass); injuries by dogs (cattle-trespass)
- classification of animals**, *see also* wild animals
- artificially bred animals, 5
  - by-laws re (British Columbia), 6
  - cross-breeds, 4
  - dangerous, 1
  - domestic, 2
  - ferocious, 1
  - general, 1, 3
  - harmless, 1
  - mischievous, 1
  - Ontario legislation, 5
- coyotes**, 4
- cribbing**, 86
- cross-breeding**, 4
- cruelty**, *see* prevention of cruelty
- damage to animals**, *see* injury to animals
- dangerous animals**, *see* classification of animals
- destruction of animals**, *see* diseased animals; dogs (general); prevention of cruelty
- diseased animals**
- compensation of owner, 257–266
  - compulsory treatment, 248, 249, 262
  - disposal of, 252–256
  - forfeiture/removal of, 250, 251
  - general, 236
  - identification of, 243–247
  - importation of, 238, 250, 251
  - infected places/control areas, 248, 249

## ANIMALS

---

- inspection/reporting, 237–242
  - liability in tort/contract re, 274, 275, 279–283
  - offences re, 73, 74, 96, 238, 263–278
  - powers of minister re, 249
  - public safety, protection of, 249
  - reportable diseases, 241, 242
  - reservation for experimentation, 256
  - water buffalo, 255
- distress**, *see* prevention of cruelty; seizure/distress
- distress damage feasant**, *see also* injuries by animals (cattle-trespass)
- care of seized animals, 483
  - conversion liability for, 488, 489, 491
  - definition of, 480, 481
  - fresh pursuit by owner, 482
  - municipal by-laws, 485
  - municipal liability, 484
  - past damage, 481
  - sale of seized animals, 486–491
  - statutory basis for, 480
- dogs**, *see also* injuries by dogs; kennels; stray animals
- dogs (evidence from tracking by)**
- corroborative evidence, need for, 313, 322
  - description of track, 321
  - factors affecting strength of scent, 320
  - general, 313, 314
  - inference of guilt, rebutting, 323
  - judicial notice, 316
  - particular breeds, 316, 317
  - qualification of dog/trainer, 315, 317–319
- dogs (general)**
- breeding premises (Manitoba), 298–308
  - compensation for injury by strays (British Columbia), 296
  - domestic animal as, 288
  - impounding/killing of, 289, 422, 576
  - licensing of, 289, 291
  - municipal by-laws re, 289, 294
  - muzzling/leashing of, 295, 310, 312, 392
  - nuisance, as, 289
  - number allowed on premises, 297, 311
  - property in, 288
  - running at large, 289, 292, 310
- dogs (guide — Alberta)**
- “blind person”, 325
  - discrimination arising from use of, 326, 327
  - “guide dog”, 324
  - identification cards, 328
- dogs (guide — British Columbia)**
- discrimination arising from use of, 331–333
  - “guide animal”, 329
  - “person with a disability”, 330
- dogs (guide — Manitoba)**
- discrimination arising from use of, 335
  - “dog guide”, 334
- dogs (guide — Ontario)**
- discrimination arising from use of, 338
  - “guide dog”, 337
- dogs (guide — Saskatchewan)**, 336
- domestic animals**, *see* classification of animals

- domestic game farm animals (Saskatchewan)**, *see also* game production farms (Manitoba)
- definition, 220
  - identification tags, 221–223
  - importing of, 225
  - slaughter of, 225
  - time for tagging, 224
  - transport of, 225
  - “unique identification”, 221
- elk**, 197, 260
- exemptions**, *see* seizure/distress
- ferocious animals**, *see* classification of animals; injuries by animals
- foxes**, 3
- game production farms (Manitoba)**, 195–197, *see also* domestic game farm animals (Saskatchewan)
- goats**, 67
- grazing**, *see* agistment
- guide dogs**, *see* dogs (guide)
- harmless animals**, *see* classification of animals
- highways/streets (animals on)**, *see also* injuries by animals; stray animals
- duty of animal’s owner, 492, 494, 495, 497, 503
  - duty of motorists, 494, 507–510, 581
  - foreseeability, 503
  - general, 461, 462, 492, 493, 506
  - legislation, breach of, 504, 506, 578
  - municipal liability, 499–501
  - offences, 505
  - sufficiency of enclosure, 497, 498, 503
- highways/streets (dogs on)**, *see also* injuries by dogs; stray animals
- duty of care, 356
  - general, 356, 357
  - insurance issues, car, 359
  - municipal by-laws, effect of, 357
- “hobby breeding premises” (Manitoba)**, 299
- horses**
- bailment of, 31, 33–44
  - carriage of, 64, 65
  - dogs barking at, liability re, 344
  - injuries caused by, 440–443
  - offences re riding of, 437
  - sale of, damages re breach, 105
  - seizure, 25
- identification of animals**, *see also* diseased animals
- identification of animals (Alberta)**
- “brand”, 154
  - definitions, 154–156
  - ear tags, 158
  - location of marks, 157
  - methods of, 157, 158
  - ownership, 162, 163
  - registration, 159–162
  - sale/purchase of brand, 159
  - “stock”, 155
  - “vent”, 156, 163
- identification of animals (British Columbia)**
- “brand”, 164
  - effect of registration, 169, 170
  - “livestock”, 165
  - powers of designated organizations, 168
  - registration by designated organizations, 167

## ANIMALS

---

- registrations under prior legislation, 166

### **identification of animals (federal)**

- by-laws re, 121, 151
- certificate of identification, 132, 133
- “individual identification”, 129, 133, 151
- miscellaneous purposes, for, 152
- regulations re, 153

### **identification of animals (general), 149, 150, 235**

### **identification of animals (Manitoba)**

- “animal identification”, 171
- assignment of ownership, 189–192
- “brand”, 172, 178
- cancellation of registration, 193, 194
- effect of registration, 179, 180
- expiry of registration, 183–185
- game production animals, 195–197
- “identification brand”, 173, 178
- registers/registrars, 174
- registration (change of), 188
- registration (general), 175–178
- registration (renewal), 186, 187
- sale of animal, 181, 182

### **identification of animals (Ontario)**

- “brand”, 226
- by-laws, municipal, 234
- “livestock”, 227
- registration (duration of), 231
- registration (effect of), 230
- registration (forfeiture of), 232
- registration (general), 228, 229
- transfer of ownership, 233

### **identification of animals (Saskatchewan)**

- “animal”, 199
- “brand”, 200, 206
- BSE Recovery Program, 207
- domestic game farm animals, 220–225
- errors in applying brand/notch, 218
- “implant”, 202, 212, 213
- “mark”, 198
- “notch”, 201, 208
- registration/licensing, 203, 204, 209–219
- size/position of brands, 205

**injuries by animals**, *see also* highways/streets (animals on); injuries by dogs; injuries to animals; nuisance; stray animals; wild animals

**injuries by animals (cattle-trespass)**, *see also* distress damage feasant

- apportionment of liability, 475–479
- bulls, 465
- “cattle”, 459
- damages, measure of, 472–474
- defences, 470, 471
- driving away trespassing animals, 354, 467–469
- fencing, obligations re, 461–463, 496
- general, 347, 361, 460–462, 520
- infecting another’s cattle, 279, 464
- killing trespassing animals, 467
- Manitoba, 362, 377, 544
- mitigation, 474
- reasonably anticipated damages, 464, 472



**injuries by animals (general)**, 1, 435, 436

**injuries by animals (negligence)**

- bees, 445
- bulls, 444, 465
- characteristics of animal, 438, 439
- contributory negligence, 444
- damages, 447
- foreseeability, 477
- general, 435, 438, 439, 452
- horses, 440–443
- volenti non fit injuria, 444

**injuries by animals (scienter)**

- bees, 445
- bulls/steers, 451, 453, 457
- dogs, 458
- ferocious animals, 1, 451
- general, 438, 439, 450, 452
- horses, 441, 454, 455, 456
- Manitoba abolition in, 458, 544
- “mischievous”, 450
- running at large, 458
- statutory modifications, 458
- trespassing animals, 455
- vicious, 450
- volenti non fit injuria, 457

**injuries by animals (statutory remedy — Manitoba)**, 348, 377–381

**injuries by animals (trespassers)**, 516, 517

**injuries by dogs**, *see also* highways/streets (dogs on); injuries by animals; injuries to animals; nuisance; stray animals

**injuries by dogs (assault)**, 363, 364

**injuries by dogs (British Columbia)**

- compensation, 370
- “dangerous dogs”, 371–375, 431

**injuries by dogs (cattle-trespass)**, 347, 361, 362, 466

**injuries by dogs (killing perpetrator)**

- Alberta, 423, 424
- British Columbia, 375, 425
- common law rule, 421, 433, 434, 621
- damages where killing wrongful, 432
- Manitoba, 426
- offence re, 433, 434
- Ontario, 392, 394, 396, 428, 429
- order for destruction, 430, 431
- Saskatchewan, 427

**injuries by dogs (Manitoba)**

- cattle-trespass, abolition of, 362
- damages, measure of, 379
- destruction order, effect of, 381
- exceptions to liability, 377
- general, 348, 376, 377
- joint liability, 380
- “owner”, 378
- scienter, abolition of, 376

**injuries by dogs (negligence)**

- Alberta, 365, 380
- British Columbia, 367–370
- causation, 350
- collisions with persons, 352, 368
- contributory negligence, 355
- dogs on highways/streets, 356–359
- foreseeability, 350
- general, 348–355, 361
- municipal by-law, effect of breach of, 351, 369

## ANIMALS

---

- occupiers' liability (Alberta), 366
  - police dogs, 353
  - trespassing cattle, driving off, 354
  - volenti non fit injuria, 355
- injuries by dogs (Ontario)**
- control orders, 393, 396
  - damages, measure of, 389
  - destruction orders, 392, 394, 396
  - general, 388, 389
  - "harbouring", 390
  - livestock/poultry, 418–420
  - occupiers' liability, 391
  - offence, 388, 397
  - "owner", 390
  - pitbulls, 406–417
  - proceedings re, 392, 393
  - prohibition against owner, 395
  - search/seizure, 398–405
- injuries by dogs (parties liable), 339**
- injuries by dogs (Saskatchewan)**
- fine not barring action, 384
  - general, 382, 383, 386
  - offence, 385
  - police dogs, 387
  - "protected animal", 382
- injuries by dogs (scienter)**
- Alberta, 365, 366
  - British Columbia, 367
  - barking at horses, 344
  - elements of scienter, 340
  - evidence of ferocious/savage nature, 341
  - Manitoba, 376
  - nuisance/negligence, effect of, 347
  - running at large, 345
  - sufficiency of precautions, 343
  - volenti, 342, 343
  - warning to strangers, sufficiency, 342
- injuries by dogs (statutory remedies)**
- British Columbia, 296, 370
  - Manitoba, 348, 377–381
  - Ontario, 349, 388–420
  - Saskatchewan, 382–387
- injuries by dogs (trespassers), 516, 517**
- injuries to animals, *see also* offences; prevention of cruelty**
- apportionment of liability, 476, 478
  - bailment situations, 31–47
  - carriage of animals, 64–66
  - cattle, 502
  - damages, 448, 449
  - defences, 471
  - dogs, 46, 47, 296, 466, 476, 478
  - highways, on or near, 499–501
  - horses, 31–45, 64, 65
  - livestock/poultry (Ontario), 418–420
  - negligence by, 31, 35–37, 65, 499
  - noise, 446
  - overdriving, 38
  - Saskatchewan, 382–387
  - statutory compensation, 370
  - trespassing animals, 354, 467–469, 471
  - wrongful killing, 13, 432
- inspections, *see* diseased animals; sale of animals**
- insurance, 26, 27, 28, 29, 359, 360**
- kennels, *see also* dogs**
- Alberta, 293

## INDEX

---

- British Columbia, 294
  - licensing of, 290
  - Manitoba, 297–307
  - Ontario, 311
  - Saskatchewan, 309
- liability**, *see* agistment; bailment; highways/streets; injuries by animals; injuries by dogs; injuries to animals; nuisance; wild animals; wrongful killing
- liens/mortgages**, *see also* bailment
- agistment, 56
  - costs of maintenance, 19, 52
  - farriers', 17
  - livery stable keepers', 15, 16, 48–54
  - progeny, 18
  - sale of animals under, 20
  - seizure, care after, 63
- “livestock”**, 67, 165, 227, 502, *see also* stock; stray animals
- migratory birds**, *see* wild birds
- mischievous animals**, *see* classification of animals
- monkeys**, 1
- mortgages**, *see* liens/mortgages
- negligence**, *see* agistment; bailment; highways/streets; injuries by animals; injuries by dogs; injuries to animals; nuisance; wild animals; wrongful killing
- nuisance**, 347, 435, 446
- offences**, *see also* pedigrees (offences); prevention of cruelty; stray animals
- Animal Care Act (Manitoba), 307, 308
  - animals on highway, 505, 632
  - assault (dogs), 363, 364
  - birds, re, 287
  - brands, re, 235, 626–628, 630
  - “cattle”, re, 518, 519, 626–630, 632
  - cockpits/fighting, re, 616, 617
  - diseased animals, re, 73, 74, 96, 238, 263–278
  - guide dogs, re use of, 326, 333, 338
  - horse riding, 437
  - killing/wounding/poisoning, 433, 618–625
  - miscellaneous, 631
  - motorist’s liability, 632
  - necessities, failure to provide, 612–614
  - pedigree association by-laws, re, 126
  - stray animals, re, 518–520, 540, 572–575, 582, 597, 628
  - theft, 14, 287, 518, 629, 630
  - threatening to harm animals, 633
  - unnecessary suffering, causing, 434, 603–607, 608, 609, 610, 611
- pasturing**, *see* agistment
- “patron”**, 67
- pedigrees (associations)**
- by-laws of, 121–128, 151
  - Canadian Livestock Records Corporation, 134
  - certificate of identification, 132, 133
  - continuation under new legislation, 119, 120
  - disciplinary proceedings, 125
  - fees, 127
  - incorporation of, 115–118
  - judicial review of decisions, 125
  - purebreds, 124, 130
  - purpose of, 114

## ANIMALS

---

- registration of animals, 128–133
- pedigrees (general)**, 112, 113
- pedigrees (offences re)**
  - certificates of identification/registration, 135, 138, 143
  - consent to prosecution, 145
  - declaration/application, falsity of, 136
  - limitation period, 148
  - misrepresentation on sale of animals, 140
  - name of corporation/association, use of, 144
  - penalties, 146, 147
  - sale of purebred animal, 141–143
  - sale of unregistered/unidentified animal, 139, 142
  - use of certificate for wrong animal, 137
- performing animals 1**
- pigs/swine**, 67
- police dogs**, 353, 387, *see also* dogs (evidence from tracking by)
- poultry**, 67
- prevention of cruelty**, *see also* offences
- prevention of cruelty (Alberta)**
  - costs of care, 679
  - custody of animals, taking, 677, 679
  - destruction of animals, 608, 695, 696
  - distressed animals, 644
  - entry/inspection powers, 664, 666, 667
  - general, 634
  - humane societies, 635
  - liability of officers, etc., 708
- offences, 648–651
- “peace officers”, 636
- remedying distress, 661
- sale/disposition of animals, 686, 687
- prevention of cruelty (British Columbia)**
  - authorized agents, 638, 639
  - costs of care, 680
  - “critical distress”, 697
  - custody of animals, taking, 678
  - destruction of animals, 697–699
  - distressed animals, 645
  - entry/inspection powers, 665, 668, 669
  - humane societies, 637
  - liability of agents, etc., 709
  - offences, 652, 653
  - peace officers, 639
  - remedying distress, 662
  - sale/disposition of animals, 688, 689
- prevention of cruelty (Manitoba)**
  - “accepted activity”, 646, 647, 654
  - animal protection officer, 640
  - costs of care, 681
  - destruction of animals, 700–705
  - “director” (Animal Care Act), 640
  - distressed animals, 646, 647
  - entry/inspection powers, 664, 670–672
  - liability of officers, etc., 710
  - offences, 654–657
  - sale/disposition of animals, 690–694
- prevention of cruelty (Ontario)**
  - agents, 642
  - appeal of decisions, 643

## INDEX

---

- breeders, duties of, 658–660
- costs of care, 685
- custody of animals, taking, 684
- destruction of animals, 707
- distressed animals, 644
- entry/inspection powers, 674, 675, 676
- humane society, 642
- inspectors, 642
- liability of inspectors, etc., 712
- police officers, 642
- remedying distress, 663
- prevention of cruelty (Saskatchewan)**
  - animal protection officers, 641
  - costs of care, 682, 683
  - custody of animals, taking, 677
  - destruction of animals, 706
  - distressed animals, 644
  - entry/inspection powers, 664, 673
  - humane societies, 641
  - liability of authorities, 711
  - peace officers, 641
  - sale/disposition of animals, 686
- property in animals**
  - absolute property, 7
  - bees, 9
  - domestic animals, 7
  - foxes, 3
  - general, 7
  - insurance, 26, 27
  - liens/mortgages, 15–20
  - progeny, 8, 18
  - qualified property, 7
  - seizure/distress/exemption, 21–25
  - theft, 14
  - wild animals, 3, 10–14
  - wrongful killing, remedy for, 13
- purebreds**, *see* pedigrees (associations)
- running at large**, *see* dogs (general); injuries by animals; injuries by dogs; stray animals
- sale of animals**, *see also* diseased animals
  - affirmations, 81, 83, 84
  - auctions, 81, 93
  - compensation funds (statutory), 67–72
  - correspondence with description, 95, 111
  - damages, 102, 104–106, 111
  - diseased animals, 73, 74, 96
  - implied terms, 90–98
  - inspection laws, 75, 76
  - offences/prohibited transactions, 73, 74
  - passing of title/property, 77–80, 96–98, 101
  - quality/fitness, 90–94
  - remedies, 102–111
  - repudiation/rescission, 102, 107–111
  - risk of loss during warranty period, 101
  - soundness of animals, 81, 85, 87, 90–92, 281
  - warranties/conditions (express), 99, 100
  - warranties/conditions (general), 81–92, 281
  - warranties/conditions (implied), 90–98
- scienter**, *see* injuries by animals (scienter); injuries by dogs (scienter)
- seizure/distress**
  - care after, 62
  - cattle, 25
  - “chattels”, 22

## ANIMALS

---

- costs of maintenance, 19
  - exemptions, 22, 23, 25
  - horses, 25
  - legislation governing, 21, 25
  - progeny, 18
  - sale of animals, 20
  - sheep, 25
- sheep**, 25, 67, 201, 208, 227
- “**stock**”, 155, *see also* livestock
- stray animals**, *see also* dogs; injuries by animals; injuries by dogs; injury to animals; prevention of cruelty
- stray animals (Alberta)**
- auction of, 523, 524
  - capture/impounding, 523
  - defences to liability, 521
  - destruction of, 523
  - expenses of capture, etc., 521, 523
  - Livestock Identification Services Ltd., 525
  - offences re, 520
  - opening/not closing gate, effect, 522
  - persons liable for damage, 521
- stray animals (British Columbia)**
- “at large”, 527, 528, 531
  - bull control areas, 531, 532
  - capture of, 533
  - “cattle”, 534
  - conflicting legislation, 537
  - “damage”, liability for, 528
  - defences to liability, 529
  - injury by, compensation for, 296
  - “livestock”, 526
  - municipal regulations re, 534, 535, 536, 537
  - proceedings re, 530
  - seizure of, 535
- stray animals (general)**, 518, 519
- stray animals (Manitoba)**
- cattle-trespass, abolition of, 544
  - contributory negligence, 546
  - damages, 542, 543
  - defences to liability, 546–548
  - impounding/sale/destruction, 549
  - joint liability re, 542
  - liability for (general), 542–545
  - “livestock”, 539
  - municipal regulations, effect of, 541
  - offences, 540
  - “running at large”, 538
  - scienter, abolition of, 544
- stray animals (Ontario)**
- damages re, 577, 581, 588
  - fence-viewers, 585, 586
  - impounded animals, 583–590
  - liability of landowner, 602
  - liability of owner, 578–82, 598
  - livestock on highway, 581, 597–601
  - municipal by-laws re, 576–579
  - offences, 582, 597
  - retained animals, 591–594
  - sale of animals, 590, 595, 596
- stray animals (Saskatchewan)**
- destruction of, 568–571
  - fencing requirements, 558–560
  - liability re (general), 555–557
  - municipal by-laws re, 554
  - offences re, 572–575
  - “owner”, 550
  - “proprietor”, 551
  - restraining/impounding, 561–567
  - “running at large”, 427, 552
  - “stray”, 553
  - “under control”, 552

## INDEX

---

- theft**, *see* offences
- trespass**, *see* injuries by animals; injuries by dogs; stray animals
- types of animals**, *see* classification of animals; specific animals, e.g., bees
- “vent”**, 156
- wild animals**, *see also* classification of animals
- cross breeds, domestic/wild, 4
  - dangerous, 1
  - definition of, 3
  - ferocious, 1, 451, 512
  - injuries caused by, 1, 451, 511–15
  - mischievous, 1
  - property in, 3, 7, 11–13
- wild birds**
- migratory birds, 284
  - nuisance birds, 285
  - offences re, 287
  - Ontario, 286
- windsucking**, 86
- wolves**, 4
- wrongful killing**, 13, 432

## Index to Annuities

(All references are to paragraph numbers.)

- abatement**, 34, 35
- “annuity”**, 1–3, 7, 90
- apportionment (general)**
- annuity by deed, 72
  - annuity by will, 73, 74
  - capital vs. income, 75
  - death of annuitant, 59
  - life tenant v. remainderman, 72–74
  - surplus income, 74
- apportionment (Manitoba)**
- accrual from day to day, 60
  - exceptions from, 68
  - recovery of apportioned parts, 70, 71
  - when apportioned part payable, 69
- apportionment (Ontario)**
- accrual from day to day, 60
  - exceptions from, 61–63
  - insurance contracts, 61, 62
  - recovery of apportioned parts, 65, 66
  - rent charges, 7
  - when apportioned part payable, 64
- arrears**, *see also* **interest**
- action for, 86
  - executor’s liability for interest, 84
  - interest on, 82–84
  - recovery, 76–79
  - release of, 85
- attachment**, *see* **creditor’s rights**
- bankruptcy/insolvency**, 14, 37, 38
- beneficiaries, change of**, 10
- cash value of annuity, right to**, 24, 32, 33
- charge on property or fund**
- charge on corpus generally, 49–52, 55, 57, 58
  - continuing charges, 39
  - cumulative vs. non-cumulative, 39
  - distribution under will, 49–52, 55–58
  - dividends and interest, charge on, 41, 49
  - dower, annuity in lieu of, 47, 48
  - fund appropriated for charge, 53
  - income, charge on, 39, 40, 49, 51, 55–58
  - land, on, 41–46
  - merger on sale, 46
  - nature of charge, 39–41
  - rents and profits, charge on, 41, 49
  - surplus income, distribution, 54
- commencement of**, 18
- conditional annuities**
- conditions precedent, 26
  - conditions subsequent, 27
- contingent debt, annuity as**, 37
- creation of annuity**
- contract, by, 1, 4
  - general, 3
  - will, by, 1, 5, 6
- creditors’ rights**, 14, 37, 38
- definition**, 1–3, 7, 90
- dower, annuity in lieu of**, 47, 48
- duration of annuity**
- general, 19



## ANNUITIES

---

- lifetime of annuitant, 20
  - multiple annuitants, 28
  - perpetual annuity, 24, 25
  - specified period, 21–23
  - specified purpose, 22
  - termination, 1
- execution, *see* creditors' rights**
- federal government annuities**
- administration of, 13
  - computation errors, effect, 14
  - creditors' rights, 38
  - general, 12, 16
  - income tax deductions re, 15
  - insolvency of annuitant, 14
- income averaging annuities, 17**
- income, gift of, 2, 5, 25**
- income tax, *see* taxation of annuities**
- insurance distinguished, 10, 61, 62**
- interest, 80, 81, *see also* arrears**
- limitation of actions, 86**
- multiple annuitants, 28**
- payment, *see* apportionment; charge on property or fund**
- pensions distinguished, 11**
- rent-charge distinguished, 7–9**
- satisfaction, doctrine of, 36**
- securing of annuity, 29–31**
- survivorship, 28**
- taxation of annuities**
- accrual method, 92–95
  - “annuity”, 90
  - death of annuitant, 97
  - definition, 90
  - exemption from accrual method, 92–95
  - government annuities, 15
  - grants free of tax, 98
  - post-December 1980, 92
  - pre-December 1980, 91
  - “prescribed annuity contracts”, 92–94
- termination, 1, *see also* duration of annuity**
- trust fund for annuity, 29–31**
- valuation of annuities, 87–89**
- wills, *see* charge on property or fund; creation of annuity**

## Index to Associations and Not-For-Profit Corporations

*(All references are to paragraph numbers.)*

- actions**, *see also* **arbitration clauses; contracts; disputes; settlement of; liability; members (liability of)**
- arrears of dues, re, 84
  - bars to, 34
  - class actions, 22
  - fraud/oppression, relief from, 66, 67, 74, 77
  - general, 12, 20
  - injunctions, 27, 73, 103, 106
  - non-members, by, 83
  - political parties, 21
  - power to commence/defend, 11, 12, 34, 71
  - representation orders, 82
  - representative actions, 104
  - torts, 13, 14, 82
  - trade unions, against, 19, 20
  - trustees, by/against, 14, 18, 71, 75
- agency**, *see* **contracts; members (liability of); subordinate entities**
- agricultural associations**, 147
- arbitration clauses**, 122, 123, 156, 161
- assets**, *see* **property**
- bad faith**, 41, 57, 125, 167
- borrowing/lending powers**
- Alberta, 5
  - British Columbia, 6
  - Saskatchewan, 9
- branches**, *see* **subordinate entities**
- building societies**
- arbitration of disputes, 161
  - constitution/powers of, 158–162
  - liquidation of, 163
  - resolutions, passing of, 160
  - shares, charges on, 162
  - statutory requirements, 159
- business affairs (federal)**, 4
- by-laws/rules (changing of)**, *see also* **purposes/powers**
- effect of changes, 49
  - fundamental changes, 50, 78, 128
  - general, 62, 78
  - implied powers re, 48
  - notice re, 50, 128
  - property, effect on, 77
  - retroactivity, 51, 78
  - statutory requirements re, 47
  - trusts, effect on, 56, 73, 77
- by-laws/rules (general)**, *see also* **voting**
- consistency with objects, 48
  - dues, re, 94
  - enforceability, 43, 52
  - expulsion of members, 94–108
  - nature/effect of, 41, 52, 62, 78
  - non-members, effect on, 52, 83
  - notice of meetings, 42, 50
  - penalty provisions, construction of, 51
  - requirement to have, 10
  - validity of, 40, 48
- by-laws/rules (review of)**, *see also* **disputes, settlement of**
- annulment by Governor in Council, 60
  - bad faith, 41, 42, 57, 49
  - certiorari, 58

- delay, effect of, 55
  - disciplinary proceedings, 57
  - elections, 89, 90
  - general, 41, 53, 54, 126
  - natural justice, 41, 124, 125
  - notice of meeting, sufficiency of, 42
  - prohibition, 57
  - public interest, 60
  - rectifying orders, 54
  - use of property, re, 74
- certiorari**, 58, 126
- clubs**
- Alberta, 5
  - British Columbia, 6
  - debentures of, 169
  - decisions of committees, challenging, 167
  - definition of, 164
  - internal dealings, 165
  - members' liability, 169
  - officers, 166, 168
  - property of, 165
  - purposes of, 164
  - rules of, 166
- combines**, 145
- contracts**
- co-operatives, of, 154
  - members' liability on, 23–25, 35, 64, 65
  - members' rights enshrined in, 78
  - officers' liability on, 36, 63, 65
  - religious societies, of, 137
  - trustees' liability on, 36, 65
- co-operative societies**
- application to form, 148, 156
  - arbitration of disputes, 156
  - contracts of, 154
  - corporate veil, piercing, 150
  - debts of, guarantee by government, 153
  - general, 148–151
  - indoor management rule, 151
  - names of, 149
  - powers of, 152, 153
  - reinstatement of members, 155
  - rights/duties, 154–157
  - taxation, 157
- courts**, *see* **by-laws/rules (review of); disciplinary proceedings**
- creation**, *see also* **subordinate entities**
- Alberta, 5
  - British Columbia, 6
  - federal legislation, 4
  - Manitoba, 7
  - officers, appointment of, 2
  - Ontario, 8
  - rules, formulation of, 2
  - Saskatchewan, 9
  - statutes, effect of, 3
- criminal liability**, 12
- definition of**, 1–3
- disciplinary proceedings**, *see also* **disputes, settlement of; expulsion of members; suspension of members**
- adjournment, right to, 118
  - certiorari, 58
  - hearing, procedure/propriety of, 115–118
  - hearing, requirement for, 113
  - non-profit corporations, 112
  - notice of, 113, 115
  - prohibition, 57
  - review by court, 57, 58, 113
  - revocation of charter, 30, 114

## INDEX

---

- disputes, settlement of**, *see also*  
**by-laws/rules (review of)**
- arbitration clauses, 122, 123, 156, 161
  - court's jurisdiction, 39, 68, 70, 74, 120, 124–126, 140
  - dissent, 74, 78
  - fraud/oppression, relief from, 66, 67, 74, 77
  - natural justice, 41, 124, 125
  - rules providing forum for, 124–126
- dissolution/winding-up**
- building societies, 163
  - charitable associations, 130
  - compensation orders, 67, 68
  - court's jurisdiction re, 129
  - Crown, devolution of property on, 135
  - distribution of assets, 131–133
  - Lieutenant Governor in Council (British Columbia), 136
  - officers powers, effect on, 134
  - property, effect on, 69, 76–80, 134
  - subordinate entities, 28
  - voluntary, 130
- domestic clause**, 59
- expulsion of members**, *see also*  
**disciplinary proceedings;**  
**disputes, settlement of; members**  
**(general); suspension of members**  
**expulsion of members (cause for)**
- authority for, 100
  - breach of by-law, 102, 105
  - general, 99
  - injunctions, 103, 106
  - notice of charges, 42, 113, 115
  - qualifications, loss of, 107, 144
  - reinstatement, 108, 155
  - remedies of member, 103, 106
  - review by court, 99, 105
  - waiver of procedural errors, 101
  - wrongful expulsion, 103, 104, 115
- expulsion of members (general)**, 92, 93
- expulsion of members (non-payment of dues)**
- action for recovery, 84
  - assessment of dues, 68, 94
  - effect of non-payment, 84, 95, 97
  - forfeiture, waiver of, 96
  - notice of arrears, 84, 98
- formal associations**, 10
- fraud/oppression, relief from**, 66, 67, 74, 77, *see also* **disputes, settlement of**
- fundamental change**, 50, 78, 128
- hospitals**, 6
- illegality**, *see* **criminal liability; purposes/powers**
- incorporation of**, *see* **creation of**
- informal associations**, 10, 62
- injunctions**, 27, 73, 103, 106
- insurance operations**
- British Columbia, 6
  - Manitoba, 7
  - Ontario, 8
- judicial review**, *see* **by-laws/rules (review of)**
- jurisdiction over**, 4, 70
- liability**, *see also* **contracts; members (liability of); trusts/trustees**
- criminal, 12
  - general, 12, 14, 17
  - political parties, 21
  - tort, 13, 14

- trade unions, 19, 20
- liquidation**, *see* **dissolution/winding-up**
- location of**, 10
- meetings, notice of**, 42, 50, 128
- members (general)**, *see also* **disciplinary proceedings; disputes, settlement of; expulsion of members; suspension of members**
  - admission of new members, 83
  - deemed membership, 85
  - disclosure of membership (Ontario), 86
  - resignation/readmission of, 119
  - secession of, 120, 121
- members (liability of)**, *see also* **contracts**
  - by-laws, changing to increase liability, 51
  - contracts/debts, on, 23–25, 36, 64, 65, 169
  - general, 14, 17
  - indemnification rights, 17
  - loans, on, 26
  - torts, 13, 14
- merger**, 127, 128
- mutual benefit societies**, 7, 38, 61, 66, 97
- natural justice**, 41, 124, 125, 167
- objects**, *see* **purposes/powers**
- officers**, *see also* **contracts**
  - dissolution, effect of, 134
  - election of, 87–91
  - injunction against, 27
  - requirement for having, 10
- oppression**, *see* **fraud/oppression, relief from**
- orphanages**, 6
- political parties**, 21
- prerogative remedies**, *see* **by-laws/rules (review by court); disciplinary proceedings**
- professional associations**, 146, *see also* **disciplinary proceedings**
- profits/dividends**
  - distribution of (British Columbia), 6
  - prohibition against (Ontario), 8
- prohibition**, 57
- property (acquisition/disposition/use)**
  - Alberta, 5
  - British Columbia, 6
  - court, jurisdiction of, 70
  - diversion from proper use, 15, 74
  - general, 15, 69, 80
  - misuse of, 73
  - perpetuities, 81
  - restriction on transfer of interest, 81
  - trust property, 56, 71–75, 79
- property (dissolution, effect of)**
  - general, 76, 78, 80
  - minority rights, 78
  - parent body vs. local association, 77
- purposes/powers**, *see also* **actions; by-laws/rules; contracts; liability; property**
  - actions, commencement/defence of, 11, 12
  - Alberta, 5
  - alteration of, 10, 50, 78, 164
  - assets, use of, 15, 74
  - British Columbia, 6
  - constitution determining, 33
  - disputes, settlement of, 39, 74

## INDEX

---

- general, 10, 33, 34
- illegality of, 16, 34, 37
- liabilities, incurring of, 12
- management of association, 87
- Manitoba, 7
- mutual benefit societies, 7, 38
- Ontario, 8
- Saskatchewan, 9
- trust property, change in use of, 73
- religious societies**
  - contracts of, 137
  - creditors' rights/members' liability, 141
  - disputes, 77, 78, 124, 125, 138, 140, 143
  - jurisdiction of court, 124, 125, 138, 140
  - meetings, notice of, 42
  - membership qualifications, 107, 144
  - property, right to/use of, 77, 78, 140, 142
- resolutions**, *see* **by-laws/rules/voting**
- rules**, *see* **by-laws/rules**
- social clubs**, *see* **clubs**
- sports leagues**, 13
- status of**, *see* **actions; liability; purposes/powers**
- subordinate entities**, *see also* **creation**
  - agency issues, 29, 31
  - dissolution of, 28
  - general, 28, 29
  - secession of, 120, 121
  - suspension/revocation of charter, 30, 114
  - suspension/separation from parent, 32
- suspension of members**, *see also* **disciplinary proceedings; disputes, settlement of; expulsion of members; members (general)**
  - dues, non-payment, 109
  - effect of, 109
  - hearings, 111
  - reinstatement, 109, 155
  - waiver of, 110
- taxation**, 157, 170
- tort liability**, 13, 14
- torts/trustees**, *see also* **liability**
- trade organizations**, 145
- trade unions**, 1, 19, 20, 43, 62, 127
  - actions by/against, 14, 18, 71, 75
  - appointment of, 71
  - liability of, 18, 36, 82
  - powers of, 56, 79
  - removal/replacement, 74
  - use of property/funds, 72–75, 77, 79
  - voluntary associations, 62
- voting**, *see also* **by-laws/rules**
  - general, 44
  - officers, for, 87–91
  - proxies, 46
  - registration, 45
- winding-up**, *see* **dissolution/winding-up**

## Index to Auctions

*(All references are to paragraph numbers.)*

- actions against auctioneer**, 107
- actions by purchaser**, 187
- advances, call for**, 141
- advertisement of sale**
  - Alberta regulations, 119, 120
  - as statement of intention, 117
  - terms, 118
  - Toronto, 123
  - Vancouver, 121
  - Winnipeg, 122
- advertising sale**, 116
- agency relationship between auctioneer and purchaser**, 108, 109
- agency relationship between auctioneer and vendor**, 90, 91, 100, 115, 150
  - breach of warranty of authority, 114
  - implied authority, 103
  - ostensible authority of auctioneer, 91, 92
- agreements not to bid at public auctions**, 132, 133, 134
- Animal Products Act (Saskatchewan)**, 89
- auction**
  - defined, 1, 2
- auction sales company**, 34, 113, 143, 164, 165
- auctioneer**
  - action by, 104
  - authority, 90–115
  - defined, 3
  - delegation of authority, 110
  - description of product by, 101
  - disclosure, duty of, 98
  - fiduciary duty, 96, 103, 142
  - licensing, 4
  - minimum price guarantee, 97
  - possessory interest of, 104
  - remuneration, right of, 102
  - warranty given by, 99
- Auctioneer’s Act (Saskatchewan)**, 9, 20, 33, 35, 37, 49, 62, 70, 76, 88
- Auctioneers’ Association of Alberta**, 26
- auctioneer’s license**
  - Alberta, 24, 25, 26
  - Manitoba, 28
  - Ontario, 29
  - Saskatchewan, 32, 33, 34, 35, 36, 37
  - Vancouver, 27
- bailee, auctioneer as**, 105
- bid**
  - highest, 136
  - withdrawal of, 135
- breach of contract by auctioneer**, 106
- cancellation, license**
  - Alberta, 72
  - British Columbia, 73
  - Manitoba, 74
  - Ontario, 75
  - Saskatchewan, 76, 77, 78, 79
- cash auction**, 140
- Chief License Inspector (Manitoba)**, 28, 74
- Cities Act (Saskatchewan)**, 11, 22

## AUCTIONS

---

- City of Saskatoon licensing by-law (Saskatchewan)**, 37, 53, 63, 71, 79
- City of Toronto licensing by-law (Ontario)**, 19, 48, 61, 69, 75, 146, 176
- City of Vancouver license by-law (British Columbia)**, 43, 44, 58, 59, 67, 73, 129, 144, 174
- City of Winnipeg license by-law (Manitoba)**, 17, 46, 60, 68, 74, 122, 130, 145, 175
- Civil Enforcement Act (Alberta)**, 13
- clerk of auctioneer**, 110
- competitive bidding**, 2
- conditions precedent**, 138, 139
- Constitution Act, 1867**, 4
- Conveyancing and Law of Property Act (Ontario)**, 126, 162
- Co-operative Corporations Act (Ontario)**, 82
- Criminal Code**, 32
- Crown**, 167
- Crown Lands Act (Manitoba)**, 134
- damages as remedy against auctioneer**, 101, 107
- conversion and, 112
- deposit, receipt by auctioneer**, 103, 185–188
- Direct Sellers Act (Saskatchewan)**, 10, 11, 21, 22, 23
- Director of Fair Trading (Alberta)**, 24, 25
- Director of Planning, Property and Development (Manitoba)**, 28
- evidentiary requirements of auction sale**, 189–192
- parol evidence, 190
  - signature, 191
  - Statutes of Frauds and, 189, 192
  - terms of sale, 190
- Fair Trading Act (Alberta)**, 13, 14, 26, 38, 40, 56, 64, 72
- Farm Products Marketing Act (Ontario)**, 82
- fraud**, 195
- guarantee of auctioneer, minimum price**, 97
- highest bidder**, 93
- innocent misrepresentation**, 173
- Internet Sales Contract Regulation (Alberta)**, 14
- invitation to treat**, 137
- Land Titles Act, 2000 (Saskatchewan)**, 20
- liability, auctioneer**, 94, 102
- breach of warranty of authority, 114
  - conversion, 111
  - failure to properly conduct auction, 159
  - non-disclosure of principal, 107
  - Toronto licensing by-law, 146
  - Vancouver licensing by-law, 144
  - Winnipeg licensing by-law, 145
- liability, vendor**, 160
- licensing**
- Alberta, 5, 13
  - British Columbia, 5
  - City of Toronto Act, 1997 (No. 2), 8
  - City of Winnipeg Charter, 6
  - Manitoba, 5
  - Ontario, 7



## INDEX

---

- provincial generally, 4
- Saskatchewan, 9, 10, 11, 12
- Vancouver, 5
- Vancouver Charter, 15
- Livestock and Livestock Products Act (Alberta)**, 13
- livestock auctioning**, 5, 20, 80, 81, 168, 169
  - Ontario, 80, 81, 82, 83, 84, 85, 86, 87, 88
  - Saskatchewan, 80, 88, 89
- Livestock Community Sales Act (Ontario)**, 82, 83
- Livestock Dealer Regulations, 1995 (Saskatchewan)**, 88
- lots, sale by**, 124
- mistake and misrepresentation**, 170–176
  - innocent misrepresentation, 173
  - Toronto, 176
  - Vancouver, 174
  - Winnipeg, 175
- mock auctions**, 6
- mortgage sale**, 196
- Motor Vehicle Dealers Act (Ontario)**, 47
- Motor Vehicle Inspection Regulation (Alberta)**, 42
- Municipal Act (Manitoba)**, 6, 16
- Municipal Act, 2001 (Ontario)**, 18
- Municipal Licensing and Standing Division (Ontario)**, 29, 30, 31, 48
- Municipalities Act (Saskatchewan)**, 10, 21
- Northern Municipalities Act (Saskatchewan)**, 12, 23
- obligations, licensees**
  - Alberta, 38, 39, 40, 41, 42
  - British Columbia, 43, 44, 45
  - Manitoba, 46
  - Ontario, 47
  - Saskatchewan, 49, 50, 51, 52, 53, 54, 55
- passing of property in goods**, 177, 178, 180
  - Alberta, 179
- presumption that sale would be with reserve**, 162
- public auction**, 95
  - agreements not to bid at public auctions, 132, 133, 134
  - Alberta, 113, 167
  - conclusion of, 141, 142
- puffery**, 125–131
  - Alberta, 128
  - Toronto, 131
  - Vancouver, 129
  - Winnipeg, 130
- purchaser, fundamental breach of contract**, 151
- Record Review Board (Manitoba)**, 28, 74
- remedies, equitable**, 172
- renewal, licenses**
  - Alberta, 64, 65, 66
  - British Columbia, 67
  - Manitoba, 68
  - Ontario, 69
  - Saskatchewan, 70, 71
- repudiation of contract by vendor**, 92
- re-sale on breach**, 151–158
  - auctioneer's right to re-sell, 155, 156

## AUCTIONS

---

- fundamental breach of contract by purchaser, 151
- private sale and, 157
- sale under statute, 158
- seller's right to re-sell goods, 154
- sale, conclusion of**, 135–146
- sale, judicial**, 193–201
  - conflict of interest on part of auctioneer, 200
  - delay in complaint and, 197
  - disclosure by auctioneer of reserve bid, 199
  - price, inadequacy of and, 195
  - procedure, 193, 194
  - referential bid and, 198
  - Sale of Land by Auction Act (U.K.) and, 201
- sale, re-opening on default of purchaser**, 147
  - dispute over highest bid, 148
  - onus, 149
  - sale of land, 152
- Sale of Goods Acts**, 108, 127, 154, 162, 177, 178, 182, 189
- Sale of Land by Auction Act, 1867 (U.K.)**, 125, 201
- sale under legislation**, 166
- Standing Policy Committee on Property and Development (Manitoba)**, 28, 74
- standing to complain of conduct of auction**, 163
- Statute of Frauds**, 108, 185, 189, 192
- suspension, license**
  - Alberta, 72
  - British Columbia, 73
  - Manitoba, 74
  - Ontario, 75
  - Saskatchewan, 76, 77, 78, 79
- term, licenses**
  - Alberta, 56, 57
  - British Columbia, 58, 59, 60
  - Manitoba, 60
  - Ontario, 61
  - Saskatchewan, 62, 63
- terms, contract of sale**, 181–188
  - clauses limiting liability of vendor, 181
  - deposit, 185, 186, 188
  - pre-sale advertisement, 182
  - putting up of goods and, 183
  - representations and, 184
  - sales catalogue, 181
- time of the essence in payment of contracts**, 153
- Toronto Licensing Commission**, 8
- Toronto Licensing Tribunal**, 29, 30, 75
- Traffic Safety Act (Alberta)**, 42
- Vancouver Charter**, 27
- warranty given by auctioneer**, 99
- without reserve auction**, 161

## Index to Aviation

(All references are to paragraph numbers.)

- aerodromes and airports**
    - commercial activities, 178-181
    - commercial passenger vehicles, 179
    - license to operate taxi service, 181
    - permit, lease, license or contract with Minister, 180
    - regulations governing control of commercial operations at government airports, 178
    - general, 152-156
      - definitions, 152-153
      - regulatory authority, 154-156
    - occupiers' liability, 182-183
    - operation of, 157-161
    - safety requirements, 162-177
      - certification and operation of airports, 163-166
      - marking and lighting, 170-171
      - miscellaneous, 172-177
      - operation of aerodromes, 162
      - operation of vehicles, vessels and aircraft, 167-169
    - use of adjacent land and airspace, 184-192
      - airport zoning regulations, 188-191
      - interests of neighbouring landowners, 184-186
      - regulation of noise, 187
  - Aeronautics Act**
    - application, 42-44
    - enforcement and compliance proceedings, 64-89
      - administrative penalty proceedings, 79-89
        - appeal, 87
        - certificates, 88-89
  - general, 79-81
  - notice, 82
  - payment and review, 83-86
  - defences, 70
  - general, 64-69
  - prosecution, 71-78
    - fines, 75-76
    - forfeiture, 77
    - general, 71-73
    - imprisonment, 74
    - prohibition, 78
  - enforcement powers, 55-63
  - detention of aircraft, 62
  - inspection and investigation, 55-61
  - obstruction, 63
  - miscellaneous provisions, 107-110
  - provisions and objectives, 38-41
  - regulations, 45-54
  - suspension and cancellation of documents, 90-106
    - appeals, 105-106
    - contravention, 92-96
    - general, 90-91
    - immediate threat to safety, 97-99
    - lack of qualifications, 101-104
    - suspension or refusal to issue, amend or renew on
    - issue of certificate, 100
- Air Canada Public Participation Act, 125**
- air carriers**
  - accountable executive, 207
  - certification, 197-202
  - fuelling of aircraft, 210

## AVIATION

---

- general, 193–196
  - liability insurance, 206
  - licensing of domestic and international carriers, 203–205
  - operations manager, 209
  - regulations respecting safety and comfort of passengers, 211
  - safety management system, 208
  - security measures, 212
- air navigation services**
- air traffic controllers, 261–262
  - general, 251–254
  - procedures, 255–260
- aircraft, defined, 213**
- Airport Transfer (Miscellaneous Matters) Act, 126–127**
- airworthiness**
- flight authority, 218–220
  - general, 215–217
  - identification of aircraft and aeronautical products, 225–226
  - offences, 221–224
- balloons used for advertising and tethered, 214**
- Canada National Parks Act, 151**
- Canada Transportation Act, 131–135**
- Canadian Air Transport Security Authority, 111–113**
- Canadian Human Rights Act, 136–137**
- Canadian Transportation Accident Investigation and Safety Board Act, 128, 311**
- Carriage by Air Act, 129**
- Civil Air Navigation Services Commercialization Act, 141–150**
- constitutional jurisdiction**
- aerodromes, 10–15
    - application of provincial laws to airport property, 14
    - building of airports, 10
    - doctrine of federal paramountcy, 12
    - doctrine of interjurisdictional immunity, 12
    - provincial legislation re location/regulation, 11
    - regulation of taxis/limousines, 15
    - zoning orders regulating use of airspace/flight paths, 11
  - aeronautics generally, 8–9
  - aircraft operation, 16–19
  - air traffic control language, 20
  - civil proceedings, 21–22
  - labour relations, 23–27
    - activity made subject of separate local business, 26
    - civil remedy for unpaid wages under provincial law, 27
  - construction of airport, 23
  - enterprise engaged in field of aeronautics, 24
  - operation having some aeronautical connection, 25
  - taxation and charges, 28–32
  - municipal business tax and flying school, 32
  - provincial mark-up on liquor purchased abroad, 31
  - provincial sales tax, 28, 30
  - provincial taxes on liquor, 30
  - provincial tax on sale of gasoline, 29
- Criminal Code, 114–115**
- Department of Transport Act, 130**

## INDEX

---

- Immigration and Refugee Protection Act, 140**
- international conventions and protocols**
  - crimes in relation to aircraft and airports, 6
  - general, 1
  - interests in mobile equipment, 5
  - international civil aviation
    - • conventions in force in Canada, 2
    - • conventions not in force in Canada, 3
  - liability for international carriage by air
    - • conventions in force in Canada, 4
    - • conventions not in force in Canada, 5
- investigation of accidents and incidents**
  - Canadian Transportation Accident Investigation and Safety Board Act, 311
  - establishment of Transportation Safety Board, 312–313
  - general, 309
  - investigations and public inquiries, 317–325
    - • investigation, 321–325
    - • powers and duties of investigators, 317–319
    - • public inquiry, 320
  - jurisdiction of Transportation Safety Board, 314–316
  - object of Transportation Safety Board, 310
  - offences, 329
  - privilege, 326–327
  - regulations, 328
- liability for aircraft accidents and incidents**
  - contract, liability in, 386–388
  - international carriage by air, 389–447
    - • general, 389–392
    - • Montreal Convention, 417–447
      - • • application, 417–421
      - • • documents of carriage, 422–427
      - • • liability of carrier/compensation for damage, 428–447
        - • • • cargo, 438–439
        - • • • delay, 440
        - • • • general, 428–433
        - • • • limits on liability, 441–447
        - • • • passengers and baggage, 434–437
    - • Warsaw Convention, 393–416
      - • • application, 393–394
      - • • documents of carriage, 397–401
        - • • • baggage check, 400
        - • • • cargo, 401
        - • • • general, 397
        - • • • passenger ticket, 398–399
      - • • jurisdiction, 395–396
      - • • liability of carriers, 402–416
        - • • • death or injury to passengers, 405–406
        - • • • delay, 412
        - • • • exceptions, 413–416
        - • • • general, 402–404
        - • • • loss or damage to baggage/cargo, 407–411
  - tort, liability in, 331–385
    - • negligence, 331–380
      - • • general, 331–337

## AVIATION

---

- • • parties—duty and standard of care, 338–380
- • • • aerodrome operators, 338–344
- • • • air carriers and aircraft operators, 345–353
- • • • aircraft maintenance engineers, 378
- • • • aircraft owners, 354–355
- • • • air traffic controllers, 356–359
- • • • Crown, 360–361
- • • • flight crew members, 362–376
- • • • manufacturer or rebuilder, 379
- • • • utility company, 377
- • • • voluntary organization re teaching methods in sport of parachute jumping, 380
- • nuisance, 381–381–383
- • strict liability, 384
- • trespass, 385
- marking and registration of aircraft**
  - criteria for registration, 230–232
  - general, 227–229
  - leasing, 233–234
- Minister of Transport**, 34–37
  - delegation, 37
  - powers, duties and functions, 34–36
- personnel licensing**
  - general, 263–264
  - issue of licenses, 265–267
  - medical and optometric fitness, 268–272
  - offences, 273–277
- Prohibition of International Air Services Act**, 138
- rules of the air**
  - aircraft converging at same altitude, 244
  - aircraft on water, 242
  - Canadian aircraft in flight over high seas, 243
  - dropping anything from aircraft in flight, 246
  - endangering life or property by operation of aircraft, 247
  - general, 235–236
  - operating limitations in flight manual, 241
  - operation over built-up area/open assembly of persons, 248, 250
  - operational and emergency equipment, 241
  - prohibitions on take-off, landing, 245
  - projection of bright light source into navigable airspace, 249
  - responsibilities of flight crew members, 237–239
  - responsibilities of operators, 237
  - responsibilities of pilot-in-command, 239–240
- security**
  - Canadian Air Transport Security Authority, 282–286
  - provision of information, 287–292
  - regulations, measures and emergency directions, 278–281
  - responsibilities of government agencies, 307–308
  - screening and other security requirements, 293–304
  - security assessments, 305–306
- Transportation Appeal Tribunal of Canada Act**, 116–124
- Transportation of Dangerous Goods Act, 1992**, 139

## Index to Bailment

(All references are to paragraph numbers.)

- action in negligence, see negligence, action in**
- actions**
- against third parties, 103, 243, 258–266, 269, 278, 279
  - breach of contract, onus in, 52
  - gratuitous bailee bringing against bailor, 85
  - money had and received, 44, 271
  - refusal to deliver, for, 44, 61
  - standing to bring, 6, 19
  - statement of claim, negligence, 133
  - sub-bailee, bailor bringing against, 133
  - successive carriers, against, 234
  - third party bringing against bailee, 270, 271
  - use, loss of, for, 111
- agency, 18, 19, 69, 259**
- animals, 56, 125, 250**
- bailees, see also gratuitous bailees; parking lot operators; reward, bailment for; standard of care; warehousemen**
- agent, as, 271
  - attornment by, 273
  - buying goods bailed, 130
  - cab driver, as, 242
  - clothing, of, 132
  - consent to act as, 71
  - defective goods, injury by, 85
  - defined, 2
  - disputing bailor's title, 7, 124, 275, 276
  - duties of, 30–32, 58, 191, 276
  - employee's tools, of, 128
  - exclusive possession, having, 20, 21
  - execution debtor, as, 281
  - finder of lost chattels, as, 77, 78
  - fraudulent intent, 279
  - impound lot, 222
  - insurable interest of, 165
  - involuntary, 235
  - liability, variation by contract, 40, 144, 147, 223
  - lien for repairs by, 117, 118
  - onus of disproving negligence, 50
  - patentee, as, 170
  - refusal to deliver by, 44, 61
  - remedies, 285
  - repairs by, 101, 117, 118
  - return of goods, 44, 61, 108, 110
  - seller in possession, as, 26, 83
  - standard of care, 32
  - stolen goods, delivering, 280
  - termination, 53, 90, 275
  - theft by, 41
  - title, eviction by paramount, 275
  - transshipping, right of, 241
  - trustee, as, 3, 194, 262
  - unauthorized sale by, 41, 44, 284
  - vicarious liability of, 267
- bailment, see also reward, bailment for**
- agency, distinguished, 18, 69, 259
  - change of possession required, 20–26, 177
  - chartered vessel, where, 177

## BAILMENT

---

- conditional sale, distinguished, 25
  - defined, 1
  - deposits, 70
  - general, 5, 6, 7
  - licence, distinguished, 16, 17, 72, 227
  - locatio conductio rei, 39
  - mandate, 67
  - master and servant, distinguished, 22, 23
  - miller, storage by, 29
  - nature of relationship, 5, 6
  - option to purchase, 25
  - option to purchase, distinguished, 96
  - pawn, 9
  - sale of goods, distinguished, 10–15, 27
  - shipmaster, 241
- bailor**
- actions against third parties, 258, 265, 272
  - contract of hire, duties, 99, 100, 109
  - defined, 2
  - liability of, 92, 268, 282, 283
  - money had and received, 44
  - onus of establishing negligence, 51
  - owner's risk, 151, 223, 238, 251
  - recovery for loss of use, 111
  - right to redelivery, 4
  - sale to bailee, 130
  - storage charges, failure to pay, 184
  - unauthorized sale by bailee, 44, 284
- benefit of bailee, for, 9**
- benefit of bailor, for, 9**
- cabmen**
- liability, 242
  - lien, 244
- carriage of goods, see common carriers**
- common carriers**
- bailee for reward, as, 231
  - damage, proof of, 243
  - deliver, duty to, 232
  - liability, limitation of, 224, 238, 239
  - lien, loss of, 244
  - negligence, proof of, 243
  - private carrier, distinguished from, 229, 230
  - repairs by, 240
  - sub-bailees, as, 233
  - successive carriers, 234
  - tranship, duty to, 241
  - warehousemen, as, 236, 237
- conditional sales, 25**
- consideration**
- mandate, 67
  - standard of care, and, 38
- conversion**
- agent, stolen goods dealt with by, 280
  - bailee committing, 159, 277, 284
  - conditional vendor, goods of, 185
  - deposit bailment, 75
  - general, 44
  - warehousemen, by, 159, 185, 277
- Crown**
- bailee, as, 63, 64
  - customs inspector, 65
  - customs warehouse, 71
  - liability under statute, 66



## INDEX

---

- patentee as bailee, 170
- patentee of, 170
- damage to chattel, action for**, 4, 103, 243, 263–265, 278
- defective goods**
  - continued operation of, 109
  - disclosure, 92
- depository, as seller**, 83
- deposits**
  - bailee, liability of, 72, 74, 75, 154
  - consent to, 71
  - definition, 70
  - revocation of, 75
- duties of bailee**, *see also negligence; standard of care*
  - general, 30–32
  - obtaining payment from purchaser, 191
  - temporary lapse of, 58
  - title, protecting bailor's, 276
- finder of lost chattel**
  - proper custodian, 78
  - standard of care, 77
- fundamental breach**
  - disappearance of chattel, 148
  - facility used, 150
  - theft by employees, 149
- garagemen**, 89, 168, 181, 251
- gratuitous bailees**, *see also negligence; standard of care*
  - action against, 79
  - buyer rejecting chattel as, 76
  - contract, liability in, 93
  - definition, 84
  - fraud, 74
  - hirer, condition that liable as, 87
  - injured by defective chattel, 85
  - insurer, where liable as, 88
  - seller, as, 76
  - third party, action against, 265
- hire of chattels**
  - car dealer loaning car, 97
  - contract, effect of, 94, 100
  - damage, 105
  - defective goods, injury by, 109, 282, 283
  - destruction, 107
  - deterioration, 106
  - option to purchase, 96
  - rent, 114–116
  - repair by bailee, 101, 117–119
  - return by bailee, 95, 98–100, 104, 108–111
- hire of work**
  - garagemen, 89, 251
  - liens for, 254–257
  - negligence, 245, 252, 253
  - repair, implied authority, 254
- jus tertii**
  - bailee, claim by, 276, 277
  - third party, claim by, 278
- licences**
  - car wash establishment, 72
  - general, 16, 17, 72
  - parking lot operators, 227, 228
- liens**, *see also warehouse liens*
  - board or lodging, for, 167
  - removal and disposal charges, for, 198
  - repairs, for, 117, 118, 181, 254
  - right under, 189
  - seller's lien, revival of, 189
  - stablekeeper, of, 189
  - storage, 180, 181
  - thresher's, 126
- limitation periods**, 46

## BAILMENT

---

### **loans for use**

- bailee's liability, 84, 86, 87, 93
- bailee's standard of care, 37, 86, 88
- bailor's liability, 82, 92
- gratuitous bailment, 87
- unauthorized use, 88

### **mandate**

- consideration in, 67
- defined, 67
- liability to bailor, 68

### **master and servant, 22, 23**

### **negligence, *see also* duties of bailee; standard of care**

- action in, 19, 48
- animals, injury to, 56, 94, 250
- contributory negligence, 47
- damage of goods/property, 19, 55, 105, 131
- damages, apportionment, 47
- damages, measure of, 45, 129
- defective machinery, operation of, 109
- destruction of goods, 34, 107
- goods lost, 54, 131
- goods stolen, 54, 57, 81, 82, 131
- gratuitous bailees, 62, 73, 74, 80, 81, 84, 86, 89
- hire of chattels, 35
- of employee, 113, 267
- onus of disproof of, 30–32, 50, 51, 54, 59, 243
- res ipsa loquitur, doctrine of, 34, 60, 105–107
- third parties, liability to, 283
- unauthorized use, 104, 106, 163, 164

### **options to purchase, 25, 96**

### **parking lot operators**

- general, 181

- impound lot, 222
- kinds of personal property, 225
- licensors, as, 227, 228
- limitation of liability, 223
- stolen cars, 224
- valuables in car, 226

### **port warehouse operators, *see also* warehousemen**

- Himalaya clauses, 176
- scope of maritime law, 175

### **return of goods, 42, *see also* hire of chattels**

### **reward, bailment for**

- contract law, and, 249
- liability for aggravated damages, 33
- liability limitation, 169, 223
- onus of disproving negligence, 57, 59, 248
- peculiar skill, required to use, 135
- private carriers, as, 230, 231
- seller, as, 76
- standard of care, 31, 38, 58, 121
- theft by employee, 246
- wharfinger, as, 279

### **sale of goods, 10–15, 27**

### **seller of goods**

- bailee, as, 26, 76, 83
- bailee, duty owed by, 191
- insolvency of, 13, 14
- lien, 181
- warehouseman, as, 165, 189

### **standard of care (general), *see also* duties of bailee; standard of care (warehousemen)**

- bailor's, 85, 99, 109, 283
- carrier's, 231
- consideration, and, 2–14, 38
- contract, enlargement by, 40

## INDEX

---

- court-imposed terms, where, 49
- garagemen, of, 168
- general, 30, 31
- gratuitous bailee, 31, 36, 73
- locatio conductio rei, 39
- relevance of amount of consideration, 38
- standard of care (warehousemen)**
  - animals, 125–127
  - contamination of goods, 142
  - defects in storehouse, 123
  - false representations, 219, 270
  - forward goods only, 140
  - general, 121, 135
  - goods lost, 136, 212
  - inevitable accident, 148
  - peculiar skill, use of, 139
  - perishable goods, 139, 157–159
  - place of storage, interpretation of, 153, 154
  - removal of goods to other storage, 155, 156
  - rodents harming goods, 141
  - unexpected events, 141
- sub-bailments**
  - breach of contract, as, 138
  - carriers, and, 233, 234
  - general, 91
  - liability to bailee, 44
  - liability to bailor, 191, 274, 276, 277
  - third party liability, 279
- third party liability**
  - damage to chattel, 103, 243, 263–265, 278
  - defence to, 269, 278
  - general, 258
  - recovery of goods, 266
  - sub-bailment, re, 279
  - trespass, 260–262
- trusts, see bailees**
- warehouse liens**
  - amount, 182
  - attachment and, 196
  - conditional vendor, against, 185
  - continuing possession, right to, 190
  - creation and perfection of, 179
  - duty to bailor to set up, 191, 274
  - enforcement, further charge for, 193
  - extinction of, 187, 189
  - fundamental breach, 184
  - legislation, 178
  - not arising, 111, 194
  - purchaser's liability, 192
  - right to sell goods, 183
  - sheriff's liability, 196
  - stablekeeper, 188
  - waiver, 191
- warehouse receipts**
  - advances of money, use for, 219
  - classification of, 203
  - conditions added to, 205
  - contracts, as, 202
  - defined, 201
  - delivery, effect on, 207, 215
  - effect of, 200
  - endorsement, 217
  - estoppel by, 209, 270
  - evidence of goods being held, as, 210
  - fraud, 218
  - legislation, 199, 201–220
  - negotiability, 206
  - representation on face, 211
  - seller's lien, effect of, 220
  - substituted goods, inclusion of, 209

## BAILMENT

---

- transferee, rights of, 216
- **warehousemen**, *see also*  
**standard of care (warehousemen)**
- agent of consignee, 200
- common carrier distinguished, 120
- constructive delivery by, 200
- conversion by, 159, 185, 277
- defined, 134, 180
- delivery by, 136, 160, 207
- duty on forwarding of goods, 140
- estoppel of, 270
- limitation of liability, 143–150
- negligence of, 137, 143
- obtaining payment from purchaser, 191
- seller, as, 189
- storage charges, 192, 193, 197
- title, disputing bailor's, 124
- validity of claims, determining, 208
- wrongful delivery, 160
- **wharfingers**
- defined, 120
- forward goods only, undertaking to, 140
- liability of, 172–174
- liens of, 171–174
- warehouseman, as, 171

## Index to Banking

(All references are to paragraph numbers)

- accounts, see charges; deposits; joint accounts; statements of account; trusts and trust accounts**
- actions (statutory)**
- amendments not affecting, 228
  - bank holding companies, 246
  - costs, 244
  - court's powers, 242
  - effect of liquidation on, 273
  - general, 241
  - notice to superintendent, 241
  - rectification of securities register, 245
  - stays and dismissals, 243
- administration, see also legislation; offences; Superintendent of Financial Institutions**
- appeals, 383
  - approvals, 398–400
  - bank certificates as evidence, 377
  - delegation of powers, 385
  - forms, 382
  - notices, sending of, 375, 376
  - publication of information, requirements re, 380
  - regulations, 384
  - verification of identity, 397
- advertising by banks, 555, 560**
- “affiliate”, 26, 160**
- “affiliated”, 16**
- “affiliation”, 31**
- “agent”, 310**
- agriculture, 481, 482, 485, 486, 493, 496, 499, 503, 504**
- amalgamation, see fundamental changes**
- annual statement, see financial statements**
- appeals, see administration**
- appropriation, see also set-off**
- Clayton's Case, rule in, 746, 748
  - collecting agent, 747
  - combined accounts, 745, 751
  - creditor's rights to, 750
  - death of customer, 755
  - guarantee, 748, 749, 755
  - insolvency of customer, 752
  - liability of bank, 753–755
  - principle of, 745
  - third parties, 747, 749
  - tracing, 747
  - trust account, 756, 827
  - unmatured notes, 753
- aquaculturists, 481, 483**
- assessments, 206**
- assignments, see collateral security; special security**
- audit committee, 42, 47, 49, 97, see also shareholders**
- auditors, see also Bank of Canada; Canada Deposit Insurance Corporation; Canadian Payments Association; financial statements; shareholders**
- annual statement, report on, 99, 101
  - appointment, 80, 81, 90
  - audit committee meetings, 97
  - designation of firm member, 92
  - examination by, 95, 96

## BANKING

---

- notice of shareholders' meetings, 94
  - privilege re statements, 102
  - qualifications, 91
  - questionable transactions, 100
  - remuneration, 90
  - replacement of, 93, 103
  - report to superintendent, 96
  - subsidiaries' auditors, 98
- authorized foreign banks**
- asset maintenance, 361
  - auditors, 355–360
  - authorization, 341–343
  - carrying on business in Canada, 345–349
  - deposit requirements, 353
  - financial statements, 354
  - generally, 340
  - powers, 350, 351
  - prohibition on doing business, 344
  - restrictions, 352
  - supervisory intervention, 362
  - termination of business in Canada, 363
  - Winding-up and Restructuring Act, 364
- automated banking machines,** 318
- bailment**
- duty of bank, 774, 775
  - fee, 775
  - gratuitous, 774
  - liability of bank, 775, 776
  - warehouse receipts, 472
- “bank”,** 7, 550, 552, *see also*
- branches**
- bank holding companies**
- constraints on doing business, 372
- continuance, 366
  - generally, 365
  - investments, 373
  - liquidation and dissolution, 369–371
  - non-bank entities, 374
  - organization and commencement, 367
  - transfer of business, 368
- Bank of Canada**
- agent of government, 642
  - auditors of, 639
  - business and powers, 641–647, 649
  - clearing and settlement system regulation, 649
  - directors of, 635–637
  - establishment of, 633
  - Governor and Deputy Governor, 635–638
  - information, providing to, 643
  - insolvency legislation not applicable, 648
  - liability for payments received, 647
  - liability, immunity from, 640
  - management of, 635
  - objects of, 633
  - offences under Bank of Canada Act, 638, 639
  - operation of, 639
  - status of, 634, 642, 646
  - winding-up of, 648
- “banker”,** 7
- “banker’s duties”,** *see also*
- collection of cheques and bills;**
- customer-banker relationship;**
- deposits; fiduciary duties**
- absence of authority, where acting in, 911–918

## INDEX

---

- action, where breach of, 906–910
- appropriation and set-off, 745
- closing account, 711
- common law, at, 711, 717
- countermand, determining, 712, 872
- customer’s death, determining, 713
- customers’ duty and, 699, 731, 732
- damages for breach, 698
- deceit, liability of bank for, 906, 907
- drawee bank, as, 852–857
- failure to make inquiries, breach of, 706
- forged cheques, where, 699, 706, 725, 731–734, 884–899, 901
- holder of cheque, as, 858–864
- honour cheques, to, 551, 697–699, 711, 716, 850, 872
- implied warranty, breach of, 907–909
- mental disorder, determining, 714
- reasonable care and skill required, 706
- repay deposits, to, 711
- secrecy, of, 737–744
- statements of account, provision of, 731
- third parties, towards, 707
- banker’s lien**, *see also* **set-off**
  - bankruptcy, effect of, 763
  - collateral security, over, 765, 766, 769, 770
  - defined, 760
  - legal mortgage, where, 768
  - partnerships, where, 767
  - securities for specific advances, 762
  - set-off, 761
  - shares, 770
  - when arising, 761, 763, 764
- “banking”**, *see also* **business and powers of banks**
  - general, 8
  - use of term, 7
- bankruptcy**, *see* **liquidation and dissolution; special security**
- bills of lading**, *see* **warehouse receipts and bills of lading**
- board meetings**, *see* **directors**
- bona fide purchaser**, *see* **security certificates**
- books**, *see* **records**
- borrowing costs**, *see* **cost of borrowing**
- branches**, *see also* **“bank”**
  - closure, notice of, 554
  - designation of, 549
  - legal status of, 550
  - location of bank’s indebtedness, 549
  - non-NAFTA country banks, 425
  - notice to, 551
  - payment of bank’s debts through, 549
  - residence of banks, 550, 551
  - separate entities, as, 551
- builders’ liens**, 504
- business and powers of banks**, *see also* **“goods, wares and merchandise”**; **hydrocarbons and minerals**; **loans**; **security**; **special security**; **warehouse receipts and bills of lading**
  - agency arrangements, 406
  - bankruptcy services, 407
  - “business of banking”, 401–405

## BANKING

---

- commencement of business, 22–27
  - credit cards, 405, 561
  - custodian of property, 405
  - information services, 405
  - interests in other financial services institutions, 414
  - lottery ticket sales, 405
  - permitted activities generally, 403–405
  - prohibited activities, 415–421, 423–424
  - public accountability statement, 426
  - real property dealings, 405, 409, 410
  - receiverships, 405, 407, 424, 438
  - regulations governing, 405, 406, 418–420
  - sale of security, 408, 409
  - specialized financing, 405
  - warehouse receipts and bills of lading, 412
- by-laws, *see also* fundamental changes**
- copies, entitlement to, 88
  - directors' remuneration, 45
  - effective date, 44
  - general, 44
  - proposal by shareholders, 44
  - shareholder approval, 44
- caisses populaires, 7, 9**
- Canada Deposit Insurance Corporation, *see also* restructuring of institutions (compulsory)**
- accounts, maintenance of, 653
  - agent of Crown, 651
  - auditor of, 653
  - borrowing powers, 659
  - compliance/restraining orders, 655
  - constitution of, 651
  - deposit insurance, 323, 658–664, 666–672
  - directors, 651, 652, 654
  - establishment of, 650
  - information obtained by, 653, 672
  - insolvency of member, effect of, 668
  - inspection of member institutions, 665, 666
  - legislation binding Crown, 651
  - loans, 653, 672
  - objects of, 650, 657, 658
  - offences under Act, 654, 655
  - personnel generally, 653, 654
  - powers of, 658
  - winding-up of, 656
- Canadian Bankers' Association**
- chief executive officer, 632
  - executive council, 631, 632
  - incorporation of, 629
  - membership, 630
  - objects and powers of, 629
  - organization of, 631
- “Canadian financial institution”, 24**
- Canadian Payments Association, *see also* clearing arrangements; directors**
- annual meeting, 621
  - auditors of, 621
  - budgets of, 621
  - clearing arrangements, 619, 649
  - directors, 611–621, 623, 625, 626
  - electronic meetings, 624
  - incorporation, 610
  - legislation, 627, 628



## INDEX

---

- objects of, 610
- offences, 628
- winding-up of, 625
- capital adequacy**, 578
- capitalization**, *see* **conversion privileges; insider trading; prospectus; security certificates; shares; subordinated indebtedness**
- central securities register**, 65, 124, 182, 245, 378
- charges**, *see also* **interest**
  - customer complaint procedures, 565
  - designated complaints body, 566
  - disclosure of, 556, 557
  - increases in, 557
  - keeping of accounts, for, 412
  - minimum deposit or balance, 558
  - prohibited charges, 563
  - retail deposit accounts, 558
  - right to make, 555
- “chartered banks”**, 4
- chattel mortgages**, 503, 769
- cheques**, *see also* **“banker’s duties”**; **collection of cheques and bills**
  - absence of authority, bank acting in, 911–918
  - bank as holder in due course, 858–864
  - bank draft, 848
  - “cash or to order”, 849
  - cashing, 564
  - certification of, 707, 868–878
  - countermand, 551, 712–714, 872, 881, 900
  - crossed, 882
  - customer’s death, effect of, 713
  - defined, 844, 845
  - dishonoured, 705, 711–714
  - drawee bank, obligations as to, 852–857
  - duty of customer, 697, 699
  - forged, 699, 732, 884–899
  - infants, 847
  - insufficient funds, 708
  - liability of bank, 698, 906–910
  - mistake, recovery where, 900–905
  - nature of, 845, 846, 851
  - outbreak of war, effect of, 715
  - overdrafts, 697, 711, 803, 804
  - “paid”, 709
  - “payable at par”, 709
  - postdated, 865–867
  - presentment for payment, 697, 700–704, 879, 880
  - stop payment order, 551, 712–714, 872, 881, 900
  - when property passes in, 700
- chief executive officer**, *see* **officers**
- clearing arrangements**, 619, 629, 649, 676, *see also* **Canadian Payments Association**
- collateral security**, *see also* **business and powers of banks; hydrocarbons and minerals; security; special security; warehouse receipts and bills of lading**
  - assignments, 458
  - banker’s lien against, 765, 766, 769, 770
  - bills as, 445
  - bonds, 458
  - chattel mortgage, 769
  - exchange of, 462
  - hypothecated securities, 453, 454, 477

## BANKING

---

- insurance, as, 457
  - meaning of, 444
  - mortgages as, 446, 465, 466
  - negligence of bank concerning, 462
  - notes as, 447–452, 454–456, 460, 461
  - powers of bank over, 453
  - prohibited types, 453–467
  - trust property, 459
  - warehouse receipts as, 472
- collection of cheques and bills**, *see also* **banker's duties; cheques**
- agency relationship created, 717, 718, 723, 727
  - banker's duties, 717–719, 726, 850
  - delayed, where, 720
  - dishonour, notice of, 724, 726
  - holder in due course, bank as, 725, 858–864
  - liability of bank, 720, 725, 727, 729, 730
  - negligence in, 725, 727, 730
  - payment of notes, 721, 722, 728
  - presentation through clearing house, 719
  - presentment by post, 718
  - time for, 721, 723
- commencement of business**, *see* **business and powers of banks**
- compliance orders**, 389
- compulsory acquisitions**
- “affiliate”, 160
  - bank holding companies, 167
  - definitions, 160, 161
  - dissenting offerees, 161–166
  - “exempt offer”, 160
  - general, 160
  - “share”, 160
  - “take-over bid”, 160
- conduct review committee**, 42, 47, 50, 607
- confidential information**, *see* **business and powers of banks; Canada Deposit Insurance Corporation; customer-banker relationship; returns; Superintendent of Financial Institutions**
- conflict of interest**, *see* **directors; officers; trust indentures**
- constitutional law**
- federal powers, 8, 9, 10
  - provincial powers, 3, 9, 792
- constructive notice, abolition of doctrine**, 18
- contingencies**, *see* **appropriation**
- continuation of federal company as bank**, 11, 12, 23, 224
- contracts**, *see also* **self-dealing**
- breaching legislation, 391
  - execution of, 183
- contributories**, 279, 281, 282, 287, 289
- “control”**, 292
- conversion**, 139, 499
- conversion privileges**, 111
- co-operatives**, 7
- corporate records**, *see* **records**
- corporate seal**, 183
- cost of borrowing**, *see also* **charges; interest**
- advertising of, 560
  - calculation of, 560, 562
  - credit cards, 561
  - disclosure of required, 559, 560
  - meaning of, 559
  - personal loans, 562

## INDEX

---

- credit cards**, 405, 561
- credit references**, *see* **fiduciary duties**
- credit unions**, 7, 9, 869
- creditors**
- actions against shareholders, 105
  - examination of records by, 88
- criminal law**, *see* **evidence; offences**
- customer-banker relationship**, *see also* **appropriation; “banker’s duties”; deposits; fiduciary duties; set-off; trust accounts**
- combining accounts, 751, 753
  - “customer”, 689, 693, 695
  - death of customer, effect of, 713, 755, 791
  - debtor-creditor, as, 690, 692
  - duration, 858
  - implied terms, by custom and usage, 861
  - mental disorder affecting, 714
  - nature of, 689–696, 761, 822, 859
  - occasional transactions, effect of, 858
  - operation of law, by, 773
  - outbreak of war affecting, 715
  - overdraft, where, 803, 804
  - presumptions, in, 745
  - secrecy, duty of, 567, 737–744
  - termination, by liquidation, 761
  - termination generally, 771, 772
- customer complaints**, *see* **charges**
- “dealer”**, 485
- death of depositor**, 553, 713, 755, 791, 796, 815, 820
- definitions**, *see also* **specific definitions**
- aids to interpretation, 3
  - power to make, 8
- deposit receipts**
- accounting, action for, 802
  - defined, 797
  - liability of bank, 797
  - nature of, 797, 798
  - negotiable instrument, as, 797, 799
  - passbook, as, 798
  - transfer of, 800, 801
- deposits**, *see also* **appropriation; Canada Deposit Insurance Corporation; charges; customer-banker relationship; joint accounts; statements of account; trusts and trust accounts**
- acceptance, 547, 789
  - bank as stakeholder, 793
  - closing account, 711
  - consolidation of accounts, 550
  - death of depositor, 553, 755, 790, 796
  - defined, 791
  - disputes over, 793
  - draft, to meet, 795
  - duty of bank, 711
  - foreign exchange, charges for, 794
  - garnishment of, 838–840
  - indefinite contingency, payable on, 792
  - interest, payment of, 807
  - limitation periods affecting, 805, 806
  - minors, by, 789
  - opening of accounts, 555, 556, 789
  - overdrafts, 437, 448, 569, 570, 711, 803, 804, 806
  - “personal deposit account”, 556
  - provincial regulation, validity of, 9, 792

## BANKING

---

- repayment of, 691, 711, 792
  - reserves, relationship to, 790
  - right to accept, 412, 417, 789
  - seizure of, 837
  - unclaimed deposits, 575, 576, 647, 841–844
  - what constituting, 758
- directors (duties and powers)**
- annual statement errors, 100
  - audit committee, 47, 49
  - committees, appointment of, 48
  - compliance with legislation, 35, 46
  - conduct review committee, 47, 50
  - conflicts of interest, 47, 55–57
  - delegation, 48, 51, 52
  - information, disclosure of, 47
  - investments, 580
  - management and supervision, 50
  - ownership of bank, 313, 314
  - policies, standards and procedures, 47
  - shareholders' meetings, 47
  - standard of care, 46, 53
  - suspension of, 221, 249, 265, 676
- directors (general), see also Bank of Canada; Canada Deposit Insurance Corporation; Canadian Payments Association; officers and offices**
- “affiliation”, restrictions on, 31
  - by-laws, 44, 45
  - conflicts of interest, 47, 55–57
  - elections and voting, 33, 34, 35, 38, 39, 80, 81, 218
  - indemnification against liability, 62, 64
  - insurance of, 63
  - liability, 46, 58–64, 228, 608
  - meetings of, 35, 39–43, 88
  - minutes and resolutions, 88
  - naming in letters patent, 15
  - number of, 29, 32, 34, 35
  - officers, appointment as, 51
  - qualifications and restrictions on, generally, 30
  - removal and resignation, 36–38, 219
  - remuneration, 45
  - residence of, 29
  - resolutions of, 41, 42, 88
  - shareholding not required, 30
  - terms of, 32, 34
  - transactions with bank, 604
  - validity of acts, 54
  - vesting of powers in, 28
- discounting, see loans**
- “distributing bank”, 144**
- “distribution”, 153**
- dividends, see shares**
- eligible financial institution, see ownership of banks**
- “entity”, 4, 72, 170, 389, 579**
- estoppel, 732, 887, 893, 894, 895, 896, 897, 899, 903**
- evidence**
- affidavits re bank records, 805
  - bank certificates, 377
  - copies of records, 180, 805
  - inspection of records, 9
  - privilege re auditor's reports, 102
  - securities register entries, 378
  - signatures, validity of, 130, 377
  - statements of account as, 731
  - statutory instruments, 381
- farming, see agriculture**

## INDEX

---

**fiduciary duties, see also customer-banker relationship; negligence of bank**

- commercial relationships, 777, 779, 783
- conflict of interest, 779, 784
- credit references, 780
- financial/investment advice, 779
- general, 777, 779, 785
- independent advice, 779, 781, 923
- inequality of bargaining relationship, 779, 781
- insurance, failure to obtain, 788
- negligent misrepresentation, 779, 781, 788
- promotion of investments, 778
- statements, errors in, 785
- trust funds, dealing with, 786, 787
- undue influence, 779, 781, 923
- wife and husband, financial issues between, 782

**“financial institution”, 7, 24, 643, see also Superintendent of Financial Institutions**

**financial statements, see also records; returns; statements of account**

- annual statement, 186, 187, 639
- approval by directors, 187
- auditor’s report, 186
- delivery to shareholders, 187
- delivery to Superintendent, 187
- financial year, 184, 185
- publication, 187
- subsidiaries’ statements, 188

**fishing, 481, 484**

**floating charges, see special security**

**foreign banks, see also ownership of banks**

- “acting in concert”, 321
- approvals, 339
- automated banking machines, use of, 318
- branches, 337, 338
- Canadian entity, 321, 329
- commencement of business by, 26
- definition, 4, 294, 317
- exemption for, 327
- foreign bank subsidiaries, 24, 40, 317, 321
- head office in Canada, 321
- incorporation, 10, 11, 19
- inspection by superintendent, 320
- investment in Canadian entities, 329–335
- legislation, applicability of, 336
- major shareholder, 321
- non-bank affiliates, 321, 322, 323, 326
- non-WTO member banks, 425
- representative offices, 318, 320
- restrictions on generally, 318, 321, 324–326, 328, 322

**“foreign financial institution”, 24, see also ownership of banks**

**forestry, 481, 489, 493, 494, 506**

**fraudulent preferences, 286, 387**

**fundamental changes, see also by-laws**

- amalgamation, 110, 230–236
- amendments to constitution, 225–228
- general, 224
- transfer of business, 238–240

**gifts, see joint accounts**

**goods, wares and merchandise.**

- bar to dealing in, 541
- bona fide settlements, 543
- breach of prohibition, 546
- general, 481, 489, 497
- indirect dealings, 545
- isolated transactions, 542
- rights and powers of bank, 529
- sale and re-purchase of, 501, 546
- sample transactions, 544
- scope of security, 499
- “trade”, 542

**guaranteed investment certificates, 821**

**guarantees**

- actions on, 941, 948–951
- construction, 926, 927
- creation, 919, 924, 925
- discharge/release of guarantor, 928–939
- rights of guarantor, 496, 941–946
- vitiation, 920–925

**guarantors**

- bank as, 418
- subrogation rights, 528

**head office, 175**

**hydrocarbons and minerals, 468–471, *see also collateral security; loans; security; special security***

**incorporation**

- application, by, 10
- approval by minister, 291
- changes in incorporating instrument, 19
- constructive notice, abolition of doctrine, 18

- continuation of federal company as bank, 11, 12, 23
- continuation under Trust and Loan Companies Act, 13
- foreign banks, 10, 11, 20
- indoor management rule, 18
- insurance companies, 11
- legislative authority over, 10
- letters patent, by, 10–15, 19, 291
- minister’s responsibilities, 14, 291
- name of bank, 16
- notice of intention, 14
- objections to, 14
- status of company as natural person, 17
- trust companies, 7, 9, 10

**incorporator, 267**

**indemnification, *see* directors**

**indoor management rule, 18**

**information circular, *see* prospectus**

**information services, 405**

**injunctions, 530**

**insider trading**

- deeming provisions, 145
- definitions, 144
- “insider”, 144
- insider reporting, 145, 146
- penalties for, 148–152
- prohibition against, 144, 147

**insolvency, *see* liquidation and dissolution; special security**

**insurance, 420, 457, 473, 500, 503, *see also* Canada Deposit Insurance Corporation; directors**

**insurance companies**

- bank acting as, 420
- incorporation, 11

- intellectual property**, 489
- interest**, *see also* **charges; cost of borrowing; deposits**
- compound interest, 569
  - criminal interest rates, 568
  - disclosure of rate and calculation, 555, 562
  - discounts, 569
  - government deposits, 563
  - interest-fixing agreements, 571, 572
  - overdrafts, on, 569, 570
  - reservation in advance, 569
  - right to charge, 412, 413
- investment by banks**, *see also* **self-dealing**
- aggregate limits, 592
  - control of body corporate, 582–585
  - default of borrower, 587
  - equities, 591, 592
  - general restrictions, 579
  - “loan”, 580
  - permitted entity, 585
  - policies concerning, 580
  - portfolio limits, 589
  - real property, 590, 592
  - realization of security, 588
  - regulations concerning “substantial investment”, 579–582, 594
  - same-party transactions, 595
  - subsidiaries and equity investments, 581–588
  - “substantial investment”, 579, 581–584, 586–588
  - superintendent’s power over, 593, 595
  - temporary investments, 586, 594
- Investment Canada Act**, 336
- joint accounts**, *see also* **deposits; statements of account; trusts and trust accounts**
- close relatives, 817
  - contracts, ratification of, 818
  - death of co-depositor, 815, 820
  - deposits constituting, 808, 809
  - garnishment of, 821
  - gifts, 819
  - nature and effect of, 810
  - parent and child, 816, 817
  - presumption of advancement created by, 814, 816
  - presumptions created by deposits to, 811, 812, 814–817
  - resulting trust, notion of, 812
  - spouses, by, 813, 814, 817
  - unmarried couples, 815, 817
- legislation**, *see also* **administration; offences**
- application of, 4–6, 316, 336
  - Canadian Payments Association, 627
  - definitions in, 3
  - delegation of powers, 385
  - evidence legislation, 8
  - general, 1
  - historical development, 2
  - paramountcy, 503, 531, 792
  - regulations, 384, 405, 406, 418–420, 491, 567, 580, 676
  - statutory interpretation, 3
- letters of comfort**, 438
- letters of credit**
- characterization of documents as, 953
  - honouring by issuer, 954
  - nature of, 952
- liens**, *see* **banker’s lien**

**liquidation and dissolution, *see also* restructuring of institutions (compulsory)**

**liquidation and dissolution (Bank Act, court-supervised)**

- accounts, approval of, 270
- actions, effect on, 273
- applicability of, 251
- application for, 263
- bank holding company, 277
- claims, payment of, 267, 270
- commencement of, 263
- costs, payment of, 270
- court's powers, 264
- effect of, 265
- examination of property holders, 269
- information, requests by superintendent, 276
- liquidators, 265–270, 276
- liquidators, liability of, 268
- orders for, 264, 265
- payments to creditors and others, 267
- priorities, 275
- property exchanges and distribution, 271, 274
- records and documents, 272

**liquidation and dissolution (claims in)**

- appeals concerning, 278
- contributories, 279, 281, 282, 287, 289
- creditors, 285, 286, 668
- deposits, recovery of, 280, 283
- fraudulent preferences, 286
- pension funds, 284
- referees, 278, 284
- set-off, 282
- winding-up, 251, 253

**liquidation and dissolution (general)**

- Bank Act (simple), 251, 260, 261, 260–262
- Bank of Canada's liability, 647
- calls on shares, 287–289
- Canadian Payments Association, 625, 626
- methods of, general, 247

**liquidation and dissolution (superintendent's takeover)**

- conditions justifying, 220, 248
- costs of, 250
- effect of, 220, 221, 249
- general, 220
- powers of superintendent, 220, 221, 248, 249
- resumption of control by bank, 221, 222, 250
- winding-up requests, 222, 223, 250, 252

**liquidation and dissolution (Winding-up and Restructuring Act)**

- actions during, 256
- applicability of, 251
- claims in, 253
- confidentiality, 256
- duty/powers of court, 253, 256, 259
- inspection of books, 259
- interim distributions, 255
- liquidators, 251, 253, 254
- meeting of shareholders/creditors, 251
- order for, 251, 252
- powers of liquidator, 255
- priorities, 257
- removal of liquidator, 254
- sale of assets, 255
- secured creditors, 258



## INDEX

---

- set-off, 257
- superintendent's request, 222, 223, 250, 252
- liquidators, see liquidation and dissolution**
- loan companies, 10**
- loans, see also business and powers of banks; collateral security; cost of borrowing; hydrocarbons and minerals; interest; security; self-dealing; special security; warehouse receipts and bills of lading**
  - advancing of, 436
  - appointment of receiver, notice of, 443
  - contravening statute, enforceability, 441
  - deemed loans, 574
  - definition of, 580
  - demand for payment, 438, 565
  - discounting, 430–435
  - duties of bank, 433, 436, 438
  - failure to provide, 436
  - general, 427, 565
  - letters of comfort, 438
  - line of credit, 438, 447
  - overdrafts, 437, 448, 569, 570, 711, 803, 804, 806
  - real property, 428, 429
  - reasonable notice, 438
  - recovery after misrepresentation, 439
  - signatures, reliance on, 440
  - tied selling, 573
  - written contract, 442
- lottery tickets, 405**
- lumber, see forestry**
- meetings, see directors; shareholders**
- minerals, see hydrocarbons and minerals; special security**
- misrepresentations, 439**
- mortgages, see also loans; collateral security; security; special security**
  - banker's liens and, 768
  - collateral security, as, 446, 465, 466
  - special security and, 480, 492, 523, 524
  - validity, 418
- name of bank, 16, 183**
- negligence of bank, see also fiduciary duties**
  - collateral securities, involving, 462
  - collection of cheques and bills, 725, 727, 730
  - negligent misrepresentation, 697, 779, 781
  - standard of care, 552
- notice of intention to give security, see special security**
- notice to bank, 551**
- offences**
  - appeals, 392
  - Bank of Canada, concerning, 638, 639
  - bills of lading, 387
  - Canada Deposit Insurance Corporation, concerning, 654, 655
  - Competition Act, 396
  - compliance orders, 389
  - Criminal Code, 394, 568
  - Extradition Act, 395
  - fines, 393
  - fraudulent preferences, 387
  - general, 386, 387
  - gratuities, acceptance of, 204

## BANKING

---

- insider trading, 144, 147
  - interest rates, 568, 571, 572
  - money laundering/proceeds of crime, 397
  - parties to, 389
  - penalties, 388, 393
  - restraining orders, 389
  - special security, 387, 539
  - summary conviction, 390
  - usury, 568
  - warehouse receipts, 387
  - words, unauthorized use of, 7, 8
- officers and offices, see also directors**
- appointment of, 51, 218
  - chief executive officer, 51
  - conflicts of interest, 55, 57
  - definition, 144
  - designation of offices, 51
  - directors as, 51
  - disqualification by superintendent, 218
  - duties and powers, 52, 221, 249, 265, 676
  - indemnification against liability, 62–64
  - insurance of, 63
  - liability of, 228, 314
  - remuneration of, 51
  - standard of care, 46, 53
  - transactions with bank, 604
  - validity of acts, 54
- oil and gas, see hydrocarbons and minerals**
- organizational meeting, 21, 22**
- overdrafts, liability of bank for, 577**
- overdrafts, 437, 448, 569, 570, 711, 803, 804, 806**
- ownership of banks, see also foreign banks; shareholders; shares**
- acquisition of shares, 303
  - constraints on ownership, 296–309
  - control, meaning of, 292
  - directors’ duties concerning, 313, 314
  - “eligible Canadian financial institution”, 292, 293
  - “eligible financial institution”, ceasing to be, 293
  - “eligible foreign institution”, 292
  - “foreign institution”, 292
  - general, 290
  - legislation, application of, 315
  - major shareholder, 292, 294, 298, 299
  - ministerial agreements, 295
  - ministerial approval, 296–309
  - ministerial directives, 312
  - “ownership”, 291
  - “resident”, 291
  - “significant interest”, 290–300, 291, 297, 300
  - “substantial investment”, 293
  - widely held bank, 295
  - “widely held institution”, 292
- penalties, see offences**
- pension funds, 284**
- pledges, 435, 475, 544**
- priorities, see special security**
- privilege, 102**
- “product of the forest”, 487**
- “products of agriculture”, 486**
- promissory notes, see collateral security**

## INDEX

---

- prospectus**
- bank holding company, 155
  - form and content, 323
  - receipt from superintendent, 154
  - requirement for, 153
- proxies**, 81–87
- publications**, *see* **administration**
- quarries**, 481, 488, 507
- ranching**, *see* **agriculture**
- real property**, *see* **business and powers of banks; investment by banks; loans**
- receivers**, *see* **business and powers of banks; restructuring of institutions (compulsory)**
- records**, *see also* **financial statements; returns**
- authorized foreign banks, 181
  - central securities register, 65, 124, 182
  - corporate seal, 183
  - format of, 178
  - general, 176
  - head office, 175
  - inspection of, 9, 88, 177
  - list of shareholders, 89
  - location of, 177
  - loss and destruction of, 178
  - maintenance and processing of information, 179
  - name on, 183
  - production of, 272
  - retention of, 180
  - unauthorized access to, 178
- registers**, *see* **records**
- regulations**, *see* **legislation**
- remedial actions**, *see* **actions (statutory)**
- “repayment”**, 691
- reserves**, 647, 790
- residence of banks**, 550
- “resident Canadians”**, 29
- residential property**, *see* **loans**
- restitution**, 105
- restructuring of institutions (compulsory)**, *see also* **liquidation and dissolution**
- general power concerning, 673
  - order vesting shares and subordinated debt/receivership, 674–678, 680
  - provincial institutions, 686
  - representations by bank, 673
  - superintendent’s report, 673
  - winding-up of institution, 679–685
- returns**, *see also* **financial statements; records**
- by-laws, delivery to superintendent, 191
  - confidentiality of, 194, 195
  - demands by superintendent, 192
  - examination of, 193
  - executive compensation, disclosure of, 195
  - general requirements, 189, 195
  - name of auditor, 190
  - names of directors, 190
  - superintendent’s duties, 193, 194
- “Schedule I banks”**, 4, 5, 230, *see also* **ownership of banks**
- “Schedule II banks”**, 4, 5, 235, 293, 304–306, *see also* **ownership of banks**
- “Schedule III banks”**, 6
- scope of title**, 1
- scrip certificates**, 123
- seal, corporate**, 183

- secrecy**, *see* **customer-banker relationship**
- section 95 security**, *see* **special security**
- section 192 security**, *see* **special security**
- section 570 security**, *see* **special security**
- “securities broker”**, 133, 134, 138
- securities registers**, *see* **central securities register**
- “securities underwriter”**, 144, 315
- security**, *see also* **business and powers of banks; collateral security; hydrocarbons and minerals; loans; special security; warehouse receipts and bills of lading**
- definition, 144
  - insurance by borrower, 420
  - legislation governing, validity of, 9
  - on bank property, 422
  - sale of, 408
- security certificates**, *see also* **conversion privileges; insider trading; prospectus; shares; subordinated indebtedness**
- “bearer form”, 119, 136
  - “bearer” of, 119
  - conversion, tort of, 139
  - death of owner of, 127
  - definition, 119
  - delivery of, 129, 134, 137
  - endorsement, 134–136
  - exercise of powers under, 126
  - form and content, 121
  - fractional shares, 123
  - “holder” of, 119
  - issue of, 120
  - issuer of, 120
  - multiple holders, 120
  - negotiable instruments, as, 120
  - “order form”, 119
  - production of cancelled certificates, 124
  - purchase and sale, 131–134, 136–143
  - “registered form”, 119, 134
  - registered owners, 126, 127
  - right to, 119
  - scrip certificates, 123
  - securities registers, 124, 125
  - signatures on, 121, 130, 132, 134
  - statement of rights and privileges, 122
  - transfer of, 120
  - validity and validation, 121, 128, 130, 131, 132
- seizure and sale**, *see* **deposits; special security**
- self-dealing**
- disclosure of interests, 608
  - permitted related-party transactions, 596, 601–607
  - prohibited related-party transactions, 596–600, 608
  - remedial actions, 609
  - review of practices, 607
- set-off**, 257, 282, 676, 745–747, 751, 752, 757, 758, 759, 761, 827, 828, *see also* **appropriation**
- share exchanges**, 11
- shareholders (general)**, *see also* **audit committee; auditors**
- access to records, 88, 89
  - acquisition of shares, 104
  - definition, 119, 267
  - liability of, 105
  - list of, 67, 89

## INDEX

---

- pre-emptive rights, 104
- voting by, 67, 72, 76–81, 85, 226, 227
- shareholders (meetings)**
  - adjournment of, 68
  - court orders concerning, 79
  - first annual meeting, 65
  - general, 65
  - list of shareholders, 67, 89
  - notice of, 65, 66, 70, 94
  - proxies, 76, 77, 81–87
  - quorum, 71
  - record date, fixing, 65
  - requisition by shareholders, 75
  - resolution in lieu of, 74
  - shareholder proposals, 76, 77, 78
  - single shareholder meetings, 73
  - special business, 69
  - special meetings, 65
  - voting, 67, 72, 76, 81–87
  - waiver of notice, 70
- shares, see also conversion privileges; insider trading; ownership of banks; prospectus; security certificates; subordinated indebtedness**
  - bank holding own, 112–114
  - by-laws concerning, 108
  - calls on, 287–289
  - certificates, 122
  - classes of, 108
  - common shares, 107
  - conversion privileges, 111
  - dividends, declaration of, 117
  - general, 106, 144, 160
  - investment in by bank, 591, 592
  - issue of, 109, 296
  - lien on, 770
  - registration of, 296
  - Schedule II banks, 304, 305
  - series of, 107
  - share exchanges, 11
  - stated capital account, 110, 116
  - stated capital, reduction in, 115
  - transfer of, 296, 310, 312, 313
  - value of, 106
  - voting shares, 107, 109, 311, 312
- shippers**, 485
- signatures**, 130, 377, 440
- “significant interest”**, 290–300, *see also ownership of banks*
- solicitation, see proxies**
- special security, see also business and powers of banks; collateral security; “goods, wares and merchandise”; hydrocarbons and minerals; loans; security; warehouse receipts and bills of lading**
  - agriculture, 481, 482, 485, 486, 493, 496, 499, 503, 504
  - appropriation of payments, 522–524
  - aquaculturists, 481, 483
  - assignments, 498, 500, 504
  - bankruptcy, effect of, 508, 511–514
  - chattel mortgage distinguished, 503
  - conditions governing taking of, 516, 517, 519–521
  - effect of giving, 490, 492
  - eligible recipients generally, 481, 485
  - enforcement of, 480
  - fishing, 481, 484
  - floating charges and, 494
  - forestry, 481, 489, 493, 494, 506
  - general, 480

## BANKING

---

- goods subject to conditional sale, on, 493
  - gravel, 507
  - invalidity, effect of, 502
  - legislation, paramountcy of, 480, 503
  - minerals and mining products, 481, 488, 504
  - notice of intention to give, 491, 516
  - person giving, 490
  - possession and sale of, 525–540
  - priorities, 492–494, 499, 501, 503–506, 510–515, 518
  - registration of, 491
  - release of security, 495
  - renewal of, 516
  - residential property, 509
  - shippers, 485
  - trade or business, 541–546
  - validity of, 502, 503, 516, 519
  - wholesale purchasers, 485
- stated capital**, *see* **shares**
- statements of account**, *see also* **deposits; joint accounts; trusts and trust accounts**
- customer's duty as to, 732, 733
  - deposit receipt, 735, 736, 797–802
  - duty of bank to provide, 731, 732
  - errors in, 733, 734, 785
  - estoppel, 732
  - evidence against bank, as, 731
  - verification agreements, 732, 733
- status and powers of banks**, 17, *see also* **business and powers of banks**
- statutes**, *see* **legislation**
- statutory instruments**, 381
- statutory interpretation**, *see* **legislation**
- subordinated indebtedness**, 118, *see also* **conversion privileges; insider trading; prospectus; security certificates; shares; trust indentures**
- “subsidiary”**, 30, 317
- Superintendent of Financial Institutions**, *see also* **liquidation and dissolution**
- actions against, 208
  - appointment and term, 198
  - assessment information, 206
  - confidential information, 205
  - deputy superintendents, 201, 204
  - due diligence defence, 211
  - duties generally, 197, 199
  - expenses of office, 202
  - general, 196, 198
  - information received by, 194, 205
  - inspections by, 642, 665
  - objects of, 197
  - offences, 210
  - provinces, entry into agreements with, 200
  - regulations designating and classifying violations, 209
  - removal of directors or senior officers from office, 219
  - report to Parliament, 207
  - supervisory committee, 203, 204
  - supervisory duties and powers, 197, 199, 214–223, 673
  - violations, proceedings in respect of, 210–213
- supervision**, *see* **Superintendent of Financial Institutions**
- take-overs**, *see* **compulsory acquisition**

## INDEX

---

### **taxation**

- arm's length, 110
- municipal, 473, 551, 688
- priority of claims, 505, 515
- provincial, 9, 473, 687
- taxable property, 688

### **tied selling, 573**

### **timber, *see* forestry**

### **“total assets”, 304**

### **trade or business, *see* special security**

### **transmission of bank debt, 553**

### **trust companies, 7, 9, 10**

### **trust indentures, *see also* subordinated indebtedness**

- conflict of interest, 169
- default, 172
- definition, 168
- event of default, 172
- evidence of compliance, 171, 172
- issuers, 170–172
- subordinated indebtedness holders, 170
- trustees, 168, 169, 173

### **trusts and trust accounts**

- appropriation concerning, 756, 827
- bank, duty on, 548, 786, 824
- breach of trust, 826
- commingling of funds in, 836
- constructive trust, 822–824
- deposits concerning, 548
- discounting of notes, 829
- garnishment of, 839, 840
- “kiting”, 831
- liability of bank, 825, 826, 832

- liability of customer, 834
- misapplication of, 832
- notice of, 824, 825, 827, 829
- principal and agent, 830
- set-off, 756, 827, 828
- tracing, 835
- trust property as security, 459, 499

### **unanimous shareholders' agreements, 28**

### **unclaimed deposits, 575, 576, 647**

### **undue influence, 779, 781, 923**

### **valuation of assets, 578**

### **verification agreements, 732, 733**

### **warehouse receipts and bills of lading**

- collateral security, as, 472
- commingling of secured goods, 476
- conditions governing taking of, 516
- definitions, 471
- general, 411, 471
- hypothecation of, 477
- insurance of goods, 473
- operation of, 474
- persons entitled to give, 472
- pledges, 475
- priorities, 510
- sale of secured goods, 476
- vesting in bank, 473, 474, 478, 479

### **wholesale purchasers, 485**

### **winding-up, *see* liquidation and dissolution**

## Index to Bankruptcy

(All references are to paragraph numbers.)

### acts of bankruptcy

- act of bankruptcy occurring within six months, 422–427
  - assignment of property to trustee for benefit of creditors, 440–442
  - ceasing to meet liabilities generally, 464–472
  - execution against debtor remaining unsatisfied, 459, 460
  - fraudulent conveyance, 443–454
    - intent to defeat, hinder, delay or defraud creditors/others, 447–454
  - fraudulent preference, 455, 456
  - intent to defraud, defeat or delay creditors, 457, 458
    - disposal of property, 458
    - leaving jurisdiction, 457
  - notice to creditors, 461–463
    - inability to pay debts, 461, 462
    - suspension of payment of debts, 463
  - particular acts of bankruptcy, 428–439
- ### application for bankruptcy order
- amendment of application, 551–555
    - adding party, 555
    - formal defect, 551–554
  - annulment of bankruptcy, 629–640
  - authorized assignment subsequent to filing, 556, 557
  - bankruptcy order, 575–581
  - defences to application, 567–574
    - estate of deceased bankrupt, 550
    - examinations, 585–591
    - formalities of application, 495–516
      - absence of registrar’s signature, 505
      - affidavit of verification, 510–516
      - amendments to application, 508
      - appointment of trustee, 509
      - clearly written without alterations after filing, 496
      - death of debtor, 502
      - debtor denying truth of facts, 499
      - inference that execution authorized, 497
      - proof of facts alleged and service of application, 495
      - secured creditor must state willingness to give of security or provide estimate of value of security, 498
    - security for costs by applicant, 500
    - service on debtor, 506
    - strict compliance with statute, 503
    - waiver of objections to service, 507
    - withdrawal requiring leave of court, 501
  - grounds, 517–548
    - act of bankruptcy, 517–525
    - debt owing to applicant creditor, 526–548
    - judgment, 534–543



## BANKRUPTCY AND INSOLVENCY

---

- application for bankruptcy order (*cont'd*)
  - liquidated debt, 526–533
  - seizure order and execution, 544
  - spousal and child support, 545–548
- hearing of application, 561–566
- interim receiver, 592–617
- place for filing, 489–494
- stay of application, 558–560
- stay of bankruptcy application, 618–628
- who may apply, 473–488

### assignments

- annulling assignment, 712–714
- authorized assignment for general benefit of creditors, 641–662
  - steps in filing, 643–659
  - ordinary administration, 643–651
  - place of filing, 658, 659
  - summary administration, 652–656
  - supporting affidavit, 657
- validity of other assignments, 711
- vesting of property in trustee, 663–710
  - exempt property, 670–694
  - jointly owned property, 685–687
  - property exempt from execution or seizure, 670–681
  - real estate and homesteads, 688–691
  - tools/chattels used in business/profession, 692, 693

- value in excess of limit allowed by provincial law, 682–684
- wages earned after bankruptcy, 694
- leaseholders, 664–667
- property divisible among creditors, 668, 669
- right of unpaid suppliers to repossess goods, 695–710
- rights of unpaid seller under Quebec *Civil Code*, 708–710

### bankruptcy offences

- false representation, 1803
- “obtains any credit”, 1802
- offences, 1800
- onus on accused to negative intent to defraud, 180
- prosecutions, 1805–1810
- secured creditor, proof of claim and removal of security, 1804

### constitutional competence

- federal jurisdiction, 4–8
- provincial jurisdiction, 9–12

### contracts with debtor

- delivery by seller of goods, 30
- eligible financial contracts, 31
- notice of adoption, 29
- vests in trustee, 28

### corporations

- allotment of shares, 95–102
- cancellation, 99–101
- repudiation of subscription, 102
- waiver of notice, 95–98
- banks and trust companies, 72–75
- filing of executor trust company with bank, 72

## INDEX

---

- corporations (*cont'd*)
  - • motion/application by incorporated bank, 73
  - • relationship between bank and customer, 74, 75
  - building societies having share capital, 76
  - contributories, 103–108
    - • liability, 103, 104
    - • nature of disputes, 107, 108
    - • personal representatives, 106
    - • procedures for asserting claim against, 105
  - corporations not subject to BIA, 71
  - corporations subject to BIA, 67–70
  - directors and officers, 81–89
    - • claims against director, 89
    - • duties on insolvency, 84–88
    - • property of company, 81–83
  - insurance companies, 77
  - railway companies, 78–80
  - rights of bondholders, 109
  - share capital, 90–94
    - • creditors' right to look to paid up capital, 90
    - • impairment of capital, 92–94
    - • liability of shareholders as contributors, 91
- costs**
  - costs preceding and in connection with assignment and application, 1792–1795
  - discretion, 1778–1782
  - personal liability of trustee, 1783–1791
  - security for costs, 1796–1799
- courts and procedures**
  - affidavits, 1218–1225
  - appeals, 1228–1244
    - • appeal from decision of registrar, 1238, 1239
    - • by trustee, 1240
    - • extending time, 1242
    - • leave to appeal to SCC, 1244
    - • notice, 1241
    - • security for costs, 1243
  - authorizing acts of trustee, 1165
  - bankruptcy and insolvency general rules, 1208
  - examination of bankrupt/others, 1209–1217
  - jurisdiction, 1148–1154
    - • courts vested with jurisdiction, 1156–1164
    - • exclusive, 1148–1153
    - • rights of provinces, 1154, 1155
  - leave to sue debtor, 1198–1202
  - power of court to relieve against formal defects and irregularities, 1166, 1167
  - power of court to review/rescind/vary orders, 1173–1179
  - registrar, 1226, 1227
  - review of trustee's decision, 1203–1205
  - stay of proceedings, 1180–1197
    - • secured creditors, 1196, 1197
    - • unsecured creditors, 1188–1195
- cross-border insolvencies**
  - attornment to jurisdiction, 1842
  - discretionary order by court, 1835–1841
  - dividends and property recovered by creditor in foreign proceeding, 1843
  - foreign main and non-main proceedings, 1827–1829
  - multiple proceedings, 1844

## BANKRUPTCY AND INSOLVENCY

---

cross-border insolvencies (*cont'd*)

- recognition of foreign proceeding, 1830–1844

### definitions

- bankrupt, 13
- corporation, 16
- individuals, 15
- insolvent person, 21–23
  - • aggregate value of property, 22
  - • insolvency, 23
- person, 14
- related persons, 17–20
  - • arm's length, 20
  - • entities, 17, 18
  - • persons, 17
  - • sale to person related to insolvent person, 19

### discharge of bankrupts

- conditional discharge, 1736–1754
- debtor bankrupt on previous occasion, 1719, 1720
- debts not released, 1726–1735
- general, 1698–1718
- rescission or variance, 1764–1770
- reviewing orders/appeals/annulling order of discharge, 1771–1777
- suspension, 1755–1763
- trustee's report, 1721–1725

### distribution and dividends

- acceptance of dividend as waiver of inconsistent claim, 1486
- distribution *pari passu*, 1479–1482
- final dividend sheet, 1495–1501

- notice to prove debt or be excluded from dividend, 1483–1485
- subrogation as to dividend rights, 1492–1494
- third party's claim against dividend, 1488–1491
- where payment of dividend refused, 1487

### duties of bankrupts

- assisting trustee, 1687–1696
  - • attending meetings of creditors, 1691
  - • disclosure and delivery of property, 1693–1696
  - • inventory of assets, 1692
- attendance before official receiver, 1679–1683
- counseling, 1697
- submission of statement of affairs, 1684–1686

infants, 44, 45

### inspectors

- appointment, 1271–1276
- employment of solicitor, 1291–1293
- powers and duties, 1277–1283
- relationship with trustee, 1284–1289
  - • authorizing trustee to bring action, 1289
  - • when permission of inspectors required, 1284–1288
- remuneration, 1290

locality of debtor, 24–27

### meetings of creditors

- appeal from ruling of chair, 1267–1270
- first meeting, 1245–1254

## INDEX

---

- meetings of creditors (*cont'd*)
  - irregularity of meeting, 1265, 1266
  - notice regarding subsequent meetings, 1255
  - voting, 1256–1264
    - proof of claim, 1256–1262
    - proxies, 1261–1264
- mentally incompetent persons**, 46
- official receivers**
  - actions against re: official report, 114
  - appeals, 113
  - appointment of, 110
  - bankruptcy districts, 110
  - cancellation of trustee's license, 111
  - duties and responsibilities, 115–123
    - appointment of trustee, 117–119
    - examination of bankrupt/others, 120–122
    - filing of assignment, 115, 116
    - investigation of bankrupt, 123
  - value of estate increasing above limit of summary administration proceedings, 112
- orderly payment of debts**, 1845–1864
- partnership**
  - assignment in bankruptcy of, 49
  - assignments, 54–60
    - assets, 54–57
    - authority of partner, 58
    - voluntary assignment, 59, 60
  - bankruptcy orders, 61–64
    - application, 61
    - assets of partnership, 62
    - surplus of estates, 63, 64
  - denial of partnership, 52
  - limited partnership, 47, 48
  - parties to proceedings, 65
  - partner as creditor, 53
  - profit-sharing agreements, 50
  - statement of partnership affairs, 66
  - syndicates, 51
- persons exempt from involuntary proceedings**
  - classes for which not available, 40
  - corporation engaged solely in farming, 41
  - personal representatives, 43
  - religious bodies, 42
- postponed claims**
  - creditor not at arm's length, 1673
  - director and officer claims for compensation, 1676
  - equitable subordination, 1677, 1678
  - equity claims, 1674
  - silent partners, 1675
- preferences and transfers at undervalue**
  - burden of proof, 1543, 1544
  - paulian action, 1551
  - preferences, 1510–1524
  - presumption and rebuttal, 1545–1548
  - protected transactions, 1525–1527
  - surety or guarantor for debt, 1549, 1550
  - transactions taking place within three and twelve months before bankruptcy, 1528–1541

## BANKRUPTCY AND INSOLVENCY

---

- preferences and transfers at undervalue (*cont'd*)
  - transfer at undervalue, 1505–1509
  - view of giving preferences, 1542
- preferential claims and expenses**
  - claims of Crown, 1639–1652
  - claims of municipality, 1653–1656
  - claims of public utility, 1657–1659
  - claims of wage earners for arrears of wages, 1559–1566
    - directors and officers, 1566
    - entitlement to preference, 1563–1565
  - costs and expenses of administration, 1613–1615
  - costs of first execution creditor, 1558
  - creditor's action in name of trustee, 1629–1637
  - landlord and tenant, 1567–1603
  - other legislation dealing with preferences, 1621–1628
    - provincial legislation, 1626–1628
    - Statute of Elizabeth, 1626
  - other preferential claims, 1616–1620
  - preference over attachments, garnishments, executions, 1552–1557
  - statutory, 1604–1612
  - summary application by trustee to set aside preferential transactions, 1638
- proof of claims**
  - claims based on foreign judgments, 1307
  - claims for spousal and child support, 1348–1350
  - claims provable, 1319–1324
    - debts payable in foreign currency, 1323, 1324
    - debts prior to date of bankruptcy, 1321, 1322
  - contingent claims, 1325–1328
  - contracts, measure of damages, 1333–1337
  - costs of action against debtor, 1338, 1339
  - default in agreement to pay debt after discharge, 1301
  - definition of action, 1295
  - disallowance of claims by trustee, 1372–1397
    - appeal from disallowance, 1382–1397
    - notice of disallowance, 1379–1381
  - filing proof of election, 1312–1318
  - form of proof of claim, 1308–1311
  - grantee opting for seizure of goods and not suit for money, 1298
  - interest on debt, 1355–1364
  - latitude in filling out proofs of claim, 1296
  - options for shares, 1299
  - production of proof of claim not a judicial procedure, 1306
  - proof against partners and firm, 1351
  - proof by sureties or guarantors, 1365–1371
  - proof in respect of distinct contracts, 1352–1354
  - rule of no double proof for same debt, 1301
  - tax claims, 1340–1347

## INDEX

---

- proof of claims (*cont'd*)
  - unliquidated claims, 1329–1332
  - unliquidated damages other than by contract, promise or breach of trust not provable in bankruptcy, 1297, 1304
- property of debtor and claim to specific property or goods**
  - claims by or against insolvent estate, 1009–1147
    - after-acquired property of bankrupt, 1123–1143
    - bills of sale, chattel mortgages, 1096–1099
    - bulk sales, 1112
    - concealed assets, 1046–1053
    - conditional sales, lien agreements, 1100–1106
    - fixtures, 1116–1119
    - funds in trustee's hands through payment under mistake, 1113–1115
    - goods on approval, 1024–1027
    - goods on consignment, 1013–1023
    - goodwill, 1120–1122
    - *in transitu*, 1107, 1108
    - money/other proceeds received under void/voidable transaction, 1111
    - non-compliance with statutory provisions, 1109
    - promoter's secret profits, 1043–1045
    - property disclaimer by trustee, 1080, 1081
    - property not passing, 1054, 1055
    - registration of bankruptcy order or assignment, 1144–1147
  - right to repossession of goods, 1056–1079
  - tracing trust property, 1028–1042
  - transfer or equitable agreement, 1082–1095
  - property of bankrupt, 881–1008
    - obtaining possession of property, 938–947
    - property exempt from seizure, 948–980
    - provision for forfeiture/divesting of title/giving of an advantage to creditor in event of bankruptcy, 1007, 1008
    - trust property, 981–1006
      - constructive trusts, 1000–1006
- proposals**
  - consumer proposal made by debtor, 720
  - consumer proposals, 851–880
    - availability, 853–859
    - court approval, 877, 878
    - creditors' meeting, 872–876
    - deemed acceptance, 869–871
    - deemed annulment, 879
    - proposal, 860–868
    - revival, 880
  - date of initial bankruptcy event, 719
  - definition and nature of, 715, 718
  - division 1 proposals, 726–850
    - annulment of proposal, 841–850
    - appointment of interim receiver, 769–774
    - approval of court, 816–828
    - classification of creditors, 792–799

## BANKRUPTCY AND INSOLVENCY

---

- proposals (*cont'd*)
  - debtor's obligations, 775–777
  - default under proposal, 838–840
  - directors and officers indemnification, 764, 765
  - effect of court approval, 829–837
  - effect of creditors refusing to accept, 812, 813
  - effect of facts under s. 173 on application for approval, 814, 815
  - effect of filing, 778–770
  - initial procedures, 733–757
    - exemptions to automatic stay, 734
    - filing does not stay application for bankruptcy order, 736
    - landlords prevented from exercising contractual termination rights, 735
    - notice of intention, 733, 739–757
    - source deductions, 738
  - interim financing, 762, 763
  - landlord rights, 732
  - lifting stay, 760, 761
  - meeting of creditors, 800–811
  - no acceleration of payment, 766–768
  - proposal to secured creditors, 728–731
  - stay of proceedings, 758, 759
  - terms of, 781–791
  - no vesting of property in trustee, 716
  - objective of continuation of business, 717
  - rules to allow debtors to negotiate payment arrangements, 721
  - secured creditor, 725
  - trustee as officer of court, 724
  - trustee to report material change, 722
- receivers, interim receivers and receiver-managers**
  - interim receivers, 385–390
  - receivers and secured creditors, 391–417
    - definition, 391–403
    - duty of receiver, 408
    - effect of appointment of receiver, 413–415
    - notice of intention, 404, 405
    - notice of receiver, 406
    - powers of court, 409–412
    - statement and reporting requirements, 407
    - statutory protection, 416, 417
- secured creditors**
  - amending valuation, 1457–1461
  - assignment of book debts, 1478
  - *Bank Act* security, 1462–1466
  - charging order made against fund in court, 1435
  - chattel mortgages registered under *Canada Shipping Act, 2001*, 1408
  - costs of realization, 1423
  - court appointed guardian, 1407
  - debenture holder, 1412
  - deference to provincial law for creation of secured claims, 1399
  - definition, 1398, 1409
  - definition of lien determined by provincial law, 1419
  - direction to trust company, 1404
  - exception to specified claims of employees/pensioners, 1400

## INDEX

---

- secured creditors (*cont'd*)
  - execution judgment creditors who have completed seizure before bankruptcy, 1409
  - garnishee who issues garnishee prior to obtaining judgment, 1427
  - guarantor who pays secured creditor's claim, 1405
  - holder of construction/mechanics lien, 1430
  - holder of registered chattel mortgage filed subsequent to an execution, 1411
  - holder of unperfected wage assignment, 1413
  - judgment creditor who has made use of execution procedure, 1426, 1428
  - landlord in distraining goods and chattels, 1422
  - landlord re claim for arrears of rent, 1433
  - municipal taxes, 1432
  - no distinguishing between classes of secured creditors, 1400
  - realization on security, 1433–1451
  - redeeming security, 1471–1477
  - registration of judgment, 1429
  - sales tax collected by bankrupt, 1403
  - security relinquished on payment of claim, 1415
  - solicitor's lien, 1424, 1425
  - statutory lien, 1431
  - trustee funds as security, 1467–1470
  - trustee's obligation to general body of creditors, 1401
  - valuing security, 1452–1456
- securities firm insolvencies**, 1811–1821
- set-off**, 1660–1672
- statute**, 2, 3
  - purpose, 3
- trustees**
  - application for directions, 313–323
    - any matter affecting administration of estate, 313
    - appeal, 323
    - claimant's status as secured creditor, 317
    - contesting validity of security, 316
    - effect of court order, 322
    - notice to Superintendent, 318
    - question of mixed fact and law/facts in dispute, 314
    - right of set-off by creditor, 315
    - superior court judge sitting in bankruptcy/registrar if unopposed, 319
    - trust funds, 320, 321
  - appointment and substitution of trustee, 141–157
    - bankruptcy order, 141, 142
    - code of ethics, 151
    - conservatory measures/summary disposition of goods, 143
    - determination of legality of appointment, 147
    - first meeting of creditors, 145
    - former trustee, 150, 152
    - meeting of creditors to affirm appointment/substitute trustee, 148
    - procedure to be followed by substituted trustee, 153–157
    - removal for cause, 149



## BANKRUPTCY AND INSOLVENCY

---

- trustees (*cont'd*)
  - creditors' meetings, 273–297
    - adjournment, 289
    - first meeting, 273–288
    - notice to creditors of meeting subsequent to first meeting, 290, 291
    - partnership bankruptcies, 293–295
    - removal of trustee/appointment of substitute, 292
  - discharge of trustee, 364–384
    - application by trustee for discharge, 364
    - effect of discharge, 365
    - incidental matters, 369
    - opposed discharge, 371, 372
    - procedure in obtaining discharge in ordinary administration, 373–378
    - re-appointment or new appointment, 370
    - refusal to grant discharge, 367, 368
    - retention of books and documents, 366
    - revoking discharge, 379–381
    - taking of proceedings without leave following, 382–384
  - duties and powers, 158–272
    - assumes rights accruing to creditors, 168
    - carrying on business of bankrupt, 260–262
    - compromise and settling of debts, 264, 265
    - conservatory measures and disposal of perishable goods, 211, 212
    - delegation, 174
    - disclaimer of property, 210
    - duties in respect of wages, 178–183
    - duty of fairness to bankrupt, 167
    - duty to obey court orders, 175–177
    - election to retain lease, 269–272
    - employing solicitor, 266–268
    - insuring assets, 231, 232
    - leasing of property of bankrupt, 263
    - legal proceedings, 213–230
      - civil, 213–229
      - criminal, 230
    - legal representative of bankrupt, 161
    - obtaining possession of property of bankrupt, 184–209
    - occupation rent, 165
    - officer of court, 160
    - protection of trustee, 298–312
      - application by creditor to confirm/reverse/modify decision of trustee, 300
      - carrying on business/employees of debtor, 302
      - final statement of receipts and disbursements, 306
      - liability where seizure/disposition of property not that of debtor or subject to security, 303
      - no action against superintendent/official and interim receivers/trustee for any action under BIA, 298
      - notice to file claim, 305
      - performance of duties under BIA, 301

## INDEX

---

- trustees (*cont'd*)
  - protection from environmental liability, 307–312
  - report on reasonableness of cash-flow statement, 304
  - threshold for leave to commence action against trustee/receiver, 299
  - realization of as much as possible from estate, 164
  - reasonable of business approach, 163
  - remuneration, 324–363
    - actions challenged by Superintendent, 346
    - approval of inspectors, 332
    - basic rule, 324
    - calculation of fees for time spent, 333
    - claim for hourly rate, 330
    - court order increasing/reducing, 339
    - delay in filing receipts, 336
    - disbursements, 359–363
    - estimates of fees, 326
    - failure to administer estate for benefit of creditors, 344
    - final statement of receipts and disbursements forwarded to Superintendent, 347
    - interim draws, 350
    - lack of receipts, 327
    - payment of remuneration, 348, 349
    - periodic withdrawal from trust account, 325
    - principles considered on taxation, 328
    - proposals, 352–356
    - special remuneration where business carried on/supervised, 337
    - successive trustees, 338, 357, 358
    - third party deposits and guarantees, 351
    - time expended in administration, 329
  - sale of assets, 233–259
    - all or any part of property including goodwill/book debts, 233
    - application by creditor to revoke/vary decision, 247
    - application/motion by aggrieved person to have decision confirmed/reversed/modified, 248
    - attack of improper sale, 245
    - authorization prior to first meeting of creditors, 243
    - consideration other than cash, 254
    - considerations by court, 234
    - court approval of sale to related person, 253
    - court overruling decision of inspectors, 244
    - defend integrity of process, 235
    - deference to business decision, 246
    - disposition of assets as quickly as possible, 239
    - duty to maximize yield of assets, 236
    - lease option agreement before inspectors appointed, 242

## BANKRUPTCY AND INSOLVENCY

---

### trustees (*cont'd*)

- money payable at future time, 255
- purchase of property by bankrupt by inspector, 250
- receiver's motion to approve quick flip transaction, 252
- sale by auction, 258, 259
- sale by tender, 240, 256, 257
- under BIA, 158
- licensing, 124–129
  - application, 126
  - duties of Superintendent of Bankruptcy, 124
  - multi-jurisdictional licenses, 129
  - notice of application for trustee to act where trustee in conflict of interest, 128
  - offence to exercise duties/powers after suspension/cancellation of license, 125
  - refusal where person found guilty of offence related to fiduciary duty, 127
- official name, 137–140
- trustee's bond, 130–136
  - bond of guaranty company, 131
  - enforcement where misappropriation, 134
  - fixing amount of bond, 132
  - general and specific, 130
  - inquiry of inspector re adequacy of bond, 136
  - reserve of funds to pay interim receiver, 135
  - responsibility of guarantee company under specific bond, 133

### **voluntary and involuntary proceedings**

- assignments, 34, 35
- bankruptcy orders, 36, 37
- proposals, 38,39

## Index to Barristers and Solicitors

(All references are to paragraph numbers.)

### **accounts (keeping of)**

- annual report re, 12
- breaches of rules re, 15
- deposit of funds, 13, 14
- duty to account, 311, 312
- general, 11–13
- investigation by law society, 16
- mixed accounts, distribution of, 15
- payment to client, action for, 20
- property of clients, custody of, 22–28

### **actions, *see* fees (actions for); accounts (keeping of)**

### **admission, *see* discipline (reinstatement); law societies**

### **advertising/marketing, 19, 144–146**

### **agents**

- lawyer as client's, 511–514
- lawyer employing, 508–510, 593

### **arbitration, *see* taxation of costs**

### **authority, *see* retainer/authority**

### **barrister's lien, *see* lien for costs**

### **bill of costs, *see* solicitor's bill**

### **benchers, *see* discipline (benchers' powers); law societies**

### **ceasing to act, *see* withdrawal/removal of solicitor**

### **champerty, *see* fees (special agreements)**

### **change of solicitor, *see* retainer/authority**

### **charging orders, *see* liens for costs**

### ***Charter* issues**

- advertising/marketing, 19
- contact with media, 19
- disciplinary proceedings, compellability of solicitor, 963
- double jeopardy, 980, 981
- hearing within reasonable time, 960
- legal aid, 1010, 1013, 1021
- right to counsel, 492, 1013
- self-incrimination, 972, 973
- unauthorized practice, 86

### **compensation, *see* reimbursement/compensation fund; fees**

### **conduct unbecoming, *see* discipline (conduct unbecoming)**

### **confidentiality, *see* conflict of interest (multiple representation); duties (confidentiality); privilege**

### **conflict of interest (general)**

- appropriation of funds creating, 262
- unpaid accounts creating, 262
- within firms, 157–159

### **conflict of interest (multiple representation)**

- bankruptcy matters, 347
- civil litigation, 334–347
- criminal litigation, 348–356
- disclosure/consent/independent advice, 359–362
- estate matters, 332, 333

- conflict of interest (multiple representation) (*cont'd*)
  - general rule against, 313–315, 540
  - in-house counsel vs. private practice, 321
  - matrimonial actions, 336
  - mortgagor-mortgagee, acting for, 328–330, 540
  - onus on solicitor, 363, 364
  - receiver, acting for, 345
  - relief from, 322
  - spouses not practising together, 324
  - vendor-purchaser, acting for, 328–330, 540
  - voluntary solicitors, 357, 358
- conflict of interest (removal for)**
  - counsel of choice, right to, 344, 346
  - former clients, acting against, 362, 373–383
  - “migrating” solicitors, 365–372
  - witness, member of firm acting as, 124, 229
- conflict of interest (transactions with clients)**
  - chattel mortgage transactions, 389
  - development ventures, 393
  - estate matters, 392
  - former clients, 394
  - fraud/deception, 387, 389
  - general rule, 384
  - independent legal advice, 385, 388, 390
  - illiterate clients, 385
  - knowledge/experience of client, 393
  - onus on solicitors, 385
  - purchase by solicitor from client, 385
  - trust funds, accepting, 391
- contempt of court, see discipline (general); duties (court, to)**
- contingency fees, see fees (contingency agreements)**
- costs, against solicitor personally, 95, 445**
- Crown counsel, 18, 503–506, 901**
- custody of property, see accounts (keeping of) defamation, 99**
- disbarment, see discipline (sanctions)**
- discipline (benchers’ powers)**
  - constitutional matters, 899, 963
  - criminal matters, 899, 903, 904, 909
  - crown Attorneys, 901
  - decisions, publication of, 910
  - extraprovincial misconduct, 898
  - investigative powers, 905–909
  - “member”, 897
  - obstruction of investigation, 909
  - purpose of statutory powers, 900
  - source of, 896–899
  - students-at-law, 904
  - suspend, power to, 902–904
- discipline (conduct unbecoming)**
  - professional misconduct vs. conduct unbecoming, 924
    - • Alberta, 925
    - • British Columbia, 917, 926, 927
    - • Manitoba, 928, 929
    - • Saskatchewan, 917, 930–934

## INDEX

---

### **discipline (general), *see also* benchers**

- contempt of court, 913
- crown counsel, 18
- duty of law society, 17
- jurisdiction of court, 912, 913

### **discipline (incompetence)**

- definition of, 935, 936
- investigation, 937
- suspension/conditions on practise, 938

### **discipline (proceedings)**

- appeals (internal), 982, 983
- appeals to court
  - Alberta, 984
  - British Columbia, 985, 986
  - general, 993
  - Manitoba, 987, 989
  - Saskatchewan, 990–992
- bias, 950–959
- *Charter* issues, 963, 972, 980, 981
- citation of member, 939–942
- compellability of cited member, 961–963
- costs, 980
- counsel, right to, 948
- criminal convictions, 971
- delay, 960
- double jeopardy, 980, 981
- evidence, 21, 961–972
- in camera hearings, 949
- investigations, 937
- jurisdiction of court, 996, 997
- natural justice, 944–960
- notice to member, 945
- onus on law society, 964, 965
- onus on solicitor, 966, 967
- privilege, 285

- quorum, 943
- self-incrimination, 972, 973
- witnesses, 946, 947

### **discipline (professional misconduct)**

- breach of rules, 15, 920–922
- common law meaning of, 914–917
- determination of, 918
- examples of, 919–923
- extraprovincial misconduct, 903
- misappropriation, 919
- professional misconduct vs. conduct unbecoming, 924
- recklessness, 923

### **discipline (reinstatement)**

- appeal from refusal, 1006–1008
- considerations governing, 1003–1005
- powers re, 998
- procedure for, 999–1002

### **discipline (sanctions)**

- disbarment, 975
- remedial education, 976
- restrictions on practice, 978
- statutory provision for, 974
- treatment for disability/addiction, 977

### **duties, *see also* conflict of interest; negligence; relationship with client (general)**

**duties (accounting),** 311, 312

**duties (advice re choice of remedies),** 307–310

**duties (confidentiality)**

- action for breach of, 280, 281
- confidentiality vs. solicitor-client privilege, 270
- disclosure to media, 274

**duties (court, to), *see also*  
witness (acting as)**

- affidavits, appearing on own, 453–455
- attendance, 420, 447
- authorities, disclosure of, 441
- contempt of court, 456–463
- Crown counsel, 442, 443
- delay, avoidance of, 444–446
- disclosure re judicial proceedings, 435
- discovery evidence, use of, 440
- dishonest/dishonourable acts of clients, 438
- evidence/allegations, 436–440, 497
- incompetent persons, 495
- officer of court, as, 94–96, 427–429, 497
- self-representation, 97, 451
- solicitor of record, as, 447, 448
- undertaking to court, 430–434
- witness, credibility of, 439
- witness, interview of, 464

**duties (Crown Counsel)**

- general, 503
- investigation vs. prosecution, 505
- selection of judge, 504
- sentencing, 506

**duties (financial), 507**

**duties (law society, to), 480**

**duties (own firm, to), 500**

**duties (other counsel, to)**

- acknowledgment of service, 424
- adjournments, request for, 475
- answering communications/commitments, 472
- conduct generally, 471

- criticism of, 473
- ex parte applications, 479
- procedural formalities, waiver of, 475
- taking advantage of slip/technical matter, 474
- trust conditions, 466–468, 470
- undertakings, 465, 469

**duties (other parties, to)**

- general, 481, 482, 496, 498
- fiduciary relationships, arising out of, 498–502
- opposite party, 486–492, 497, 499
- third parties, 483–485, 530–534
- unrepresented persons, 493–496

**duties (persons other than clients), 258**

**duties (right to be heard, re), 104**

**duties to client, *see* relationship with client (general)**

**education, *see* discipline (sanctions); law societies**

**ethical standards, *see* discipline; law societies**

**fees, *see* liens for costs; solicitor's bill; taxation of costs**

**fees (action for)**

- bars to, 791, 792
- commission evidence, 799
- default judgment, 788
- foreign solicitor bringing, 799
- jurisdiction of court, 795, 796
- mandamus, 793
- name for bringing, 787
- onus, 793, 794
- review of solicitor's work, 797
- set-off, 798

## INDEX

---

- fees (action for) (*cont'd*)
  - solicitor's bill, as prerequisite to, 683, 789–791
  - statutory rights re, 106, 595, 596, 790
  - taxation, as prerequisite to, 786, 791
- fees (common law)**
  - acting other than as solicitor, 581
  - corporate matters, 585–588
  - estates, 582–584, 678, 679
  - fair and reasonable, 573, 574
  - full disclosure, 573, 575, 576
  - hidden fees, 253
  - interest, 237
  - multiple clients in matter, 577, 578
  - multiple firms acting, 579
  - onus of proving liability for, 589–594
  - payment out of client's account, 576, 681
  - sharing fees, 580
  - unauthorized practice, 93
  - written agreements re, 715
- fees (contingency fee agreements)**
  - ambiguous/misleading, 634
  - application for fee exceeding limit, 654
  - disbursements, 653
  - discharge of solicitor, 640
  - fiduciary duty to explain, 637
  - general, 630
  - independent legal advice re, 633, 650
  - interpretation of, 642, 644
  - invalid agreements, effect of, 635, 643
  - lien for costs, 822
  - *quantum meruit*, 638, 640, 646
  - review by court/fair and reasonable, 573, 615, 630, 643–647, 649, 651, 655
  - security for costs, 656
  - settlement offers, 650
  - termination of, by client, 639
  - termination of, by solicitor, 636
  - undue influence, presumption of, 633
  - upfront costs, 652
  - withdrawal of solicitor, 641, 642
  - workers' compensation matters, 648
- fees (criminal cases), 674–676**
- fees (quantum — tariff matters)**
  - general, 602–608
  - estate matters, 609–614
  - legal aid, 1030
- fees (quantum — non-tariff matters)**
  - conduct of legal work, 619
  - excessive/inconsistent demands by client, 622
  - fair and reasonable, 573, 615
  - factors governing, 615–623
  - oral estimate of fees, 620
- fees (special agreements), see also fees (contingency fee agreements)**
  - bonus, 672
  - champertous agreements, 657–663
  - counsel fee, 659–663
  - general, 624–629, 755
  - hourly fee agreements, 664–669
  - lump sum agreements, 670, 671
  - review of, 624, 625, 627–629
  - secret agreements, 674–676



**fees (statutory control)**

- action for costs, 106, 595, 596, 786
- advertising, 19
- Attorney General/Deputy Attorney General, 599
- class actions, 601
- counsel hired by commission, 600
- interest, 597, 598
- legal aid, 1030

**fees (Supreme Court of Canada), 677**

**fees (trustees/administrators), 678, 679**

**firms, see law firms**

**incompetence, see discipline (incompetence)**

**indemnity rights, 512**

**insurance (liability), see law societies; professional liability claims fund**

**interest, see fees (statutory control); solicitor's bill; taxation of costs**

**law firms, see also conflict of interest**

- advertising/marketing, 144–146
- conflict of interest within, 157–159
- interjurisdictional firms, 155, 156
- letterhead, 139–143
- liability of partners/employees, 147, 148, 551–553
- limited liability partnerships, 152–154
- names, 137, 138
- professional misconduct of, 149–151

**law societies, see also benchers; discipline; right to practise**

- admission to, 7, 36–58
- benchers, 2
- body corporate, as, 1
- *Charter* issues, 19
- committees, referral to, 6
- compensation/reimbursement fund, 9
- education, 7, 29, 30
- ethical standards re, 4
- law foundation, 31–33
- liability insurance, 8, 563, 564
- liability of, 28, 34, 35
- membership of, 1
- powers, 3–5

**legal aid**

- appeals, 1019, 1020, 1024, 1025
- costs, 1026
- *Charter* issues, 1013, 1021
- delegation of duties by solicitor, 1029
- duty of counsel re, 1022
- entitlement
  - Alberta, 1014
  - British Columbia, 1012
  - general, 1013
  - Manitoba, 1012
  - Saskatchewan, 1012
- fees, 1018, 1025, 1027
- onus on claimant, 1017, 1020
- portion to be paid by applicant, 1011
- privilege, 278, 1028, 1029
- statutory basis of, 1009–1011
- withdrawal of aid, 1023
- withdrawal of counsel, 1029
- young persons, 1015, 1016

**liabilities, see defamation; duties; law firms; negligence;**

## INDEX

---

- liabilities (*cont'd*)  
**privilege; retainer/authority;  
right to practise; rights before  
court; witness (acting as)**
- liability insurance, see law  
societies; professional liability  
claims fund**
- liens for costs, see also fees  
(action for)**
- “barrister” lien, 837, 838
  - changing solicitor, effect of, 819–824
  - charging orders, 831–834, 885–894
  - closed files, 817, 818
  - contingency fee agreements re, 822
  - corporate record books/books of account, 807–809
  - death of solicitor, 816
  - discharge/withdrawal of solicitor, 423–426, 825–827
  - documents, on, 801–818
  - enforcement of, 857
  - fruits of action, on, 828–850
  - interest in land, effect on, 845
  - money
    - general, 851, 852
    - in court, 853–856
  - nature of, 800
  - priority
    - as between solicitors, 873, 874
    - as among solicitors and other claimants, 875–884
  - property held by custodian, 27
  - property received as trustee/mortgagee, 814
  - property recovered/preserved, 830, 839–850
  - right of set-off, effect on, 863–872
  - salvage, 846, 851, 870, 885
  - settlement, effect of, 858–862
  - solicitor-and-client costs, 835, 836
  - taxation of account, 843
  - trust moneys, 877, 886, 895
  - wills, 807, 818
- negligence, see also duties**
- advice from multiple lawyers, effect of, 524
  - agreements, drafting of, 521
  - barristers, liability of, 545, 546
  - breach of confidentiality, 280, 281
  - business transactions, 549
  - causation, 560–562
  - commercial/real estate matters, 536–540
  - contract/tort liability, 515, 518, 557
  - damages, 554–557
  - duty of care
    - general, 515–524
    - third parties, 483–485, 530–534
  - errors in judgment, 520
  - insurance against, 563, 564
  - investment advice, 547, 548
  - knowledge of law, 535
  - legal advice vs. business risks, advice re, 523
  - limitation period (action against solicitor), 533, 534
  - limitation period, missing of, 543, 544
  - property of client, care of, 550
  - retainer, scope of, 516, 518
  - settlement of action, 541, 542
  - vicarious liability, 551–553
  - wills/estates, 531, 532, 538

**notice to solicitor as notice to client**, 395–401

**privilege**

- agreements, effect of, 277
- bankruptcy matters, 275
- breach of, 280, 281
- confidentiality vs. privilege, 270
- co-plaintiffs/co-defendants, 279
- crown agents, 287
- death of party holding privilege, 276
- defence of action against solicitor, 299
- disciplinary proceedings, 285, 962
- documents, 282–289
- duration of, 290
- estate matters, 298
- exceptions, 116–122, 291–306
- fees, disclosure of, 299
- fraud, effect of, 118, 303, 304
- general, 112–115, 265–279
- inadvertent disclosure, 268
- income tax matters, 272
- injunctions protecting, 298
- insurance documents, 117, 284, 285
- jointly owned funds, 305
- joint retainers, 297
- lawyer and client being investigated, 273
- legal assistance clinics, 278
- loss of, 119, 286
- multiple clients, acting for, 116, 117
- potential joint liability, effect of, 273
- proceeds of crime legislation, 267
- public safety exception, 306
- real estate matters, 288, 289

- record of billing, 271
- search warrants, effect of, 300–302
- settlements, 269
- terrorism legislation, 267
- third parties, 286
- trust accounts, 272
- waiver of, 268, 276, 291–296
- witness, lawyer acting as, 125

**professional corporations**, *see* **law firms**

**professional liability claims fund**, 8

**professional misconduct**, *see* **discipline (professional misconduct)**

**property of clients**, *see* **accounts (keeping of)**

**Queen's Counsel**

- appointment of, 126–132
- order of preference, 133–136

**reimbursement/compensation fund**

- discretion of law society, 10, 569–572
- statutory basis of, 9, 565
- statutory conditions, 566
- subrogation of law society, 567
- wrongful conversion, 568

**reinstatement**, *see* **discipline (reinstatement)**

**relationship with client (general)**, *see also* **conflict of interest; duties; negligence; withdrawal/removal of solicitor**

- advising client, rules re, 246
- child welfare proceedings, 264
- corporate clients, 250, 251
- co-ventures, 260, 261

## INDEX

---

- relationship with client  
(general) (*cont'd*)
- disclosure in financial matters, 253
  - duty of loyalty, 247, 248
  - fiduciary, nature of, 245, 258
  - hidden fees, 253
  - instructions of client, 249
  - mortgage transactions, 263
  - non-receipt of retention letter, 259
  - retainer re, 171, 172
  - solicitor-client relationship, existence of, 250–252, 254, 256
  - tax credit transaction, 255
- representing self, see self-representation**
- retainer/authority**
- admissions, authority to make, 209–212
  - appeal, authority to, 230, 231
  - arbitration, right to referral to, 203, 204
  - change of solicitor, 241–244
  - compromise, authority to, 222, 223
  - contracts, authority to bind by, 213–221
  - corporate clients, 177, 186–189
  - duration of, 171, 173–176
  - employment of others for client, 205–208
  - estate matters, 192
  - garnishment of, 162
  - inquiries re fees, 167
  - joint retainer, 297
  - lessor-lessee matters, 201
  - liability for acting without, 232–238
  - meaning/effect of, 160–162
  - minors, 164
  - mistake, 235
  - mortgage matters, 193, 198
  - multiple clients, acting for, 180, 181
  - nature of, explanation to client, 163–167
  - notice, as agent to receive, 201, 202
  - onus, 182, 185, 186
  - privilege, 271, 297
  - proof of, 182–190
  - receipt of money, 191–200
  - scope of, 165, 172, 178–180, 516
  - security for costs, applications for, 179
  - sheriff's sale, acting in, 178
  - stay of unauthorized proceedings, 239, 240
  - trial, authority re conduct of, 224–229
  - validity of, 166
  - vendor-purchaser matters, 194
  - writing/sealing requirements of, 168–170
- right to practise (general), see also law societies (general)**
- citizenship, 55, 56
  - extraprovincial applicants, 45–47
  - law faculty members, 48
  - good character, 49–52
  - legislative authority, 36, 37
  - readmission/reinstatement, 57, 58
  - representing self, 97
  - residency, 53, 54
  - students-at-law, 38–44
- right to practice (unauthorized practise)**
- *Charter* issues, 75

- right to practice (unauthorized practise) (*cont'd*)
- contempt of court, as, 89
  - fees, right to charge, 93
  - injunctions against, 90–92
  - practice
    - common law meaning of, 62–75
    - exceptions to constituting, 79–87
    - statutory definitions of, 76–78
  - prosecution for, 88
  - purpose of prohibition, 60, 61
  - statutory prohibition, 59

**rights before court**

- right of audience, 100–103
- right to be heard, 104, 105

**rules of professional conduct**, 17,  
*see also law societies*

**salvage**, *see liens for costs*

**self-representation**, 97, 451

**solicitor's bill**

- definition, 732
- form of, sufficiency, 684, 685
- interest on, 698–702
- interim bill, 686, 687, 732, 750
- jurisdiction of court, 703
- liability to pay, 753
- necessity for, 681–683, 715
- order for delivery of, 692–697, 706, 707
- purpose of, 680
- rules re, 681, 682
- signing of, 685
- withdrawal/amendment of, 688–691
- written agreements re, 715

**solicitor's lien**, *see lien for costs*

**students**, *see law societies; right to practise (general)*

**taxation of costs**, *see also solicitor's bill, fees, liens for costs, retainer/authority*

- agreements, 754, 755
- appeals from, 773–779, 782–785
- application, notice of, 725–729
- application, time limit for, 730–733
- arbitration order, 714
- bars to, 715
- certificate of taxation, 762, 763
- costs of taxation, 768–772
- criminal matters, 716
- delivery of solicitor's bill, necessity of, 683, 706, 707
- estoppel, 763
- evidence, 740–745
- execution after taxation, 762
- factors governing, 757–761
- failure to appear, 724, 729
- forum for review, 716–720
- independent legal advice, duty re, 728
- interest, 756
- interim accounts, 750
- interpretation of orders, 752
- jurisdiction of court/taxing officer, 713, 747–761, 780, 781
- legal aid matters, 1030
- liability to pay, 753
- minors, bills to, 736
- negligence/incompetence of solicitor, 738, 739
- notice of application for, 725–729
- order for delivery of bill, 692–697, 706, 707
- order for taxation, 708–710

## INDEX

---

- taxation of costs (*cont'd*)
- onus of proof, 746
  - party-and-party, 764
  - payment of bill, effect of, 750
  - quantum issues, 748, 764
  - questions determinable on, 734–739
  - retainer, existence of, 735, 749
  - right to appear, 721–724
  - right to taxation, 711–713, 750
  - solicitor-and-client, 764–767
  - solicitor-client relationship, existence of, 751
  - statutory provision for, 711, 712
  - submission to pay, requiring, 707
  - withdrawal of bill, effect of, 770
  - withdrawal of solicitor, effect of, 761
  - written agreement, effect of, 715
- transactions with clients, see conflict of interest (transactions with clients)**
- trusts, see accounts (keeping of); fees (trustees/administrators); liens for costs; privilege**
- unauthorized practise, see right to practise (general)**
- undertakings, see duties (court, to); duties (other counsel, to)**
- withdrawal/removal of solicitor**
- appeals, during, 421
  - contingency fee agreements, 641, 642
  - court refusing to allow, 419, 420
  - duty not to withdraw, 402, 446, 562, 1029
  - duty to attend court, 418, 446
  - duty to withdraw, 403, 404
  - duty upon withdrawal, 422
  - ethical considerations, 413–416
  - lack of instructions, 406
  - lien, effect of withdrawal upon, 423–426, 824
  - loss of confidence, 405
  - non-payment of fees, 407–410
  - notice, 417
  - permissible to withdraw, 405–410
  - potential conflict of interest, 411, 412
  - procedure, 417–421
  - witness, solicitor acting as, 452
- witness (acting as), 123–125, 229, 415, 449–452, 455**

## Index to Bills of Exchange

(All references are to paragraph numbers.)

- acceptance**, *see also* **cheques; delivery; dishonour; liability; presentment**
- acceptance supra protest, 146
  - corporation, by, 141
  - date of, 71
  - delivery and, 137
  - discharge by, 266
  - dishonour, acceptance after, 146
  - effect of, 235, 236
  - errors in names, 141
  - liability generally, 134, 235, 236
  - method of, 136
  - nature/effect of, 134
  - parties entitled to accept, 141, 146
  - possession of acceptor as discharge, 266
  - presentment, 143–145, 200, 296
  - qualified acceptance, 139–142
  - sufficiency of, 136
  - timing of, 142, 144
  - uncertified cheques, 135
  - validity of, 136
  - when overdue, 142
- acceptors**, *see* **liability**
- “accommodation bill”**, 104, 105
- accommodation parties**
- consideration and, 104, 105
  - discharges, effect on, 260, 261
  - liability generally, 248–250
  - notice of dishonour and, 216
- accord and satisfaction**, *see* **settlements and compromises**
- actions**, *see also* **defences; liability**
- costs, 201, 230
  - right of, 169, 170, 255
- agency**, *see* **estoppel; signatures**
- alteration**, *see* **material alteration**
- assignments**, 192
- “at sight”**, 44, 46, 73, 80, 145
- bank drafts**, 32
- banks**, *see also* **cheques**
- customer’s duties to, 133
  - holders in due course, as, 163, 182, 183, 185
  - notices to, 222
- “bearer”**, 147
- blanks**, *see* **formal validity; material alteration**
- cancellation, discharge by**, 270–272
- capacity of parties**, 85, 86, 239, 297, 298, *see also* **defences**
- cheques**, *see also* **banks; formal validity; legislation; promissory notes**
- bank’s liability generally, 135, 182, 183
  - certification, 303–310
  - countermanding, 306 308, 309, 313–319
  - crossed cheques, 320
  - death of drawer, 318, 319
  - definitions, 299–301
  - dishonour, 225, 227, 309
  - formal requisites, 300, 301
  - general, 3
  - local cooperative credit societies liability generally, 183
  - payable to “cash or order”, 63
  - personal property, as, 15

- post-dating of, 302, 304, 315
- presentment, 304, 305, 311, 312
- collateral agreements**, 28–30, 49
- collateral security**, 21
- common law, applicability of, *see* legislation**
- compromises, *see* settlements and compromises**
- conditional sales contracts**, 24–27
- conflict of laws**
  - capacity of parties, 297, 298
  - currency of payment, 296
  - formal validity, 291, 292
  - general, 290
  - holder’s duties, 295
  - interpretation of instruments, 293, 294
- consideration**
  - accommodation parties, 104, 105
  - adequacy of, 13, 89, 93
  - antecedent debt/liability as, 96–98
  - bank legislation re, 90
  - civil vs. common law, 89
  - consumer purchases, 103
  - deemed consideration, 92
  - definition, 89
  - failure of, 99
  - federal bank legislation re, 90, 92
  - forbearance as, 95
  - general, 87, 93
  - illegality of, 100–102
  - immediate parties, between, 94
  - patent rights, 103
  - proof of, 91, 93
  - provincial legislation, 89
  - remote parties, between, 88
  - usurious consideration, 102
  - value, 177
- constitutional law issues**
  - federal powers, 9
  - paramountcy, 9
  - provincial legislation, 10, 11
- consumer bills**
  - “business purpose”, 83
  - consideration, 103
  - “consumer purchase”, 82, 84, 103
  - definition, 82
  - evidence issues, 83
  - general, 27
  - holders of, 188–192
  - offences re, 84
  - validity, 84, 188
- contents, *see* formal validity**
- contracts, *see* capacity of parties; conditional sales contracts; consideration; fictitious payees; interpretation of instruments; signatures**
- conversion**, 15
- corporations, *see* acceptance; formal validity; signatures**
- crossed cheques to divided warrants**, 3
- Crown**
  - forgery, repudiation of, 125, 127
  - legislation not binding, 8, 33, 125, 127
- damages**, 15, *see also* liability
- days of grace, *see* formal validity**
- debentures**, 3
- defences, *see also* actions; estoppel; formal validity; liability; material variation; protest**
  - consent, involving, 108



## INDEX

---

- consideration, lack/illegality of, 87, 88, 91, 99–102, 179
- consumer bills, 189
- defects in title, 179, 196–198
- drunkenness, 86
- duress, 36, 176, 179
- equities of bill, 197, 198
- equities of parties, 196, 198
- estoppel, 106, 114, 119, 121–125
- forgery, 117–127, 239, 241
- fraud, 36, 176, 179
- general, 68, 178, 180, 181
- good faith, lack of, 172, 174–176
- illegality, 176
- incapacity, 86, 236, 239
- infancy, 86
- insanity, 86
- intention to issue, 68
- limitations, 43
- non est factum, 36, 108, 109
- personal defences, 196
- set-off, 189, 196
- signatures, involving, 108
- undue influence, 36
- defect in title, see defences**
- delivery, see also acceptance; endorsement; negotiation**
- delivery**
  - acceptance and, 137
  - authority to make, 151
  - conditional, 151, 153, 154
  - effect generally, 15, 148, 150
  - mail, by, 152
  - necessity for, 150
  - presumption of, irrevocable, 155
  - presumption of, rebuttable, 153, 154
- detinue, 15**
- discharge, see cancellation; material alteration; payment, discharge by; possession by acceptor; reunication; satisfaction; settlements and compromises**
- dishonour, see also protest**
  - holder's duties on, 207
  - non-acceptance/non-payment, by, 139, 144, 213, 214
  - notice of, 215–227
- donatio mortis causa, 317**
- drawers, see liability**
- endorsement, see also formal validity; liability; signatures**
  - “allonge”, attachment of, 156
  - bearer, to, 62, 63, 148, 159
  - bill payable to order, 148, 156
  - conditional endorsements, 30, 161
  - date of, 71
  - definition of, 156
  - errors in name, 60
  - fictitious payees, 128–133
  - forgery in, 127
  - general, 156
  - holder in due course, rights of, 122
  - in blank, 159
  - intention to endorse, 158
  - maturity, after, 166
  - misspelled names, 60
  - note to maker's order, 58
  - order of, 158, 234
  - restrictive endorsement, 162, 163
  - signatures, 156–158, 234
  - special endorsement, 160
  - transfer without, 164, 165
- enforceability, see formal validity**

**enforcement**

- completion of instrument before, 67
- general, 18
- summary judgment, 18

**estoppel**

- certified cheques and, 313
- forged signatures, 119, 239, 241
- preclusion and, 121–125, 236
- unauthorized signatures, 119
- undisclosed principal, liability of, 106, 114

**evidence/general**

- cancellation, of, 272
- consumer bills and, 83
- material alteration, 282
- onus, shifting of, 176, 257
- payment, proof of, 257
- protest, of, 228
- Quebec law, 13

**evidence (parol)**

- character of signature, re, 38, 116, 157, 199
- consideration, re, 91
- delivery, re, 153
- endorser, name of, 61
- general, 14, 26, 116, 199
- intention of parties, re, 116
- maturity date, re, 45, 50
- order of signing, 199

**executors/administrators**, 10, 319

**family law**, *see* **husband and wife**

**fictitious payees**, *see also* **formal validity; signatures**

- bank customer's duties, 133
- bearer, payment to, 128, 129
- bills payable to, effect of, 128, 236
- fraud, 130, 131

- real person as, 130, 131
- vicarious liability, 131, 132

**“foreign bills”**, 229

**forgery**, *see* **defences; formal validity; signatures**

**formal validity**, *see also* **capacity of parties; conditional sales contracts; consideration; defences; endorsement; fictitious payees; holders (in due course); signatures**

- addressing of bill, 32–34
- blanks, filling in, 64–70, 277
- “bearer”, 62, 63
- collateral agreements, 28–30
- collateral security, 21
- conflict of laws and, 291, 292
- consumer bills, 82–84
- corporations, 35, 37, 61, 85
- date of bill, 71, 74
- demand, payable on, 44, 45
- general, 16
- intention to issue, 65, 68–70
- language, 31
- presumption re, 69, 70
- rectification of bill, 64–67
- signature of maker/drawer, 35–43, 85
- specified person, payment to, 57–63
- sum certain in money, 51–56
- time of payment (certainty of), 46–50
- time of payment (determination), 72–81
- unconditional order/promise to pay (bills), 19, 20
- unconditional order/promise to pay (notes), 21–23
- words of negotiability, 57
- writing, requirement for, 31

## INDEX

---

- fraud, *see* defences; fictitious payees**
- good faith, *see* holders (in due course)**
- history of legislation, *see* legislation**
- holders (consumer bills)**
- common law status, 190–192
  - defences, 189
  - rights generally, 188
  - set-off, 189
- holders (general)**
- assignees as, 169
  - bare holders, 193–195
  - definition of, 147, 164, 169, 184
  - duties, 199, 249, 295
  - holders for value, 193–195
  - possession by, 169
  - primary parties, 199
  - right of action, 169, 170
  - secondary parties, 199
- holders (in due course.), *see also* defences; formal validity**
- acceptance and, 138, 139
  - accommodation parties, liability of, 105
  - banks as, 163, 182, 183
  - close connection barring, 187, 190, 191
  - definition, 171
  - delivery and, 151, 153, 155
  - endorsement and, 122
  - forgery and, 122
  - good faith, 172, 174–176
  - illegal/lack of consideration and, 88, 100, 179
  - knowledge of, relevance, 173–175
  - local cooperative credit societies, 183
  - loss of status, 105, 187
  - lost instruments, 289
  - non est factum, 108
  - payee as, 184–186
  - presumption of regularity, 170, 176
  - renunciation and, 269
  - transfer without endorsement, 164
  - usury and, 102
  - value, 177
- husband and wife, 41, 109**
- incapacity, *see* capacity of parties; defences**
- infants, *see* capacity of parties; defences**
- “inland bills”, 229**
- insanity, *see* defences**
- instalments, *see* formal validity**
- interest**
- inserting rate in note, 64, 277
  - recovery of, 254
  - sum certain and, 54, 55
- interpretation of instruments, 293, 294**
- intoxication, *see* defences**
- “issue”, 149, 184**
- joint makers, 10, 13, 40–43**
- judgment, *see* enforcement**
- knowledge, *see* holders (in due course)**
- language, 31**
- law merchant, *see* legislation**
- legislation, *see also* conflict of laws**
- common law, applicability of, 2, 7, 12–14
  - conflicts between, 5

## BILLS OF EXCHANGE

---

- constitutional law and, 9–11, 18
  - Crown, binding of, 8, 33
  - history of, 1, 2, 16
  - interpretation of, 6–8, 12
  - law merchant, 2, 12
  - Quebec, 10, 13
  - supremacy of, 4, 5
- letters of credit**, 186
- liability**, *see also* **actions; defences; protest**
- acceptors, 134, 235, 236
  - accommodation parties, 248–250
  - damages recoverable, 254–256
  - drawers, 237, 238
  - endorsers, 241–247
  - general, 234
  - makers of notes, 239, 240
  - order of, 253
  - transferors by delivery, 251, 252
- lien notes**, 24–27
- local cooperative credit societies**, 183
- lost instruments**, 287, 288, 289
- material alteration**
- apparent alterations, 274, 280–282
  - assent/authorization, 278
  - blanks, filling in, 64–67, 277
  - certified cheques, 310
  - dates, of, 283
  - effect generally, 273, 279
  - examples, 275, 386
  - mistakes, correction of, 276
  - non-apparent alterations, 274, 280–282
  - original instrument, of, 279
  - place of payment, 285
  - proof of validity, 282
  - strangers, by, 279
  - sum payable, of, 284
  - time of payment, 285
- maturity**
- negotiation after, 166, 196–198
  - presentment on, 201
- mistakes**, 276
- negotiable instruments**, *see also* **legislation**
- bills as, 3
  - distinguishing characteristics, 3, 4
  - endorsement in blank, 3
  - endorsement of holder, 3
  - legislation, applicability of, 3
  - legislation governing, 5
- negotiation (general)**, *see also* **acceptance; delivery; endorsement; maturity**
- bill payable to bearer, 148
  - bill payable to order, 148
  - definition, 147
  - delivery and, 148
  - “issue”, 149
  - maturity, after, 166, 196–198
  - purpose of, 149
  - transfers generally, 149, 164, 165
- non est factum**, *see* **defences**
- notice**, *see* **dishonour**
- offences**, 84
- omissions**, *see* **formal validity**
- “overdue” bills**, 166
- parties**, *see* **capacity of parties; consideration; holders (general)**
- patent rights**, 103
- payment, bill or note as**, 165, 166, *see also* **formal validity; presentment for payment; signatures**

**payment, discharge by**

- acceptor paying, 258–260
- agent, payment to, 258
- drawee paying, 257–260
- drawer paying, 261, 262
- endorser paying, 261, 262
- joint acceptors/makers, 260
- manner of payment, 257
- “payment in due course”, 257
- proof of, 257
- surrender of instrument, 259

**personal property, bills as, 15**

**possession, see holders (general)**

**possession of acceptor, discharge by, 266**

**preclusion, see accommodation parties; signatures**

**prepayment clauses, 46**

**presentment for payment, see also acceptance; cheques**

- currency of payment, 296
- conflict of laws and, 295
- delay in, 210
- deposit, by, 204
- dispensing with, 211, 212
- exhibiting bill, 203
- failure to make, effect of, 201
- general, 200
- maturity, on, 201, 206–208
- parties making/receiving, 209
- place for, 201, 205
- post, by, 204
- promissory notes, 202
- requirement for, 201
- time for, 201, 206–208, 210
- waiver of, 211, 212

**privilege clauses, 46**

**promissory notes, see also formal validity; legislation**

- conditional sales contract and, 24–27
- constitutional jurisdiction, 9
- endorsement, 58
- general, 3, 185
- joint makers, 10, 240
- liability of maker, 239, 240
- personal property, as, 15
- presentment, 202

**protest, see also dishonour**

- dispensing with, 232
- evidence of, 228
- expenses of recovery of, 230
- “foreign bills”, 229
- formal protest, 231
- “inland bills”, 229, 230
- miscellaneous provisions, 233
- nature of, 228
- necessity for, 229, 295
- “note of protest”, 231
- notice of, 232
- sufficiency of, 296
- time for, 232

**recovery of payments, 126, 127**

**relation back, 65**

**renunciation, discharge by, 267–269**

**replevin, 15**

**satisfaction, discharge by, 263–265**

**settlements and compromises, see also discharge**

- collateral agreement, by, 28–30
- joint makers, involving, 42

**sight bills, see “at sight”**

## BILLS OF EXCHANGE

---

**signatures**, *see also*

**endorsement; fictitious payees;  
formal validity**

- agents, of, 110–116
- binding effect generally, 106, 107
- “by procuration”, 110
- corporations, 107, 111, 112, 115
- forgery, 117–133, 236, 239, 241–243, 246
- location of, 234
- non est factum, 108, 109
- representative capacity, signing in, 114–116
- striking out, effect of, 270–272
- unauthorized signatures, 117
- undisclosed principals, 106, 114

**specialities**, 37

**statutes**, *see* **legislation**

**stolen instruments**, 288

**time**, *see* **formal validity**

**title, defect in**, *see* **defences**

**transfer**, *see* **endorsement;  
liability; negotiation**

**trusts**

- bills made in, 58
- agent’s breach of, 110
- third party’s duty of inquiry, 110

**validity**, *see* **formal validity**

**variation**, *see* **material alteration**

**waiver of presentment**, 211, 212

**wills/estates**

- donatio mortis causa, 319
- mature bills, heirs’ rights, 13

**writing**, *see* **formal validity;  
signatures**

## Index to Boundaries and Surveys

(All references are to paragraph numbers.)

- accretion**, *see* water boundaries
- ad medium filum**, *see* water boundaries
- adverse possession**, 64–69
- aliquot parts of parcels**
- Alberta, 125
  - British Columbia, 125
  - definition, 124
  - general, 126
  - Manitoba, 125
  - Ontario, 127–129
- alveus**, 20
- beach**, *see* water boundaries
- boundary**, *see also* adverse possession; municipal boundaries; retracement; water boundaries
- confirmation of, 155–164
  - definition of, 1
  - establishment of, 133–138
  - international, 2
  - interprovincial, 3, 4
  - monuments, 153
  - municipal, 6–16
  - restoration, 165, 167
  - re-survey of, 139–152
  - retracement, 166, 168–179
  - road, as, 6, 16
- boundary commissioners**, 3
- Canada Lands**, 5
- condominium plans**, 118–121
- confirmation**, *see* boundary; survey
- conflicting surveys**, *see* survey
- construction of documents**, *see* interpretation of descriptions
- conventional boundaries**
- definition of, 70, 71
  - estoppel, 83–87
  - general, 72–82
- conventional boundary line**, 3
- Crown ownership of beds**, 20, 22, 23, 26
- encroachment**, 88–91, 256–257
- erosion**, *see* water boundaries
- erroneous surveys**, *see* survey
- estoppel**, 83–87, 191
- extrinsic evidence**, *see* interpretation of descriptions
- fences**
- definition of, 235
  - encroachment on, 256, 257
  - obligation to construct and maintain, 236–252
  - ownership of, 234, 253, 255, 258
  - snow fences, 254
- foreshore**, *see* water boundaries
- high-water mark**, *see* water boundaries
- highways**, 123, 149
- Indian reserve**, 6
- integrated survey areas**, 132
- internal provincial boundaries**, 6–16
- international boundary**, 2
- international rivers**, 20, 36
- interpretation of descriptions**
- area, 218–221
  - extrinsic evidence, 204–207

- general, 192–203
- reference to plan, 222–233
- survey records, 208–217
- interprovincial boundaries**, 3, 4
- jurisdiction**
  - federal, 2
  - international boundary, 2
  - interprovincial boundaries, 3
- lake**, *see* water boundaries
- lateral support**
  - easement, 281
  - removal of, 282–288
- lost corner**, 73, 102
- lost monument**
  - definition, 170, 175
  - general, 112, 167
  - re-establishment of, 140, 171–179
- low-water mark**, *see* water boundaries
- mineral claims**, 113–115
- monument**
  - general, 134, 135, 153, 186, 197–199, 206
  - lost, 112, 140, 167, 170–179
- municipal boundaries**
  - Alberta, 6
  - British Columbia, 7
  - Manitoba, 8
  - Ontario, 9–15
  - Saskatchewan, 16
  - variation of, 7, 14–16
- natural boundary**, 38, 71
- obliterated boundary**, 73
- offences**
  - Criminal Code, 130
  - provincial, 131
- party walls**
  - agreements re, 271–275
  - damage to, 279
  - definition of, 263, 265
  - encroachment on, 276–278
  - general, 266–270
  - regulation of construction of, 264
- reference plans**, 122
- reliction**, *see* water boundaries
- re-posting**, 140
- re-survey**, *see* boundary; survey
- riparian proprietors**, *see* water boundaries
- river**, *see also* water boundaries
  - bed of, 21–28, 32, 33
  - municipal boundary, as, 6, 8, 10–13
- road allowance as boundary**, 6, 16
- shore**, *see* water boundaries
- sinuous boundary line**, 3
- subdivision**, *see* survey
- survey**
  - annulment of, 108
  - Canada Lands, 93, 94
  - condominium plans, 118–121
  - confirmation of, 155–164
  - control of, 132
  - definition of, 99, 100
  - erroneous or conflicting, 154, 180–191
  - methods, 101, 103–106
  - mineral claims, 113–115
  - provincial lands, 96–99, 109
  - public lands, 107
  - records, 208–217
  - re-survey, 102, 112



## INDEX

---

- subdivision, 110, 116, 117
- surveyors**
  - licensing and regulation of, 92, 95
  - powers of, 111
  - records, 208–211
- trees on boundary**
  - ownership of, 260, 262
  - trespass re, 259, 261
- wall as boundary**, 280, *see also* party walls
- water boundaries**
  - accretion, 56–63
  - ad medium filum, 17, 20, 30
  - bank, 32, 49, 52
  - beach, 42, 45, 50, 51
  - bed, ownership of, 17–28, 30, 32
  - channel, 53
  - coastline, 46
  - erosion, 56
  - foreshore, 19, 42, 44
  - general, 28, 32, 34, 35, 38, 48
  - high-water mark, 19, 29, 32, 37, 40, 45
  - island, 11, 31, 53
  - low-water mark, 32, 37, 41
  - reliction, 56
  - riparian proprietors, 29, 30, 39
  - road along water boundary, 47
  - seashore, 42–44
  - shore, 37, 42, 50
  - shore road allowance, 47, 54, 55
- watercourses**
  - general, 28
  - middle thread, 33–35, 53
  - navigable, 25–27, 29, 36, 37, 47
  - non-navigable, 17, 24
  - non-tidal, 18, 30, 37
  - tidal, 19, 29, 37, 39–41

## Index to Builder's Liens

(All references are to paragraph numbers.)

- abandonment by contractor**
- acts constituting, 197, 198
  - calculation of holdback, 237
  - effect of, 34, 257, 258
  - holdback, use to complete contract, 245
  - subcontractors' lien rights, effect on, 34
  - surety taking over, 34
- accounting services**, 9
- accountings**, 263, 532, 536
- actions**, *see* enforcement of lien
- administrative costs**, 28
- affidavit verifying claim**, *see also* registration
- amendment of, 170, 175
  - assignee of lien making, 151
  - challenging of, 173
  - general, 171
  - “information and belief”, 172
  - swearing of, 171
- “agent”**, 8
- agreements for sale**, *see also* mortgages/mortgagees; priorities
- purchaser's interest, 98, 99, 111–113
  - vendor's interest, 114–116
- amount of lien**, *see also* holdback fund; trust fund
- British Columbia, 13
  - counterclaims, 12
  - false/overstated claims, 169
  - general, 11
  - interest, 166
  - lost profits, 11
  - minimum, statutory, 14
  - stating of when registering, 166
- appeals**, *see also* enforcement of lien
- Alberta, 345
  - application to strike out lien, dismissal, 346
  - British Columbia, 347
  - lien fund, re, 350, 351
  - Manitoba, 348
  - Saskatchewan, 344
- appliances, installation of**, 9
- arbitration**, *see also* enforcement of lien
- general, 271
  - substantial performance, re, 27
- architects**
- Alberta, 68
  - British Columbia, 69
  - certificates of completion, 26, 27
  - lien claimants, general, 8, 9, 11
  - loss of lien right, 72
  - Manitoba, 70
  - Saskatchewan, 71
  - “worker”, as, 59
- arising of lien**, *see* lien claims/claimants
- assignment of lien claims**, 16, 151, 311, 313
- bankruptcy**, *see also* winding-up
- constitutional conflicts, 507
  - priorities, effect of, 493–495, 513, 514
  - trust fund, distribution by trustee, 559
  - trustee as party to lien action, 315
- bridges**, *see* highways/streets
- certificates of completion**
- contracts, 26, 27

## BUILDERS' LIENS

---

- reliance on, 229
- running of time, effect on, 187, 188
- subcontracts, 33
- clearing of land**, 79
- completion of work, requirement for**, 22, 23
- conditions precedent to enforcement**, 25, 260
- condominiums**, 88
- consent of owner**, *see* request by owner
- “construction”**, 9
- construction superintendents**, 73
- contractors**, *see also* materialman; subcontractors
  - certificate of completion, 26, 27
  - completion of work required, 22–27
  - conditions precedent, 25
  - definition of, 17, 66
  - direct dealing with owner required, 18
  - “in respect of” an improvement, 21
  - interim payments, 24
  - more than one contractor, 18
  - preparatory expenses, 21
  - substantial performance, 26, 27
  - waiver of Act not allowed, 20
- cooks/cooking**, 61
- costs**, *see also* enforcement of lien
  - Alberta, 373, 384
  - British Columbia, 369, 370
  - disallowance of, grounds for, 383
  - disclaimer by lien claimant, 377
  - general, 378
  - Manitoba, 371, 374, 375, 384
  - owner’s costs, priority of, 376, 377
  - Saskatchewan, 372, 374, 375
  - set-off, 379
  - surplus funds, access to, 380
  - taxation of, 381
- counterclaims**, 12, 274, 289, 300, *see also* set-off
- creation of lien**, *see* lien claims/claimants
- Crown property**
  - Alberta, 128, 134
  - British Columbia, 129–131, 134
  - federal, 135, 136
  - leasehold interests in, 102
  - Manitoba, 132, 134, 176, 178
  - overlapping claims, 138
  - Saskatchewan, 133, 134, 177
  - school property, 134
  - unpatented Crown lands, 137
  - Workers’ Compensation Board (British Columbia), 129
- damages**, *see also* enforcement of lien
  - access to trust fund/money in court, 343
  - Alberta, 334
  - British Columbia, 335
  - default judgment, 342
  - invalidity of lien, effect of, 339
  - Manitoba, 334, 336
  - persons liable for, 340, 341
  - Saskatchewan, 337
  - statutory provisions, purpose of, 338
- debentures**, *see* priorities
- deficiencies**, 190, 194, 256
- demolition work**, 9, 85
- developers’ claims**, 78

## INDEX

---

- discharge of lien**, *see also* loss of lien right
- abuse of process, 414
  - accord and satisfaction, 428
  - affidavit supporting application for, 412
  - bars to, 433
  - discretion of court, 424
  - execution by partnership, 411
  - filed out of time, 412
  - frivolous/vexatious claims, 414
  - invalidity of lien, 422
  - judgment for debt, effect of, 434
  - lien not related to land charged, 414
  - payment into court, upon, 146, 235, 253–255, 270, 301, 317, 415–427, 431, 432
  - payments made by owner, 235, 241
  - protection of lien claimants, 424
  - sale in satisfaction, after, 413
  - satisfaction of lien, 411, 428
  - security, upon giving of, 264, 300, 415–420, 429, 430
  - setting aside of, 316
- enforcement of lien**, *see also* damages; loss of lien right; parties to action; trust fund
- abandonment/non-completion of contract, 257–259
  - accountings, 263
  - action outside legislation allowable, 4
  - appeals, 344–351
  - arbitration, 27, 271
  - commencement of action, 272–274, 280, 281, 291, 386–400, 403, 430, 486
  - conditions precedent, 25, 260
  - consolidation of actions, 328–333, 540
  - costs, 369–384
  - counterclaims, 12, 279, 289
  - damages, 334–343
  - default judgment, 290, 342
  - defences, 278, 297, 298
  - demand for notice (Saskatchewan), 289
  - discontinuance of action, effect, 288, 387
  - evidence, 295, 297, 298
  - failure to defend, 287, 289, 290
  - failure to enforce, 280
  - general, 257–261, 305, 325
  - information, right to, 261
  - interest, right to, 166, 363–368, 415
  - interpleader, 270, 301, 317
  - jurisdiction of court, 82, 170, 174, 175, 262–270
  - lis pendens, 276, 280, 281, 386, 388, 430
  - non-appearance by owner, effect of, 294
  - non-delivery, as defence, 297, 298
  - notice of trial (Manitoba), 287, 306
  - notice to prove lien (Alberta), 285
  - pleadings, 11, 274–279, 319, 322, 323, 346, 399
  - pre-trial hearing (Alberta), 286
  - production of documents (British Columbia), 283
  - proof of filing/date of lien, 282
  - questions of fact, 296
  - receivers, appointment, 263, 355
  - repudiation of contract by owner, effect of, 259
  - sale/distribution of proceeds, 352–362, 450
  - security for lien, 264, 300

## BUILDERS' LIENS

---

- service of documents, 389
  - settlement minutes, effect of, 292
  - stay of proceedings, 271
  - summary nature of proceedings, 284
  - transfer of action (Saskatchewan), 344
  - trial, conduct of, 293
  - trial of issue, 277, 288
  - trustee, appointment of, 355
  - withdrawal by solicitor, 302
- engineers**, 8, 9, 59, 69–71, 481
- entitlement to lien**, *see* lien claims/claimants
- equipment (installed)**, 76
- equipment lessors**
- Alberta, 65, 216
  - British Columbia, 66
  - general, 8, 216
  - interest, claims for, 367
  - Manitoba, 67
  - Saskatchewan, 67
- estoppel**, *see also* merger; waiver
- authority of agent, 408
  - false receipt for payment, 37, 406
  - materialman, 409
  - non-parties, against, 405
  - occupation of building, 407
- excavation work**, 75
- false/overstated claims**, 169, 338
- filing of lien**, *see* registration
- foreclosure/sale**, *see* mortgages/mortgagees
- form of claim**, *see also* registration
- Alberta, 162–164, 169
  - amendments, 170, 175
  - amount due/coming due, 166
  - British Columbia, 161, 171
  - date of work/service/material, 163–165
  - description of work/service/material, 166
  - identifying owner/land/building, 162, 170, 174
  - Manitoba, 162, 165, 167, 168
  - multiple parcels, claims against, 168
  - Saskatchewan, 162, 166, 168
- “furnishes”**, 9, 10, 39, 44, 45
- garnishment**, 317, 499, 519, 530, 561
- highways/streets**
- Alberta, 124, 128
  - Manitoba, 125, 132
  - Saskatchewan, 126, 133
  - trust fund, access to, 127
- historical development**, 1
- holdback fund**, *see* trust fund
- holdback fund (calculation of)**
- abandoned contracts, 237
  - appeal court setting, 350
  - consent orders re, 351
  - contract price, 233, 238
  - contract price not payable in money, where, 234
  - main contract/contract with owner, 235, 240
  - time work/service provided, relevance, 236
  - trial of issue re, 235
  - value of work done, 233, 238
- holdback fund (general)**
- access by persons below contractor, 36, 230, 231
  - accounts, where required, 218

## INDEX

---

- bars to retaining (British Columbia), 224, 240
- certificates of substantial completion, 229
- Crown property, re, 127, 129, 131, 132, 177
- deficiencies, 256
- “lien fund” (Alberta), 225–227
- lien on holdback fund, 219
- lien on holdback fund (British Columbia), 220
- maximum liability of owner, 227, 228
- parties obliged to retain, 223
- payment out, 299
- payment provisions in contract, effect of, 221
- period for maintaining, 249
- purpose of, 218
- reduction of, 247, 248
- separate vs. cumulative holdbacks, 222, 226
- set-off, 12, 231, 232, 254
- trust account (Saskatchewan), 250
- use of to complete contract, 245, 246
- holdback fund (payments by owner affecting)**
  - appropriation re payment for material, 244
  - completion of contract, payments re, 245, 246
  - deficiencies, deduction for, 256
  - effect of, 241, 250, 251
  - expiration of holdback period, 251
  - general, 239, 240, 251
  - good faith requirement, 241
  - payment into court, 235, 253–255
  - person not primarily liable, payments by, 242, 243
  - premature payments, 252
  - reduction of holdback, 247
  - timing of payment, 241
- husband and wife**, *see* spousal interests
- illegal contracts**, 15, 43
- “improvement”**, 9, 75, 110
- “in respect of” an improvement**, 21, 28, 54
- insurance proceeds**, 147, 148
- interest, right to**, *see also* enforcement of lien
  - Alberta, 363, 368, 415
  - British Columbia, 363, 366, 415
  - equipment leases, under, 367
  - general, 166, 363, 365, 415
  - Manitoba, 363
  - mortgages, on, 444
  - Saskatchewan, 364, 415
- interests in land**, *see* lienable interests
- interim payments**, 24
- interpleader**, 270, 301, 317
- interpretation of legislation**, 5–7, 18
- irrigation districts**, 124, 126
- irrigation systems**, 9
- joinder**, *see* enforcement of lien consolidation of actions
- jurisdiction of court**, *see also* enforcement of lien
  - accountings, 263
  - Alberta, 266
  - amendments, re, 170, 174, 175, 265
  - British Columbia, 267–270

- general, 82, 262–265
- Manitoba, 266
- receivers, appointment of, 263
- Saskatchewan, 266
- security, reduction of, 264
- labourers**, *see* wage earners
- landscaping**, 9
- leasehold interests**
  - Alberta, 104, 108, 110
  - British Columbia, 107, 109, 110
  - Crown property, 102
  - filing of lien, 103
  - forfeiture/cancellation of lease, effect of, 108
  - general, 95–97, 102
  - Manitoba, 105, 108
  - notice to fee simple holder, 104
  - removable buildings, 110
  - sale/assignment of lease, 109
  - Saskatchewan, 106, 108–110
- legal services**, 9
- lessors**, *see* equipment lessors; leasehold interests
- lien claims/claimants**, *see also* registration; specific claimants, e.g., subcontractors
  - amount of lien, 11–14, 166, 169, 363–368, 415, 444
  - architects, 8, 9, 11, 26, 27, 59, 68–72
  - arising of lien, 10, 33, 150
  - assignability of, 16
  - clearing of land, 79
  - consent/privity re work/service, 89–94
  - “construction”, 9
  - construction superintendents, 73
  - contractors, 17–27, 66
  - counterclaims, 12
  - demolition work, 9, 85
  - developers, 78
  - drawings/specifications, preparers of, 8
  - engineers, 8, 9, 59, 69–71
  - equipment (installed), 76
  - equipment lessors, 8, 65–67
  - excavation worker, 75
  - general, 8–16
  - illegal contracts, 15, 43
  - “improvement”, 9, 75
  - landscaping, 9
  - materialman, 8–10, 17, 30, 39–57, 66
  - mineworkers, 75
  - partnerships, 74
  - plowing of land, 79
  - subcontractors, 28–38, 48, 66
  - surveyors, 77
  - wage earners, 32, 48, 56, 58–64, 85
  - work/services, 7–9
- “lien fund” (Alberta)**, *see* holdback fund
- lienable interests**
  - agreements for sale, 98, 99, 111–116
  - condominiums, 87
  - Crown property, 102, 128–138, 176–178
  - general, 80–87
  - highways/streets, 124–128, 132, 133
  - insurance proceeds, 147, 148
  - irrigation districts, 124, 126
  - land, 83, 85, 87
  - leasehold interests, 95–97, 102–110
  - legal vs. equitable interests, 81
  - lien rights, lien against, 81
  - life estates, 104
  - materials, 84

## INDEX

---

- minerals, 117–120, 158–160
- modular houses, 85
- money paid into court re lien, 146
- multiple properties subject to lien, 139–145
- “owner’s” interest, 29, 89–101, 114–116, 121–123
- produce of land, 86
- spousal interests, 121–123
- transfer of interest, effect on lien, 80
- life estates**, 104
- light fixtures, installation of**, 9
- limitation periods**, *see* time limitations
- loss of lien right**, *see also* discharge of lien
  - agreements respecting payment for discharge, 55
  - estoppel, 37, 405–409
  - failure to commence/continue action, 386–400, 403, 419
  - failure to register, 153, 385, 393–399
  - illegal contracts, 15, 43
  - merger, by, 402, 404, 434
  - waiver, 20, 23, 35, 401–403
- “material”**
  - accommodation, 54
  - coal, 50
  - electricity, 51
  - explosives, 52
  - food, 54
  - general, 8, 10, 49
  - oil/gasoline, 53
  - propane, 50
  - repair work re machinery, 53
  - spare parts, 52
  - transport of men/equipment, 53
- material supplies**, *see* materialman
- materialman**, *see also* contractors; subcontractors
  - Alberta, 39, 44, 47
  - British Columbia, 40, 66
  - contract for materials, need for, 43
  - definition of, 17, 48
  - del credere agents, 48
  - “furnishes”, 9, 10, 39, 44, 45
  - guarantee by owner, 57
  - holdback, access to, 56
  - “in respect of”, 54
  - incorporation in improvement, 44
  - labourer distinguished, 48
  - loss of right, 55
  - Manitoba, 41, 44, 47
  - “material”, 8, 10, 49–54
  - removal of material from site, 46
  - Saskatchewan, 42, 45
  - specific improvement, furnishing for, 39–42
  - subcontractor, as, 30
  - subcontractors distinguished, 48
  - unincorporated material, 47
  - wages, lien for, 56
- merger**, 402, 404, 434, *see also* estoppel; waiver
- minerals**
  - Alberta, 117, 158
  - British Columbia, 120
  - Manitoba, 159
  - oil and gas, 119, 158–160, 211, 466
  - priorities, 119, 447, 464, 466
  - Saskatchewan, 86, 117, 118, 160, 447
- mineworkers**, 75



- mistake, effect of**, 9
- mortgages/mortgagees**
- foreclose/sale proceedings, 268, 450, 456–462
  - holdback fund, right to establish, 223
  - “owner”, as, 435–437
  - party to action, as, 312, 321
  - prior mortgages/advances, 438–450
  - subrogation rights, 451, 455
  - subsequent mortgages/advances, 451–455
- nature of lien**
- actions outside legislation allowable, 4
  - general, 1, 505
  - intent of acts, 2, 3
  - interpretation of acts, 5–7
  - waiver of Act not allowed, 20
- oil and gas**, *see* minerals
- ornaments, installation of**, 9
- “owner”**
- consent/privity re work/service, 89–94, 114–116, 121–123
  - definition, 88
  - express vs. implied request, 91
  - general, 87
  - grantees, 94
  - landlord as, 88, 92
  - lessees/lessors as, 95–97
  - mortgagees as, 435–437
  - occupiers/squatters as, 94
  - purchasers as, 98, 99
  - railways, 100
  - request for improvement, 89–94, 114–116, 121–123
  - school trustees as, 101
  - subcontractor as, 29
- paintings, installation of**, 9
- parties to action**, *see also* enforcement of lien
- adding of, 318–322, 324
  - Alberta, 304
  - assignments, effect of, 311, 313
  - British Columbia, 305
  - corporations, 310
  - encumbrancers arising pendente lite, 309
  - garnishees, 317
  - general, 303–317
  - lienholders who have settled, 316
  - Manitoba, 306
  - mortgagees, 312, 321
  - “owner”, 308
  - Saskatchewan, 307
  - third parties, 325–327
  - trustee in bankruptcy as, 315
  - unnamed lienholders, 314
- partnerships**, 74, 411
- “payment certifier”**, 26, 27
- payment into court**, *see also* discharge of lien; security for lien
- Alberta, 253, 415
  - amount of, determining, 235, 254, 415, 416
  - application/disbursement of funds, 255, 425
  - British Columbia, 254, 416, 419, 423
  - charging order against, 431
  - discretion of court, 424
  - dismissal of action, effect of, 432
  - general effect of, 146, 420, 422, 423
  - holdback fund, of, 253–255, 419, 420, 422
  - interpleader, 270, 301, 317
  - Manitoba, 420

## INDEX

---

- multiple properties liened, 426
- payment out (general), 255, 425, 427, 432
- payment out (holdback, of), 255
- Saskatchewan, 415, 421
- service of order for, 421
- performance bonds**, *see* sureties
- personal judgment**, *see* damages
- pleadings**, *see also* enforcement of lien
  - amendments, 275, 276, 319, 322, 323, 399
  - contents of, 274
  - counterclaims, 12, 279, 300
  - defences, 278
  - set-off, 300
  - striking out, 277, 346
- plowing of land**, 79
- preparatory expenses**, 21
- priorities**, *see also* trust fund
  - assignments of proceeds, 497, 561
  - Bank Act security, 464, 561
  - bankruptcy, effect of, 493–495, 513, 514, 561
  - debentures, 447, 448, 464, 467, 561
  - discharge of lien, effect of, 503
  - employment insurance premiums, etc., 500, 560
  - engineers supervising construction, 481
  - executions, 498
  - fraudulent preferences, 504
  - garnishments, 317, 499, 519, 530, 561
  - general, 463, 469
  - interim payments, re, 24
  - judgment holder vs. lien claimants, 482
  - lienholders (between), 479–486
  - mineral recovery, lien re, 119, 447, 464
  - miscellaneous, 497–504
  - mortgages/advances (prior), 438–450
  - mortgages/advances (subsequent), 451–455
  - municipal hospital expenses, 468
  - oil well drilling, re, 465
  - personal property security acts, effect of, 502
  - purchasers, 465, 487–492
  - royalty interests, 466
  - sale of property, proceeds from, 358–362
  - sureties, 528
  - surface rent, oil and gas, 119
  - tax, claims for, 470–472, 538, 560
  - unregistered interests/encumbrances, 465
  - vendors, 465, 487–490
  - wage claims, 473–478
  - winding-up proceedings, 496
  - workers' compensation assessments, 501, 516, 521, 531
- privity of contract**, 34
- quantum meruit**, 22
- railways**, 100, 135
- receivers, appointment**, 263
- registration**, *see also* loss of lien right; time limitations
  - affidavit verifying claim, 151, 170–175
  - amendments, 170, 174, 175, 265
  - amount due/coming due, 166, 169
  - arising of lien, 10, 33, 150
  - assignment of lien, effect of, 16, 151

- bars to, 152
- Crown property, against, 176–178
- date of last work/service/material, 163–165
- defects, curing of, 6, 153–155, 162, 168, 175, 265
- description of work/service/material, 166
- discretion/duties of Registrar, 395, 396
- effective date of lien, 150
- failure to file, effect of, 153, 385, 486
- false/overstated claims, 169, 338
- form of claim, 161–171, 175
- general, 149–155, 486
- identifying owner/land/building, 162, 170, 174, 265
- lessee's/lessor's interest, against, 103
- multiple claimants making single claim, 161
- multiple parcels, against, 168
- place of, 156–160
- purpose of, 149
- substantial compliance, 6, 153–155, 162, 168, 175, 265
- vendor's/purchaser's interest, against, 113
- request by owner**, 89–94, 114–116, 121–123
- sale/distribution of proceeds**, *see also* enforcement of lien
  - Alberta, 353, 355, 360
  - British Columbia, 352, 358, 359
  - discretion of court, 356
  - Manitoba, 354, 355, 360
  - order for sale barring execution, 357
  - Saskatchewan, 354, 355, 361, 362
- school trustees**, 101
- security for lien**, *see also* discharge of lien; payment into court
  - action still required, 430
  - Alberta, 253, 415
  - British Columbia, 416, 417
  - effect of posting, 430
  - fixing of, 300
  - Manitoba, 420
  - release of security, 430
  - review/reduction of, 264
  - Saskatchewan, 415
  - terms of cancellation order, 429
- “services”**, 8–10, 67, 211
- set-off**, 12, 231, 232, 254, 300, *see also* counterclaims
- spousal interests**
  - Alberta, 121
  - Manitoba, 122
  - Saskatchewan, 123
- statutory basis of lien**
  - general, 1
  - intent of acts, 2, 3
  - interpretation of acts, 5–7
  - waiver of Act not allowed, 20
- stay of proceedings**, 271, 495, *see also* enforcement of lien
- subcontractors**, *see also* contractors; materialman
  - abandonment by contractor, 34
  - administrative costs, 28
  - arising of lien, 33
  - certificate of completion, 33
  - definition, 28, 48, 66
  - entitlement to statutory holdback, 36
  - “in respect of” an improvement, 28

## INDEX

---

- labourers distinguished, 32
- loss/abandonment of contractor's lien, effect, 35
- loss of lien right, 37
- materialman as, 30
- "owner" as, 29
- substantial performance, 33
- time limitations, evidence re, 38
- truckers as, 31
- waiver of rights by, 35
- subdivision approval, obtaining**, 9
- subrogation rights**, 451, 455, 516
- substantial compliance**, *see* registration
- substantial performance**
  - contracts, 26, 27
  - general, 179–181, 187–194
  - subcontracts, 33
- sureties**
  - abandonment by contractor, effect of, 34
  - priorities, 528
  - privity of contract, issues re, 34
- surveyors**, 77
- tax sales, effect of**, 410
- taxes**, *see* priorities
- time limitations**, *see* registration
- time limitations (contractor/subcontractor)**
  - abandonment/cancellation of contract, 179–181
  - Alberta, 179
  - British Columbia, 180, 195
  - "completion of contract", 179–181, 187–194, 296
  - delays at owner's request, effect of, 186
  - distinct liens arising from one contract, 184
  - extras, 190, 191
  - Manitoba, 181
  - multiple jobs on same building, 183
  - Saskatchewan, 182
  - work on improvement and chattels, 185
- time limitations (materialman)**
  - abandonment of contract, 197, 198
  - Alberta, 196
  - British Columbia, 197
  - continuing contracts for supply, 201–204
  - extras, 205
  - general, 200
  - Manitoba, 198
  - Saskatchewan, 199
  - subsequent supply contracts, effect of, 206
- time limitations (running/computation of)**
  - completion/abandonment/cancellation of contract, 179–181, 187–194, 296
  - delivery of material, 200–204, 296
  - evidence re, 38
  - general, 153, 217
- time limitations (service providers)**
  - Alberta, 211
  - British Columbia, 212
  - equipment lessors, 216
  - Manitoba, 213
  - partial claims, 215
  - Saskatchewan, 214
- time limitations (wage earners)**
  - Alberta, 207

- British Columbia, 208
- Manitoba, 209
- Saskatchewan, 210
- truckers**, 31
- trust fund**, *see also* holdback fund; priorities
  - access to/beneficiaries, 127, 129, 131, 509, 515–517, 521, 531–533, 535, 552–556
  - accountings, 532, 536
  - Alberta, 506
  - assignments, effect of, 520, 538
  - attempts to circumvent barred, 508
  - banks, obligations of, 536–538, 553
  - breach of trust, 518, 536–538, 543–556
  - claims against, making, 539–543
  - constitutionality of, 507, 545
  - damages claims against, 522
  - discharge of trustee, 540
  - distribution of, 557–561
  - garnishment, effect of, 317, 499, 519, 530
  - general, 505–509
  - jurisdiction of court re, 270
  - money subject to, 510–514, 516, 518, 521–529
  - nature/purpose of, 505, 531, 535
  - preferences, 550
- trustee of property, appointment of**, 355
- wage earners**, *see also* priorities
  - architects/engineers, 59
  - assembly work, 85
  - cooks, 61
  - diversion of product of work, by owner, 62
  - general, 58
  - “labourer”, 59
  - materialman, claims by, 56, 58
  - materialman distinguished, 48
  - subcontractors distinguished, 32, 48
  - travelling time, 60
  - “wages”, 63, 64
  - “worker”, 59
- waiver**, *see also* estoppel; loss of lien right; merger
  - acts not constituting, 402
  - extension of time for payment, effect of, 403
  - of Act, not allowed, 20, 35, 401
  - performance of contract, of, 23
  - subcontractor, by, 35
- winding-up**, 496, *see also* bankruptcy
- “work”**, 8–10
- worker**, *see* wage earners
- workers’ compensation**, 129, 501, 516, 521, 531
- zoning applications**, 9, 78

## Index to Building Contracts

(All references are to paragraph numbers.)

- abandonment (of contract)**
- general, 325, 326
  - ownership of materials upon, 85
  - quantum meruit after, 99, 104–106
- acceptance**, 2, 3, *see also* bids/tenders
- agents, liability of**, 28, 29, *see also* architects/engineers
- arbitration**, *see also* architects/engineers
- agreement to arbitrate, 313
  - arbitration panels, 312
  - bias, 315
  - compulsion to arbitrate, 3–21, 281
  - disqualification of arbitrator, 315
  - general, 310
  - international commercial, 311
  - jurisdiction of arbitrator, 313
  - procedure, 314
  - setting aside award, 313, 314
  - stay of court action, 310, 311
  - validity of arbitration clause, 310
- architects/engineers**, *see also* certificates; liability (architects/engineers); supervision of work (architects/engineers)
- advice to contractor, duty re, 129
  - arbitrator, function as, 124, 126, 162, 164, 315
  - breach of warranty of authority, 132
  - contractor, relationship with, 124
  - decisions of, finality/conclusiveness, 125, 126, 133, 134, 140, 145
  - delay in providing remedial instructions, 332
  - dual capacity of, 124
  - duties generally, 124–132, 159
  - fairness/impartiality, duty of, 125, 127, 138, 145
  - fraud of, 127
  - negligent misrepresentation, 127, 128
  - powers/authority, 125, 130–132
  - remuneration, right to, 153–155
- assignment of contract**, *see also* bonds (general)
- bankruptcy/receivership, on, 116–118
  - death of contractor, 115
  - equitable assignments, 119
  - general, 113, 114
- assignment of contract moneys**
- form of, 121, 122
  - general, 120
  - progress payments, 123
- band council, liability of**, 3–21, 22
- bankruptcy/insolvency, effect**, 116–118, 320
- bid bonds**, *see also* bonds (general); labour/material payment bonds; performance bonds
- acceptance of tender required, 296, 297
  - amount recoverable, 295, 298, 299
  - bars to liability, 297
  - nature/purpose of, 295
  - recovery under, generally, 295

- bids/tenders**, *see also* bid bonds; types of contracts
- acceptance, 2, 64, 74, 187
  - bid shopping, 44, 45, 60
  - cancellation/rebidding, 76
  - deletions by owner, 65
  - deposits, 70
  - discretion not to award, 56–60
  - duty of owner, 56, 61
  - errors in, 2, 3, 47, 67, 73
  - estimates/guesstimates, 69, 244
  - failure to complete, 68, 73
  - formal contract, execution of, 3, 67
  - general nature of, 44, 49–62, 67, 71
  - good faith requirement, 64, 76
  - legislative changes, effect of, 75
  - placement of subcontract, 46
  - parol evidence, 48
  - privilege clauses, 56–60
  - rescission, 74
  - revocation, 44, 47, 52, 66
  - “snapping up”, 67
  - suppliers’ rights, 72
  - taxes, 75
- bonds (general)**, *see also* bid bonds; labour/material payment bonds; performance bonds
- assignment of rights under, 292
  - escrow agreement as, 294
  - formal requirements of, 285, 286
  - liability limits, 287
  - mitigation of damages, 287
  - nature of, 284
  - non-conforming bids, acceptance of, 290
  - persons bound by, 285
  - privilege clauses, 55–60
  - recover under, generally, 287
  - release of surety, 288, 289
  - subcontractor’s obligations with respect to owner, 3–21, 293
  - subcontractor’s rights against surety, 291
  - variation of building contract, effect of, 288
  - writing requirements, 285
- breach of contract**, *see* damages
- builders’ liens**, 117, 256, 366, *see also* payment; subcontractors
- “building contracts”**, 1, *see also* types of contracts
- certificates**
- action on, 150
  - conclusiveness of, 145, 146, 150, 151, 372
  - entitlement to, 252, 255
  - extras, re, 148, 277–280
  - final certificate, 144, 146
  - form of, 147–150, 255
  - hearing of parties, 142
  - progress payments, re, 141, 143, 252
  - purpose/effect of, 141, 143
  - signing of, 148
  - time for issuing, 149
  - validity of, 148–151
  - waiver of, 144, 147, 150–152
- children**, *see* infants
- clubs**, 26
- completion**, *see* performance
- conditions precedent**, 3, 86, 87, 226, 278, *see also* payment
- construction**, *see* interpretation/construction
- contra proferentum**, 4, 31
- corporations**
- contracts of, generally, 23

## INDEX

---

- extraprovincial activities, 24
- personal vs. corporate liability, 25
- pre-incorporation contracts, 29
- seal of, use, 23
- cost-plus**, 11, 14, 242, 247, 248
- “costs of material and labour”**, 14
- Crown**
  - authority of agents, 18
  - claim’s against, 16, 17
- custom**, *see* interpretation/construction
- damages**, *see also* penalties/liquidated damages; performance; quantum meruit; rectification; rescission
  - breach by contractor, 326–333
  - breach by owner, 324, 325
  - concurrent tort liability, 328
  - defective work, 342–350
  - delay by contractor, 183, 200, 213–220, 335–341, 363, 370, 372
  - delay by owner, 332, 334, 371
  - delay by subcontractor/supplier, 341
  - exculpatory clauses, 40, 358, 360, 361, 363, 371
  - extras, re, 218, 336, 370
  - lost profits, 354–357
  - measure of, 326, 329, 338, 345, 354–357
  - mitigation, 331
  - predetermination of, reasonableness, 363
  - set-off, 253
  - specifications, non-compliance with, 81
  - waiver, 203, 349, 351, 352
- death of contractor**, 115
- defective work**
  - acceptance/waiver, 349
  - causation, 344
  - code compliance, 343
  - general, 342, 343, 350
  - measure of damages, 345
  - notice to contractor, 350
  - recovery of payments, 348
  - set-off for, 347
  - warranty programs, 346
- definitions**, *see also* interpretation/construction
  - building contract, 1
  - completion, 199
  - costs of material and labour, 14
  - extra, 258, 259
  - frustration, 108
  - overhead costs, 14
  - rescission, 89
  - standard builder’s warranty, 38
  - subcontractor, 171
- delay by contractor**, *see also* damages; performance
  - delay clauses, 217, 339
  - extras, 218, 336, 370
  - general, 200, 213–220, 335
  - measure of damages, 338
  - onus of proof, 340
  - owner’s conduct, 335
  - penalty clauses, 217, 341
  - time extensions, 217, 220, 335
  - waiver of, 220, 336, 337, 372
- discriminatory provisions**, 20
- duress**, 231, *see also* illegality
- engineers**, *see* architects/engineers
- estimates**, 69
- evidence**
  - bids/tenders, 48



## BUILDING CONTRACTS

---

- conditions precedent, re, 86
- expert evidence, 32
- parol evidence, 2, 31, 48, 86
- proof of contract, onus, 2
- exculpatory clauses**, 40, 358, 359, 360, 371
- extras**
  - acquiescence of owner, 282, 283
  - amount claimable for, 261
  - architect's role re, 138, 139, 148, 280
  - assumption of risk re, 262
  - authorization for, 261, 264, 270–274
  - bars to recovery for, 267
  - certificates re, 148, 277–280
  - definition, 258, 259
  - delay caused by, 218, 336, 370
  - general, 12, 258
  - higher quality work as, 275
  - interest on, 268
  - material change, when constituting, 271
  - municipal by-law barring, 266
  - nature of contract, relevance of, 265
  - penalties/liquidated damages, 370
  - proof work being extra, 260
  - quantum meruit, 271
  - reason required, relevance of, 261–264
  - set-off against, 269
  - time for completing, 218, 276, 278, 370
- fitness**, *see* warranty of fitness
- fraud**, *see* architects/engineers; misrepresentation
- frustration**, *see* impossibility/frustration
- general principles**, *see also* interpretation/construction; parties; specific issues, e.g., rescission; types of contracts
  - acceptance, 3
  - ambiguity, 7
  - bids/tenders, 3
  - conditions precedent, 3
  - contra proferentum, 4, 31
  - general, 2
  - interest provisions, 9
  - multiple contracts, 2, 5, 6
  - oral contracts, 10
  - parol evidence, 2
  - proof of contract, 2
  - Statute of Frauds, 10
  - variation of terms, 8
- “guaranteed upset price contract”**, 3–21, 249
- “guesstimate”**, 69
- illegality**, *see also* impossibility/frustration; performance
  - duress, 231
  - examples, 229, 230
  - general, 229, 231
  - proof of, 3
  - quantum meruit, 229
  - supervening legislation, 232
  - trusts, 233
- impossibility/frustration**, *see also* illegality; performance
  - act of God, 227
  - conditions precedent, effect, 226
  - contemplated problems arising, 228
  - definition, 108
  - extras, re, 262
  - force majeure clauses, 224
  - general, 223, 224

## INDEX

---

- impossibility due to act of party, 225, 234
- supervening legislation, 232
- infants**, 30
- innocent misrepresentation**, *see* misrepresentation
- insurance** 33
- interest**, 9, 112, 268
- interpretation/construction**, *see also* definitions
  - contra proferentum, 4, 31
  - expert evidence, 32
  - extrinsic evidence, 31
  - general, 31, 32
  - implied terms, 35–41
  - penalties/liquidated damages, 364, 369
  - quantities, re, 42, 43
  - reasonableness, provisions re, 36–38
  - repugnant provisions, 33, 34
  - trade custom, 31, 37
  - warranty of fitness, 40, 41
  - workmanlike performance, 39
- labour/material payment bonds**, *see also* bid bonds; bonds (general); performance bonds
  - defences to liability, 309
  - irrevocable letter of credit as, 308
  - nature/purpose of, 307
- liability (architects/engineers.)**, *see also* damages; third party liability
  - breach of contract, 164
  - breach of warranty of authority, 132
  - certificates, errors in, 144
  - estimates, errors in, 157
  - failure to supervise, 133
  - fraud/misrepresentation, 127, 165, 166
  - general, 156, 159, 161, 162, 167
  - improper supervision, 135, 136
  - negligence, 127–129, 139, 156–158, 161, 162, 166, 168–170
  - scope of damages, 167, 170
  - site investigations, re, 158
  - subsequent purchaser, to, 160
  - third parties, to, 168–170
- lump sum contracts**, 11, 12, 43, 242, 243
- material suppliers**, *see also* subcontractors
  - bids by, 178
  - duties of, 179, 181
  - liability of owner, 180
  - liability to owner, 179
  - placing of contracts with, 178
  - supervision of installers, 181
- materials**, *see also* labour/material payment bonds
  - abandonment of contract, effect, 85
  - delivery, effect of, 84
  - ownership of, 82, 84
  - protection by contractor, 83
- minors**, *see* infants
- misrepresentation**
  - architect/engineer, by, 127, 165, 166
  - fraudulent, 92, 93
  - innocent, 95
  - negligent, 94, 96
  - rescission and, 90, 92–95
- mistake**, *see* rectification; rescission
- municipal corporations**
  - by-law requirements, directory vs. mandatory, 21
  - discriminatory contracts, 20

## BUILDING CONTRACTS

---

- power to contract, 19
- seal on contract, 19
- validity of contracts, 19, 20
- negligence**, *see*  
architects/engineers; damages;  
misrepresentation; third party  
liability
- novation**, 88 365
- offer**, *see* bids/tenders
- oral contracts**, 10
- “overhead costs”**, 14
- parties**
  - agents, 28, 29
  - corporations, 23–25, 29
  - Crown, 16–18
  - general, 15
  - infants, 30
  - joint contracts, 15
  - municipal corporations, 19–21
  - partnerships, 27
  - societies, 23
  - unincorporated entities, 26
- partnerships**, 27
- payment**, *see also* damages;  
performance; quantum meruit
  - building code standards, 3–21,  
241
  - conditions precedent to,  
238–240, 252, 255
  - cost plus contracts, 242, 247,  
248
  - defects in performance, effect of,  
201, 236, 269
  - delayed performance, effect of,  
200
  - direct payment by owner to  
subtrades, 236
  - enforcing, 240
  - final payment, 254, 255, 372
  - general, 235
  - holdbacks, 256, 257
  - lump sum contracts, 242, 243
  - methods generally, 242
  - partial performance, 202–204,  
211, 212
  - penalty clauses, 217, 276
  - progress payments, 141, 143,  
202, 204, 210, 215, 250–252,  
253
  - reasonable time for, 235
  - set-off, 253
  - unit price contracts, 242, 245,  
246
- penalties/liquidated damages**, *see*  
*also* damages
  - conduct of owner, effect of, 217,  
371
  - delay as breach, 367, 368
  - extensions of time, effect, 370
  - general, 362
  - interpretation, 364, 369
  - novation, effect of, 365
  - recovery under, 366
  - waiver, 369, 370, 372
- performance**, *see also* damages;  
illegality; impossibility/frustration;  
penalties/liquidated damages
  - “completion”, 199
  - condition precedent to payment,  
as, 198
  - defects in, effect of, 201, 209,  
212, 222
  - delays, effect of, 200, 213–220
  - “entire contracts”, 204
  - extension of time for, 208
  - in accordance with plans, 205
  - non-performance generally, 221,  
222, 234
  - notice of completion, 206
  - partial, effect of, 202–204, 211,  
212

## INDEX

---

- penalty clauses, 217
  - progress payments, 202, 204, 210, 215
  - quantum meruit, 207
  - “substantial completion”, 201, 204, 209, 210, 222
  - time for, 208, 213–220, 276
  - waiver of complete performance, 203, 349, 351, 352
  - waiver of maximum price in contract, 3–21, 353
- performance bonds**, *see also* bid bonds; bonds (general); labour/material payment bonds
- discharge of surety, 300, 302, 303, 304
  - escrow agreements as, 294
  - execution/delivery, 303
  - forfeiture, relief from, 302
  - indemnity agreements, 306
  - nature/purpose of, 300, 301
  - subrogation rights, 301, 305
  - time for claiming, 302
- progress payments**, 141, 143, 202, 204, 210, 215, 250–252
- quantum meruit**
- abandonment by contractor, after, 106, 107
  - abandonment by owner, after, 104, 105
  - amount recoverable, 111, 112
  - availability generally, 91, 99–101, 110
  - change in nature of work, 108–110
  - extras, re, 271
  - frustrated contracts, 108
  - general, 207
  - illegal contracts, 229
  - interest on award, 112
  - knowledge of owner, 100
  - payment provisions, absence of, 102
  - payment provisions, setting aside, 103
  - subcontracts, re, 190
- reasonableness, provisions re**, 36–38, 205, 216
- receivership**, *see* bankruptcy/insolvency
- rectification**, *see also* bids/tenders; damages; quantum meruit; rescission
- mutual mistake, 97
  - unilateral mistake, 98
- rescission**, *see also* bids/tenders; damages; quantum meruit; rectification
- fraudulent misrepresentation, 92, 93
  - general, 89–91
  - innocent misrepresentation, 95
  - misrepresentation, general, 90
  - mistake, for, 98
  - partial, 90
  - quantum meruit and, 91
- set-off**, *see* damages; payment
- societies**, 23
- specifications**
- accuracy of, 80
  - ambiguities, 78, 80
  - approval by owner, 81
  - architect’s role re, 138
  - changes to, 79, 80, 283
  - contractor’s duty re, 78
  - damages for breach, 81
  - general, 77
  - owner’s warranty re, 80, 81
  - supremacy of, 81
  - trade custom, effect of, 79

- workmanlike construction and, 81
- Statute of Frauds**, 10, 285
- subcontractors**, *see also* material suppliers
  - bidding/tendering, 187, 188
  - breach of contract, 185
  - choice of subcontractor, 176
  - contractor's liability for, 189
  - liability to owner, 191, 197, 339, 341
  - owner's liability to, 172, 173, 192, 193
  - payment, 190, 192
  - relationship with contractor, 174, 182–189
  - relationship with owner, 172, 173, 191–193, 194, 197
  - right to employ, 175
  - rights under bond, 291
  - “subcontract”, 171
  - “subcontractor”, 171
  - sub-subcontractors, 177
  - termination of head contract, effect, 173, 182
  - terms of, 184
  - third party rights, 195–197
- supervision of work (architects/engineers)**
  - changes, 138, 139, 148
  - decisions re standards, 134
  - extras, 138, 139, 148
  - general, 133
  - method of performance, specifying, 135
  - owner's liability, 133
  - specifications, interpreting, 138
  - standard of care, 136, 137
  - work not required by contract, 138–140
- suppliers**, *see* material suppliers; subcontractors
- tenders**, *see* bids/tenders
- terms**, *see* discriminatory provisions; exculpatory clauses; interpretation/construction; penalties/liquidated damages; specifications; variation of terms
- third party liability (contractor's)**
  - defective construction, 322
  - general, 322
  - subsequent purchasers, 322
  - voluntary acts of workers, 323
- third party liability (owner's)**
  - contractor's negligence, 316–318
  - dangerous work, 318
  - developer's insolvency, 320
  - general, 317
  - indemnity agreements, effect, 321
  - supervision by owner, 317
  - unlawful construction, 318
  - work under statutory power, 319
- types of contract**, *see also* bids/tenders
  - conditional contracts, 86, 87
  - cost-plus, 11, 14, 242, 247, 248
  - extras, 12
  - general, 11
  - joint contracts, 15
  - lump sum, 11, 12, 43, 242, 243
  - unit price, 11, 13, 242, 245
- unincorporated entities**, 26
- unit price contracts**, 11, 13, 242, 245
- variation of terms**, 8
- waiver**, *see* damages; penalties/liquidated damages; performance

INDEX

---

warranty of fitness, 40, 41, 342  
warranty programs, 346

workmanlike performance, 39,  
81  
writing, *see* Statute of Frauds

## Index To Burial And Cremation

*(All references are to paragraph numbers.)*

- aboriginal rights/burial grounds**, 72, 226
- actions (civil)**, 59–63, 81
- autopsies/investigations**, 13, 60, 94
- bodies (disinterment)**
- Alberta, 60, 91
  - British Columbia, 91, 96
  - Criminal Code, 93
  - general, 91, 94, 95
  - Manitoba, 93
  - Saskatchewan, 60, 91, 92, 97
- bodies (offences re)**
- Alberta, 54
  - British Columbia, 36, 57, 58
  - Criminal Code, 53
  - cryonics/irradiation, 36
  - Manitoba, 55
  - Saskatchewan, 56
- bodies (possession of/property in)**, 23, 24, 35, 59, 64–68
- bodies (transportation of)**
- Alberta, 30, 34
  - British Columbia, 31, 34
  - Manitoba, 32, 34
  - Saskatchewan, 33, 34
- bodies (unclaimed/unidentified)**
- disposition of
    - Alberta, 18, 22, 29, 144
    - British Columbia, 17, 27
    - general, 16
    - Manitoba, 19–21, 23, 26, 28, 75, 144, 146
    - Saskatchewan, 24, 25, 144
  - right to possession of, 23, 24
  - use of, 48–52
- bodies (use of)**
- consent, with, 37–47
  - cryonics/irradiation, 36
  - general, 35, 36
  - possession of/property in bodies, 35, 59
  - unclaimed bodies, 48–52
- burial plots (access to)**, 119, 130, 169–173
- burial plots (registration of)**, 168, 176
- burial plots (sale/ownership)**, *see also perpetual care funds; pre-need contracts*
- Alberta, 157, 159, 160
  - British Columbia, 162
  - easements, 164
  - general, 164–167
  - Manitoba, 157–159
  - rights acquired, 176, 177
  - Saskatchewan, 161, 163
  - seizure/execution, 155, 156
  - shareholders' rights, 174, 175
  - taking back of, 195–197
- burials**, *see also perpetual care funds*
- costs of, 25–29, 144, 146
  - duties re, 69–75
  - permits, 128, 129, 131, 134
  - style of, 71, 76–81
  - vaults/chapels, 138
  - war veterans, 140, 144
- cemeteries**, *see facilities*
- churchyards**, 98–100
- columbarium**, *see facilities (establishment)*
- creditors' rights**, 155, 156

**cremation, *see also* facilities**

- Alberta, 86
- British Columbia, 83–85
- general, 82
- Manitoba, 87
- Saskatchewan, 88–90

**cryonics/irradiation, 36**

**death (presumption of), 1**

**death (registration of)**

- aircraft, death on board, 8
- errors, correction of, 9
- person responsible for, 10
- place of, 6–9
- ships, death onboard, 7
- time for, 11
- violence/misadventure, death by, 12–15

**disinterment, *see* bodies (disinterment)**

**facilities (closing/disposition of lands)**

- Alberta, 211–216
- British Columbia, 217, 218
- Manitoba, 219
- Saskatchewan, 220–224

**facilities (establishment), *see also* burial plots**

- Alberta, 101–107
- British Columbia, 108–112
- Manitoba, 113–115
- Saskatchewan, 116–118
- trusts re, 100

**facilities (general/definitions), 98–100**

**facilities (licensing), 147–150**

**facilities (management/operation), *see***

***also* burial plots; burials; perpetual care funds**

- abandonment/neglect, 123, 139
- access to/layout of plots, 119, 130
- beautification/maintenance, 120
- conduct of burials, 126, 128
- duties re, 122, 126, 128, 129
- exclusive areas, 121
- expropriation of, 123
- fees/charges, 141, 142
- general, 119, 125
- maintenance, 136–140
- memorials, 124, 127, 132, 133
- municipal cemeteries, 125
- offences re, 127, 130, 132, 133
- order/quiet, maintenance of, 126
- records, 143

**facilities (taxation), 151–154**

**funeral establishments, *see* facilities**

**legislation/regulations, 225**

**mausoleums, *see* facilities (establishment)**

**offences, *see* bodies (offences re); facilities (management/operation)**

**perpetual care funds**

- accounts, passing of, 183–188
- bequest for, 189–191
- disposition of, 192–194
- general, 178–181
- investment of, 182
- offences re, 187
- taking back plots, 195–197

**pre-need contracts, *see also* burial plots (sale/ownership)**

- Alberta, 198–201
- British Columbia, 202
- Manitoba, 203



## INDEX

---

- Saskatchewan, 204–210
- still-births (registration of)**
  - Alberta, 2
  - British Columbia, 3
  - Manitoba, 4
  - Saskatchewan, 5
- trespass**, 59, 61, 62
- violence/misadventure, death by**, 12–15

## Index to Business Corporations

(All references are to paragraph numbers.)

- Alberta Act, application of**, 8
- amalgamations**, *see* fundamental changes
- amendment of articles**, *see* fundamental changes
- articles of incorporation**
- federal, 55
  - Alberta, 56
  - British Columbia, 57
  - Manitoba, 58
  - Saskatchewan, 59
- borrowing power**, *see* fundamental changes
- British Columbia Act**
- recognition of corporations, 25
  - special act corporations, 26
- by-laws**, 302–305
- continuation**, *see* fundamental changes
- corporate finance**
- commission for sale of shares, 176
  - common law, 138–163
  - contract to buy shares, 175
  - conversion of shares (British Columbia), 171
  - corporation holding its own shares, 170
  - donated shares, 172
  - floating charges, 213–222
  - mortgages, 208–212
  - options and rights, 168, 169
  - pre-emptive right, 167
  - reduction in stated capital, 173
  - sale of constrained shares by federal corporation, 200
  - shares, 164
  - shares in series, 166
  - stated capital account, 165
  - stated capital account, adjustment, 174
- corporate records, access to**, 137
- corporate veil**, *see* corporation as legal entity; piercing corporate veil
- corporation as legal entity**, 40–43, *see also* piercing corporate veil
- criminal offences, officers and directors**, 401–403
- criminal proceedings against corporations**, 111–122
- damages, apportionment (federal)**, 655
- debentures**, 201–207
- derivative actions**, *see* remedies, offences and penalties
- directors**, *see also* duty of care, officers and directors
- disclosure of interest (Alberta), 358–362
  - disclosure of interest (British Columbia), 363–374
  - disclosure of interest (common law), 333–356
  - disclosure of interest (federal), 357
  - disclosure of interest (Manitoba and Saskatchewan), 375–381
  - duty of care, *see* duty of care, officers and directors
  - duty to manage, 297
  - liability (Alberta), 315
  - liability (British Columbia), 316, 317
  - liability (federal), 312–314

- liability (Manitoba), 318
- liability (Saskatchewan), 319
- Manitoba and Saskatchewan (duty of directors), 805–809
- number, 298–301
- organization meeting, 306
- qualifications (Alberta), 308
- qualifications (British Columbia), 309
- qualifications (federal), 307
- qualifications (Manitoba), 310
- qualifications (Saskatchewan), 311
- wages, liability for (Alberta), 329
- wages, liability for (British Columbia), 330
- wages, liability for (common law), 320–325
- wages, liability for (federal), 326–328
- wages, liability for (Manitoba), 331
- wages, liability for (Saskatchewan), 332
- dissent, director**, 414–417
- distributing corporations**, 23–24
- dividends**
  - common law, 177–196
  - form of dividend, 198
  - legislation, 197–200
  - payment, 197
  - shareholder immunity, 199
- duty of care, officers and directors**
  - common law, 387–399
  - federal, 400
  - criminal offences, 401–403
  - Alberta, 404
  - British Columbia, 405
  - Manitoba, 406–409
  - Saskatchewan, 410–413
- evidence (corporate certificates)**, 836
- extra-provincial corporations**
  - continuance (export), 849, 850
  - continuance (import), 846–848
  - information, 853–856
  - registration, 838–845
  - service, 851, 852
- federal act**
  - application, 2–4
  - not-for-profits, 7
  - purpose, 6
- financial disclosure**
  - Alberta, 469
  - British Columbia, 470
  - common law, 467
  - federal, 468
  - Manitoba, 471
  - Saskatchewan, 472, 473
- floating charges**, 213–222
- Foss v. Harbottle*, rule in**, 102–110
- fundamental changes**
  - Alberta (amalgamation), 508
  - Alberta (amendment of articles), 507
  - Alberta (court-ordered reorganization), 511
  - Alberta (extraordinary sale), 509
  - Alberta (take-over bids), 512
  - British Columbia (amalgamation), 516, 517
  - British Columbia (amendment of articles), 513, 514
  - British Columbia (arrangements), 518
  - British Columbia (compulsory acquisitions), 519

## INDEX

---

- British Columbia (continuation), 522, 523
  - British Columbia (conversion of Special Act corporations), 515
  - British Columbia (disposal of undertaking), 520
  - British Columbia (transfer of corporation), 521
  - common law, 474–491
  - federal (amalgamation), 494
  - federal (amendment of articles), 492, 493
  - federal (borrowing powers), 497
  - federal (continuance), 495, 496
  - federal (going-private transactions), 504
  - federal (reorganizations and arrangements), 502, 503
  - federal (squeeze-out transactions), 505
  - federal (take-overs), 506
  - Manitoba (amalgamation), 525
  - Manitoba (amendment of articles), 524
  - Manitoba (arrangement), 530
  - Manitoba (borrowing powers), 528
  - Manitoba (continuance), 526, 527
  - Manitoba (registration of extra-provincial corporations), 531
  - Saskatchewan (take-over bids), 540
  - Saskatchewan (amalgamation), 533
  - Saskatchewan (amendment of articles), 532
  - Saskatchewan (arrangement), 539
  - Saskatchewan (borrowing powers), 536
  - Saskatchewan (continuance), 534, 535
  - Saskatchewan (reorganization), 538
- going-private transactions (federal), 504**
- incorporation**
- advantages, 27–30
  - Alberta, 33
  - British Columbia, 34
  - disadvantages, 31
  - federal, 32
  - Manitoba, 35
  - one-person corporation, 37
  - professional corporations, 38, 39
  - Saskatchewan, 36
- indemnification by corporation, 418**
- indoor management rule, 134, 135**
- insider trading**
- common law, 423, 424
  - federal, 425–427
  - Alberta, 428
  - British Columbia, 429
  - Manitoba, 430
  - Saskatchewan, 431
- investigation**
- common law, 638–644
  - federal, 645, 646
  - Alberta, 647, 648
  - British Columbia, 649, 650
  - Manitoba, 651, 652
  - Saskatchewan, 653, 654
- liquidation and dissolution**
- Alberta (appointment of liquidator), 608
  - Alberta (bankruptcy and insolvency), 603
  - Alberta (dissolution by shareholders), 605–607

- Alberta (revival), 604
  - British Columbia (bankruptcy and insolvency), 609
  - British Columbia (corporate status before dissolution), 613
  - British Columbia (liquidators), 612
  - British Columbia (proceedings for dissolution), 614–618
  - British Columbia (restoration), 619
  - British Columbia (voluntary dissolution), 610
  - British Columbia (voluntary liquidation), 611
  - common law, 541–566
  - federal (appointment of liquidator), 602
  - federal (bankruptcy and insolvency), 597
  - federal (dissolution), 599–601
  - federal (revival), 598
  - Manitoba (appointment of liquidator), 625
  - Manitoba (continuing liability), 626, 627
  - Manitoba (dissolution), 622–624
  - Manitoba (revival), 620, 621
  - Saskatchewan (continuing liability), 636, 637
  - Saskatchewan (appointment of liquidator), 635
  - Saskatchewan (bankruptcy and insolvency), 628
  - Saskatchewan (dissolution), 630–634
  - Saskatchewan (revival), 629
  - Winding-Up and Restructuring Act, 567–596
- Manitoba Act**
- application, 9–13
  - existing corporations, 14, 15
- mortgages**, 208–212
- name of corporation**
- Alberta, 71
  - British Columbia, 72
  - common law, 60–69
  - federal, 70
  - Manitoba, 73
  - Saskatchewan, 74
- notice, administrative proceedings and**, 835
- offences**, *see* remedies, offences and penalties
- officers**, 382–386, *see also* duty of care, officers and directors
- oppression remedy**, *see* remedies, offences and penalties
- penalties**, *see* remedies, offences and penalties
- piercing corporate veil**, 44–54
- powers and capacities of corporations**
- general, 93–101
  - legislatively prescribed, 130–133
  - rule in *Foss v. Harbottle*, 102–110
- pre-incorporation contracts**, 77–86
- professional corporations**, 38, 39
- proxies**
- Alberta, 463
  - British Columbia, 464
  - common law, 455–461
  - federal, 462
  - Manitoba, 465
  - Saskatchewan, 466
- receivers and receiver-managers**
- common law, 258–273
  - court directions, 283–287
  - directors' powers, 276

## INDEX

---

- duties, receiver-manager, 288–296
- duty of care, 279–282
- duty to act, 277
- duty under instrument, 278
- functions, receiver, 274
- functions, receiver-manager, 275
- registered office**, 136
- registrar**, 837
- relationship, corporations**, 19–22
- remedies, offences and penalties**
  - Alberta (appeals from court orders), 739
  - Alberta (compliance or restraining order), 737
  - Alberta (compliance order), 742
  - Alberta (court order for directions), 733
  - Alberta (court orders), 720
  - Alberta (derivative actions), 718, 719
  - Alberta (general offences), 741
  - Alberta (offences regarding reports), 740
  - Alberta (oppression remedy), 721–731
  - Alberta (rectification of records), 732
  - Alberta (refusal by registrar to file), 734–736
  - Alberta (security for costs), 743
  - Alberta (summary application to court), 738
  - British Columbia (applications to court), 750
  - British Columbia (compliance and restraining orders), 772
  - British Columbia (correction of records), 777–779
  - British Columbia (derivative actions), 744–748
  - British Columbia (dissent proceedings), 753–764
  - British Columbia (duty to file records), 780–782
  - British Columbia (limitation period), 798
  - British Columbia (misleading statements), 793–795
  - British Columbia (offences), 783–792
  - British Columbia (oppression remedy), 765–771
  - British Columbia (penalties), 796
  - British Columbia (relief in legal proceedings), 749
  - British Columbia (remedies preserved), 797
  - British Columbia (remedying corporate mistakes), 773–776
  - British Columbia (security for costs), 751, 752
  - federal (cancellation of articles by director), 708–714
  - federal (corporate corrections), 707
  - federal (derivative actions), 691–693
  - federal (directors' corrections), 706
  - federal (offences and punishment), 716, 717
  - federal (offences regarding reports), 715
  - federal (oppression remedy), 694–699
  - federal (rectification of records), 704, 705
  - federal (security for costs), 702, 703
  - federal (shareholder approval), 700, 701
  - Manitoba (cancellation of record by director), 818

- Manitoba (limitation period), 829
  - Manitoba (offences), 824–828
  - Manitoba and Saskatchewan (compliance and restraining orders), 822
  - Manitoba and Saskatchewan (court directions), 819
  - Manitoba and Saskatchewan (derivative actions), 799–803
  - Manitoba and Saskatchewan (discontinuance of action), 810
  - Manitoba and Saskatchewan (duty of directors), 805–809
  - Manitoba and Saskatchewan (interim costs), 812
  - Manitoba and Saskatchewan (oppression remedy), 804
  - Manitoba and Saskatchewan (rectification of records), 813–817
  - Manitoba and Saskatchewan (registration refusal proceedings), 820, 821
  - Manitoba and Saskatchewan (security for costs), 811
  - Manitoba and Saskatchewan (summary application to court), 823
  - oppression remedy (common law), 656–686
  - Saskatchewan (appeals), 830
  - Saskatchewan (disabilities and penalties), 831–834
  - types of actions distinguished, 687–690
- remuneration of directors**
- common law, 420–422
  - legislation, 419
- representation, legal proceedings,** 123–129
- residence, domicile and nationality,** 87–92
- rule in *Foss v. Harbottle*,** 102–110
- Saskatchewan Act**
- application, 16–18
- scope of title,** 1
- securities transfers**
- common law, 225–239
  - dealings with registered holder, 243–246
  - federal and Manitoba legislation, 224
  - general legislative provisions, 240–241
  - securities records, 242
  - securities transfer legislation, 223
- shareholder immunity,** 199
- shareholder meetings**
- common law, 432–449
  - federal, 450
  - Alberta, 451
  - British Columbia, 452
  - Manitoba, 453
  - Saskatchewan, 454
- shareholders' right to dissent**
- federal, 498–501
  - Alberta, 510
  - British Columbia, 753–764
  - Manitoba, 529
  - Saskatchewan, 537
- shares,** *see* corporate finance
- take-over bids,** *see* fundamental changes
- trust indentures**
- duty of care, 256
  - evidence of compliance, 254
  - general, 247–253
  - notice of default, 255
  - reliance on statements, 257

## INDEX

---

- unlimited liability corporations**
- Alberta, 75
  - British Columbia, 76
- wages, directors' liability for, *see***  
directors
- Winding-Up and Restructuring Act, 567–596**



## Index to Charities

(All references are to paragraph numbers.)

- Accumulations Act (Ontario),**  
306–307
- charitable activities,** 1, 2
- charitable institution defined,** 3
- charitable purpose**
- community, beneficial to, 52–72
  - education, advancement of, 32–40
  - generally, 1, 2
  - Income Tax Act, under, 95–104
  - mixed purposes, 82–94
  - non-charitable purpose, 76–81
  - public benefit, 73–75
  - relief of poverty, 24–31
  - religion, advancement of, 41–51
- Charitable Gifts Act (Ontario),**  
308
- Charitable Institutions Act (Ontario),** 309
- Charitable Purposes Preservation Act (British Columbia),** 303–305
- Charities Accounting Act,**  
277–286
- community, benefit to,** 52–72
- corporations, charity as,**  
111–118
- courts**
- jurisdiction, 5–11
  - scheme-making power, 237–245
- crown, role of,** 12–23
- cy-près doctrine,** 246–274
- disclaimer of gift,** 232–234
- education, advancement of,**  
32–40
- forms**
- corporations, 111–118
  - generally, 105–106
  - Income Tax Act, under, 122
  - trusts, 107–110
  - unincorporated organizations, 119–121
- fundraising,** 139–141
- gifts**
- ambiguity, 235–236
  - certainty, requirement for, 211–224
  - cy-près doctrine, 246–274
  - disclaimer, 232–234
  - discretion to trustees, 275–276
  - failure of, 149–159
  - inaccurate description, 203–206
  - lapse, 225–231
  - preservation of, 160–202
  - scheme-making power, 237–245
  - uncertainty of amount, 207–210
- Income Tax Act**
- charitable purpose, 95–104
  - classification of charities, 122
  - deductions, 123–132
  - exemptions, 123–132
  - investments, 133–135
  - tax credits, 123–132
- investments,** 133–135
- jurisdiction of court,** *see* **courts**
- lapse of gift,** 225–231
- litigation,** 136–138
- municipality, as charitable organization,** 4

## CHARITIES

---

### **non-charitable purpose**

- generally, 76–81
- mixed purposes, 82–94

### **operations**

- investments, 133–135
- fundraising, 139–141
- litigation, 136–138
- revocation of registration, 142–148
- tax credits, 123–132
- tax deductions, 123–132
- tax exemptions, 123–132

### **perpetuities acts, 296–302**

### **poverty, relief of, 24–31**

### **public benefit, 73–75**

### **Public Guardian and Trustee, *see* crown**

### **registration, revocation of, 142–148**

### **religion, advancement of, 41–51**

### **Religious and Charitable Corporations Property Act (Nova Scotia), 295**

### **Religious Organizations' Lands Act (Ontario), 287–290**

### **Religious Societies' Land Act (Alberta), 291–294**

### **revocation of registration, 142–148**

### **Statute of Charitable Uses, 1601, 1**

### **trusts**

- charity as, 107–110
- investments, 133–135

### **trustees, discretion to, 275–276**

### **unincorporated organizations**

- charity as, 119–121

## Index to Children

(All references are to paragraph numbers.)

- actions by and against infants**
  - costs, 721–727
  - • infant plaintiff or defendant, 726, 727
    - • • liability for costs, 726
    - • • liability of infant’s solicitor, 727
  - • next friend or litigation guardian, 721–725
    - • • costs awarded to Public Trustee, 725
    - • • expenses and costs incurred for benefit of infant, 723
    - • • liability for costs, 721, 722, 724
  - discovery, 715–717
  - examination of infant, 715–717
  - examination of litigation guardian, 715, 717
  - general, 689, 690
  - infant defendant, 711–714
    - • provincial requirements for litigation guardian or representative, 711–713
    - • step in default, 714
  - infant plaintiff, 696–710
    - • actions of litigation guardian must be for benefit of infant, 704
    - • attaining age of majority, 701–703
    - • cause of action for contributory negligence against parent, 709
    - • claim of expenses by litigation guardian, 706
      - • consent of litigation guardian, 700
      - • objective in requiring litigation guardian, 707
      - • omission of litigation guardian irregularity only, 699
      - • Ontario, 697
      - • removal of litigation guardian, 710
      - • requirement for litigation guardian or representative, 696
      - • right of action belonging to infant, 705
      - • Saskatchewan, 698
      - • unborn child, 708
    - • limitations, 728–731
      - • Alberta, 728
      - • British Columbia, 729
      - • Manitoba, 729, 730
      - • Saskatchewan, 731
    - service, 691–695
      - • Alberta, 691
      - • British Columbia, 692
      - • Manitoba, 693
      - • Ontario, 694
      - • Saskatchewan, 695
    - settlement or compromise, 718–720
      - • court approval, 718
      - • not binding, 720
      - • Public Trustee of British Columbia, 719
- adoption**
  - access, 1166–1174
  - adoption order superseding existing access order, 1173

## CHILDREN

---

- adoption (*cont'd*)
  - Alberta, 1166
  - British Columbia, 1167
  - final order of adoption precluding grant of access to natural parent, 1174
  - Manitoba, 1168, 1169
  - Ontario, 1170, 1171
  - Saskatchewan, 1172
  - adoption order, Alberta, 1105
  - appeals, 1175–1178
    - Alberta, 1175
    - Ontario, 1176, 1177
    - Saskatchewan, 1178
  - application for adoption, 1049–1056
    - Alberta, 1049, 1050
    - British Columbia, 1051
    - Manitoba, 1052
    - Ontario, 1053–1056
  - assisted reproduction, 1208–1215
    - Alberta, 1208–1214
    - British Columbia, 1215
  - best interests of child, 1106–1110
    - aboriginal child, 1109
    - Alberta, 1107
    - consideration of relevant factors, 1108
    - rights of biological parents, 1109
    - test, 1106
  - child welfare agency reports, 1111–1121
    - Alberta, 1112
    - British Columbia, 1113–1116
    - Manitoba, 1117–1119
    - Ontario, 1120
  - report on adoptive placement where child permanent ward, 1111
  - Saskatchewan, 1121
  - child's name, 1122, 1123
    - child's consent to change of name, 1122, 1123
    - surname of adoptive parents unless ordered otherwise, 1122
  - consents — consents required for adoption, 1070–1077
    - Alberta, 1071
    - British Columbia, 1077
    - circumstances in which consent may be dispensed with or waived, 1072
    - consent of child, 1073
    - Ontario, 1074–1076
    - permanent ward, 1070
  - consents — dispensing with consent, 1094–1104
    - Alberta, 1099
    - British Columbia, 1100, 1101
    - child's consent, 1095
    - notice of proceedings, 1096
    - parental consent, 1097, 1098, 1103, 1104
    - parental misconduct, 1102
    - whose consent may be dispensed with, 1094
  - consents — revocation of consent, 1084–1093
    - Alberta, 1084
    - British Columbia, 1085–1087
    - consent induced by fraudulent misrepresentation, duress or undue influence, 1092
    - Manitoba, 1088
    - Ontario, 1089
    - revocation by natural parent, 1091, 1093

## INDEX

---

- adoption (*cont'd*)
  - Saskatchewan, 1090
  - consents — validity of consents, 1078–1083
    - British Columbia, 1079
    - consent executed outside province where adoption taking place, 1082
    - consideration for consent, 1083
    - Ontario requirements, 1081
    - requirements for valid consent, 1078
    - timing of attack on validity, 1078
    - when consent may be given, 1080
  - customary adoption, 1202–1204
    - Alberta, 1204
    - British Columbia, 1203
    - Inuit custom adoptions in Northwest Territories, 1202
  - de facto adoptions: Manitoba, 1149–1151
  - disclosure of information, 1179–1201
    - Alberta, 1179–1187
    - British Columbia, 1188–1190
    - Manitoba, 1191–1194
    - Ontario, 1195–1200
    - Saskatchewan, 1201
  - effect of adoption order, 1140–1148
    - aboriginal rights, 1148
    - Alberta, 1141, 1147
    - conflict of laws, 1145
    - entitlement to inherit, 1146
    - general, 1140, 1143
    - relationship in consanguinity, 1142
    - testamentary or other document, 1143
  - international adoptions, 1152–1157
    - Alberta, 1156
    - Hague Convention, 1152–1155
    - Manitoba, 1157
  - jurisdiction, 1030–1036
    - Alberta, 1030
    - British Columbia, 1031
    - Manitoba, 1032, 1033
    - move to another province, 1036
    - Ontario, 1034
    - Saskatchewan, 1035
  - offences, 1205–1207
    - advertisements dealing with adoption, 1207
    - giving or receiving payment or reward to procure child for adoption, 1205, 1206
  - openness order, 1161–1165
    - Ontario, 1161–1165
      - application for order, 1164
      - circumstances where order appropriate, 1162, 1164
      - notice, 1163, 1164, 1165
      - society to consider benefits of order or agreement, 1161
      - termination of order, 1162, 1164, 1165
      - variation of order, 1165
  - persons entitled to notice of proceedings, 1124–1136
    - Alberta, 1124–1127
    - British Columbia, 1128–1130
    - Manitoba, 1131–1134
    - where child permanent ward or voluntarily surrendered for adoption, 1136
    - where father not named, 1135

## CHILDREN

---

- adoption (*cont'd*)
  - placement of child for adoption, 1057–1069
    - Alberta, 1057
    - British Columbia, 1058, 1059
    - Manitoba, 1060–1064
    - Ontario, 1065–1068
    - Saskatchewan, 1069
  - procedure at hearing, Alberta, 1137–1139
    - adjournment, 1139
    - entitlement to be heard, 1138
    - proceedings heard in private, 1137
  - purpose of adoption, 1028, 1029
  - rescission or setting aside of adoption order, 1158–1160
    - Alberta, 1159
    - British Columbia, 1160
    - exceptional circumstances, 1158
  - who may adopt, 1037–1043
    - Alberta, 1037
    - British Columbia, 1038
    - Manitoba, 1039
    - Ontario, 1040, 1041
    - same-sex partner, 1037
    - Saskatchewan, 1042
  - who may be adopted, 1044–1048
    - aboriginal child, 1048
    - adult, 1046, 1047
    - Alberta, 1045
    - definition of “child” in western provinces, 1044
    - Ontario, 1047
- child support — appeals**
  - Alberta, 556, 557
  - British Columbia, 558–560
  - Divorce Act, 565–567
- Manitoba, 561, 564
- Ontario, 562
- Saskatchewan, 563
- child support — enforcement**
  - Alberta, 329–379
    - arrears of support, 329
    - civil contempt, 379
    - crediting of money paid to Director, 367
    - default hearing, 359, 360
    - defraying costs of Director, 372
    - deterrent charges, 357
    - enforcement of post-1986 maintenance orders, 332, 333
    - filing of maintenance agreement, 336, 338, 374
    - filing of maintenance order in Personal Property Registry, 351
    - filing of order and proceedings by minor, 368
    - filing of pre-1987 maintenance orders, 331
    - filing of maintenance orders not otherwise filed, 343
    - imprisonment of debtor, 361, 362
    - inquiries by Director to determine circumstances of debtor, 342
    - notification to registrar, 353
    - offences, 358
    - order directing payment of debtor’s salary, wages or other remuneration, 349
    - order restraining disposition or wasting of assets, 366
    - order suspending proceedings, 365

## INDEX

---

- child support —
- enforcement (*cont'd*)
  - • person in receipt of or qualifying for social assistance, 378
  - • portion of maintenance order enforceable, 329, 377
  - • person assuming care and control of child, 334
  - • powers of court, 363
  - • priority of maintenance order filed with Director, 350
  - • provision of financial information to another party, 375
  - • provision of information to court where order not filed with Director, 356
  - • provision of information to Director by Crown, provincial agency, statutory agent and business organization, 341
  - • provision of information to Director by debtor, 340, 355
  - • registration of maintenance order in Land Titles office, 354
  - • restrictions on or cancellation of driver's licence, 352
  - • role of Director of Maintenance Enforcement, 330, 339
  - • security for payment of support, 376
  - • seizure of corporate funds or property, 364
  - • support deduction notice, 344–348
  - • variation of agreement, 337
  - • variation of order, 337, 370
  - • withdrawal of maintenance order, 335, 353, 371
  - British Columbia, 380–421
    - • annual default fees, 394, 395
    - • application for variation of maintenance order, 415, 416
    - • appointment of receiver of any property of debtor, 410
    - • crediting of payments, 413
    - • deemed filing of variation of maintenance order with Director, 381
    - • default hearing, 404, 415
    - • enforcement by Director, 382, 383, 407
    - • enforcement officers, 421
    - • failure to file statement of finances, 391, 417
    - • filing of maintenance order with Director, 380
    - • information regarding debtor, 386
    - • jurisdiction, 414
    - • liability of corporation for payments where debtor sole shareholder, 392, 393
    - • notice of attachment on person indebted to debtor, 396–402
    - • notice of filing or withdrawal of order to all parties by Director, 385
    - • order for garnishment or for attachment of salary, 403
    - • order restraining debtor from disposing of or wasting any property, 412
    - • payments by debtor where order filed with Director, 387
    - • priority of maintenance order, 409
    - • registration of maintenance order in land title office, 405
    - • requirement for filing of statement of finances, 389, 390

## CHILDREN

---

- child support —
- enforcement (*cont'd*)
  - • restrictions on issuance or renewal of driver's license, 411
  - • rights of Director on appeal, 420
  - • warrant of execution, 408
  - • withdrawal of maintenance order, 384
  - federal, 524, 525
  - Manitoba, 422–442
  - • action or proceeding against designated officer, 440
  - • application of enforcement provisions, 422
  - • appointment of receiver, 435
  - • consequences of failure of debtor to appear, 432
  - • contempt proceedings, 429
  - • examination of debtor before deputy registrar, 430
  - • filing of separation agreement with designated officer, 423
  - • hearing before judge or master, 431
  - • imprisonment, 433, 437
  - • liability of corporation, 436
  - • limitation in respect of enforcement and recovery, 438
  - • offences, 437, 442
  - • payments to be remitted to designated officer, 426
  - • refusal to enforce maintenance order, 425
  - • registration documents, 424
  - • registration of order for maintenance in Land Titles office, 434
  - • relief from payment of amount in default, 439
  - • role of designated officer where person in default, 427, 428
  - • suspension order, 441
  - Ontario, 443–485
  - • agreement to change, avoid or prevent enforcement, 474
  - • alternative payment order, 469–472
  - • amounts deducted by income source, 465, 466
  - • conflict between support order and support deduction order, 458
  - • default hearing, 479
  - • demand for information, 482–483
  - • discretion of Director to enforce lesser amount of support, 454
  - • disputes as to identification of income source or amount deducted, 467
  - • enforcement mechanisms, 480, 481
  - • enforcement of orders by Director, 444–446
  - • filing of support order with Director, 460
  - • financial statement and proof of income, 478
  - • order for security for costs, 485
  - • posting of information as to payor in default on website, 484
  - • priority of support deduction order, 473, 475
  - • stay of enforcement order, 456
  - • support deduction order, 457, 462–464, 468
  - • support order, definition, 443



## INDEX

---

- child support —
- enforcement (*cont'd*)
  - support orders made by courts outside of Ontario, 457
  - suspension of driver's license, 476, 477
  - termination of support obligation, 447–453
  - terms of support order regarding enforcement by Director, 455
  - withdrawal of support order and support deduction order, 461
  - Saskatchewan, 486–523
    - appeal from order, 519
    - appointment of receiver, 512, 517
    - assignment of rights, 486
    - attaching pension entitlement, 506
    - committal for contempt, 518
    - crediting of payments, 520
    - default hearing, 514, 516
    - demand by Director for information, 494
    - enforcement by Director, 489
    - enforcement by judicial sale of encumbered land, 510
    - filing of agreement in Maintenance Enforcement Office, 488
    - garnishment, 492, 497–505
    - liability of corporation, 493
    - limitations, 522
    - notice requiring filing of financial statement, 513
    - order restraining any dealing with, or gift or transfer of property, 517
    - payment by Director to claimant of monies received, 491
    - priority of maintenance order, 495
    - recovery from estate, 523
    - registration of maintenance order as judgment, 508
    - registration of maintenance order in Saskatchewan Writ Registry and Land Titles Registry, 509
    - security for obligation under maintenance order, 507
    - termination of maintenance obligation with respect to only one of children, 496
    - terms of maintenance order regarding enforcement, 487
    - warrant for arrest, 515
    - warrant of distress, 511
    - withdrawal of maintenance order, 490
- child support — enforcement of foreign orders**
  - claimant ordinarily resident in province, 527–530
    - commencement of process, 527
    - imputing income, 530
    - provisional order, 529
    - submission of application to designated authority, 528
  - claimant ordinarily resident outside province, 531–537
    - consideration of evidence and documents from reciprocating jurisdiction, 534
    - designating authority knowing respondent residing outside Canada, 531
    - designating authority unable to determine where respondent residing, 531
    - law of jurisdiction, 535

## CHILDREN

---

- child support — enforcement of foreign orders (*cont'd*)
    - powers of court on conclusion of hearing, 536
    - respondent ordinarily residing in another reciprocating jurisdiction, 532
    - submission of application to designated authority, 531
    - where respondent does not appear or provide information or documents, 537
    - general, 526
    - registration and enforcement of orders made outside jurisdiction, 538–540
      - application to set aside registration, 540
      - effect on being registered, 539
      - enforcement, 538
      - variation of support orders, 541–555
        - appeals, 553–555
        - applicant ordinarily resident outside jurisdiction, 545–550
          - Alberta, 549, 550
          - law of jurisdiction, 546
          - powers of court on conclusion of hearing, 547
          - responsibilities of designating authority, 545
          - where respondent not appearing or providing information, 548
        - general, 541–544
        - variation of registered orders, 551, 552
  - child living and attending school elsewhere, 102, 103
  - determination of amount, 99, 101
  - parental finances, 105
  - post-secondary expenses, 104
  - two-step approach, 100
  - Child Support Guidelines, 84–97
    - applicable guidelines, 84, 85
    - applicable tables, 89
    - application of guidelines, 88
    - calculation of amounts, 91
    - child living away from parent's home, 95
    - deduction of expenses for banking transaction fees, 97
    - economics of scale, 90
    - means and needs test, 93
    - objectives of guidelines, 86
    - payor parent income-based approach, 92
    - reasonable arrangements, 87, 96
    - special provisions in order or written agreement, 94, 217
  - child under age of majority, 98
  - income over \$150,000, 106–109
    - child expense budgets, 109
    - determination of amount, 106
    - objectives, 107
    - wealth transfer, 108
  - medical or dental coverage, 112
  - rights of access to/physical custody of not less than 40% of time, 124–130
    - determination of amount, 124, 128
    - factors, 126
    - hybrid claim, 130
- child support — entitlement**
  - apportionment of support obligations, 110, 111
  - child over age of majority, 99–105

## INDEX

---

- child support —
- entitlement (*cont'd*)
  - • modification of set off amount, 127
  - • onus on payor, 128
  - • threshold, 129
  - • two-part determination, 125
  - special or extraordinary expenses, 113–120
    - • expenses qualifying as special or extraordinary expenses, 113
    - • extraordinary expenses, definition, 114, 115
    - • necessity, 116
    - • no requirement that expense be significant or extraordinary, 120
    - • post-secondary education, 119
    - • sharing of, 117
    - • spousal support, 118
  - split custody, 121–123
    - • determination of amount, 121
    - • hybrid of custody arrangements, 123
    - • parent having no income, 122
  - undue hardship, 131–139
    - • assumption of new family support obligations, 137
    - • circumstances causing undue hardship, 132
    - • circumstances where application must be denied, 134
    - • comparison of households standards of living test, 136
    - • deduction of travel expenses, 133
    - • discretionary order, 131
    - • reasonable time for satisfaction of obligation, 138
    - • requirement of reasons for order under undue hardship provision, 139
    - • two-step test, 135
- child support — form of support**
  - binding estate, 154, 169, 170
  - calculations, 200, 201
  - conditions, 162–165
    - • set-off, 164
    - • terms, conditions or restrictions, 162, 165
    - • time limit, 163
  - effect of agreement, 217–221
    - • Alberta, 219
    - • British Columbia, 220
    - • consent to award different amount, 218
    - • Ontario, 221
    - • special provisions for benefit of child, 217
  - indexing, 197–199
    - • Manitoba, 198, 199
    - • no longer applies, 197
  - interim child support, jurisdiction, 140–149
    - • Alberta, 140
    - • British Columbia, 141
    - • Divorce Act, 145, 146
    - • Manitoba, 142
    - • Ontario, 143
    - • retroactive, 148, 149
    - • Saskatchewan, 144
    - • terms, 147
  - interim child support, principle, 150–154
  - periodic or lump sum, 153, 155–158
  - priority, 166–168
  - child support and spousal support applications, 166

## CHILDREN

---

- child support — form of support (*cont'd*)
  - Divorce Act proceedings, 167, 168
  - provisional orders, 202–216
    - appeals, 210
    - Divorce Act proceedings, 211–216
      - Child Support Guidelines, 212
      - defences, 215
      - further evidence, 216
    - further information or documents required from claimant, 203
    - law of jurisdiction applied, 202, 204
    - powers of court on conclusion of hearing, 205
      - Alberta, Manitoba, Ontario, Saskatchewan, 206
      - British Columbia, 207
      - Ontario, 206, 208
      - Saskatchewan, 206, 209
    - re-opening after denial of confirmation, 202
  - retroactive support, 171–196
    - amount, 191
    - circumstances of child, 189
    - circumstances where inappropriate, 182
    - circumstances where power to award curtailed, 180
    - conduct of payor parent, 187, 188
    - consideration of all relevant factors, 172, 183, 195, 196
    - continuing responsibility of payor parent to pay appropriate amount, 174
    - date to which award should be retroactive, 193, 194
    - delay in seeking, 184–186
    - fluctuating income provisions, 192
    - hardship, 190
    - interim child support, 148, 149
    - proceedings under Divorce Act, 181
    - retroactive variation orders, 173
    - situations where ordered, 175–178
    - special or extraordinary expenses, 179
  - security, 159–161
- child support — quantum**
  - calculation of annual income, 257–265
    - adjustments to income, 259–265
      - business expenses, 260
      - overtime, 265
      - social assistance, 263
      - stock options, 259
      - student loans, 264
      - tax benefits and rebates, 261
      - taxable benefits, 262
    - general, 257, 258
  - determining income of payor, 251–256
    - Child Support Guidelines, 251
    - income, definition in Child Support Guidelines, 253
    - income where spouse or parent non-resident of Canada, 254
    - most current information, 255
    - sources of income, 252
    - written agreement as to annual income, 256

## INDEX

---

- child support — quantum (*cont'd*)
  - duty of financial disclosure, 315–328
    - Alberta, 315–317
    - British Columbia, 318, 319
    - Federal Child Support Guidelines, 326
    - limitations in order or agreement unenforceable, 328
    - Manitoba, 320, 327
    - obligation to include certain income information, 324
    - Ontario, 321, 322
    - Saskatchewan, 323
    - self-employed, 325
  - fluctuating income, 266–269
    - discretion, 268
    - federal guidelines, 269
    - general, 266
    - Manitoba, 269
    - non-recurring income, 267
  - imputing income, 276–290
    - beneficiary under trust, 282
    - conflicting affidavit evidence, 262
    - exemption from payment of income tax, 279
    - failure to provide income information, 281
    - income diverted, 280
    - income from sources taxed at lower rate or exempt from tax, 282
    - income splitting, 285
    - imputing reduced income, 288
    - intentionally underemployed or unemployed, 276–278
      - matters taken into consideration, 277
      - pursuit of educational goals, 278
    - interim child support, 287
    - list of circumstances not exhaustive, 283
    - living in country where effective rates of taxation significantly
      - lower, 279
    - method using payor's expenses, 289
    - property not reasonably utilized to generate income, 280
    - recipient of support, 284
    - shareholder, director or officer, 290
    - unpaid taxes, 286
    - unreasonable deduction of expenses from income, 281
  - recalculations, 291–314
    - agreement with province authorizing provincial child support service, 291
    - Alberta, 294–298
    - British Columbia, 299–301
    - discretionary power of court not applying, 293
    - Manitoba, 302–314
    - variation application where spouse not agreeing with recalculation, 292
  - shareholder, director or officer of corporation, 270–275
    - averaging approach, 273
    - considerations where court determining whether to exercise discretion, 271, 274
    - general, 270
    - imputation of income, 275
    - maintaining business as viable going concern, 272
- child support — standing**
  - “child”, definition, 1–8

## CHILDREN

---

- child support — standing (*cont'd*)
  - Alberta, 2
  - British Columbia, 3
  - “child of the marriage”, 8, 29, 30
  - Divorce Act, 7, 8
  - Manitoba, 4
  - Ontario, 5
  - Saskatchewan, 6
  - payor, obligation to maintain, 46–83
    - Alberta, 50–57
      - circumstances where order for child support may be made, 53
      - order or agreement as to whom payment to be made, 55
      - “parent”, 50, 54
      - person standing in place of parent, 51
      - persons who may make application, 52
      - rights of director under Income and Employment Supports Act, 57
      - written agreement to pay support for child, 56
    - British Columbia, 58–60
    - federal, 72–83
      - “child of the marriage”, 74, 78
      - “material time”, 79
      - “spouse”, definition, 73
      - stands in place of parent, 75–77, 80–83
    - Manitoba, 61–65
      - obligations of person cohabiting in conjugal relationship, 63
      - obligations of spouse, 62
      - “parent”, definition, 61
    - person who stands in loco parentis, 64, 65
    - Ontario, 66–70
      - “parent”, definition, 66
      - settled intention to treat dependant as child of family, 67, 68
    - parent’s duty to support child, 46–49
      - common law, 46
      - Criminal Code, 47
      - equitable defence of laches not applying, 48
      - persons liable to maintain child, 49
    - Saskatchewan, 71
  - withdrawal from charge, 9–45
    - Alberta, 9–11
    - British Columbia, 12
    - federal, 24–45
      - “charge”, 25
      - child in foster care, 45
      - “child of the marriage”, 24, 29, 30, 38
      - child rejecting relationship with non-custodial parent, 27, 28
      - child who is pregnant or has child of own, 41
      - illness or disability of child over age of majority, 39
      - inability of child over age of majority to obtain employment, 40, 42
      - “other cause”, 43
      - pursuit of education, 31–37, 42
      - question of fact, 26
      - reinstatement as child of marriage, 44
      - residential requirement, 38
    - Manitoba, 13, 14

## INDEX

---

- child support — standing (*cont'd*)
  - Ontario, 15–22
    - divorce proceedings, 22
    - enrollment in educational program, 15, 17, 18
    - general, 15, 19, 20
    - ill or disabled adult children, 16
    - limitation on time for making claim, 21
  - Saskatchewan, 23
- child support — variation of orders**
  - cancellation or reduction of arrears, 248–250
  - general, 223–247
    - Alberta, 223–225
    - British Columbia, 226, 227
    - Child Support Guidelines, 246, 247
    - Divorce Act, 240–245
    - Manitoba, 228–231
    - Ontario, 232–237
    - Saskatchewan, 238, 239
- children born outside marriage**
  - affiliation proceedings, 747–810
  - agreements, 756–760
    - application for declaration of parentage/paternity, 759
    - bar to proceedings, 758
    - maintenance of child, 725
    - Saskatchewan, 757
    - who may make application, 760
  - amount of maintenance, 790–792
    - considerations, 792
    - obligation of parent to provide reasonably for child's support, 790
    - Saskatchewan, 791
  - appeals, 805–810
    - Alberta, 805
    - British Columbia, 806
    - Crown having no interest in and no right of appeal, 810
    - Manitoba, 807
    - Ontario, 808
    - Saskatchewan, 809
  - assistance to mother, 765
  - declaration of paternity or maternity, 773–776
  - enforcement, 800–804
    - Alberta, 800
    - British Columbia, 801
    - Inter-jurisdictional support orders, 804
    - Manitoba, 802
    - Saskatchewan, 803
  - evidence, 777–788
    - blood and DNA tests, 780–788
      - Alberta, 781
      - British Columbia, 786
      - jurisdiction to order leave to obtain tests, 784, 785
      - Manitoba, 782
      - member of family unit, 787
      - Ontario, 780
      - probative value of blood group findings, 788
      - Saskatchewan, 783
    - general, 777
    - putative father, 778, 779
      - Alberta, 779
      - competent and compellable witness, 778
  - general, 747–752

## CHILDREN

---

- children born outside marriage (*cont'd*)
  - common law rights of unmarried mother, 748
  - confidentiality provisions in Alberta, 751
  - confidentiality provisions in provinces other than Alberta, 752
  - interim maintenance award, 750
  - provincial legislative provisions, 747
  - rights created purely of civil character, 749
  - issuance of summons or warrant; notice, 768–772
    - Alberta, 770–772
    - assuring appearance of putative father, 768
    - failure to appear to set trial date, 769
    - Saskatchewan, 772
  - jurisdiction, 753–755
    - affiliation order nullity where father lives in another province, 754
    - maintenance orders, 755
    - province where father resides, 753
  - leave to reopen, 799
  - limitations, 766, 767
    - application not dismissed merely because limitation period elapsed, 767
  - mode of payment, 796
  - presumption of paternity, 761–764
    - effect of admission in prior custody application, 763
    - Manitoba, 762
    - presumptions of paternity regarding more than one male person, 764
    - presumptions used to determine paternity, 761
  - reasonable expenses, 789
  - res judicata, 797, 798
  - variation, rescission and termination, 793–795
    - affiliation order may be varied or rescinded, 793
    - duration of support obligations, 794
    - Saskatchewan, 795
  - birth registration, 733–741
    - Alberta, 734, 740
    - British Columbia, 733
    - child's surname, 738
    - deserted newborn child, 741
    - Manitoba, 735, 740
    - Ontario, 736
    - Saskatchewan, 737, 739
  - custody and access, 811–818
    - access, 817
    - Alberta, 812
    - British Columbia, 813
    - common law, 811
    - Manitoba, 814
    - Ontario, 815
    - paramount claim of natural parent, 818
    - Saskatchewan, 816
  - dependants' relief legislation, 823–825
    - Manitoba, 823
    - Ontario, 824
    - Saskatchewan, 825
  - general, 732
  - inheritance, 819–822
    - Alberta, 819
    - Manitoba, 820



## INDEX

---

- children born outside marriage (*cont'd*)
  - • Ontario, 821
  - • Saskatchewan, 822
  - legitimation, Alberta, 742
  - presumption of legitimation, 743–746
    - • conception before marriage but birth during marriage, 744
    - • rebutting presumption, 745
    - • where divorced or judicially separated, 746
    - • where woman married at time of child’s conception or birth, 743, 744
- children in need of protection**
  - apprehension and involuntary committal, 840–1011
    - • appeals, 988–1010
      - • • Alberta, 988–990
      - • • British Columbia, 991
      - • • disposition, 1006–1009
        - • • • Alberta, 1006
        - • • • Manitoba, 1009
        - • • • Ontario, 1007
        - • • • Saskatchewan, 1008
      - • • fresh evidence, 999
        - • • • Alberta, 1000
        - • • • Manitoba, 1001, 1002
        - • • • Ontario, 1003
        - • • • Saskatchewan, 1004
      - • • Manitoba, 992–994
      - • • Ontario, 995, 996
      - • • role of appellate court, 1005
      - • • Saskatchewan, 997, 998
      - • • writ of habeus corpus, 1010
    - • apprehension, 867–873
      - • • Alberta, 871
      - • • Ontario, 872, 873
      - • • parental liberty interest, 868
      - • • provincial legislative provisions, 867
      - • • Saskatchewan, 869
      - • • warrant authorizing entry and use of force, 870
    - • expiration and extension of temporary wardship orders, 974–980
      - • • Alberta, 974, 975
      - • • British Columbia, 976
      - • • Manitoba, 977
      - • • Ontario, 978
      - • • power to retain child in custody pending review, 979
        - • • • Saskatchewan, 976, 980
    - • hearing, 874–964
      - • • adjournment, 926–934
        - • • • Alberta, duration and interim orders, 928
        - • • • Alberta, order for psychological evaluation, 927
          - • • • general, 926
          - • • • Ontario, duration, 933, 934
          - • • • Ontario, interim orders, 929–932
      - • • disposition, 936–964
        - • • • access, 943, 945, 952, 955–962
          - • • • Alberta, assessment, 944
          - • • • Alberta and B.C., permanent guardianship orders, 948, 953
          - • • • Alberta, appointing director as guardian, 940
          - • • • Alberta, abuse of process, 963

CHILDREN

---

|  |       |   |
|--|-------|---|
| children in need of protection ( <i>cont'd</i> )               | ••••• | Alberta, production of documents or things, 918           |
| ••••• Alberta, restraining order, 951                          | ••••• | comments of children (“kiddie comment”), 913              |
| ••••• British Columbia, permanent wardship, 950                | ••••• | evidence obtained by CAS in violation of Charter, 922     |
| ••••• British Columbia, plan of care, 954                      | ••••• | hearsay evidence, 906–911                                 |
| ••••• British Columbia, temporary custody order, 942           | ••••• | non-suit, 924   |
| ••••• Manitoba, agency appointed temporary guardian, 941       | ••••• | Ontario, CAS duty of just dealing, 923                    |
| ••••• Manitoba and Saskatchewan, permanent guardian, 949       | ••••• | Ontario, credible and trustworthy evidence, 905           |
| ••••• Ontario, considerations before making removal order, 964 | ••••• | Ontario, order for assessment, 925                        |
| ••••• Ontario, custody order, 939                              | ••••• | Ontario, order for DNA testing, 912                       |
| ••••• Ontario, placement of child, 946, 947                    | ••••• | Ontario, past conduct toward any child, 904               |
| ••••• Ontario, temporary ward, 938                             | ••••• | Ontario, production of record, 919                        |
| ••••• Saskatchewan, dismissal of action, 937                   | ••••• | parents compellable, 915                                  |
| ••••• supervision order, 936                                   | ••••• | Saskatchewan, department worker not compellable, 916      |
| ••••• notice, 874–879  | ••••• | solicitor-client privilege not altered, 917               |
| ••••• Alberta, 874–875   | ••••• | wardship orders/neglect of older children, 903            |
| ••••• British Columbia, 876                                    | ••••• | whereabouts of child, 920                                 |
| ••••• Manitoba, 877  | ••••• | witness immunity for psychologists hired by province, 921 |
| ••••• Ontario, 878   | ••••• | exclusion of witnesses, 895                               |
| ••••• Saskatchewan, 879  | ••••• |   |
| ••••• procedure, 886–925                                       | ••••• |   |
| ••••• discovery, 888   | ••••• |   |
| ••••• evidence, 903–925  | ••••• |   |
| ••••• adverse inferences with respect to parents, 914          | ••••• |   |

## INDEX

---

- children in need of protection (*cont'd*)
  - legal representation for child and minor parents, 886, 887
    - parent's right to fair hearing, 887
    - provincial requirements, 886
  - privacy, 889–895
    - Alberta, 889
    - British Columbia, 890
    - Manitoba, 891
    - Ontario, 892, 893
    - Saskatchewan, 894
  - standard and burden of proof, 896, 897
    - civil standard of proof, 896
    - no onus on parent, 897
  - test to be applied, 898–902
    - Alberta, 898
    - British Columbia, 899
    - Manitoba, 900
    - ~•• Ontario, 899
    - ~•• Saskatchewan, 901
    - ~•• time period to be considered, 902
  - scheduling, 880–885
    - Alberta, 881
    - ~•• British Columbia, 882
    - ~•• Manitoba, 883
    - ~•• obligation to return child or bring matter before court, 880
      - ~•• Ontario, 884
      - ~•• Saskatchewan, 885
    - summary judgment, 935
    - jurisdiction, 840–847
      - access, 844
      - “child”, definition, 842
      - Infant mother, 843
      - Ontario, 846, 847
      - prior lawful apprehension, 845
      - provincial court, 840
      - superior court, 841
    - meaning of “child in need of protection”, 848–866
      - abandonment, 851, 852
      - factors, 848, 849
      - failure to provide adequate care, 855–857
      - failure to provide medical treatment, 858–864
      - mental welfare, 865
      - neglect of education, 866
      - physical abuse, 853
      - sexual abuse, 854
      - temporary ward, 850
    - rescission or variation of permanent order, 981–987
      - Alberta, 981–983
      - British Columbia, 984
      - Manitoba, 985
      - Ontario, 986
      - Saskatchewan, 987
    - review of order, 965–973
      - Alberta, 967
      - British Columbia, 966
      - Manitoba, 968
      - Ontario, 969–973
      - Saskatchewan, 965
    - duty to report neglect or abuse, 1011
      - general, 826–828
    - character of child welfare
      - civil, not criminal, 827
    - agencies, 828

## CHILDREN

---

- children in need of protection (*cont'd*)
  - liability of child protection authorities, 1012–1017
    - British Columbia, 1012
    - Ontario, complaint to CAS or Board, 1016, 1017
    - contempt proceedings against CAS, 1015
    - costs against CAS, 1014
    - no duty of care by court ordered service providers to family, 1013
  - protection of drug-endangered children, 1023–1027
    - Alberta, 1023–1027
  - protection of sexually exploited children, 1018–1022
    - Alberta, 1018–1021
    - British Columbia, 1022
  - voluntary committal and temporary agreements for care, 829–839
    - Alberta, 832, 835
    - British Columbia, 829, 836
    - Manitoba, 830, 831, 837
    - Ontario, 833, 834
    - private adoption, 839
    - Saskatchewan, 829, 838
- contractual rights**
  - agreements between parent and child, 646
  - apprenticeship agreement, 639
  - arbitration award, 640
  - cheques, bills and notes, 634, 635
  - contracts of infants which are binding, 607–611
    - binding where minor permitted by statute to enter into contract, 609
      - contracts, which if for infant's benefit, enforceable against infant, 607
      - medical and hospital treatments, 608
      - recurrent obligations, 611
      - infant's contract executed for something other than a necessary, 610
    - distinction between void and voidable contracts, 615, 616
      - common law, 615
      - promissory note by infant, 616
    - fraud of infant, 621, 622
    - general, 600–604
      - Alberta, 601
      - British Columbia, 602, 603
      - general rule and exception, 600
      - where lack of contractual capacity not defence, 604
    - infant as partner, 643
    - infant shareholder, 641
    - infant trader, 642
    - infant's contract of hiring, 636–638
      - common law, 637
      - services rendered to parent by child, 638
    - suit for wages earned, 636
  - infant's fraudulent representation as to age, 620
  - legal effect of voidable contract, 617–619
    - contract binding on other party until avoided by infant, 617
      - contract of service, 619
      - subsequent purchaser, 618
    - marriage, 647–652
      - Alberta, 647

## INDEX

---

- contractual rights (*cont'd*)
  - British Columbia, 648
  - Manitoba, 649
  - Ontario, 650
  - Saskatchewan, 651, 652
  - parent's liability for infant's debts, 605, 606
    - general rule, 605
    - Ontario, 606
  - ratification after attaining majority, 623–626
    - definition, 623
    - implied ratification, 625
    - liability for costs, 626
    - requirements, 624
  - recovery of money paid by infant, 644
  - repudiation after coming of age, 627–633
    - acquiescence where infant actually performing act, 628
    - contract of service, 630
    - no repudiation where real advantage derived, 629
    - reasonable time after reaching majority, 627
    - repudiation in toto, 631
    - restoring goods, 633
    - unjust retention of property, 632
  - specific performance of contract to which infant party, 645
  - void contracts, 612–614
    - acquiescence, 614
    - contract not for infant's benefit, 613
    - term or condition in nature of penalty for default in payment, 612
- custody and access**
  - Alberta, 1217–1231
    - assessment, 1229
    - best interests of child, 1218, 1222, 1223, 1228
    - contact order, 1222–1224
    - deportation order, 1230
    - jurisdiction, 1217, 1231
    - parenting order provisions, 1219, 1220
    - relocation, 1228
    - “time with a child” clause, 1226, 1227
    - variation, suspension and termination orders, 1221, 1225, 1227
  - British Columbia, 1232–1250
    - access, 1235
    - assessment, 1249
    - best interests of child, 1233–1235
    - change, suspension and termination of orders, 1248
    - compliance issues, 1250
    - conduct, 1234
    - court orders, 1240, 1241
    - extraprovincial orders and matters, 1246, 1247
    - family violence, 1236
    - guardian, 1237
    - jurisdiction, 1232, 1245
    - parenting arrangements, 1238, 1239
    - relocation, 1242–1244
    - wrongful removal of child, 1247
  - general, 1216
  - international child abduction, 1297
  - Manitoba, 1251–1254
    - best interests of child, 1253
    - custody and access orders, 1252

## CHILDREN

---

- custody and access (*cont'd*)
  - rights of parents, 1251
  - variation or discharge of order, 1254
  - Ontario, 1255–1281
    - application for custody or access, 1257
    - assessment, 1264
    - best interests of child, 1255, 1271
    - “child”, 1259
    - conduct, 1260
    - deportation order, 1276
    - extra-provincial orders, 1275, 1281
    - incidents of custody, 1258, 1262
    - interim motions, 1268
    - jurisdiction, 1255, 1266, 1272–1275
    - mediation, 1265
    - non-removal order, 1276, 1280
    - police records check of non-parent, 1270
    - preferred status of biological parents, 1271
    - reconciliation of parties, 1266
    - relocation of child, 1267
    - rights of parents, 1256, 1271
    - stay of application, 1278
    - supervision of custody and access, 1269
    - unlawfully withholding child, 1279
    - unpaid costs as bar to application for access, 1277
    - variation orders, 1263
    - wishes of child, 1261
  - Saskatchewan, 1282–1294
    - agreements, 1282
    - best interests of child, 1283, 1285
    - court orders, provisions, 1288
    - enforcement, 1293, 1294
    - extra-provincial orders, 1293
    - interim orders, 1286
    - jurisdiction, 1283, 1291, 1292
    - legal custodians, 1282
    - mediation, 1289
    - person having sufficient interest, 1284
    - relocation, 1290
    - removal or retention of child, 1293
    - varying or rescinding orders, 1283, 1285–1287
  - separate representation of children, 1295, 1296
  - appointment of amicus curiae or Official Guardian, 1295
  - role of counsel, 1296

### **guardianship**

- appointment of guardian, 1314–1323
  - Alberta, 1323
  - British Columbia, 1319
  - consent of child, 1320
  - consideration of circumstances, 1317
  - court may appoint guardians of infants and their estates, 1314
  - Manitoba, 1318
  - powers of court, 1322
  - rights of parent displaced, 1321
  - test for determining guardianship, 1316
  - welfare of child, 1315
- appointment of official guardian or public trustee, 1324–1327

## INDEX

---

- guardianship (*cont'd*)
- • Alberta, 1324
  - • British Columbia, 1325, 1326
  - • Manitoba, 1327
  - • Saskatchewan, 1328
  - foreign guardian, 1354–1356
    - • court's jurisdiction as *parens patriae*, 1354
    - • payment of fund to foreign guardian, 1355
    - • security, 1356
  - guardianship on death of parent, 1308, 1309
    - • Alberta, 1308
    - • British Columbia, 1308, 1309
    - • Saskatchewan, 1308
  - parent as guardian, 1298–1303
    - • Alberta, 1298, 1301
    - • British Columbia, 1299, 1301
    - • Manitoba, 1303
    - • Ontario, 1300
    - • Saskatchewan, 1298, 1302
  - powers and duties of guardian, 1334–1353
    - • Alberta, maintenance of child, 1353
    - • application for advice or direction from court, 1335
    - • authority of guardian, 1334
    - • care and management of estate, 1339, 1340, 1352
    - • custody and care of education, 1344
    - • encroachment by guardian on principal of minor's estate, 1346
    - • Manitoba, property and maintenance, 1343, 1345
    - • Ontario, role of Children's Lawyer, 1337
    - • Ontario, where no guardian of property appointed, 1341, 1342
    - • payment of fees and expenses, 1347
    - • representation in court, 1336, 1338
    - • role of Public Guardian and Trustee, 1348–1352
    - private guardianship: Alberta and Manitoba, 1304–1307
      - • Alberta, 1306, 1307
      - • Manitoba, 1304, 1305
    - removal or resignation of guardian, 1329–1332
      - • British Columbia, 1330, 1331
      - • removal for same causes for which trustees removable, 1329
      - • resignation with leave of court, 1332
    - security, 1333
    - testamentary guardian, 1310–1313
      - • Alberta, 1310
      - • British Columbia, 1312
      - • Ontario, 1313
      - • Saskatchewan, 1310
      - • welfare of child, 1311
- infant's property**
- deeds and mortgages, 591–594
    - • deed, voidable or void, 591
    - • mortgage given by infant voidable, 592
    - • notice of power of sale, 594
    - • personal covenant not for benefit of infant not binding on infant, 593
  - domestic contracts, 571
  - gifts by and to infants, 595–599
    - • gift from parent to child, 597

## CHILDREN

---

- infant's property (*cont'd*)
  - gift of chattels by infant voidable, 595
  - gift to infant cannot be revoked, 598
  - gift to parent, 596
  - stated intention of parent to convey property to child, 599
  - interests under separation agreements, 572
  - power to deal with land, 569, 570
  - sale or lease of infant's real estate, 573–590
    - lease, 585–590
      - common law, 585
      - distress, 590
      - execution of lease by guardian, 587
      - lease of infant's land in infant's interest, 586
      - lease to infant voidable by lessee, 589
      - repudiation of lease on reaching age of majority, 588
    - sale, 573–584
      - Alberta, 575, 576
      - British Columbia, 577
      - guardian requiring court approval, 584
      - Manitoba, 578
      - Ontario, 579, 580
      - promoting infant's interest, 573, 574
      - Saskatchewan, 581–583
  - testamentary capacity, 568
- torts**
  - liability for infant's torts, 681–688
    - general, 681–684
      - judgment binding on infant, 683
      - liable to be sued for torts of all kinds, 681
      - test for determining negligence, 682
      - wrong within purview of contract not binding on infant, 684
    - parent's liability, 685–688
      - control of dangerous thing or negligence in allowing control by
        - infant, 686
      - liability for failure to supervise or restrain infant, 687
      - liability for tort committed without knowledge, consent or sanction, 685
      - Ontario, liability where child takes, damages or destroys property, 688
  - parent's right of action for injuries to child, 673–680
    - Alberta, 678
    - British Columbia, 680
    - common law, 673
    - damages for pecuniary loss resulting from injury or death of child, 674
    - death of unborn child, 679
    - Ontario, 675, 676, 678
    - western provinces, 677
  - right of action for personal injuries, 653–672
    - action by child against parent for physical and emotional abuse, 672
    - contracting out liability for negligence, 671
    - contributory negligence, 663–666



## INDEX

---

- torts (*cont'd*)
- application to infants, 663
  - infant of tender age, 664
  - intervening act by child too young to appreciate obvious danger, 665
  - liability of parent for injuries suffered by infant, 666
  - doctrine of allurements, 660–662
    - leaving dangerous machines on street or private premises, 660
    - requirements of doctrine of allurements, 661
    - trespass, 662
  - general, 653–659
    - burden of proof, 655
    - child injured when allowed to operate farm machinery, 657
    - daycare workers, standard of care, 658
    - injury caused entirely by infant's negligence, 653, 654
    - injury caused partly by infant's own negligence, 654, 656
    - no duty of care by physician to unborn foetus, 659
    - unborn infant, 667–670
      - damages for death of parent through accident, 668
      - damages for pre-natal injuries, 667
      - damages where child born alive, 669
      - no duty of care of pregnant mother toward foetus or child, 670

## Index to Citizenship

*(All references are to paragraph numbers.)*

- abandonment of application,**
  - 106–111
- appeals**
  - appeal to Federal Court, 114, 115
  - grounds for appeal by applicant, 116
  - grounds for appeal by Minister, 116
  - right to appeal, 113
- appeals (disposition of Federal Court)**
  - appeal allowed, 134, 135
  - grant of citizenship by discretionary waiver, 136, 137
  - re-application for citizenship pending appeal, 138, 139
- appeals (procedure)**
  - applicant’s record, 127
  - contents of notice of applicant, 121
  - cross-examination on affidavits, 126
  - material in possession of tribunal, 119
  - notice of appearance by respondent, 123
  - party seeking to file additional material, 129
  - pre-hearing conference, 132
  - production of certified tribunal record, 120
  - requirement to file additional material, 130
  - requisition for hearing, 131
  - respondent’s record, 128
  - service of applicant’s affidavits, 124
  - service of notice of applicant, 121
  - service of respondent’s affidavit, 125
  - time period for applicant to file appeal, 117
  - time period for Minister to file appeal, 118
  - witness testimony, 133
- applicant process**
  - adopted children, 38
  - adult applicants, 28–30
  - applicants for minor children, 31–34
  - applying for citizenship certificate, 39, 40
  - minors applying as adults, 35–37
- certificate of citizenship**
  - application for replacement, 231
  - availability, 229
  - certification package, 219
  - children born outside of Canada to Canadian parent, 233
  - minors under 14 years of age, 220
  - processing time, 232
  - proof of citizenship document, 228
  - verification document, 230
- citizenship ceremonies**
  - documents to bring, 218
  - dress attire, 227
  - legislative authority, 202–204
  - locations, 221
  - notice to appear to take oath of citizenship, 205, 206
  - overview, 199, 200

- roles of ceremony officials, 222–226
- size and frequency, 201
- structure and procedures, 207–217
- citizenship judges**
  - accountability, 153–158
  - appointment, 145, 146
  - initial screening of, 140–142
  - oral test for, 144
  - role of, 147–149
  - role of senior citizenship judge, 150–152
  - written test for, 143
- citizenship test**
  - applicants exempted, 46–48
  - general, 41
  - notification and response, 49–51
  - oral interview for citizenship, 57–60
  - overview, 42–45
  - structure and procedure, 52–56
- decisions on citizenship application**
  - adequacy of reasons, 85, 86
  - all the evidence considered, 83, 84
  - bias, 87–90
  - burden of proof, 73
  - duties of citizenship officer, 74–77
  - general policy, 67
  - procedural fairness, 78
  - right to be heard, 79–82
  - right to decision within reasonable time, 91–94
  - steps in making a decision, 68–72
- eligible applicants for citizenship,** 22
- first generation Canadians born outside of Canada,** 3–7
- grant of citizenship**
  - age requirement, 21
  - citizenship by naturalization, 8
  - knowledge of Canada, 19, 20
  - language requirement, 18
  - residency, 9–17
- grant, renunciation and resumption**
  - grant, 95–100
  - renunciation, 101–104
  - resumption, 105
- ineligible applicants for citizenship,** 23, 24
- legal right of Canadian citizenship,** 2
- loss of citizenship**
  - inadvertent loss, 172
  - revocation, 168–171
- oath of citizenship,** 61–66
- prohibitions re applications for citizenship,** 25–27
- renunciation of citizenship**
  - application to renounce, 178–181
  - eligibility to renounce, 173–177
  - process for reviewing renunciation applications, 182–184
  - streamlined process for renunciation applications, 185–187
- resumption of citizenship**
  - automatic restoration, 191–193
  - eligibility, 189
  - ineligibility, 190
  - overview, 188
  - process for applications, 194–198

## INDEX

---

- right to Canadian citizenship, 1**
- suspension of processing of application, 112**
- waivers**
  - granting citizenship, 159, 160
  - role of case management branch for waivers, 166, 167
  - role of citizenship judge for waivers, 161, 162
  - role of local officer for waivers, 163–165

## Index to Companies' Creditors Arrangement Act

*(All references are to paragraph numbers)*

- appeals**
- appeals to Supreme Court of Canada, 1123, 1124
  - • jurisdiction to intervene even in case of discretionary decisions, 1124
  - • with leave, 1123
  - grounds for granting leave to appeal, 1086–1106
    - • authorization of key elements of proposed plan, 1105
    - • disruptive, 1102
    - • effect upon parties, 1096
    - • elements subsumed in general criterion, 1086
    - • exercised sparingly, 1087
    - • general importance, 1088
    - • onus, 1090
    - • prejudicial to prospects of restructuring, 1094
    - • premature to grant leave, 1093
    - • right to appeal lost where transactions completed, 1091
    - • role of court, 1104
    - • significance to practice, 1097
    - • standard of review, 1099, 1100
    - • standing of unsuccessful bidders, 1095
    - • stringency, 1103
    - • undue delay of proceedings, 1101
  - leave to appeal, 1071–1085
    - • expedition of application for leave to appeal, 1082–1084
      - • • collapse oral hearing for leave with hearing of appeal, 1084
      - • • generous view of urgency, 1082
      - • • leave only sparingly granted, 1083
    - • extension of time for appeal, 1080, 1081
      - • • conditions for extension, 1081
      - • • court appealed from, 1080
    - • necessity for leave, 1073–1076
      - • • appeal from refusal of leave, 1074
      - • • court appealed from or court appealed to, 1073
      - • • furthers objects and purposes of Act, 1076
    - • proper court, 1071, 1072
      - • • Ontario, 1072
      - • • provincial appellate court, 1071
    - • stay pending determination of application for leave to appeal, 1085
    - • time limit, 1077–1079
      - • • importance of timing, 1078
      - • • meaning of 'perfect', 1079
      - • • within 21 days, 1077
  - role of appellate court, 1107–1116
    - • burden on appellants very heavy, 1109
    - • cautious intervention, 1113
    - • interference with discretionary findings, 1108
    - • real time dynamic and discretionary nature of decisions, 1114
    - • reluctance to intervene, 1115
    - • right to reverse decision, 1110
    - • standard of review one of deference, 1116

## COMPANIES' CREDITORS ARRANGEMENT ACT

---

- • trial judge's exercise of discretion not reflected in reasons, 1107
- stay of proceedings pending hearing of appeal, 1117–1122
- • jurisdiction of appellate court, 1120
- • successful litigant should not be deprived of fruits of success, 1117
- • test, 1119, 1121
- approval of plan of arrangement**
- ancillary orders, 1070
- approval by creditors, 942–965
- • general, 942–944
- • • approval of all classes of creditors, 944
- • • majority in number representing 2/3 in value of creditors voting, 942
- • • majority of minority test, 943
- • meetings of creditors, 950–965
- • • adjournment, 959–961
- • • • modifications proposed, 959
- • • • negotiations continue, 961
- • • • sufficient information not provided, 960
- • • conduct of meeting, 962, 963
- • • • common meetings of separate classes, 962
- • • • separation of major groups of creditors, 963
- • • notice of meeting, 957, 958
- • • • discretion to be exercised judicially, 957
- • • • when no publication in one location as ordered, 958
- • • order authorizing meeting, 950–956
- • • • best interests of debtor and stakeholders, 952
- • • • consideration of equities, 951
- • • • considerations in exercise of discretion, 953
- • • • court to be fully informed as to all matters, 954
- • • • discretionary, 950
- • • • come-back clause, 956
- • • • reasonable chance of carrying on business as going concern, 955
- • • voting at meeting, 964, 965
- • • • disputes, 965
- • • • requirements, 964
- • private arrangements, 945–949
- • • advantage set aside, 945
- • • full disclosure, 948
- • • majority in class must at without coercion towards minority, 949
- • • members of class must vote in good faith, 946
- • • secret guarantees unlawful, 947
- binding effect, 1058–1069
- • acquisition by third parties of reorganized debtor, 1066
- • action by creditor, 1063
- • action stayed where indirect collateral attack on order, 1065
- • alter contractual rights of creditors that did not approve plan, 1061
- • cause of action merges in judgment made under CCAA, 1064
- • drop dead provisions, 1067

INDEX

---

- • encouragement of wide variety of solutions, 1069
- • notice to unknown creditors by advertisement, 1062
- • other creditors of equal status disadvantaged, 1059
- • parties bound, 1060
- • requirements for compromising rights of creditors, 1058
- • third party releases, 1068
- refusal of court to sanction plan of arrangement, 1052–1057
  - • circumstances, 1053
  - • cram down provisions of U.S. Bankruptcy Code, 1054
  - • parties may return to negotiation, 1056
  - • prolong or entirely defeat reorganization procedure, 1052
  - • re-open for further offers, 1057
  - sanction of plan by court, 966–1051
    - • discretion of court, 995–997
      - • • determination of whether criteria met, 997
      - • • limited, 995
      - • • not entitled to substitute judgment, 996
    - • factors to be considered by the court, 998–1051
      - • • creditor approval, 998–1011
        - • • • all classes of creditors, 999
        - • • • approval where not approved by all classes, 1000
        - • • • burden on parties seeking to upset plan, 1005
        - • • • creditors better judges of commercial advantage, 1002
        - • • • each class has veto, 1001
        - • • • majority in number and 2/3 in value of creditors voting, 998
        - • • • perfection not required, 1007
        - • • • second guessing business people re business aspects, 1009
        - • • • strong influence of big majority vote, 1004, 1010, 1011
      - • • equal vs. equitable treatment, 1037–1044
        - • • • adjournment, 1040
        - • • • equal treatment, 1041, 1042
        - • • • fair and reasonable does not mean equal, 1038
        - • • • perfection not required, 1039
        - • • • right to receive as much as under liquidation, 1037
        - • • • sliding scale, 1043
      - • • plan fair and reasonable, 1012–1036
        - • • • available commercial alternatives, 1026
        - • • • bona fide and credible plan, 1018
        - • • • company will not continue as going concern, 1034
        - • • • considerations, 1019
        - • • • fairly balances interests of creditors, debtor and stakeholders, 1022
        - • • • feasible, 1017
        - • • • impact on creditors, 1021
        - • • • implementable, 1035
        - • • • inference created by creditor support, 1032

COMPANIES' CREDITORS ARRANGEMENT ACT

---

- injustice within class and re stakeholders as whole, 1025
- keynote concepts, 1012
- more generous to some creditors and still fair to all, 1030
- perfection not required, 1024
- prejudice to various parties, 1036
- priority mortgagees, 1016
- releases, 1015
- second guessing business people, 1023
- shareholders, 1029
- test, 1014
- unique circumstances of each case, 1027
- weighing process, 1033
- provision for payment of crown claims, 1050, 1051
- set-off by Canada Customs and Revenue agency, 1050
- set-off credits by Canada Customs and Revenue agency, 1051
- termination of leases and contracts, 1046–1049
  - contracts, 1047
  - leases, 1046
  - replaceable contracts, 1049
  - section 6 and 11.1 of CCAA discretion, 1048
- voting by related parties, 1045
  - general, 966–986
  - anything that could be lawfully incorporated in any contract, 985
- approve scheme that is not illegal, improper or unfair, 971, 972
- benefits not otherwise available under liquidation, 975
- chance of surviving, 980
- consideration of what currently known and realistic in future, 982
- economic and social impacts, 970
- elements to be considered by court, 966
- fairness hearing, 977
- implementable, 983
- majority acting bona fide and in good faith, 978
- matters that must be considered, 967
- monitor's reports, 968
- not a rubber stamp process, 969, 981
- relaxation of some standards, 973
- third party releases, 984, 986
- treatment compared to rights received in event of failure, 974
- unfair confiscation of property of secured creditors, 979
- hearing of application, 990–994
  - adjournment, 994
  - court must have all facts, 990
  - independent and competent expert, 991
  - postponement, 993
  - re-opening process, 992
- timing of court approval, 987–989



## INDEX

---

- • • consideration of fairness prior to sanction hearing, 989
- • • only when plan in final approved from, 987, 988
- claims of creditors**
- adjudication of claims, 924–941
- • claims resolution process, 924–936
  - • • Canadian Human Rights Act pay equity case, 935
  - • • claimants analogous to plaintiffs, 925
  - • • claims falling outside of proceedings, 930
  - • • claims not valued for distribution purposes, 933
  - • • control over process by debtor, 926
  - • • determination of amount of claim, 924
  - • • establishing value of claims, 934
  - • • extending time to file notice of dispute, 929
  - • • monetary penalty imposed by regulatory body, 936
  - • • no value for voting purposes, 928, 932
  - • • trial, 927
  - • • unremitted GST, 931
- proceedings before claims officer, 937–941
  - • • appeal from decision, 939, 940
  - • • determination of inter-creditor claims, 937
  - • • Part III claim under Canada Labour Code, 938
  - • • refusal to hear oral evidence, 941
- claims barring procedure, 912, 913
  - • criteria to be considered, 913
  - • power to amend claim bar orders, 912
- claims of landlords, 898, 899
  - • unsecured creditor, 898
  - • valued in accordance with provincial law, 899
- claims of secured creditors, 890–897
  - • costs of unsuccessful secured creditors, 896
  - • holder, 893
  - • not same meanings as in Bankruptcy and Insolvency Act, 891, 892
  - • security under s. 427 of Bank Act, 894
  - • trustee under trust deed securing bonds, 890
  - • unperfected interest, 897
  - • valid builders' liens, 895
- claims under guarantee, 900–902
  - • amount owing where principal debt discharged by partial payment, 901
  - • creditor, 900
  - • principal debtor clause, 902
- contingent or unliquidated claims, 903–905
  - • determination of amount of contingent claim, 904
  - • monetary penalty imposed by regulatory body, 905
  - • unliquidated claim provable in bankruptcy, 903
- date of determination of claim, 911
  - • general, 882–889
  - • concepts of claim and liquidated amount, 882
  - • function of monitor, 889
  - • no interest stops rule, 888

## COMPANIES' CREDITORS ARRANGEMENT ACT

---

- • provable claim in Bankruptcy and Insolvency Act, 885
- • provisions of Bankruptcy and Insolvency Act dealing with claims of secured creditors, 886
- • repudiation of contract prior to proceeding, 887
- • right of retraction attached to share, 883, 884
- proofs of claim, 914, 915
- • representative claims, 915
- • technical irregularities, 914
- subordinated claims, 906–910
- • absence of provision extinguishing subordination provisions, 910
- • agreement of bank re collateral, 909
- • claim for damages from share exchange, 907
- • doctrine of equitable subordination, 906
- • without subordinating to claims ranking in priority, 908
- voting, 916–923
- • determination of who is creditor, 920
- • guarantor, 918
- • head count, 916, 921
- • master participation agreement, 917
- • multiple claims by way of assignment, 922
- • unsecured creditors, 923
- **exercise of inherent jurisdiction**
- approval of transactions, including settlements, 612
- bar claims against specified assets and receivers, 583
- cannot conflict with statute or rule, 603
- court's process and company's process, 602
- definition, 579
- determining method of distribution of equity shares, 588
- distinguished from cases involving receivers/managers, 587
- does not operate where Parliament has acted, 600
- ensure that matters adjudicated in proper forum, 584
- extension of option period, 608
- fill in gaps in legislation and promote objectives of Act, 594
- fleshing out, 580
- imposing stays against third parties, 585, 590, 591, 595
- just and convenient to control or prevent abuse of process, 581
- legal costs of debtor in defending application to replace monitor, 607
- may not alter statutory priorities, 589
- need for caution, 596
- necessary for fair and effective exercise of jurisdiction under Act, 598
- no exhaustive list of circumstances, 578
- permanent injunction against unaffected creditors, 606
- priming liens or priority charges in favour of insolvency officers, 609
- priority charges, 611
- reasons for exercising, 586
- section 11 discretion supplants need, 601
- source of, 599
- subordinate existing security, 597

## INDEX

---

- supplement statute, 592
- transfer location of head office, 610
- vesting order, 605
- extension of CCAA stay order**
  - general, 267–296
    - appointment of interim receiver to realize upon assets, 292
    - auction bidding process, 277
    - broad discretion to impose terms and conditions, 269
    - court’s role during stay period, 290
    - debtor acting in good faith with due diligence, 282, 295
    - dogmatic approach by creditors, 275
    - doomed to failure consideration, 270
    - factors considered, 291
    - failure by management to comply with timetable, 279
    - flexibility, 274
    - genuine progress towards restructuring plan, 273, 284
    - identical powers for additional orders without time limits, 268
    - limitations on DIP financing, 271
    - limited period where no realistic period of success, 283
    - onus of proof, 278
    - reasonable probability of success in meetings, 272, 276
    - role of existing management, 281
    - short extension to move process along, 296
    - test, 286
    - where allowed, 293, 294
    - where extension effectively financed by secured creditors, 280
    - where not granted, 288
  - length of stay, 297, 298
  - British Columbia, 298
  - industrial and commercial concerns, 297
  - success fees, 299
- financing debtor during CCAA proceedings — debtor-in-possession (“DIP”) financing**
  - balancing act, 514
  - cogent evidence that benefit outweighs potential prejudice to lenders whose security subordinated, 515, 522, 524, 529
  - compensation to secured creditor for continuing operating facility, 519
  - creditor cannot be required to pay funds in excess of value of security interest, 526
  - equitable allocation of costs among creditors, 532
  - fees and disbursements of professional advisors, 521
  - guidelines, 516
  - jurisdiction, 523
  - not empowered to alter statutory priorities, 513
  - only practical means of securing repayment of loan, 518
  - operating principles in court’s consideration, 530
  - overarching policy favouring possibility of going concern solution, 531
  - reasonably necessary to meet urgent needs over sorting out period, 512, 520
  - right to allocate costs among creditors, 525

## COMPANIES' CREDITORS ARRANGEMENT ACT

---

- security for credit extended to debtor after date of initial order, 511
- two track approach under Bankruptcy and Insolvency Act and CCAA, 528
- when granted, 527
- general**
- application of CCAA, 35–42
  - general, 35–39
    - Act prevails over Bank Act, 39
    - applies at any stage of insolvency proceedings, 37
    - instrument governing rights of creditors, 35
    - no exemptions for any creditors, 36
    - non-creditors not included, 38
  - rights of crown, 40, 41
    - bankruptcy decisions not applicable, 41
    - binding on crown, 40
  - unknown and unascertainable creditors, 42
- compromise of indebtedness, 102
- consolidation of CCAA proceedings, 103–116
  - affairs intermingled, 105
  - assessing whether benefits outweigh prejudice to particular creditors, 106
  - balance economic prejudice, 111
  - balancing of interests, 107
  - in appropriate circumstances, 110
  - intertwining elements, 115
  - look at overall general effect, 112
  - may not be barred from seeking from creditors approval of consolidation plan, 103
  - Ontario Rules of Civil Procedure re joinder, 116
  - subsidiary company, 114
  - test for consolidation, 109
  - threatens to prejudice rights of creditors, 108
  - vote by creditors of other companies, 113
- constitutional matters, 43–50
  - application of provincial legislation, 46
  - constitutionally valid, 43
  - doctrine of paramourty, 46
  - extended term ‘insolvency’, 44
  - inherent jurisdiction to override provision in provincial legislation, 48
  - legislation relating to bankruptcy and insolvency, 45
  - phrase ‘but not required’, 49
  - third party releases, 50
- interaction of CCAA and Bankruptcy and Insolvency Act, 51–64
  - appointment of interim receiver, 59
  - bankruptcy trustee may file plan of compromise or arrangement, 57
  - combination of CCAA order and s. 47(2) Bankruptcy and Insolvency Act receivership, 53
  - determining property to devolve to trustee in bankruptcy, 56
  - far different procedures, 62
  - greater flexibility of CCAA, 58

## INDEX

---

- • dismissal of petition where plan of arrangement sanctioned, 55
- • not envisaged that terms have same meaning as in Bankruptcy and Insolvency Act, 54
- • petition into bankruptcy at end of CCAA proceedings, 64
- • purpose of Bankruptcy and Insolvency Act, 60
- • purpose of CCAA, 61
- • scheme occupies field, 52
- • time horizons, 63
- • where proceedings commenced under CCAA, 51
- interpretation, 117–154
  - • claim, 117–121
    - • • contingent liabilities, 118
    - • • debt provable in bankruptcy, 120
    - • • future obligations, 119
    - • • holder of guarantee, 117
    - • • representative claims, 121
  - • company, 122
  - • court, 123
  - • debtor company, 124–129
    - • • company not incorporated or doing business in Canada, 128
    - • • conditions precedent, 125
    - • • incorporates concept of insolvency, 126
    - • • limited partnership, 129
    - • • trust entities, 127
    - • • under CCAA, 124
  - • eligible financial contract, 130–137
    - • • forward commodity contract, 131
    - • • narrower construction dictated, 137
    - • • no bright line definition, 136
    - • • physical supply of gas, 133
    - • • physically settled forward commodity contract, 132
    - • • prescribed by regulation, 130
    - • • regard to contract as a whole to determine its character, 134
    - • • specific pigs, 135
  - • insolvent, 138–154
    - • • admission by senior executives, 139
    - • • claims based on possibilities not sufficient, 154
    - • • contingent and unliquidated claims, 151
    - • • date of filing, 147
    - • • debt payable at some future date, 141
    - • • definition in Bankruptcy and Insolvency Act, 138
    - • • definition under Bankruptcy and Insolvency Act artificial or notional hypothetical test, 150
    - • • definition under Bankruptcy and Insolvency Act only appropriate definition, 152
    - • • expanded meaning, 146
    - • • having intentionally ceased to pay pre-filing debts, 148
    - • • interest of all stakeholders and any public interest, 143
    - • • obligations currently payable, 142, 153
    - • • reference not made to financial statements, 140
    - • • test for insolvency determined on its own merits, 149

## COMPANIES' CREDITORS ARRANGEMENT ACT

---

- test may differ from Bankruptcy and Insolvency Act test, 144
- test under Bankruptcy and Insolvency Act disjunctive, 145
- introduction, 1–8
  - forms of reorganization, 8
  - not preventive, 5
  - origins and purpose, 1
  - Pandora's box of matters, 6
  - paramount interest of all parties and court, 7
  - remedial legislation, 3
  - skeleton legislation, 2
  - wide and liberal construction, 4
- qualifying company, 31–34
  - characterization of company does not matter, 32
  - no requirement for carrying on active business, 33
  - total claims exceeding \$5,000,000, 31
  - U.S. corporation, 34
- purpose of CCAA, 9–31
  - according limited period of time, 29
  - Act serves broad constituency, 20
  - broad and liberal interpretation, 12
  - can involve liquidation scenario, 22
  - cannot be interpreted without reference to law of bankruptcy, 15
  - discretion to stay proceedings, 19
  - enabling compromises, 10, 11
  - fairness of plan determined, 23
  - list of purposes, 21
  - not intended to disadvantage, 26
  - objective similar to bankruptcy legislation, 9, 16
  - primary purpose, 27
  - protection of creditors, 17
  - providing stability during restructuring, 30
  - remedial legislation, 25
  - sketch, 13
  - statutory mechanism to bind unwilling minority of creditors, 14
  - structured environment for negotiation of compromises, 18
  - supervision of complicated restructuring, 24
  - test fairness of plan with reference to impact on stakeholders, 28
- role of court, 65–91
  - agenda of court hearings, 76
  - broad and flexible exercise of jurisdiction, 69
  - control of court, 70
  - DIP financing, 84, 85
  - distinction between court's process and company's process, 81
  - extension of option period, 88
  - fairness and reasonableness, 79
  - fill the gaps, 78
  - fleshing out details of statutory scheme, 89
  - judge should not substitute own business judgment, 82
  - jurisdiction extends to continued process related matters, 83
  - liberal construction, 72, 75
  - meeting of creditors, 67

## INDEX

---

- • nature and extent of supervision not specified, 66
- • no power to affect legal relationships between parties to letter of credit, 91
- • not simply administrative, 74
- • objectives of legislation, 68
- • obligations defined by objectives, 73
- • power to approve transactions during stay period, 87
- • priming liens or priority charges, 86
- • real time litigation, 77
- • reorganization at three points, 71
- • section 11 discretion engine that drives scheme, 80
- • supervisory, 65
- • transfer of head office of debtor, 90
- • role of directors, 92–101
  - • after receiver and manager appointed, 92
  - • conflicts of interest, 99
  - • emergence of better corporation, 95, 96
  - • guarantees, 101
  - • inappropriate for court to intervene in management, 93
  - • liability for non-payment of wages, 100
  - • not immunized from complying with regulatory regimes, 94
  - • not to favour interests of any one group of stakeholders, 98
  - • statutory fiduciary duty obligation and duty of care obligation, 97
- initial application under CCAA**
  - • applicants, 160–165
  - • customer, 164
  - • debtor, creditors, trustee in bankruptcy, liquidator, 160
  - • insolvent subsidiary of applicant, 165
  - • subsidiary company, 162
  - • team of operating companies controlled by holding company, 163
  - • where receiver manager appointed, 161
  - • jurisdiction, 156–159
    - • court, 156–158
      - • • dismissed if most assets in another province, 157
      - • • onus to prove another province more appropriate forum, 158
      - • • province within which head office or chief place of business, 156
    - • single judge, 159
  - • material in support, 166–172
    - • cash flow projection and financial statements, 166
    - • obligation on ex parte application, 172
    - • plainer language, 169
    - • plan of compromise or arrangement not prerequisite, 167
    - • plan outline, 168, 170
    - • realistic standard of disclosure, 171
  - • notice of initial application, 173–180
    - • application in summary way, 175
    - • as much advance notice as possible, 179
    - • ex parte application, 176, 177
    - • notice by telephone, 178
    - • order dispensing with service, 174

## COMPANIES' CREDITORS ARRANGEMENT ACT

---

- • “without notice” basis, 180
- procedure, 155
- international insolvencies**
- assistance from foreign court, 702, 703
- • by way of order, 702, 703
- cross-border insolvencies, 716–722
- • guidelines re court to court communications, 718
- • informal protocol, 721
- • order recognizing and giving effect to proceeding in foreign court, 719
- • substantial connection of company with U.S., 717
- • voting, 716
- • waiver of deemed undertaking rule, 720
- debts payable in foreign currency, 723
- definitions, 690–693
- • chapter 11 proceedings under U.S. Bankruptcy Code, 691
- • foreign proceeding, 690
- • judicial assistance and protection for solvent corporation in foreign proceedings, 692
- foreign representative, 693
- international comity, 706–715
- • cooperation with foreign representative and foreign court, 706
- • document production, 713
- • effect of protocol, 708
- • extension of comity as between courts in cross-border matters, 710
- • full recognition to comity, 709
- • powers of court, 711
- • protection of rights of all creditors, foreign or domestic, 714
- • protocol agreement, 722
- • putative class proceedings, 715
- • stay of proceedings against foreign debtor, 712
- powers of court, 694–701
- • auxiliary relief, 698, 699
- • coordination of proceedings, 694
- • not required to do something contrary to public policy, 696
- • purpose of section 52 of CCAA, 697
- • stay treatment under Chapter 11 in U.S., 700
- • synopsis letter, 701
- • terms of order, 695
- status of foreign representative, 704, 705
- • order conditional on compliance with any other order, 705
- • submit to jurisdiction of foreign court, 704
- legal costs**
- determination of amount of costs, 1131
- fees of counsel for debtor paid by interim receiver, 1132
- fees of lawyers for debtor, 1126, 1127
- principle of reasonableness, 1133
- property charged by debenture, 1129
- provincial tariffs, 1130
- taxation of legal accounts paid from bank account operated during proceedings, 1125



## INDEX

---

- taxation of legal fees included in restructuring costs of proceedings, 1128
- lifting of stay of proceedings**
- bankruptcy proceedings, 464–466
  - order that petitions allowed to proceed in ordinary course, 466
  - preservation of three month presumption period, 465
  - transactions falling outside time period set out in Bankruptcy and Insolvency Act, 464
- determination of claim, 463
- general, 439–458
  - application by mortgagee to realize on mortgage, 440
  - chief restructuring officer, 446
  - circumstances where application required, 445
  - circumstances where refused, 456
  - creditor materially prejudiced by refusal to lift stay, 451
  - effect of jeopardizing reorganization, 455
  - factors considered, 452, 453
  - interlocutory injunction restraining debtor, 443
  - leave nunc pro tunc, 450
  - litigation in United States jurisdiction, 458
  - matters that do not threaten reorganization, 439
  - notice to officers and directors of proposed derivative/oppression action, 448
  - principles applicable to granting leave under Bankruptcy and Insolvency Act not applicable, 447
- replacement of management team, 449
- repossession of equipment subject to security, 441
- solely for protection against expiration of some right, 442
- sound reasons test, 454
- late registration of security agreement, 459–462
  - no prejudice suffered, 460
  - Ontario Repair and Storage Liens Act, 461
  - re-registration by secured creditor, 462
- proceedings against guarantor, 469
- proceedings against insurer, 467, 468
  - allowing creditor to access funds not available to other creditors, 468
  - enforce claim covered by insurance, 467
  - protection of lien rights, 470–473
    - court will ordinarily lift stay to allow filing, 472
    - filing of lien within proper time, 471
    - never intended to disadvantage any group, 470
    - stay not lifted to permit filing of invalid lien, 473
- liquidation or sale of assets**
- approval of shareholders, 685
- distribution of proceeds, 686–689
  - claims against cannot be greater than claim against collateral, 686
  - pending bankruptcy petitions, 687
  - plan of arrangement, 689

## COMPANIES' CREDITORS ARRANGEMENT ACT

---

- • proceeds of asset sale do not constitute trust funds, 688
  - method of sale, 673–676
  - • open bidding process, 673
  - • process for receiving offers, 675
  - • second bidder not allowed to improve offer, 674
  - • sealed bids, 676
  - role of chief restructuring officer, 682
  - role of monitor, 683, 684
  - • facilitate sale of assets, 683
  - • process for receiving offers, 684
  - sale of assets before submission of plan, 661–672
    - • affecting third parties as minimally as possible, 669
    - • fallout from liquidation materially worse than sale of assets, 663
    - • fundamentals of proceeding, 666
    - • jurisdiction, 661, 662
    - • leave to appeal, 671
    - • marketing and divestiture process, 667
    - • order that rights of first refusal not triggered, 670
    - • power to authorize assignment of material agreement, 665
    - • replaceable contracts, 672
    - • sale of assets of debtor as going concern, 664
  - use of CCAA for liquidation purposes, 653–660
    - • appropriate circumstances, 654
    - • assessment of each case on own unique facts, 659
    - • conditions precedent, 655
    - • ongoing business entity surviving asset sale, 657
    - • situations in Alberta and Ontario, 658
    - • where assets end up with select group of creditors, 656
  - vesting orders, 677–681
  - • clear title to assets, 678
  - • covenants running with land, 680
  - • notification to registered encumbrancers, 677
  - • replaceable contracts, 679
  - • substantive rights of persons not having notice, 681
- matters arising during CCAA process**
- appointment of mediator, 644–648
    - • participation of non-party, 646
    - • principles guiding court's discretion, 648
    - • process for receiving offers, 645
    - • purpose of, 644
    - • role of monitor, 647
  - approval of financing agreements and other contracts, 624–632
    - • agreement for payment of pre-filing debt over period of time, 624
    - • approval of transactions prior to plan of reorganization, 625, 630
    - • conflicts of interest and issues arising from management, 631
    - • duties of court re sale of asset, 632
    - • entrenching elements of proposed plan of arrangement, 629
    - • motions re receivers, 627
    - • stand-by purchase agreement, 626

## INDEX

---

- assignment of contracts, 623
- conduct of debtor, 637
- corporate actions, 633
- information to creditors, 640
- investigations, 641
- non-ordinary course of business, 638
- payments to certain creditors, 613
- pension contributions, 649
- protection of confidential information, 642, 643
  - open court system, 643
  - permanent sealing order, 642
- rights of administrator, 636
- rights of secured creditors, 639
- rights of shareholders, 634, 635
  - annual meeting, 635
  - oversight committee, 634
- rights of third parties, 650–652
  - may be affected by stay order, 650
  - may permanently alter contractual rights of non-creditor, 651
  - no permanent injunctions to permit debtor to vary terms of contract, 652
- termination of contracts by debtor including leases, 614–622
  - considerations for approval of, 621
  - intervention in management’s exercise of discretion, 615
  - repudiation does not affect either party’s right to claim damages, 617
  - restructuring of business affairs, 620
  - right of debtor to disclaim leases, 616
  - unilateral termination of leases and contracts, 618
- **plan of arrangement**
  - amendment of plan of arrangement, 819–836
    - before approval by creditors, 819–824
      - adjournment of meetings, 822
      - creditor’s amendment considered at meeting, 823
      - debtor’s consent, 824
      - not after vote taken, 821
      - right up to last moment, 819
    - by court, 825–836
      - circumstances, 826
      - class of creditor adversely affected by alteration, 825
      - court sanctioned plan, 831
      - creation of separate class of creditors, 834
      - drop dead provisions, 835
      - exercised sparingly, 828, 830
      - following approval, 832, 836
      - no prejudice, 827
      - protecting unique entitlement of creditor, 833
      - technical amendments after approval, 829
  - claims against officers and directors, 805–813
    - claims specifically excluded from compromise, 806, 811
    - compromise of claims arising before proceedings, 805
    - compromise must be fair and reasonable, 807
    - government claims, 808
    - guarantees, 813
    - ineffective to release from liability for misrepresentations, 810

COMPANIES' CREDITORS ARRANGEMENT ACT

---

- claims against third parties, 814–818
- claims against directors specifically excluded, 815
- directors, 817
- guarantor, 814
- letter of credit, 816
- third parties who are not applicants, 818
- claims subject to plan, 854–862
- agreement entered into after initial application, 861
- compromise of landlord's claim for rent owing, 858–860
- deemed trust for GST payments, 855
- failure to file proof of claim, 854
- no temporal limitation re when person became creditor, 862
- procedures under Part III of Canada Labour Code, 857
- terms of settlement, 856
- classification of creditors, 747–804
- disclosure to creditors, 863–865
- certainty as to implications of plan, 863
- considerations in determining if plan fair and reasonable, 864
- elimination of ambiguities, 865
- examples of classification, 776–802
- guarantors, 791–794
- identity of class with lenders, 792
- protection as separate class, 793
- question of what is fair and reasonable, 794
- landlords, 784–790
- avoid fragmentation, 790
- grouping of all landlords in separate class, 786
- lessors as separate class simply because lessors, 784, 788, 789
- same class of creditors as unsecured creditors, 787
- where proper to separate landlords and unsecured creditors, 785
- others, 795–802
- amend plan to direct payment in full of certain creditors, 802
- commonality of interest, 795
- fact driven determination, 797
- fracturing class prior to vote, 798
- liens attached to property of third party, 801
- no real commonality of interest, 800
- parties holding same note, 799
- sub-classification of ordinary creditors, 796
- secured creditors, 776–783
- amounts owing pursuant to same loan, 783
- bonds, 780
- equality of treatment, 778
- no rigid guidelines, 777
- over secured and not fully secured in same class, 782
- principles, 779
- priority mortgages, 781

## INDEX

---

- single class where no true commonality of interest, 776
- time of classification determination, 803, 804
  - procedure for attacking classification, 803
  - raising issues at sanctioning hearing, 804
- general, 747–752
  - confiscation of interests of senior class, 747
  - identity of interest, 748
  - meaning of ‘class’, 749
  - priorities between those with financial stake, 751
  - reorganization to be fair and equitable as between parties, 750
  - status of individual members of union, 752
- principles of classification, 753–775
  - amending plan to direct payment in full of certain creditors, 773
  - application by creditor for reclassification of creditors, 767
  - authority to alter legal rights of parties without consent, 757
  - basic rule for creation of groups, 753
  - commonality of interest test, 765
  - creditor’s security having no value, 775
  - differences in nature of debt or groups of creditors, 755
  - distinct creditor class, 772
  - general similarities of interest, 759
  - guidance in Act, 758
  - identity of interest test, 754
  - interests considered in determining commonality of interest, 768, 769, 771
  - legal rights not considered in isolation, 761
  - meaning of ‘interest’, 763
  - minority veto test, 756
  - non-fragmentation approach, 760
  - relationship of operating lenders and term lenders, 774
  - rights and not personalities of creditors, 762
  - separation based on conflict of interest, 764
  - unperfected interest, 770
- corporate reorganizations, 838, 839
- Canada Business Corporations Act arrangement, 838
- meeting of shareholders, 839
- creditors affected by plan of arrangement, 727–734
  - application can apply to all creditors or classes of creditors, 729
  - compromise not required to be proposed to all creditors, 732
  - debtor may fall back to narrower scenario during process, 730
  - debtor must submit to creditors able to preclude operation, 727
  - failure to include creditors of parent company, 734
  - plan proposed solely to secured creditors, 733
- distribution to creditors, 849–853
  - contract, 853
  - no interest stops rule, 851

## COMPANIES' CREDITORS ARRANGEMENT ACT

---

- • no requirement to execute deemed trusts, 852
- • rule in *Cherry v. Boulton*, 849
- • stay of order permitting preliminary distribution, 850
- general, 724–726
  - • contract, 724
  - • creditor proposal, 725
  - • interim receiver, 726
- income tax obligations, 837
- interpretation of plan, 840–848
  - • administrator must act judicially in business context, 841
  - • application for directions, 843
  - • fairness and reasonableness considerations, 846
  - • give effect to every provision, 848
  - • implied terms, 847
  - • overall purpose and intention of plan, 844
  - • prevails over federal or provincial statutes, 845
  - • whether retirees employees, 842
- negotiation of plan of arrangement, 744–746
  - • creditor may insist on improvements, 744
  - • underlying business agenda, 746
- terms of plan of arrangement, 738–743
  - • anything lawfully incorporated in any contract, 742
  - • governing jurisdiction, 740
  - • termination of leases, 739
  - • third party releases, 741, 743
  - • use of explicit dates, 738
  - • treatment of creditors, 735–737
- • fair and equitable treatment of all parties within each class, 736
- • secured creditor led plan, 737
- • to receive as much as if there were no reorganization, 735
- treatment of shareholders, 866–881
  - • application of Act together with federal or provincial legislation, 870
  - • arguments from existing shareholders, 878
  - • cannot expect any advantage from arrangement, 877
  - • conversion of common and preferred shares into new common shares, 875, 879
  - • fairness where given something rather than nothing, 867
  - • mesh with reorganization provisions under Canada Business Corporations Act, 871, 872
  - • must sacrifice to creditors, 866
  - • oppression, 869
  - • priority right of preferred shareholders, 876
  - • right to vote, 874
  - • share capital reorganization without shareholder approval, 868
  - • status to object to plan, 873
  - • surplus property remaining after plan satisfied, 881
  - • whole interests of existing shareholders wiped out, 880
- priority obligations**
  - administrative charges, 547–556
  - allocation of charges that accrue during process, 554, 1136

## INDEX

---

- • application by monitor to be paid from debtor's operating account, 551
- • fees of monitor and legal expenses relating to restructuring, 548, 556
- • legal and accounting fees predating initial order, 549
- • limitation on super-priority financing, 550
- • priority over insurance proceeds, 552
- • professional advisors, 547
- • purpose of, 555
- • requirement for professionals to provide details of accruing fees, 553
- employee claims, 559, 560
- • employee retention charge, 560
- • severance pay and pension contribution arrears, 559
- goods and services tax, 563–566
- • deemed trust, 563
- • exclusive jurisdiction of Tax Court re GST issues, 566
- • legislative intent, 565
- • statutory trust takes precedence over CCAA, 564
- indemnity of directors, 569–576
- • first in priority fixed mortgage, lien and charge, 572
- • liabilities for which directors could be personally liable, 576
- • liability insurance and subrogation, 573
- • purpose of director's charge, 569
- • severance or termination pay claims, 570
- • terms of charge, 574
- • trust fund re vacation pay and employee deductions, 571
- interest and penalties on source deductions, 567
- lease obligations, 561, 562
- • covenant to repair equipment, 561
- • splitting of keep equipment in repair obligation, 562
- legal costs, 557, 558
- • mortgagee, 557
- • Ontario Solicitor's Act, 558
- payment to foreign creditor, 568
- post-petition creditors, 533–546
- • administrative fund to satisfy claims of suppliers, 543
- • compensation to operating lender for continuing line of credit operation, 538
- • critical supplier designation, 539
- • debtor may vary practice re payment of invoices, 545
- • no general priority for all post-filing obligations, 533
- • priority of claim arising in post-filing period, 546
- • provision permitting debtor to pay for goods and services, 534, 53
- • scope of charge in favour of post petition creditor to be clearly defined, 540
- • severance pay, 544
- • terms to be defined with precision, 541
- • use of credit available after date of order, 535
- • where party required to provide services not paid because of bankruptcy, 542

## COMPANIES' CREDITORS ARRANGEMENT ACT

---

- proceedings and other actions subject to stay**
- bankruptcy proceedings, 329, 330
    - lifting of stay to file petition to avoid limitation period, 330
    - no further steps, 329
  - certification of a labour union, 367, 368
    - application comes within meaning of proceeding, 367
    - purpose of stay, 368
  - claims for return of thirty day goods, 333–336
    - maintaining status quo, 336
    - period of time between date of CCAA order and date of bankruptcy, 334
    - right of suppliers, 335
    - staying right of creditors to seize, 333
  - class actions, 397, 398
    - purpose of stay, 398
    - where lifting of stay would delay reorganization, 397
  - contractual rights, 320–328
    - general, 320, 321
      - arbitration award, 321
      - non-creditors to enforce contractual rights, 320
    - rights of lessors, 324–328
      - asset leased under pure lease, 328
      - bound by preceding order until issuance of subsequent order, 324
      - collection of rents under assignment of rents, 325
      - dispute re leases as financing arrangements or true leases, 327
      - payments for use of leased property, 326
  - termination of contracts, 322, 323
    - order third parties to honour obligations in existing agreements, 322
    - right of counterparty to terminate, 323
  - criminal proceedings, 359
  - crown garnishment rights, 360–364
    - requirements to pay under income tax act, 361–364
      - cessation of stay order under s. 11.09(1) of CCAA, 364
      - no jurisdiction to set aside assessment, 363
      - requirements for end of stay, 361
      - where order staying ceases to be in effect, 362
  - rights of Canada Revenue Agency Under Excise Tax Act, 360
  - employee proceedings, 376
  - general, 300–308
    - arbitration proceedings, 304
    - balance of convenience, 301
    - criminal and quasi criminal proceedings, 307
    - discretionary power to restrain judicial or extra judicial conduct, 300
    - examples, 306
    - power of sale proceedings, 303
    - proceedings commenced or continued without leave of court, 305
    - purpose of stay, 308
    - purposes of ss. 11, 11.02 of CCAA, 302
  - meetings of shareholders, 366



## INDEX

---

- payment of interest, 394–396
- filing does not stop accrual, 394, 395
- no interest paid to one creditor during stay unless paid to all, 396
- payment of monies out of court, 365
- payments to creditors, 331, 332
  - application by creditor for return of product, 331
  - obligations which become owing after CCAA filing, 332
- proceedings against officers and directors, 385, 386
  - guarantees survive plan, 386
  - prohibition may be deleted from initial order, 385
- proceedings against partnerships and other third parties, 377–384
  - affairs of partnership intertwined with applicant's, 378
  - all non-creditors and other parties who could jeopardize success of plan, 377
  - nominee corporation owned by debtor, 381
  - order varied to remove stay, 380
  - third party, 382–384
- proceedings by secured creditors, 309–319
  - acts of receiver, 313
  - general, 309–312
    - application to be excluded from proceedings, 312
    - exercise of rights under assignment of rents, 310
    - marketing of shares and assets of subsidiary, 311
    - power to stay applies to secured and unsecured creditors, 309
    - rights under liens authorized by statute, 314–319
      - miner's lien, 317
      - New Brunswick mechanics lien, 318
      - running of limitations period suspended, 319
      - section 427 Bank Act security, 314, 315
      - woodsman lien, 316
    - set-off, 337–358
      - general, 337–352
        - application in CCAA context, 348
        - application of, 337
        - carefully scrutinized, 350
        - claim and cross claim need not arise out of same contract, 349
        - contractual and legal set-off, 351
        - equitable set-off, 341
        - equitable set-off as opposed to counterclaim, 344
        - equitable set-off operating as true defence, 345
        - may be permitted despite fact that prohibited by initial order, 339
        - obligations arising under same contract, 352
        - principles applying to equitable set-off, 346
        - question asked to determine applicability of equitable set-off, 342
        - requirements of equitable set-off, 347
        - section 21 of CCAA, 338
        - three occasions where set-off permissible, 340

## COMPANIES' CREDITORS ARRANGEMENT ACT

---

- where equitable set-off applies, 343
- refusal of set-off, 356–358
- competing policy concerns, 358
- giving claimant preference over other creditors, 356
- set aside on nunc pro tunc basis, 357
- stay of set-off, 353–355
- purpose of prohibition, 353
- word 'proceeding' includes claim for set-off, 354, 355
- regulatory proceedings, 369–375
- grievance claim filed with Canadian Human Rights Commission, 375
- matters excluded under stay, 374
- Ontario Securities Commission exemptions from filing requirements, 372
- provincial health and safety board, 371
- provincial labour relations board, 370
- union grievances, 373
- utilities proceedings, 369
- rights of termination, 387–393
- balancing of interests, 390
- factors considered, 393
- financing payment of premiums for insurance policy, 392
- permanent order re insolvency defaults occasioned by granting of CCAA order, 388
- repudiation of leases or store contracts, 391
- terminating or cancelling executory contracts, 387
- professional fees**
- expert witness retained by debtor re fraud allegation, 1134
- professional from outside province, 1135
- restrictions on scope of CCAA orders**
- effect on collective agreements, 427
- further advances of money or credit, 414–418
- credit card processor, 416
- employees, 418
- may not require new loan not agreed to, 415
- order may not require, 414
- payment for services not yet provided, 417
- general, 399–400
- passive receipt by bank of ordinary deposit not breach of stay, 399
- rights of holder of mechanics liens, 400
- limitations periods, 424–426
- Bank Act, 424
- lifting of stay order, 426
- provision that parties not prejudiced by effluxion of time, 425
- proceedings against unaffected creditors, 419
- proceedings in the Federal Court, 420–423
- full faith and credit, 420
- granting of stay in comity, 421
- issue of affect of stay determined by CCAA court, 422
- Official Languages Act, 423
- proceedings under letters of credit and guarantees, 404–408

## INDEX

---

- • creditor's rights to proceed against guarantor, 406
- • no order staying or restraining, 404
- • protection not extended to cover guarantor of obligations of debtor, 405
- • rights of holder of letter of credit, 408
- requirements for immediate payment for supply of goods and services, 409–413
  - • capital lease agreements, 412
  - • extending further credit after date or original application, 409
  - • leased property, 413
  - • order cannot prohibit, 410
  - • section 11.01(a) of CCAA applies to true lease, not financial lease, 411
- removal of directors, 428
- rights under eligible financial contracts, 401–403
  - • non-defaulting party, 403
  - • prescribed by regulation, 401
  - • restrictions on order, 402
- results of initial application**
- appointment of interim receiver or receiver, 230–247
  - • general, 230–237
    - • • authorization to realize upon assets, 235
    - • • custodian to supervise operations, 231
    - • • DIP financing, 236
    - • • does not dissolve or annul company, 230
    - • • monitor appointed interim receiver, 233
    - • • purpose of, 237
    - • • role of interim receiver as monitor, 232
    - • • when granting extension of stay of proceedings, 234
  - • powers and duties, 238–247
    - • • appointment where CCAA application dismissed, 241
    - • • burden on complainant, 246
    - • • considering whether interim receiver acted properly, 245
    - • • directors of debtor, 238
    - • • discretionary advance to itself, 240
    - • • powers of interim receiver, 242
    - • • production of communications, 247
    - • • requirement for repayment of portions of fees and expenses, 239
    - • • supervise and concur in carrying on of business, 243
    - • • where power limited by order, 244
- dismissal of application, 215–229
- applicant secured creditor, 223
- attempt to obtain federal funding failed, 215
- circumstances where dismissed, 217
- discretion to be exercised judicially based on credible evidence, 226
- failure to disclose material facts on initial application, 229
- meeting of creditors, 218, 220, 224, 225
- no pressing need to restructure, 227
- plan that cannot succeed, 219, 221, 222

COMPANIES' CREDITORS ARRANGEMENT ACT

---

- when sole purpose to obtain stay of licensing proceedings, 228
- effective date, 263, 264
- day of order, 263
- declaration that process effective at time of application, 264
- grant of stay, 181–214
- general, 181–206
  - application supported by unsecured creditors, 202
  - appropriate, 182
  - assets of company most valuable as ongoing operations, 189
  - components of initial order, 185
  - court should not impose burden to establish success from outset, 195
  - creditor holding veto, 201
  - creditor integrally involved in financial management of debtor, 191
  - DIP financing, 206
  - doomed to failure consideration, 199
  - feasibility of plan, 194
  - functional basis, 204
  - keep lights of company on objective, 205
  - key element of process, 186
  - meeting of creditors, 183
  - not dependent on prior agreement with secured creditors, 198
  - onus, 187
  - period not exceeding 30 days, 181
  - probable chance of acceptance test, 196, 197
- reasonable chance company can continue to operate as going concern, 188
- refused where obvious no plan acceptable to required percentages of creditors, 192
- requesting permission to file plan, for stay and appointment of receiver, 184
- where major creditors advise plan will never be approved, 193, 200
- wider public interest, 190, 203
- good faith, 207, 208
- provision of information to creditors, 207
- maintenance of status quo, 211–214
- broad jurisdiction under s. 11 to impose terms and conditions, 214
- not necessary to maintain between classes of creditors, 211
- preventing maneuvers by creditors impairing financial position, 213
- supervisory role of court, 212
- prejudice to creditors, 209, 210
- balance relative degrees of prejudice, 209, 210
- interpretation of initial order, 265, 266
- creditor overpaid, 265
- plain meaning, 266
- length of stay, 258–262
- cannot exceed 30 days, 258

## INDEX

---

- does not stipulate that initial order to be granted for 30 days, 259
- length of stay on subsequent applications not statutorily prescribed, 260, 261
- short time periods should be considered, 262
- use of “come-back” clause, 248–253
- available to sort out issues during course of restructuring, 249
- limitations on creditors where notice given, 250
- terms of, 248
- use on timely basis, 252, 253
- utilization of rather than application for leave to appeal, 251
- variation of order, 254–257
  - full and frank disclosure on ex parte application, 256
  - jurisdiction to amend or rescind original order, 255
  - lack of notice solved by, 254
  - referral to judge making order in first instance, 257
- role of monitor**
  - appointment of monitor, 474–482
    - appointment mandatory when court grants relief, 480
    - assessment of candidate’s necessary expertise, 475
    - fiduciary obligations, 476
    - monitor not entitled to deference, 477
    - objective concern for interests of all stakeholders, 481
    - principle followed by court re monitor’s report, 478
    - required skills, 479
  - rights of debtor and creditors in collateral, 482
  - trustee as monitor, 474
  - auditor as monitor, 483–486
    - conflict of interest, 484
    - may not be appointed unless court orders otherwise, 483
    - relationship must be disclosed, 486
    - when court will appoint, 485
  - duties and powers of monitor, 487–497
    - appointment of interim receiver, 490
    - confidential information, 491
    - cross-examination of monitor, 497
    - discretion of court to authorize functions, 494
    - duty to send initial order to every creditor, 487
    - general duties, 489
    - obligation to act independently, 492
    - report re reviewable transactions, 495
    - responsibilities of monitor, 488
    - role of monitor, 493
    - supervision of negotiations re revision of contract, 496
  - fees of monitor, 503–510
    - factors considered when assessing reasonableness of charges, 510
    - involvement of accounting professions, 508
    - legal costs of monitor in defending application to substitute monitor, 509
    - no restriction on jurisdiction of court to grant super priority for costs, 506

## COMPANIES' CREDITORS ARRANGEMENT ACT

---

- • priority charge includes disbursements incurred by legal counsel, 505
  - • priority for fees and expenses, 503, 504
  - • super priority only practical means of securing payment, 507
  - liability of monitor, 498–502
  - • entitled to protection set out in engagement letter, 500
  - • good faith and reasonable care in preparing report, 498
  - • grant of limited liability proper exercise of court's discretion, 502
  - • liability for gross negligence or willful misconduct, 499
  - • sanction order does not constitute monitor officer of court, 501
  - due diligence and good faith, 438
  - failure to obtain federal funding, 429
  - known in advance that plan cannot succeed, 430
  - less than full disclosure or misleading re material facts, 437
  - no reasonable chance that company can operate as going concern, 435
  - right to file additional material, 436
- utilization of other federal and provincial legislation**
- CCAA applied together with legislation authorizing arrangements, 1137
  - oppression remedy available to in CCAA proceedings, 1138
- termination of CCAA proceedings**
- burden on applicant to terminate in British Columbia, 431
  - determination that debtor not insolvent, 434
  - doomed to failure, 432, 433

## Index to Condominiums

*(All references are to paragraph numbers.)*

- amalgamation and phased strata plans (British Columbia)**
  - amalgamation, 222
  - phased strata plans, 223–227
- common expenses**
  - assessment by corporation, 208–212
    - • Alberta and Saskatchewan, 208
    - • British Columbia, 209–211
    - • Manitoba, 212
  - contributions by owner developer, 213
  - remedies for owner’s default, 214–221
    - • Alberta, 214
    - • British Columbia, 215–218
    - • Manitoba, 219
    - • Saskatchewan, 220, 221
- common property**
  - appurtenance of unit and common property, 93–104
    - • assessment for taxation, 98
    - • easements, 104
    - • general, 93
    - • liens and encumbrances, 94–97
      - • • Alberta, 94
      - • • British Columbia, 95, 96
      - • • Manitoba, 97
    - • repairs and maintenance, 99–103
  - definitions, 85
  - interest of the unit owners, 86, 87
    - • amendment of interest, 87
    - • nature of the interest, 86
    - • limited common property, 105, 106
    - • use of common property, 88–92
      - • • general, 88–90
      - • • rules for common property, 91, 92
- condominium corporation**
  - creation of corporation, 107
  - insurance, 165–182
    - • Alberta, 165–169
      - • • double coverage, 169
      - • • duty to insure, 165–167
      - • • payment of insurance monies, 168
    - • British Columbia, 170–174
      - • • duty to insure, 170–172
      - • • owner’s insurance, 174
      - • • payment of insurance monies, 173
    - • Manitoba, 175–178
      - • • duty to insure, 175
      - • • liability insurance, 178
      - • • owner’s insurance, 177
      - • • payment of insurance monies, 176
    - • Saskatchewan, 179–182
      - • • duty to ensure, 179, 180
      - • • owner’s insurance, 181
      - • • where building not insured, 182
  - powers and duties, 108–164
    - • corporation board, 132–144
      - • • Alberta, Manitoba and Saskatchewan, 132–135
      - • • British Columbia, 136–144
    - • duties (general), 108–117
    - • enforcement of duties, 148–164

## CONDOMINIUMS

---

- arbitration, 153–156
  - duties of corporation, 157–162
  - general, 148–152
  - judgments against corporation, 163–164
  - management agreements, 145–147
  - powers, 118–131
    - Alberta and Saskatchewan, 118–120
    - British Columbia, 122–130
    - Manitoba, 131
- condominium unit**
- definitions of unit, 44–46
  - easements, 64–66
  - legal description, 47–53
    - contents of the plan, 47–49
      - Alberta, 48
      - British Columbia, 49
    - unit boundaries, 50–53
      - Alberta, 50
      - British Columbia, 51
      - Manitoba, 52
      - Saskatchewan, 53
  - restrictions on use, sale and lease, 67–84
    - sale and leasing, 70–80
      - Alberta, 70–72
      - British Columbia, 73–78
        - assignments, 77
        - general, 73–76
        - residential disclosure statement, 78
      - Manitoba, 79
      - Saskatchewan, 80
    - use, 67–69
  - re-subdivision and consolidation, 81–84
    - Alberta and Saskatchewan, 81
    - British Columbia, 82–84
  - unit proportions, 54–63
    - calculation, 54, 55
    - forms of expression, 63
    - sharing of common expenses, 56–58
    - voting rights, 63
- condominiums on leasehold property**
- Alberta, 183
  - British Columbia, 184–191
    - destruction/deemed destruction of building, 191
    - duties of strata corporation, 190
    - effect of deposit, 186
    - general, 184–191
    - requirements for deposit of a leasehold strata plan, 185
    - restrictions on sale, 189
    - termination or renewal of lease, 187, 188
  - Manitoba, 192
  - Saskatchewan, 193
- discrimination and human rights**
- Alberta, 242, 243
  - British Columbia, 244, 245
  - Manitoba, 246
  - Saskatchewan, 247
- formation of condominiums (Alberta and Saskatchewan)**
- bylaws, 8–17
  - condominium plan, 3–7
    - general, 3, 4
    - requirements of plan, 5–7
- formation of condominiums (British Columbia)**
- bylaws, 24–30
  - amendments, 25–30
  - general, 24
  - strata plan, 18–23



## INDEX

---

- • contents of plan, 20–23
- • registration of plan, 19
- • subdivision into strata lots, 18
- formation of condominiums (Manitoba)**
  - bylaws, 40, 41
  - • general, 40
  - • rules for common elements, 41
  - declaration, 31–36
    - • amendments, 36
    - • contents of declaration, 33, 35
    - • effect of registration, 32
    - • general, 31
    - • special requirements for tenants, 34
  - interim occupancy agreements, 42, 43
  - plan, 37–39
    - • amendment, 39
    - • contents of plan, 37, 38
- legislation**, 1, 2
- regulations**, 248
- replacement plans (Saskatchewan)**, 228–230
- requirements for sale of units by developers**
  - Alberta and Saskatchewan, 231–236
  - British Columbia, 237
  - Manitoba, 238
- rule against perpetuities**, 248
- separate residential and commercial sections (British Columbia)**, 239–241
- termination of condominium**
  - partial or total destruction, 194–198
    - • Alberta and Saskatchewan, 194
    - • British Columbia, 195–197
    - • Manitoba, 198
  - termination by election, 199–203
    - • effect of termination, 201–203
    - • procedure, 199, 200
  - termination by sale, 204–207
    - • Alberta and Saskatchewan, 204
    - • British Columbia, 205
    - • Manitoba, 206, 207

## Index to Conflict of Laws

(All references are to paragraph numbers.)

- abduction**, *see* **child custody**
- adoption**, *see also* **child custody; child guardianship; foreign judgments**
  - change of domicile, 276, 277
  - effect, 276
  - jurisdiction, 275
  - recognition of extraprovincial order, 278
- anti-suit injunction**, 68
- bankruptcy**, *see also* **jurisdiction and choice of law; property**
  - application of Canadian law, 359
  - application of provincial law, 360
  - “debtor”, 358
  - discharge, 364
  - general, 366
  - immovable property, 361
  - jurisdiction, 358, 362
  - movable property, 361
  - personal property security, 367
  - powers of trustee, 359, 361, 365
  - property vesting in trustee, 360
  - receiver, 363
  - records, 365
  - United States, 365
  - validity of debt, 359
- characterization of legal issue**, *see also* **conflict of laws; jurisdiction and choice of law; lex causae; lex fori; lex situs**
  - application of *lex causae*, 86, 89, 90, 92, 98, 100
  - application of *lex fori*, 9, 80, 82, 86–101, 126
  - application of *lex situs*, 83, 293, 294
  - functional approach, 81
  - incidental question, 84, 85
  - independent analysis approach, 85
  - limitation of actions, 94, 95, 211, 212, 427
  - novel circumstances, 81
  - *stare decisis*, 81
- Charter of Rights**, 380
- child custody**, *see also* **adoption; child guardianship; divorce; jurisdiction and choice of law; legitimacy**
  - extraprovincial orders, 265, 266
  - international child abduction, 267
  - jurisdiction, 254–64
- child guardianship**, *see also* **adoption; child custody; divorce; foreign judgments; jurisdiction and choice of law; legitimacy**
  - disregarding foreign order, 268, 271
  - recognition of foreign order, 268–271
- choice of law**, *see* **jurisdiction and choice of law**
- class actions**, 387
- conflict of laws**, *see also* **characterization of legal issue; foreign judgments; jurisdiction and choice of law**
  - “country” defined, 2
  - federal jurisdiction, 2, 8
  - foreign bankruptcy, 51, 180
  - forum conveniens, 19, 63–74, 156
  - *lex situs*, 47

## CONFLICT OF LAWS

---

- private international law, 1
  - provincial jurisdiction, 2, 8, 17
  - public international law, 1
  - stay of proceedings, 35–37, 40, 41, 74, 77, 79
- contracts**, *see also*  
**characterization of legal issue;**  
**conflict of laws; jurisdiction**  
**and choice of law;**  
**maintenance; marriage; proper**  
**law; property; rescission;**  
**specific performance**
- bills of exchange, 176–180
  - bills of lading, 41, 157, 173, 174
  - capacity, 168
  - conditional sales agreements, 190–192
  - currency of payment, 164
  - exchange rate, 181
  - exclusive jurisdiction clause, 154, 156, 171, 173, 174
  - exemption clause, 215
  - foreign jurisdiction clause, 35–40, 156
  - formal validity, 169
  - freight and carriage, 172–174
  - fundamental public policy, 170
  - guarantees, 193, 194
  - illegality, 166, 167
  - insurance policies, 182–188, 189
  - interpretation, 153
  - jurisdiction, 45–48
  - lawyer’s fees, 175
  - marriage contracts, 195–198
  - morality, 170
  - promissory notes, 177, 178
  - proof of foreign law, 103, 116
  - proper law, 38, 43–53
  - validity, 153
- corporations**
- artificial personality, 345
  - capacity, 346
  - comity of nations, 345
  - extraprovincial operations, 347, 348
  - foreign corporations, 349–353
  - indemnity bond, issues re, 354
  - internal corporate governance, 355
  - powers, 346
  - winding up, 356, 357
- diplomatic immunity**, *see*  
**sovereign immunity**
- divorce**, *see also* **child custody;**  
**child guardianship; foreign**  
**judgments; maintenance;**  
**marriage; nullity of marriage**
- foreign divorce, 225, 241–252
  - jurisdiction, 238–240
- domicile**, *see also*  
**characterization of legal issue;**  
**jurisdiction and choice of law**
- corporations, 150, 151
  - definition, 120
  - determinant of civil status, 120
  - domicile of choice, 126–143
  - domicile of origin, 125, 129, 134
  - infants, 144–147
  - Manitoba, 124, 145
  - married woman, 147, 149
  - mentally incompetent person, 148
  - national, 123
  - provincial, 123
  - residence distinguished, 121, 122
  - statutory rules, 123, 124, 145
- foreign judgments (general)**, *see*  
*also* **child custody; child**  
**guardianship; divorce;**

## INDEX

---

- maintenance; nullity of marriage**
  - assignability, 437
  - costs, 428
  - general, 368, 369
  - interest, 370, 429
  - merger not applicable, 455, 456
  - nature of action, 370
  - proof, 438
  - res judicata, 370
  - severability, 436
- foreign judgments (recognition and enforcement)**
  - alimony and maintenance, 405, 457–475
  - common law, 371
  - conclusive and final, 399–401
  - defences, 406–426
  - effect of appeal, 403, 404
  - effect on domestic action, 188, 372
  - error of law or fact, 407
  - examination for discovery, 408
  - finality, 402
  - foreign revenue laws, 433
  - fraud, 409–413
  - fundamental justice, 419
  - general, 366, 369, 382, 398
  - insurance, 188
  - international commercial arbitration award, 452, 453, 454
  - lack of jurisdiction, 406
  - legislation, 373
  - limitation of actions, 427
  - maintenance orders, 457–475
  - multiple actions, 188, 372
  - penal actions, 430–434
  - personal actions, 358, 374–94
  - proof of judgment, 438
  - public policy, 420, 421–425, 426
  - real actions, 358, 396
  - real and substantial connection, 395
  - reciprocal enforcement, 439–452
  - reciprocal enforcement (Manitoba), 443, 450
  - specific performance, 397
  - substantial connection, 382
  - sum certain, 397
  - violation of natural justice, 414–418, 419
- foreign land**, 45–452, 297
- foreign law**, *see also* **characterization of legal issue; conflict of laws; foreign judgments; jurisdiction and choice of law**
  - commission evidence, 118
  - effect as question of law, 102
  - evidence, 108–113, 116, 118
  - evidence Acts, 113
  - judicial notice, 105–107, 114
  - limitation periods, 62
  - onus of proof, 101
  - pleading, 101, 114, 115
  - presumption, 101, 103, 104
  - proof, 101
  - question of fact, 101, 102
  - refusal to apply, 59, 60, 61, 62, 119
  - rules of construction, 117
- forum non conveniens**, *see also* **jurisdiction and choice of law**
  - anti-suit injunction, 68
  - British Columbia, 72
  - evidence, 73
  - factors, 65, 66, 67
  - failure to object, 74
  - focus, 67
  - general, 63
  - onus of proof, 71

- proper law distinguished, 156
  - secondary issue, 64
  - service ex juris, 70
  - stay of proceedings, 41, 74, 157
  - substantial connection, 205, 387
  - title to foreign land, 69
- guarantees**, *see also*  
**characterization of legal issue;**  
**contracts; foreign judgments;**  
**jurisdiction and choice of law**
- general, 193, 194
  - Guarantees Acknowledge Act, 92
- immunity**, *see* **sovereign immunity**
- injunction, anti-suit**, 68
- insurance**, 182–188, 189
- international law**
- private, 1
  - public, 1
- judicial separation**, 236, 237
- jurisdiction and choice of law**,  
*see also* **characterization of legal issue; conflict of laws; contracts; foreign law; forum non conveniens; personal actions**
- actions “quasi in rem”, 43
  - adoption, 275
  - airplane travel, 206, 207
  - annulment, 228, 229
  - anti-suit injunction, 68
  - assumed jurisdiction, 34
  - bankruptcy, 358, 359, 362
  - child custody, 254–264
  - concurrent liability in tort and contract, 215
  - consent-based jurisdiction, 34
  - definition, 6
  - divorce, 238–240
  - domicile, 4
  - estates, 324, 326, 333, 334
  - foreign limitation period, 62
  - foreign penal laws, 59, 119
  - foreign revenue laws, 59, 119
  - fundamental public policy, 61, 62, 119
  - international child abduction, 267
  - judicial separation, 236, 237
  - land, 4, 5
  - lex fori determinative, 6
  - lis alibi pendens, 75–79
  - morality, 61
  - movable property, 4, 5, 307
  - non-exclusive jurisdiction clause, 165
  - nullity of marriage, 228, 229
  - personal actions, 7–40, 199, 205
  - presence-based jurisdiction, 34
  - real actions, 42, 44–52, 297
  - recognition by foreign courts, 6
  - residence, 4
  - sovereign immunity, 53–58
  - status issues, 4
  - substantial connection, 208, 387
  - succession, 4
  - territorial nature, 4, 6
  - trusts, 315, 316, 317–323
  - wills, 334–341
- land**, *see* **foreign land; property**
- legitimacy**, *see also* **marriage; nullity of marriage**
- applicable law, 272
  - children of polygamous unions, 226, 274
  - statutory provisions, 273
- lex causae**
- compensable items, 99
  - elements of cause of action, 89

## INDEX

---

- extinguishing cause of action, 98
- Guarantees Acknowledgement Act, 92
- presumptions, 90
- remoteness of damage, 100
- substantive issues, 86, 89
- lex fori**
  - assessment of damages, 100
  - change of domicile, 126
  - characterization, 80
  - evidence, 87, 89
  - execution, 87
  - limitation rules, 87, 93
  - mode of trial, 99
  - presumptions, 90
  - priority of security interest, 307
  - procedural or substantive rules, 86, 90, 93, 98
  - procedural statute, 91
  - procedure, 86–100
  - quantum of damages, 100
  - remedies, 87, 99
  - scope, 82
  - service, 88
  - set-off, 87
  - Statute of Frauds, 92
  - time for appeal, 87
- lex situs**
  - immovable property, 83, 293, 294
  - movable property, 83, 293, 294
- limitation of actions**, 94–97, 211, 212, 427
- lis alibi pendens**, *see also jurisdiction and choice of law*
  - foreign appeal, 79
  - “forum shopping”, 78
  - general, 75
  - selecting forum, 78
  - stay of proceedings, 77, 79
  - substantial connection, 77
  - test, 76
- maintenance orders, interjurisdictional**, *see also divorce; foreign judgments; marriage*
  - application for order, 459, 460
  - British Columbia, 474
  - child support, 477
  - confirmation proceeding, 461
  - Divorce Act, 475, 476
  - entitlement, 462, 463
  - general, 457, 458
  - interjurisdictional support legislation, 467, 468, 469
  - judicial notice of foreign law, 467
  - notice to respondent, 460
  - Ontario, 465
  - procedure, 464
  - provisional orders, 461
  - registration, 465, 466
  - regulations, 470
  - Saskatchewan, 469, 473
  - variation, 475
- marriage**, *see also child custody; child guardianship; divorce; foreign judgments; jurisdiction and choice of law; maintenance orders; nullity of marriage*
  - bigamy, 225
  - capacity, 168, 217, 218
  - consent, 216
  - effect on will, 291
  - foreign marriage, 218–221, 226
  - formal validity, 216
  - marriage contract or settlement, 195–198, 285–88
  - parental consent, 216
  - polygamy, 222–227

## CONFLICT OF LAWS

---

- property, 281–284, 290, 292, 435
- nullity of marriage**, *see also* **divorce; foreign judgments; marriage**
- applicable law, 230
- declaratory judgment, 234
- general, 230
- jurisdiction, 228–231, 235
- recognition of foreign decree, 232, 233
- personal actions**, *see also* **jurisdiction and choice of law**
- challenging service, 32
- contract, 10
- contractual jurisdiction clauses, 35–40
- decree in absentia, 7
- definition, 9
- domicile, 11
- lex fori, 8
- matrimonial causes distinguished, 12
- personal service, 14–16
- residence, 11
- service ex juris, 17–21
- service on defendant, 10, 14–21
- stay of proceedings, 35–37, 40
- substantial connection, 205, 207, 208
- tort, 10, 199, 200, 205, 208
- tort on airplane, 206
- voluntary submission, 10, 27–33
- personal property security**, 367
- proper law**, *see also* **contracts**
- closest connection test, 158–160
- express selection, 154, 156
- general, 152, 153
- immovable property, 164
- inferred, 158–164
- jurisdictional issues distinguished, 156
- place of offer or acceptance, 161
- place of performance, 162
- validity of foreign jurisdiction clause, 38
- property**, *see also* **characterization of legal issue; contracts; jurisdiction and choice of law; torts; trusts; wills and estates**
- property (immovable)**
- application of lex situs, 293–296
- gift, 301
- jurisdiction, 45–52, 297
- mineral claim, 300
- mortmain laws, 301
- title, 295
- transfer void against creditors, 298
- trust, 315
- unpaid vendor, 299
- property (movable)**
- assignment, 302, 306
- mortgage debt, 311
- negotiable instruments, 310
- purchase abroad, 305
- security interests, 307
- shares, 312
- simple contract debt, 308–311
- speciality contract, 308–311
- stolen goods, 313, 314
- succession, 303, 304
- transfer, 303, 304
- rescission**, 46
- remedial order (Alberta)**, 94, 211
- service**, *see also* **foreign judgments; jurisdiction and choice of law**
- challenging, 32

## INDEX

---

- ex juris, 17–23, 24–26, 70
- foreign states and entities, 56
- lex fori governing, 88
- necessity, 10
- personal, 14–16
- sovereign immunity**
  - definition, 53
  - diplomatic and consular officials, 56, 58
  - scope of doctrine, 57
  - statutory provisions, 53–56
  - voluntary submission, 54
  - waiver, 54
- specific performance**, 47, 397
- substantial connection**, *see* **forum non conveniens; lis alibi pendens; personal actions**
- torts**, *see also* **foreign judgments; jurisdiction and choice of law**
  - conspiracy (British Columbia), 22, 202
  - contractual exemption clauses, 215
  - contributory negligence, 213
  - damages, 100
  - double actionability rule, 199–210
  - fatal accidents, 214
  - jurisdiction, 10
  - negligent misrepresentation, 203
  - sexual assault/misconduct, 95, 212
  - situs, 201
- trusts**, *see also* **characterization of legal issue; jurisdiction and choice of law; wills and estates**
  - British Columbia, 317–323
  - foreign immovable property, 315
  - international convention, 317, 318
  - lex fori, 316
  - lex res situs, 316
- wills and estates**, *see also* **jurisdiction and choice of law; trusts**
  - administration, 324–332
  - construction, 336
  - essential validity, 337
  - formal validity, 335
  - general, 339, 340
  - probate, 338
  - revocation by marriage, 291, 344
  - situs of intangible property, 341, 342
  - succession, 333, 334, 343
  - testamentary capacity, 334



## Index to Conspiracy

(All references are to paragraph numbers.)

- “agreement”, 10, 45
- breach of contract**
  - damages, 66, 70, 71
  - directors/employees, 43
  - employment contracts, 32
  - general, 29, 36, 70, 76
  - incidental consequences, 31
  - injunctions, 76
  - lawful acts, 31
  - predominant purpose, 30
- common design**, 12, 13, 59, 62
- Competition Act**, 22, 63, 64, 74
- corporations**, 13, 26, 4
- criminal conspiracy**, 3, 24, 34, 65, 70
- damages**, *see also* **injunctions**
  - apportionment, 14, 69
  - breach of contract, 66, 70, 71
  - causation, 9
  - Competition Act, 74
  - definition, 66
  - difficulty assessing, 73
  - foreseeability, 19
  - general, 66, 70, 73
  - liability of individual conspirators, 14, 69
  - necessity for damage, 1, 2, 8, 15
  - non-pecuniary loss, 67
  - pecuniary loss, 66, 68
  - pleading, 51
  - presumption of damage, 68
  - punitive damages, 72
- defamation**, 33
- defences**, *see* **pleadings**
- definition/nature of**, 1–6
- directors/officers**, 13, 41–43
- elements/scope of**, *see also* **breach of contract; damages; defamation; injure, conspiracy to**
  - acts in furtherance of conspiracy, 3, 7, 20, 21
  - “agreement”, 10
  - common design, 12, 13
  - damage, 1, 2, 8, 9, 14, 15
  - general, 1–4
  - predominant purpose, 1, 2, 12, 16, 17, 30
  - restrictions on availability, 5, 6
  - trade/labour disputes, 5, 23, 24
- employment**, *see* **labour disputes**
- evidence**
  - acts, 62
  - admissions, 61
  - agreement, of, 11
  - balance of probabilities, 58, 63
  - common design, re, 59, 62
  - Competition Act, 63, 64
  - criminal conviction as, 65
  - declarations, 62
  - general, 58
  - hearsay, 62
  - innocent explanation, 60
  - predominant purpose, of, 2, 8
- injunctions**, 75, 76, *see also* **damages**
- injure, conspiracy to**
  - acts furthering, 20, 21
  - Competition Act, 22
  - constructive intent, 2, 18
  - corporations, damage to, 26
  - criminal act not required, 20
  - general, 15

## CONSPIRACY

---

- identity of plaintiff irrelevant, 19
- labour disputes, 5, 23, 24
- legislative constraints, 28
- mistake, 27
- predominant purpose, 1, 2, 12, 16, 17, 30
- statutory breaches, 21
- unlawful means, use of, 17, 18, 20, 24, 25
- insurance fraud**, 57
- intent**, *see* predominant purpose
- labour disputes**, 5, 23, 24, 32, 39, 40, 75
- mistake**, 27
- parties**, *see also* **practice (general)**
  - corporations, 41–43
  - employees, 43
  - naming vs. suing all conspirators, 38
  - representative actions, 44
  - spouses, 37
  - trade unions/members, 39, 40
- patent infringement**, 52
- picketing**, 75
- pleadings**, *see also* **practice (general)**
  - acts of conspirators, 45, 47
  - criminal acts, 49, 50
  - damages, 51
  - defences, 48, 52
  - exceptions, 43
  - general, 45
  - identities of conspirators, 38, 43, 45
  - illegal acts, 49
  - insurance fraud, 57
  - negligent acts, 56
  - particulars of agreement, 45
  - purpose/object of conspiracy, 45, 46, 55, 56
  - striking out, 53–55
- practice (general)**, 34–36, *see also* parties; pleadings
- predominant purpose**, 1, 2, 12, 16, 17, 30, 45, 46
- remedies**, *see* damages; injunctions
- trade disputes**, *see* labour disputes

## Index to Constitutional Law

(All references are to paragraph numbers.)

### aboriginal rights

- analysis of s. 35 claims, 673–675
- Charter of rights, effect of, 660, 671
- “culture”, laws affecting, 317
- duty of Crown to consult/accommodate, 690
- evidence supporting, 686–689
- federal powers generally, 308–310
- fishing/hunting rights, 316, 691, 692
- general, 693
- government funding of litigants, 676
- interjurisdictional immunity, doctrine of, 120, 149, 310
- interpretation generally, 123
- interpretation of s. 35, 674
- labour relations, 310
- land, interests/rights in, 308, 315, 318, 679–685
- “lands reserved for Indians”, 309, 315, 318
- “metis”, 672
- motor vehicles, 310
- offences by aboriginal people, 692, 694
- provincial powers re, 123, 184, 311, 314
- “reserve”, 309
- reserves, creation of, 312, 313
- self-government rights, 677, 678
- spirit dancing, 695
- taxation, 684

**abuse of process**, *see* criminal proceedings.

**administration of justice.**, *see* Attorney General; courts; criminal law.

**advertising**, 374, 479, 506, 508

**aeronautics**, 213, 214

**affirmative action.**, *see* equality rights.

### agriculture

- butter/margarine, 219
- dairy marketing, 218
- egg marketing, 216
- extra-territorial marketing schemes, 218
- general, 215
- grain, 219
- horses, 218
- marketing schemes generally, 215, 217, 218, 446–448

### aliens/immigration

- expulsion of aliens, 221
- general, 220
- provincial restrictions, 222
- restrictions on aliens, 222
- voting rights, 222

### amendment of constitutions

- constitutional conference, 700
- constitutional remedies, 704
- natural resources, 701
- procedure generally, 698
- provincial constitutions, 699
- retroactive remedies, 704

### arbitrary

**detention/imprisonment**, 580, 581, 582, 591., *see also* criminal proceedings; life/liberty/security of the person.

**arrest/detention (rights upon)**

- advising detainee of legal rights, 585, 586
- bail, 606
- counsel, 540, 572, 584–588, 587
- detention without warrant, 591
- habeas corpus, 284, 590
- questioning of detainee, 585
- reasons for, disclosure of, 583
- waiver of rights, 589

**Attorney General**, 48, 49, 262

**bail**, *see* criminal proceedings.

**bankruptcy/insolvency**

- banks, 224
- compositions, 225
- compulsory winding-up, 223
- corporations (provincial), 240
- federal powers, 223–225
- fraudulent preferences, 229
- “insolvency”, 225
- provincial powers, 226–228
- statutory trusts, priority of, 227, 228
- voluntary assignments, 229

**banks/banking**

- “banking”, 230
- general, 230
- insurance, 232
- provincial powers, 231–233

**belief**, *see* freedom of thought/belief/opinion/expression.

**Bill of Rights**, 386–390, 663, *see also* Charter of Rights.

**bills of exchange**, 22, 235

**bonding, legislation re**, 260

**boundaries**, *see* creation/secession of provinces.

**breach of constitution, effect of**, 3

**British North America Act**, 1, 2

**carriers**, *see* local works and undertakings.

**Charter of Rights (enforcement)**

- appeal courts, role of, 651
- costs, awards of, 652
- “court of competent jurisdiction”, 647
- damages, awards of, 653
- declaration of invalidity, 653
- effective date of Charter, 706
- exclusion of evidence, 654–659
- general, 646
- interpretation of remedies provision, 646, 648
- pre-Charter convictions, 646, 706
- stay of proceedings, 593, 594

**Charter of Rights (general)**, *see also* Bill of Rights; specific rights, e.g., freedom of association.

- administrative discretion, exercise of, 475
- applicability of, 476, 660, 665, 667–670, 669
- common law, effect on, 476
- corporations, 483, 542, 668
- exemptions from, 670
- extradition proceedings, 477
- fundamental freedoms generally, 481, 482
- guarantees under, 472
- headings, effect of, 667
- infringement of, 480
- interpretation of, 660–663, 667
- legal rights generally, 527
- negative obligation on government, 482
- political party, 519
- pressing and substantial legislative objective, 480

## INDEX

---

- purpose/effect of acts limiting rights, 474
- “reasonable limits” on rights/freedoms, 473
- retrospective application of, 527
- chattel mortgages**, 246
- children**
  - discipline of, 557
  - disclosure of identity/sentencing, 546, 559, 604
  - medical treatment, 492, 556
  - special education classes, 634
- commissioners**, 39
- competition legislation**, 377
- confederation**, 8–13
- confiscation**, *see* expropriation; property and civil rights in province.
- conscience**, *see* freedom of conscience/religion.
- constitution generally**
  - acts affected by, list of, 707
  - amendment of, 63, 64
  - British roots, 2, 7
  - comparison to other constitutions, 7
  - confederation, 8–13
  - constitutional conventions, 5, 6
  - constitutional remedies, 704
  - division of powers, 11, 12
  - effective date of Charter of Rights, 706
  - federalism, 11
  - French/English language differences, 705, 644, 645
  - interpretation of, 14
  - notice re constitutional challenges, 703
  - principles underlying, 4, 14
  - retroactive remedies, 704
  - supreme law of land, 702
  - written nature of, 4, 5, 12
- constitutional conventions**, 5, 6
- conventions**, *see* treaties/conventions.
- coroners (Quebec)**, 163
- corporations**
  - “affects” vs. “in relation to” civil rights, 242
  - bankruptcy/insolvency, 240
  - Charter Rights of, 483, 542, 668
  - chattel mortgages, 246
  - companies with extra-provincial objects, 236–242
  - expropriation rights, 241
  - insurance companies, 245
  - land holdings, 248
  - mortmain legislation, 248
  - peace, order and good government, 236
  - provincial powers generally, 243
  - provincial powers re federal companies, 236, 244–248
  - provincial powers re foreign companies, 249
  - securities, trading in, 245
  - taxation of, 237
  - trade and commerce, 236
- counsel**, *see* arrest/detention (rights upon); criminal proceedings.
- courts**, *see also* Charter of Rights (enforcement).
  - aboriginal rights, 184
  - additional courts (s.101), 171, 176, 187
  - adjudicative role, legislative interference with, 85
  - admission to bar/practice of law, 208–212
  - appeal/review rights, 170, 183, 207

## CONSTITUTIONAL LAW

---

- civil liberties, protection of, 82
- civil procedure, 185, 187–189
- commissions/commissioners, 204–206
- coroners (Quebec), 163
- creditors' rights, 189
- criminal law/procedure, 167, 186, 193
- divisional courts, 200
- divorce, 197
- elections, 188, 195
- family court, 180, 182
- Federal Court, 172, 176
- federal powers (s.96), 162, 164, 167, 168
- judges, appointment/remuneration, removal of, 164, 166, 196–202, 203
- judicial independence, 82–84
- juries, 169
- justices of the peace/police magistrates, 199
- language issues, 191–194
- legislative interference with, 85
- maintenance orders, enforcement of, 182
- maritime court, 177
- property rights, protection of, 86
- provincial boards/tribunals, 178–184, 198
- provincial powers (s. 92), 161, 164–166
- references to court, 90–94
- role of, 80, 81
- rule of law, 82
- sex offender registry, 190, 255
- stay of proceedings, 189
- supremacy of Parliament, 81, 82, 86–88
- Supreme Court of Canada, 89, 187
- validity of statutes, ruling on, 81
- youth courts, 167
- **creation/extension of provinces**, 95, 109, *see also* secession of provinces.
- **criminal law**, *see also* Bill of rights; Charter of Rights.
  - absolute liability offences, 539
  - administration of justice, 262
  - bonding, legislation re, 260
  - criminal purpose, 252, 253, 255
  - definition/elements of, 250–252
  - driving offences, 478
  - extra-territorial crimes, 265
  - fair and public hearing, 601
  - fines/imprisonment (provincial), 266–273
  - fingerprinting, 543
  - fraud, 264, 268, 375, 376
  - gaming/disorderly houses, 235, 274, 275
  - general, 250–257
  - gun control, 256
  - habeas corpus, 284, 590
  - hatred, promoting, 478, 503
  - informer privilege rule exception, 601
  - innocence at stake exception, 601
  - limits on federal powers, 258–260
  - noise by-laws, 257
  - obscenity, 478, 502
  - pith and substance of legislation, 258, 268
  - professional misconduct, 273
  - prohibition backed by penalty, 252–254
  - prostitution, 478
  - provincial rights/powers, 261–264, 266–273

## INDEX

---

- sanity, presumption of, 478
- securities, sale of, 375, 376
- sex offender registry, 190, 255
- sexual assault, 478
- Sunday observance, 276, 277
- trial rights, 601
- criminal proceedings**, *see also* self-crimination.
  - abuse of process, 551, 552
  - bail, 595, 606
  - children/young persons, 546, 559, 604
  - cross-examination of witnesses, 546, 548, 605
  - cruel and unusual treatment/punishment, 614
  - disclosure by Crown, 544, 545
  - double jeopardy, 610, 611
  - evidence, rules of/admissibility, 280, 282, 549, 654–659
  - fair and public hearing, 600, 601
  - federal non-criminal offences, 283
  - general, 278
  - habeas corpus, 284
  - impartial hearing, 600
  - informer privilege rule exception, 601
  - informing accused of offence, 592, 593
  - innocence at stake exception, 601
  - interpreters, 621
  - judicial independence, 600
  - juries/secretcy, 281, 550, 604, 607
  - lesser punishment, right to benefit of, 612
  - offence must exist at time of act/omission, 608, 609
  - parole ineligibility, 553
  - pre-Charter convictions, 646
  - presumption of innocence, 600, 602
  - prior convictions, examination on, 603
  - private prosecutions, 279
  - “punishment”, 613
  - right to counsel, 540, 572, 584–588, 587
  - silence, right to, 543
  - trial rights, 601
  - trial within reasonable time, 594–598
  - war crimes, 608, 609
  - witnesses, protection of identities, 546, 604
- Crown**, *see also* executive branch of government.
  - diplomats/foreign sovereigns, 58
  - duty to obey law, 22
  - immunity/privilege of, 27, 44, 51, 58–60
  - indivisibility of, 19–21
  - officers of, 45–50
  - prerogatives of, 21, 23–28
  - taxation of land/property, 436–439
  - treaties/conventions, powers re, 29–32
- cruel and unusual treatment/punishment**, *see* criminal proceedings.
- customs/excise**, 434
- death penalty**, 563
- defence/military issues**, 342, 467
- democratic rights**
  - general, 520
  - prisoners’ rights, 520
  - purpose of, 521
  - sittings of House of Commons/legislatures, 522, 523
  - standing for office, 521

- voting, 520
- deportation**, *see* extradition/deportation.
- detention**, *see* arbitrary detention/imprisonment; life/liberty/security of the person.
- diplomats/foreign sovereigns**, 58
- division of powers**, 11, 12
  - disputes, 120
- divorce**, *see* marriage/divorce/solemnization of marriage
- DNA warrants**, 576, 613
- double jeopardy**, *see* criminal proceedings.
- double-aspect rule**, *see* interpretation of constitution/legislation.
- early closing legislation**, 364
- economic rights**, 561, 567
- education**
  - Charter rights, 288
  - denominational schools/religion issues, 285–288, 291, 490, 664
  - discipline, 557
  - interpretation of rights, 288
  - language rights, 290, 643, 644, 645
  - provincial powers generally, 285
  - public school system, design of, 289
  - school boards, 291
  - special education classes, 634
- egg marketing**, *see* agriculture.
- elections**, 188, 195
- electricity**, 350, 408, 701
- emergency powers**, 137–140, *see also* peace, order and good government.
- employment**, *see* labour relations.
- employment insurance**, 451, 452
- equality rights**
  - affirmative action programs, 633–635
  - analogous grounds, 629, 630
  - comparator group, 627, 628, 629, 630
  - contextual analysis, 626
  - disabled persons, 634
  - discrimination, 625, 627, 628, 629
  - equal benefit of the law, 625
  - estates, 623
  - general, 622, 635
  - groups, rights of, 631, 633
  - legal profession, admission to, 479
  - personal characteristics, 629
  - purpose of protection, 624, 635
  - special education classes, 634
  - status, issues re, 632
  - substantive equality, 635
  - test for discrimination, 624
- equalization/regional disparity**, 696, 697
- escheats**, 378
- euthanasia**, 535
- evidence**, *see* criminal proceedings.
- executive branch of government**
  - Crown, 19–32
  - Governor General, 33–39
  - immunity of, 27, 44, 51
  - officers of Crown, 45–50
  - orders in council, 40–44
  - role of, 80
- expression**, *see* freedom of thought/belief/opinion/expression.
- expropriation**, 241, 371, 382, 401



## INDEX

---

- extradition/deportation**, 477, 563, 564, 565
- federalism**, 11
- ferries**, 292, 293
- fingerprinting**, 543
- fisheries**
- aboriginal rights, 316, 691, 692
  - conservation, 294, 295, 301
  - delegation of powers, 297, 298
  - duties of minister, 294, 295
  - estuaries/arms of sea, 299
  - federal powers, 294–301
  - fish processing, 306
  - foreign vessels, pursuit of, 307
  - labour relations, 296
  - legislative jurisdiction, 294–302, 305
  - pollution, 301
  - proprietary rights in, 464
  - provincial rights, 297, 300, 303, 304
  - taxation, 299
  - tidal waters, 300
- forests**, 350, 701
- fraud**, *see* criminal law.
- fraudulent preferences**, *see* bankruptcy/insolvency.
- freedom of association**
- compelled association, protection from, 515
  - general, 514
  - labour relations, 516
  - violent groups not protected, 514
- freedom of conscience/religion**
- admissibility of evidence (confession to pastor), 488
  - children's rights re, 492, 556
  - corporations, rights of, 483
  - dietary issues, 484
  - education issues, 490
  - faith, 485
  - infringement of, 486
  - limitations on, 484
  - medical treatment, 492, 556
  - protection by Charter, 485, 491
  - religion as civil right in province, 369
  - same-sex marriage, 487
  - sincerity of belief, 484, 485
  - Sunday closing laws, 276, 277, 483
  - weapons having religious significance, 489
- freedom of peaceful assembly**, 512, 513
- freedom of speech**, *see* freedom of thought/belief/opinion/expression.
- freedom of the press**
- access to/publication of court proceedings, 497–500
  - non-Charter protection of, 391, 392
  - privilege/immunity, 501
  - publication bans, 497–500
- freedom of thought/belief/opinion/expression**
- collective bargaining, 511, 517, 518
  - commercial expression/advertising, 374, 479, 506, 508
  - consumer advocacy, 508
  - context, 510
  - core values, 494
  - evidence required to establish violation saved by section 1, 510
  - general, 493
  - government funding/consulting of groups, effect of, 505
  - infringement, 496, 498, 504

- interaction of pedestrians and vehicles, regulation of, 507
  - limits on, 495
  - nature of impugned expression, 504
  - non-Charter protection of, 391, 392
  - obscenity, restrictions re, 502
  - positive rights claim under section 2(b), 496
  - press, 493
  - protection, 494, 495
  - public servants, political activities of, 509
  - purpose of guarantee, 493
  - restriction of, 493
  - statutory right of access to government information, 498
  - unions, 511, 517, 518
- fundamental justice**, *see* life/liberty/security of the person.
- gaming legislation**, *see* criminal law.
- general matters**, *see* constitution generally.
- Governor General**, *see also* executive branch of government.
- commissioners, appointment of, 39
  - general, 33, 34
  - Lieutenant Governors, 35–39, 250
- gun control**, 256
- habeas corpus**, 284, 590, *see also* criminal law.
- harbours**, *see* property (public).
- highways**, *see* local works and undertakings.
- history**, *see* confederation; constitution generally.
- hunting**, 146
- immigration**, *see* aliens/immigration.
- immunity/privilege**, *see* Crown; legislatures (provincial); Parliament of Canada.
- imprisonment**, *see* arbitrary detention/imprisonment; criminal proceedings; life/liberty/security of the person.
- income tax**, *see* taxation.
- Indians**, *see* aboriginal rights.
- insolvency**, *see* bankruptcy/insolvency.
- insurance**, 232, 245, 353, 379, 414
- interest**, 319, 320
- interjurisdictional immunity, doctrine of**, 120, 149, 310
- interpretation of constitution/legislation**, *see also* aboriginal rights; Charter of Rights (general).
- aboriginal rights, 123
  - ambiguity/conclusiveness of text, 114
  - amendment of constitution, 112
  - characterization of legislation, 126, 128, 129
  - colourability, 111, 121
  - double-aspect rule, 156–158
  - effect of legislation, 119, 122
  - form vs. substance, 124
  - general, 14, 113
  - intention of legislature, 117
  - “large and liberal” approach, 113
  - “living tree” approach, 14
  - objects of constitution, 110–112
  - “occupied field” doctrine, 148
  - overlapping/ancillary/concurrent legislation, 147–155

## INDEX

---

- paramountcy/occupied field doctrine, 120, 125, 147–155
  - partial invalidity/severance, 130, 131
  - “pith and substance”, 121, 126, 73, 120, 121, 126, 152, 152
  - presumption of constitutionality, 115, 116
  - reading s. 91/s. 92 together, 118–124
  - referred legislation, 91–94
  - restitution, 133
  - standing to challenge legislation, 132
  - ultra vires legislation, 133, 427
  - United States principles inapplicable, 113
  - validity, methods of determining, 125
- interpreters**, 621
- intoxicating liquors**, *see* liquor.
- judges**, *see* courts.
- juries**, *see* criminal proceedings.
- labour relations**
- certification of unions, 407
  - Charter of Rights protection, 516
  - employment, right to, 560
  - employment standards, 373
  - federal powers, 329, 352
  - hours of work, 331
  - minimum wage legislation, 407
  - provincial powers, 328, 330, 372, 373
- lakes**, *see* property (public).
- language rights**, 191–194, 290, 479, 637–646, 644, 545
- lawyers**
- admission to bar/practice of law, 208–212
  - Charter issues, 479
  - professional misconduct, 273
- legal rights**, *see* Bill of Rights; Charter of Rights (general); criminal proceedings; specific entries, e.g., self-crimination.
- legislation (general)**, *see also* amendment of constitutions; interpretation of constitution/legislation.
- British, effect of, 13, 15–18, 31, 52
  - repeal/nullification of, 159, 160
- legislatures (provincial)**, *see also* Parliament of Canada.
- confiscatory powers of, 71
  - delegation of powers, 54, 56, 74–77
  - “direct legislation”, authority re, 78
  - extra-territorial powers, 72, 73
  - natural justice, effect of, 69
  - powers generally, 65–70
  - privileges of, 79
  - role of, 80
  - status of, 65–70
  - term of, 69
  - territorial limitations, 73
- licences**, 332, 333, 385, 450
- life/liberty/security of the person**, *see also* criminal proceedings.
- absolute liability offences, 539
  - certificate of inadmissibility, 565
  - children (discipline), 557
  - children (disclosure of identity/sentencing), 559
  - children (removal from parents), 492, 556
  - conception, 531
  - corporations, 542
  - counsel, limit on right to, 541
  - death penalty, 563

- deportation, 565
  - detention, 566, 582
  - determination of infringement, 533, 534
  - economic rights, 561, 567
  - employment rights, 560
  - euthanasia, 535
  - extradition/deportation, 477, 563, 564, 565
  - fingerprinting, 543
  - foreign judgments, recognition/enforcement, 562
  - fundamental justice, principles of, 536–539, 546, 547
  - general, 528, 554, 560
  - harm principle, 538
  - immigration, 565
  - interpretation of s. 7, 533, 534
  - “liberty”, 530
  - “liberty interest”, 531
  - medical treatment, 556
  - national security, threat to, 565, 566
  - positive obligations on state, possibility of, 558
  - “principles of fundamental justice”, 529, 532, 547
  - privacy, right to, 555
  - property rights, 561
  - psychological dimension of, 559
  - scope of protection, 554, 555
  - “security of the person”, 535
  - vagueness of legislation, 567
  - voluntary conduct, culpability re, 537
- liquor**
- federal powers, 321
  - licensing, 327
  - provincial powers, 322–327
- local or private matters**, 146, 361–364
- local works and undertakings**, *see also* works for the general advantage of Canada.
- carriers/trucking, 335
  - federal/interprovincial undertakings, 337, 338, 385
  - highways, 334, 336
  - railways, 334
- maintenance orders, enforcement**, 182
- marketing schemes**, *see* agriculture.
- marriage/divorce/solemnization of marriage**
- general, 339
  - maintenance and custody, 341
  - prohibited degrees of affinity, 341
  - provincial powers, 340
- medical treatment**, 492, 556
- military**, *see* defence/military issues.
- mines and minerals**, *see* natural resources.
- ministers**, *see* officers of Crown.
- minority language educational rights**, 643–645
- mobility rights**, 479, 524–526
- municipal institutions**
- constitutional status, 345
  - delegation of powers to, 343, 344
  - disqualification from office, 346
  - federal powers, 347
  - forms of, 345
  - general, 343, 363
  - taxation powers, 433
- narcotics**, 348, 349

## INDEX

---

- natural resources**, 350, 380, 466, 701
- naturalization**, *see* aliens/immigration.
- noise by-laws**, 257
- occupied field**, *see* interpretation of constitution/legislation.
- officers of Crown**, *see also* Crown; executive branch of government.
- appointment, 45
  - Attorney General, 48, 49
  - expenditure of public money, 50
  - powers/duties/liability, 46–49
- oil/gas**, *see* natural resources.
- orders in council**, *see also* executive branch of government.
- bringing legislation into effect, 41, 43
  - exempting from criminal liability, 44
  - validity of, 40
- paramountcy**, *see* interpretation of constitution/legislation.
- parental benefits**, 452
- Parliament of Canada**, *see also* legislatures (provincial).
- delegation of powers, 54–56
  - extra-territorial powers, 57, 58
  - general, 53
  - immunity/privilege of, 58–60
  - privileges, 59, 60, 42
  - role of, 80
  - rule of law, 82
  - Senate, 42, 61–64
  - supremacy of, 81, 82, 86–88
- patent medicines**, 325
- patents of invention**, 359
- peace, order and good government**, 134–136, *see also* emergency powers.
- pipelines**, 382, 405
- pith and substance**, *see* criminal law; interpretation of constitution/legislation.
- postal service**, 360
- powers/subject matter**, *see* interpretation of constitution/legislation; s. 91 (federal) powers; specific items, e.g., aeronautics; bankruptcy/insolvency, etc.
- prerogatives**, *see* Crown.
- press**, *see* freedom of thought/belief/opinion/expression.
- principles of fundamental justice**, *see* life/liberty/security of the person.
- privilege/immunity**, *see* Crown; legislatures (provincial); Parliament of Canada; search/seizure (protection from).
- promissory notes**, 234, 235
- property and civil rights in the province**, *see also* property (public).
- advertising, 374
  - “affects” vs. “in relation to”, 242
  - competition legislation, 377
  - confiscation of property/rights, 71, 86, 381–383
  - Crown property, 378
  - employment standards, 373
  - escheats, 378
  - expropriation of property, 314, 371, 382, 401
  - federal powers, 365, 370
  - grants of land, 380
  - insurance, 379

- labour relations, 372
- landlord and tenant matters, 371
- meaning of, 366–368
- mines and minerals, 380
- religion, practice of, 369
- rights outside province, 384
- securities, sale of, 375
- trade and commerce, 444, 445
- property (public)**, *see also* fisheries; property and civil rights in the province.
  - adjustment of federal/provincial claims, 471
  - beds of lakes/rivers, 460
  - federal powers generally, 365, 454, 456
  - harbours (public), 461–463
  - military lands, 467
  - Newfoundland, 469, 470
  - proprietary rights vs. legislative jurisdiction, 457–459
  - provincial powers generally, 454–456
  - royalties, 466
  - territorial sea, 470
  - transfers between federal/provincial governments, 468–470
- property rights (private)**, 561
- public debt**, 365
- public morality**, 146
- punishment**, *see* criminal proceedings.
- radio communications**, 393, 394
- railways**
  - directors of, 401
  - execution of instruments, 401
  - expropriation powers, 401
  - general, 395–397, 404
  - levies on municipalities, 398
  - limitation of actions, 399–401
  - local railways, 334
  - Newfoundland, 470
  - provincial powers, 334, 402–404
  - taxation of, 440
- references to court**, *see also* courts.
  - interpretation of legislation, 91
  - power to refer, 90
- referenda**, *see* secession of provinces.
- regional disparity**, 696, 697
- religion**, *see* freedom of conscience/religion.
- right to counsel**, *see* arrest/detention (rights upon); criminal proceedings; life/liberty/security of the person.
- rivers**, *see* property (public); shipping/navigation.
- royal prerogatives**, *see* Crown.
- royalties**, *see* natural resources; property (public).
- rule of law**, 82
- sanctions**, 3, 5
- schools**, *see* education.
- scope of title**, 1–3
- search/seizure (protection from)**
  - administrative inspections audits, 579
  - commercial documents, 573
  - conduct of search, reasonableness/intrusiveness of, 569, 574, 575, 578
  - DNA/bodily substances, 576, 613
  - expectation of privacy, reasonableness of, 568, 569
  - general, 568

## INDEX

---

- “implied invitation/licence”, 570
  - lawyers’ offices, 572
  - onus on defendant, 568
  - persons not places protected, 570, 573
  - personal nature of right, 569
  - private communications, interception, 571
  - vehicle searches, 578
  - warrants/authorizations, 568, 571, 576
- secession of provinces**, *see also* creation/extension of provinces.
- clarity of referendum question, 104, 105, 106, 107
  - “clear expression” of will of population, 105, 106, 107
  - “clear majority”, 97, 100
  - “clear question”, 97, 100
  - de facto secession, 103
  - definition, 96
  - duty to negotiate, 98, 100
  - negotiations, 106, 107, 108
  - negotiations, principles governing, 99–102
  - referendums, 97, 104, 105, 106, 107
  - unilateral secession, 102, 103, 108
- Section 91 (federal) powers**, 141–144, 409–413, *see also* interpretation of constitution/legislation.
- Section 92 (provincial) powers**, 145, 146, 161, 409–413, *see also* interpretation of constitution/legislation.
- securities, trading in**, 245, 375, 378
- self-crimination**, *see also* criminal proceedings.
- bodily substances, 576
  - cross-examination of witness re right of, 618
  - documents, 619
  - fundamental purposes, 620
  - general, 536, 599, 615, 617, 620
- Senate**, *see* Parliament of Canada.
- separation of powers**, 80
- shipping/navigation**
- admiralty actions, 354
  - federal powers generally, 351, 355
  - labour relations, 352
  - marine insurance, 369
  - obstruction of navigable rivers, 367
  - provincial powers, 370, 371
  - public, rights of, 372, 373
- silence**, *see* life/liberty/security of the person.
- stay of proceedings**, *see* Charter of Rights (enforcement).
- succession duties**, *see* taxation.
- Sunday observance**, 276, 277, 483
- taxation**
- aboriginal rights, 684
  - “articles of growth/produce/manufacture between provinces”, 441, 442
  - Crown lands/property, 436–439
  - customs/excise, 434
  - “direct taxation within the province”, 416, 419–423, 424
  - Goods and Services Tax, 415
  - illegal tax, 133, 427
  - income tax, 423, 431–433
  - legal proceedings, taxes on, 435
  - “Mill’s Formula”, 419
  - municipal taxation, 433
  - powers/validity of taxation, 414, 416–418

## CONSTITUTIONAL LAW

---

- provincial taxation generally, 425, 426
  - railways (federal), 440
  - restitution, 133, 427
  - Statute of Westminster, effect of, 417
  - succession duties, 428–430
- telecommunications**, *see* radio communications; telephones.
- telephones**, 406, 407
- thought**, *see* freedom of thought/belief/opinion/expression.
- torture**, 567
- trade and commerce (regulation of)**
- licensing of particular trades, 450
  - meaning of, 441–447
  - provincial powers, 444, 445, 447
- treaties/conventions**, 29–32
- trial within reasonable time**, *see* criminal proceedings.
- trucking**, *see* local works and undertakings.
- unemployment insurance**, 451, 452
- war crimes**, 608, 609
- war measures**, 40
- water rights**, 465
- waterpower**, 408, 701
- waterways**, *see* property (public); shipping/navigation.
- weights and measures**, 453
- wiretaps**, *see* search/seizure (protection from).
- witnesses, protection of**, *see* criminal proceedings.
- workplace health/safety**, 158
- works for the general advantage of Canada**, 410–413, *see also* local works and undertakings.
- young offenders**, *see* children; criminal proceedings.



## Index to Contempt of Court

(All references are to paragraph numbers.)

- abuse of process**, 34
- administrative tribunals**, 41
- appeals (civil)**
  - bars to/restriction of, 157
  - Federal Court of Appeal, to, 159
  - general, 152, 153
  - interim release, 154
  - limitation periods, 155
  - order to show cause, re, 156
  - sentence, of, 152
  - stay of order, 152
  - Supreme Court of Canada, to, 154
- appeals (criminal)**
  - bars to, 149
  - Crown not entitled to, 150
  - general, 148
  - right to, 148, 149
  - sentence, of, 148, 151
- assaults**, 15, 16
- bankruptcy, effect of**, 135
- breach of court order**, 4
- breach of undertaking**, 53
- broadcasting, see publication contempt**
- Charter of Rights**
  - contempt instante, 122
  - criminal contempt, effect on, 8
  - general, 128, 136
  - publication contempt, 20
  - scandalizing the court, 18
- civil contempt, see also punishment**
  - availability of, 6
  - bankruptcy, effect of, 135
  - costs, 97
  - criminal contempt distinguished, 7, 9, 10, 45
  - definition, 5
  - disobeying court order, 45, 75
  - maintenance/support orders, 75
  - sanctions, coercive nature of, 6, 44, 87, 88
- constructive contempt, see contempt not in face of court**
- contempt in face of court**
  - absence of judge, effect of, 16
  - boundaries of court, 14
  - definition, 13
  - examples of, 15, 16
- contempt instante**, 122
- contempt not in face of court**, 13, 14, 16, 17
- corporations**, 56, 57, 139
- costs orders, disobeying**, 73
- counsel, by**
  - abuse of process as, 34
  - examples, 33
  - failure to appear, 32
  - punishment, 82
  - unauthorized practice, 35
- criminal contempt, see also punishment**
  - Charter of Rights, effect of, 8
  - civil contempt distinguished, 7, 9, 10, 45, 75
  - definition, 8
  - disobeying court order, 43, 45, 75, 131
  - general, 8, 43, 134
  - public defiance of civil order, 11
  - sanctions, punitive nature of, 12

## CONTEMPT OF COURT

---

- unions, 127
- young offenders, 115
- defamatory statements**, 3, 21
- definition**, 1–4
- direct contempt**, *see* **contempt in face of court**
- directors**, *see* **corporations**
- discharge**, *see* **purging contempt**
- disobeying court orders/judgments/Rules**
  - administrative tribunals, orders of, 41
  - breach of undertaking, 53
  - consent judgments, 49
  - costs, re, 73
  - counselling/assisting, 55
  - declaratory judgments, 41
  - default judgments, 49
  - defences, 49, 52
  - elements of breach, 46
  - execution, proceedings in aid of, 68–71, 73
  - failing to attend/answer at examination, 64–67
  - failing to produce documents, 63
  - family law orders, 75–78, 99, 147
  - Federal Courts Rules, 42
  - general, 41–57
  - injunctions, 58–62
  - intent, 46–48, 131, 132
  - invalid orders, 51
  - knowledge of order, 46, 131
  - lying at examination for discovery, 65
  - non-parties, liability of, 55
  - objection to order, 50
  - obstruction, 55
  - payment of money/costs, 72–74
  - receiver, interfering with, 54
  - recklessness, 48, 49, 132
  - vicarious liability, 56, 57
- ex facie contempt**, *see* **contempt not in face of court**
- execution, proceedings in aid of**, 68–71, 73
- failing to appear**, 4, 32, 36
- failing to attend/answer at examination**, 64–71
- failing to produce documents**, 63
- family law orders, disobeying**, 75–78, 99, 147
- Federal Court**, 42, 137, 138, 144, 159
- gestures**, 4
- in facie contempt**, *see* **contempt in face of court**
- injunctions, disobeying**, *see also* **disobeying court orders/judgments/Rules**
  - Crown, involving, 59
  - general, 58
  - persons liable for, 62
  - technical breaches, 58
  - timing of disobedience, 60
- insults**, 15, 33
- interference with proceedings**, 4, 15, *see also* **publication contempt**
- interference with witness**, 4, 13, 14, 16, 39, 40
- intoxicated persons**, 15, 40
- jurisdiction of court/tribunal**
  - commissions of inquiry, 119
  - Court of Appeal, 111
  - inferior courts/tribunals, 110, 118
  - Legislative Assembly, 120
  - masters (Alberta), 112

## INDEX

---

- Parliament, 120
- preliminary inquiry, at, 116
- provincial legislation, 117
- registrar (bankruptcy), 113
- superior courts, 109
- Tax Court, 114
- youth courts, 115
- labour disputes, see picketing/striking**
- Legislative Assembly, 120**
- letters, 16**
- libel, see defamatory statements**
- maintenance/support orders, 75**
- media, see publication contempt**
- nature of, 1–4**
- officers, see corporations**
- orders, see disobeying court orders/judgments/Rules**
- Parliament, 120**
- payment of money, disobeying order for, 72–74**
- perjury, 36**
- picketing/striking, 9, 11, 45, 127**
- prejudicing parties/trial, see publication contempt**
- press, see publication contempt**
- procedure, commencement (civil)**
  - Charter of Rights, 136
  - Federal Court, 137, 138
  - general, 136, 140
  - motion, bringing of, 136
  - officers/directors, against, 139
  - Rules of Court, 133, 134
  - stay, 135
- procedure, commencement (criminal)**
  - charge, stating of/particulars, 130
  - historically, 121, 134
  - method of, 125
  - notice to show cause, 124
  - parties entitled to, 125
  - purpose of citing, 123
  - summary procedure, 122
- procedure, hearing (civil)**
  - adjournments, 141, 142
  - bankruptcy, effect of, 135
  - evidence previously given, use of, 144
  - Federal Court, 143
  - hearsay evidence, 142
  - standard of proof, 142
  - viva voce evidence, 142
- procedure, hearing (criminal)**
  - general, 128, 130
  - judge entitled to hear, 129
  - jury not available, 129
  - standard of proof, 131, 132
- publication contempt**
  - Charter of Rights, 20
  - elements of, 29–31
  - examples, 31, 40
  - fair comment, defence of, 25
  - general, 4, 19–21
  - intent of publisher, 21, 29, 30
  - interference with course of justice, 2, 19
  - jury trial, 28
  - media, by, 23–27
  - objection of counsel/party not necessary, 27
  - republication, defence of, 26
  - truth, defence of, 25

## CONTEMPT OF COURT

---

- punishment (civil contempt)**, *see also purging contempt*
- costs, 97
  - factors governing, 92–95
  - family law cases, 99, 147
  - fines, 96
  - imprisonment, 89, 90, 96
  - principals of sentencing, 88
  - purpose of, 86, 91
  - refusal of court to hear party, 108, 146, 147
  - sanctions, same as for commission of criminal offence, 87
  - statutory penalties, 98
- punishment (criminal contempt)**, *see also purging contempt*
- correctional power, 81
  - costs, order for, 81
  - counsel, 82
  - factors governing, 83
  - family law cases, 99
  - fine, 81
  - incarceration, 81, 85
  - purpose of, 79, 80
  - refusal of court to hear party, 108, 146, 147
  - restitution, order for, 81
  - sentencing generally, 84
- purging contempt**, *see also punishment*
- apologies, 104
  - contempt inter partes, 103
  - criminal contempts, 104, 105
  - discharge, 106
  - general, 100, 101
  - onus, 102
  - pardons, 107
- receiver, interference with**, 54
- refusal to be sworn/answer**, 4, 15
- remedies**, *see punishment; purging contempt*
- scandalizing the court**, 18
- stay of order**, 152
- strikes**, *see picketing/striking*
- threats**, 13, 14, 16
- unauthorized practice constituting**, 35
- unions**, *see picketing/striking*
- vicarious liability**, 56, 57, 127
- witnesses**
- failure to appear/remain, 36
  - failure to leave, 38
  - interference with, 4, 13, 14, 16, 39, 40
  - intoxication, 15, 38
  - journalist's claim of confidentiality, 37
  - perjury, 36
  - refusal to be sworn/answer, 4, 15

## Index to Contracts

(All references are to paragraph numbers.)

- abandonment**, 888–891
- acceptance**, *see also* offer and acceptance
  - agency, 54
  - communicating, *see* acceptance (communicating)
  - conduct or inaction as acceptance, *see* conduct as acceptance
  - contracts by correspondence, 99, 100, 591–593
  - generally, 49–57
  - option, 56
  - variance of terms, 57
- acceptance (communicating)**, 79–85
  - facsimile, 83
  - mail communication, 82
  - real estate agent, 85
  - refusing to accept delivery, 84
- accord and satisfaction**, 68, 849–858
  - intimidation, 858
  - legislation, 855–857
  - satisfaction, 851, 852
  - scope, 853
- adhesion contract**, 582, 754
- advertisement**, 60
- agent**
  - capacity, 185–188
  - privity, 204–210
  - statute of frauds, 353, 354
- agreement to agree**, 9, 12
- ambiguity**, 562–586
  - alternative interpretations, 578–581
  - collateral statements, 572–575
  - contra preferentem, 582–586
  - parol evidence rule, 564–567
  - subsequent agreements, 576, 577
  - subsequent conduct of parties, 568–571
- anticipatory breach**, 862–870
- assignment and novation**, 911–963
  - assignor’s position after assignment, 944, 945
  - consideration, 943
  - equities, 936–940
  - future choses of action, 920
  - joinder of parties, 946–949
  - limitations on assignability, *see* assignment and novation (limitations)
  - maintenance of actions, 946–949
  - notice, 915–919
  - novation, 950–964
  - priority among assignees, 942
  - privity, 215–217
  - set-off of third party debt, 941
  - subcontracting, 934, 935
- assignment and novation (limitations)**, 921–933
  - consent required, 928–933
  - covenants against assignment, 927
  - mere rights of action, 925, 926
- bailment contracts**, 826
- battle of the forms**, 71
- bid deposit**, 1011
- bilateral contract**, 911
- blue pencil rule of excision**, 512

## CONTRACTS

---

- breach of contract**, 859–904
- abandonment, 888–891
  - anticipatory breach, 862–870
  - exculpatory clauses, 899–904
  - fundamental breach, 860, 861
  - notification of election, 885–887
  - remedies available, 871–884
  - rescission, 872
  - substantial breach, 860, 861
- business efficacy rule**, 639, 640
- cancellation**, *see* variation and cancellation
- capacity to contract**, 154–184, *see also* duress, undue influence, unconscionability
- corporations, 184
  - crown, 180
  - infants (British Columbia), 156–163
  - infants (other than British Columbia), 164–171
  - intoxicated persons, 172
  - married women, 155
  - mentally incompetent persons, 173–179
  - minors (British Columbia), 156–163
  - minors (other than British Columbia), 164–171
  - municipal corporations, 181, 182
  - self, 154
  - unincorporated associations, 183
- charitable subscriptions**, 136–138
- chose in action**, 911
- collateral agreements**, 127, 368
- comprehensive contracts**, 130
- concurrent liability**, 965–979
- contract remedy, 965–970
  - contributory negligence, 977–979
  - negligent misrepresentation, 971–976
  - tort remedy, 965–970
- conditions**, 71–78
- conditions precedent, 690–693
  - conditions subsequent, 697–700
  - cross-offers, 77
  - promissory conditions, 694–696
  - reasonable commercial efforts, 76
  - superadded request, 73
- conduct as acceptance**, 58–70
- advertisement, 60
  - construction tenders invitation, 61, 64
  - delivery of goods, 59
  - employment contract, 67
  - franchise agreement, 67
  - partial payment of liquidated claim for sum certain, 70
  - recipient of unrequested goods, 65
  - unilateral contract, 66
  - warranty, 62
- consensus ad idem**, 2–8, 224
- consideration**, 101–147
- flowing from promisee, 105–107
  - generally, 101
  - mere option, 103
  - nature of consideration, *see* consideration (nature)
  - signed, sealed and delivered, 102
  - total failure of consideration, 791–795
- consideration (nature)**, 108–127
- adequacy, 128, 129
  - collateral agreements, 127
  - compromise, 120–122
  - extension of time, 123–125
  - forbearance, 114–119

## INDEX

---

- money, 126
- mutual promises, 112, 113
- past consideration, 131–135
- prize, 110
- reward, 110
- contingency fee**, 133
- contra preferentem**, 582–586
- contract (definition)**, 1
- contributory negligence**, 977–979
- corporate liability**, 189–194
- corporations**, 184
- counteroffers**, 71–78
  - cross-offers, 77
  - reasonable commercial efforts, 76
  - superadded request, 73
- credit card account**, 150
- Criminal Code**, 513
- cross-offers**, 77
- crown**, 180
- custom and usage rule**, 641–648
- debt, part payment**, 129
- deposits**, 1006–1008
- discharge**
  - accord and satisfaction, *see* accord and satisfaction
  - breach of contract, *see* breach of contract
  - by operation of law, *see* discharge (operation of law)
  - discharge by agreement, *see* discharge by agreement
  - frustration, *see* frustration
  - repudiation of contract, *see* breach of contract
- discharge (operation of law)**, 905–910
  - forfeiture, 909
  - material alteration of document, 910
  - merger, 805–907
  - suspension, 908
- discharge by agreement**, 832–858
- duress**, 521–531, *see also* undue influence, unconscionability
  - defined, 521
  - economic duress, 527–529
  - effect, 530, 531
  - types, 522
- economic loss**, 972
- ejusdem generis**, 607–610
- election**, 773–790
- employment contracts**, 134, 201, 461–477
  - deprivation of benefits, 476, 477
  - legitimate interest, 467, 468
  - non-solicitation clauses, 463
  - reasonability test, 462
  - restrictions (business and employee capacities), 470–472
  - restrictions (customers), 469
  - restrictions (geographic/temporal), 473–475
- entire agreement clause**, 573, 574, 577, 719–725
- equitable assignments**, 936
- error in substantialibus**, 687
- estoppel**, 773–790
- exclusionary clauses**, 621–630
- exculpatory clauses, effect of fundamental breach**, 899–904
- express terms**, 686–700
  - condition, 689
  - conditions precedent, 690–693
  - conditions subsequent, 697–700
  - good faith, *see* good faith

## CONTRACTS

---

- incomplete performance, 719–725
  - innominate term, 688
  - instalment contracts, 726–731
  - mere representation, 687
  - non-performance, 713–718
  - performance options, 709–712
  - promissory conditions, 694–696
  - relief from forfeiture, 796
  - total failure of consideration, 791–795
  - waiver, 773–790
- expressio unius est exclusio alterius**, 603, 604
- falsa demonstratio non nocet**, 580
- fine print terms**, 91–98
- escape clause, 98
  - ticket cases, 91, 94
- force majeure**, 714
- forfeiture**, 989
- form contracts**, 90
- formal writing requirement**, 17–21
- antecedent agreement, 20
  - putative agreement, 19
  - subject to contract term, 18
- formation**, *see* offer and acceptance
- frustrated contracts legislation**, 828–831
- frustration**, 797–832
- defined, 797
  - effect of frustration, *see* frustration (effect)
  - elements of frustration, *see* frustration (elements)
  - frustrated contracts legislation, 828–831
  - function, 801
  - part of contract affected, 807, 808
  - physical destruction, 800
  - purpose, 801
  - specific applications, *see* frustration (specific applications)
  - supervening illegality, 802–804
  - supervening impecuniosity, 806
- frustration (effect)**, 823–827
- bailment contracts, 826
  - contracts for future credit, 824
  - option contracts, 825
  - war, 827
- frustration (elements)**, 809–811
- fault, 810
  - foresight, 809
  - time, 811
- frustration (specific applications)**
- death, 817–820
  - leases, 815
  - methods of delivery, 813
  - partial destruction, 814
  - retirement, 822
  - sale of land, 816
  - sickness, 821
  - sources of supply, 812
- fundamental breach**, 860, 861
- good faith**, 24–27, 752–772
- defined, 752
  - fiduciary standard, 752
  - implied duty of co-operation, 756
  - implied term, 661
  - judge of other party's performance, 765–772
  - promised benefits, 757–764
  - quantum meruit, 27
  - special relationships, 25, 26, 754



## INDEX

---

- unconscionability standard, 752
- holdback provisions**, 1003
- illegality**, *see* substantive illegality
- implied terms**, 633–685
  - burden of proof, 638
  - business efficacy rule, 639, 640
  - course of dealings rule, 649, 650
  - custom and usage rule, 641–648
  - duration, 681–685
  - legal incidents of contract, 651
  - types, *see* implied terms (types)
- implied terms (types)**, 652–680
  - collections, 670
  - contracts of supply, 662
  - contracts to supply, 662
  - co-operation and good faith duty, 661
  - extras, 663–669
  - indemnification, 671–675
  - notice, 679, 680
  - professional services fees, 669
  - restraint on competition, 676–678
  - standards of quality, service and safety, 653–660
  - title, 652
- in terrorem clause**, 989, 994
- incompleteness of terms**, 9–16
  - agreement to agree, 9, 12
  - incompleteness distinguished from uncertainty, 10
  - onus of proof, 16
  - usual terms, 15
- indemnities**, 619, 620, 671–675
- infants**, *see* capacity to contract
- innominate term**, 688
- instalment contracts**, 726–731
- integration clause**, 573
- intention to create legal obligations**, 22, 23
  - family agreement, 23
  - household agreement, 23
- interpretation**, 552–632
  - ambiguity, *see* ambiguity
  - burden of proof, 631, 632
  - contextual approach, 553
  - contracts by correspondence, 591–593
  - estimates, 597–602
  - expectations, 597–602
  - partly printed, 594, 595
  - recitals, 587–590
  - renewal agreement, 593
  - typographical errors, 596
  - words of general import, 605
- invitation to tender**, 34
- invitation to treat**, 32
- labour agreements**, 489, 490
- legal assignments**, 936
- limitation clauses**, 621–630
- liquidated damages clauses**, 994–1012
  - acceleration clause, 1005
  - deposits, 1006–1012
  - distinguishing penalties from liquidated damages, 997–1000
  - graduated damages, 1001, 1002
  - holdback provisions, 1003
  - limit on damages clause, 1006, 1007
  - liquidated damages and not a penalty, 996
  - minimum payment clause, 1005
  - part payment, 1006–1012
  - reimbursement, 1004
  - reversion, 1004

## CONTRACTS

---

- mentally incompetent persons**,  
*see* capacity to contract
- minors**, *see* capacity to contract
- mistake**, 224–257
- common mistake (common law), 234–240
  - common mistake (equity), 241–245
  - generally, 224–229
  - mistake of identity, 248–255
  - mutual mistake, 230–232
  - rectification, *see* rectification
  - res extincta, 235
  - res sua, 235
  - unilateral mistake, 246, 247
- mutual rescission**, 888–891
- negligent misrepresentation**, 971–976
- non est factum**, 258–273
- capacity, 264, 266, 267
  - fraud requirement, 269, 270
  - language, 268
  - spouses, 265
- noscitur a sociis**, 606
- novation**, 950–964
- offer and acceptance**, *see also* acceptance
- death of offeree, 47, 819
  - expectation of continuance of contractual relationship, 37
  - government policy statement, 35
  - intention to benefit another, 36
  - necessity, 28–31
  - offer defined, 32
  - price quotation, 33
  - revocation, *see* offer (revocation)
  - time for acceptance, 44–48
  - unilateral request for extension of time, 46
  - without prejudice offer, 38
- offer (revocation)**, 39–43
- construction tender, 40
  - option not under seal, 43
  - option under seal, 43
- options contracts**, 517–618, 825
- parol evidence rule**, 564–567
- parol rescission, 837, 838
  - rectification, 284
  - statute of frauds, 333
- part performance**, 375–387
- parties**, *see also* capacity to contract
- credit card account, 150
  - joint and several contracts, 148–153
- partners**, 187, 191
- penalty clauses**, 991, 994–1012
- acceleration clause, 1005
  - defined, 994
  - deposits, 1006–1008
  - distinguishing penalties from liquidated damages, 997–1000
  - graduated damages, 1001, 1002
  - holdback provisions, 1003
  - limit on damages clause, 1006, 1007
  - liquidated damages and not a penalty, 996
  - minimum payment clause, 1005
  - part payment, 1006–1008
  - reimbursement, 1004
  - reversion, 1004
- performance**, 701–796
- alternative promises, 702–704
  - dependent obligations, 705–708
  - independent obligations, 705–708

## INDEX

---

- place of contract**, 86–89
- instantaneous communication (telephone), 86
  - jurisdiction, 87
  - negotiable instrument, 88
  - substantial connection test, 87
- privity**, 195–223
- deed under seal, 197
  - exceptions, *see* privity (exceptions)
  - general rule, 195–199
- privity (exceptions)**, 199–223
- agency, 204–210
  - death, 223
  - employment contracts, 201
  - principled exceptions, 199–203
  - statutory exceptions, 218–222
  - trusteeship, 211, 212
- promissory estoppel**, 139–147, 373
- quantum meruit**
- good faith, 27
  - severable contracts, 725
- reasonable commercial efforts**, 76
- rectification**, 274–295
- bars to rectification, 290–292
  - evidence, 283–286
  - mutual mistake, 285
  - onus of proof, 282
  - parol evidence rule, 284
  - practice and procedure, 293–295
  - relief, 287–289
  - unilateral mistake, 278–281
- reformation**, *see* rectification
- relief from forfeiture**, 796
- remedies**, 964–1008
- alternative liability, *see* remedies (alternative liability)
  - clauses, *see* remedies (clauses)
  - damages, 964
  - specific performance, 964
- remedies (alternative liability)**, 965–979
- contract remedy, 965–970
  - contributory negligence, 977–979
  - negligent misrepresentation, 971–976
  - remedy clauses, *see* remedies (clauses)
  - tort remedy, 965–970
- remedies (clauses)**, 989–1008
- forfeiture, 989
  - in terrorem, 989
  - penalty clauses, *see* penalty clauses
- repudiation of contract**, *see* breach of contract
- res extincta**, 235
- res sua**, 235
- rescission**
- breach, 872
  - equitable, *see* rescission (equitable)
  - mistake, 256, 257
- rescission (equitable)**, 980–987
- affirmation in rescinding, 982–987
  - delay in rescinding, 982–987
- restraint of trade**, 450–490
- agreements between businesses, 478–488
  - deprivation of benefits, 476, 477
  - employment contracts, 461–477, 676–678
  - labour agreements, 489, 490
  - legitimate interest, 467, 468
  - non-solicitation clauses, 463

## CONTRACTS

---

- price-fixing agreements, 481
- reasonability test, 462
- restrictions (business and employee capacities), 470–472
- restrictions (customers), 469
- restrictions (geographic/temporal), 473–475
- revocation of offer**, 39–43
  - construction tender, 40
  - option not under seal, 43
  - option under seal, 43
- satisfaction**, *see* accord and satisfaction
- set-off of third party debt (assignment)**, 941
- signed, sealed and delivered**, 102
- specific performance (privity)**, 213, 214
- statute of frauds**, 296–391
  - agreement to lease, 298
  - effect of, *see* statute of frauds (effect of)
  - guarantee, 302
  - indemnity, 302
  - lease, 298
  - memorandum, *see* statute of frauds (memorandum)
  - one year requirement, 307–315
  - part performance, 375–387
  - past consideration, 135
  - pleading, 388–391
  - rectification, 289
  - rescission, 371–374
  - scope, 296–354
  - trust in land, 299
  - variation, 371–374
- statute of frauds (effect of)**
  - collateral contract, 368
  - enforcement of contract, 362–365
- frauds, 362–365
- severable covenants, 369, 370, 723
- statute of frauds (memorandum)**, 316–354
  - agency, 329–332, 353–354
  - documents read together, 323–325
  - essential terms, 337–345
  - parties, 326–328
  - signature, 346–352
  - subject matter, 333–336
- subcontracting**, 934, 935
- substantial breach**, 860, 861
- substantial performance**, 719–725
- substantive illegality (public policy)**, 411–440, *see also* restraint of trade, substantive illegality (statutory)
  - effect, 491–500
  - illegal acts, 418–420
  - injurious to administration of justice, 428–437
  - ousting court jurisdiction, 438–440
  - pleading, 514–520
  - proof, 514–520
  - recovery of consideration, 501–506
  - severance, 507–513
  - state interests (domestic), 421–425
  - state interests (foreign), 426, 427
- substantive illegality (statutory)**, 392–410, *see also* restraint of trade, substantive illegality (public policy)
  - contracts collateral to illegal purpose, 441–449
  - effect, 491–500
  - pleading, 514–520

## INDEX

---

- proof, 514–520
- public policy, *see* substantive illegality (public policy)
- recovery of consideration, 501–506
- severance, 507–513
- statutory illegality, 394–410
- time element (statutory), 408–410
- ticket cases**, 91, 94
- time of contract**, 86–89
  - instantaneous communication (telephone), 86
  - jurisdiction, 87
  - negotiable instrument, 88
  - substantial connection test, 87
- time for performance**, 732–751
  - as soon as possible requirement, 733
  - extension of time, 749–751
  - holidays, 735
  - time of essence, 740–748
  - waiver of time, 749–751
- tort remedy**, 965–970
- uncertainty of terms**
  - agreement to agree, 9, 12
  - incompleteness distinguished from uncertainty, 10
  - onus of proof, 16
  - usual terms, 15
- unconscionability**, 543–551, *see also* duress, undue influence
- undue influence**, 532–542, *see also* duress, unconscionability
- unilateral contract**
  - acceptance by inaction, 66
- usual terms**, 15
- variation and cancellation**
  - agreements for cancellation, 841–848
  - contract under seal, 839, 840
  - modification, 832–836
  - parol rescission, 837, 838
- void ab initio**, 178, 234, 394, 507, 513, 871, 872, 980
- void contracts**, 28, 165, 172, 178, 233, 234, 235, 236, 238, 248, 249, 250, 251, 252, 253, 258, 267, 394, 397, 400, 406, 407, 408, 409, 413, 420, 425, 428, 430, 444, 445, 450, 480, 492, 495, 498, 504, 507, 513, 515, 530, 532, 578, 586, 744, 760, 842, 871, 872, 921, 980
- voidable contracts**, 165, 167, 169, 172, 173, 178, 233, 234, 241, 244, 248, 250, 256, 409, 418, 515, 522, 528, 530, 532, 872, 982
- voluntary subscriptions**, 136–138
- waiver**, 773–790
- without prejudice offer**, 38

## Index to Co-operatives

(All references are to paragraph numbers.)

- community clinic**, 467
- community service co-operative**, 464, 465
- consumers' co-operative**, 466
- continuance of actions**, 407, *see also* **dissolution; liquidation; winding-up**
- "co-operative basis"**, 1–5
- co-operative marketing contract**, 463
- corporate finance**, *see also* **share capital structure**
  - capital account, 271–273
  - conversion privileges, 274, 275
  - dividends and patronage return, 286–292
  - general, 269, 270
  - holding, acquiring and redeeming shares, 276–285
  - security issues, 293–296
- corporate mistakes**, 421
- derivative actions, statutory**, 414, 415
- directors and officers**
  - by-laws, 31, 35–37, 39
  - consumers' co-operative, 466
  - disclosure of interests, 219–230
  - election and appointment, 196–201
  - employment co-operatives, 457
  - exclusion from liability, 420
  - first directors, 15, 186–189
  - functions and duties, 190–195
  - indemnification, 233–240
  - liability, 214–218
  - meetings and quorum, 189, 207–213
  - multi-stakeholder co-operatives, 459
  - number of directors, 183, 184
  - officers, general, 231, 232
  - qualifications, 195
  - resignation and termination, 204–206
  - terms and vacancies, 202, 203
- dissolution**, *see also* **continuance of actions; liquidation; winding-up**
  - by-laws, 36
  - by director, 391, 392
  - by Lieutenant Governor in Council, 390
  - by minister, 393, 394
  - by registrar, 389, 391, 395, 396
  - community service co-operative, 464
  - court-ordered, 388
  - employment co-operatives, 457
  - housing co-operatives, 437, 442
  - unknown claimants, 408, 409
  - voluntary, 381, 383–386
- employment co-operatives**, 14, 453–457
- extra-provincial co-operatives**
  - agreements, 432
  - cancellation of registration, 389, 390
  - federated co-operatives, 461
  - lack of registration, 429–431
  - registration, general, 428
  - reservation of name, 56
  - restoration of registration, 413

- federated co-operatives**, 460, 461
- financial disclosure**, 340–343
- federated co-operatives**, 460, 461
- fundamental changes**
- amalgamations, 349, 357, 358
  - amendment of articles or memorandum, 354, 356
  - arrangements, 365, 366
  - community service co-operative, 465
  - continuances, 349–353
  - dissent rights, 361–363
  - employment co-operatives, 457
  - housing co-operatives, 435, 440, 448, 451
  - reorganization, 364
  - restated articles, 355
  - sale, lease or exchange of property, 359, 360
- housing co-operatives**
- business, 439, 446
  - conversion or continuance, 441
  - dissolution or winding-up, 437, 442
  - general, 433, 447–451
  - membership, 435, 436, 438, 440, 443, 452
  - object, 434
  - orders or writs of possession, 435, 437, 440, 444, 445
- incorporating a co-operative**
- application to incorporate, 9–19
  - by-laws and amendments to by-laws, 26–40
  - certificate of incorporation, 20–25
- inspections**, 367–372
- investigations, court-ordered**, 373–377
- legal capacity and powers**
- knowledge of articles and by-laws, 65
  - liability of members, 58
  - reliance on co-operative’s records, 66
  - restriction on powers, 60–64
  - status or capacity of co-operatives, 59
  - validity of acts, 67
- liquidation**, 382, 388, 395, 397–406, 420, *see also* **continuance of actions; dissolution; winding-up**
- maintenance of co-operative status**
- annual returns, 7
  - conversion into corporation, 6
  - complaints regarding status, 8
  - required information, 6
- meetings**
- annual and special meetings, 148–161
  - by-laws, 39
  - first meeting of members, 144–147
  - location and manner of meetings, 137–143
  - meeting called by registrar or court, 181, 182
  - notice of meetings, 162–171
  - requisition for meeting, 172–180
- members, cessation of membership, see also members, general**
- by-laws, 31, 39
  - housing co-operative, 435, 436, 438, 440, 443, 447, 452
  - readmission to membership, 122, 123

## INDEX

---

- members, cessation of
- membership, see also members, general (*cont'd*)
  - redemption of shares and loans, 114–118
  - reserve fund for missing members, 119, 120
  - termination by directors and members, 107–113
  - termination of inactive memberships, 121
  - withdrawal of member, 103–106
- members, general**, see also **members, cessation of membership**
  - becoming a member, 97–102
  - by-laws, rules and articles, 94–96
- membership, joint**, 29, 31, 39, 129–136, see also **membership, restrictions; membership, transfer**
- membership, restrictions**, 3, see also **membership, joint; membership, transfer**
- membership, transfer**, 31, 124–128, 462, see also **membership, joint; membership, restrictions**
- multi-stakeholder co-operatives**, 458, 459
- name of co-operative**
  - change of name, 53–55
  - form, display and use of other names, 46–50
  - prohibited and improper use of name, 51, 52
  - reservation of name, 56, 57
- new generation co-operatives**, 462
- offences**
  - alternative dispute resolution, 26, 32, 39, 427
  - contravening legislation, articles, memorandum, by-laws or rules, 419, 423
  - exclusion from liability, 420
  - penalties, 425, 426
- oppression proceedings**, 416, 417
- pre-incorporation contracts**, 41–45
- receivers and receiver-managers**, 378–380, 420, see also **sequestrators**
- records**
  - access to records, 76–84
  - form of records, 85, 86
  - lists, 87–93
  - maintenance of records, 68–75
- registers**
  - adverse claims, 337, 338
  - general, 334–336, 339
  - rectification, 418
- remedies**
  - actions, stay or dismissal, 422
  - actions, want of prosecution, 422
  - damages, 424
- renewable energy co-operative**, 35
- revival**, 410–413
- security certificates and transfers**, 324–333
- sequestrators**, 379, 380, see also **receivers and receiver-managers**



## CO-OPERATIVES

---

**share capital structure, *see also*  
corporate finance**

- compulsory acquisition, 306, 307
- constraints on shares, 266–268
- general, 241
- insider trading, 304, 305
- loans and guarantees, 297–303
- membership and investment or preference shares, 242–265

**trust indentures, 344–348**

**voting**

- delegate voting, 318–323
- general, 308–310
- investment shares, 256–259, 267
- proxies, members, 311–314

- proxies, investment shareholders, 315–317

**winding-up, *see also*  
continuance of actions;  
dissolution; liquidation**

- community service co-operative, 464
- court-ordered, 387
- housing co-operatives, 437
- voluntary, 382, 385

**worker co-operatives, *see*  
employment co-operatives**

## Index to Copyright

(All references are to paragraph numbers.)

- abandonment of copyright**, 126,  
*see also* waiver of rights
- accounting of profits, *see* remedies**
- acquisition of copyright**, 16–24, 182, *see also* ownership of copyright; registration of copyright
- actions, *see* remedies; penalties**
- advertisements**, 85
- anonymous works**, 107–109
- anthologies**, 56
- Anton Piller orders, *see* remedies**
- architectural works**
- builder vs. architect, 87
  - definition of, 77, 87
  - infringement, 88, 89, 221
  - publication of, 22, 23, 88
- archives, *see* libraries/archives/museums**
- “arrangements”, 97**
- artistic works**
- “artistic”, 82
  - “artistic craftsmanship”, 83
  - definitions of, 49, 76–81
  - examples of, 85
  - exempted items, 86
  - infringement of, 219–222
  - integrated circuit topography, 476, 477
  - merit, relevance of, 82
  - moulds/casts, use by author, 306
  - originality, 82
  - rights of owner, 84
- assignment/transmission/licence**
- bankruptcy, 174, 175
  - death of author, 173
  - exclusive licence, 177, 178
  - form of, 168, 322
  - general, 164, 165, 166
  - interpretation/construction of, 169, 170
  - licences, 176–81, 323
  - limitations on, 171
  - moral rights, 163
  - owner cannot be located, where, 180, 181
  - registration/priority of, 167
  - right of action for infringement, 172
  - scope of, 170
- “author”, 71, 129, 141, 145**
- “authorize”, 128, 193**
- bankruptcy, effect of, 174, 175**
- Berne Convention, 28**
- biographical sketches, 56**
- “book”, 48, 49, *see also* parallel importation of books; National Library**
- breach of confidence, effect of, 23, 46**
- broadcasts, *see also* royalties (cable retransmissions)**
- “broadcaster”, 103
  - “communication signal”, 103, 123, 124
  - general, 24
  - retransmissions, 301, 302
  - rights of broadcasters, 104, 105, 247
  - telecommunications, infringement by, 237–241
  - term of copyright, 123, 124
- business forms, 56**

- charts, 76
- “choreographic work”, 63
- cinematographic works**
  - “author”, 71, 141
  - definition, 63
  - elements protected, 70
  - “maker”, 20, 68, 71, 142
  - ownership of copyright, 141, 142
  - rights of owner, 69
  - term of copyright, 120, 121
- collective administration (general), *see also* royalties**
  - arbitration regime, 434
  - charter of right for creators, 431
  - general, 431
  - licensing agreements, 438
  - requests for information, answering, 431
  - royalties, general, 434, 435, 437
  - royalties, payment as defence, 436
  - tariffs, 432–434
- collective administration (performing/communication rights), *see also* royalties**
  - cable transmission systems, 429
  - general, 415
  - radio stations, 430
  - regulations re, 428
  - request for information, answering, 416
  - royalties, payment as defence, 423
  - royalties, right to, 426–428, 430
  - tariffs (approval of), 422, 424, 429
  - tariffs (proposed), 417–421, 425
- “collective works”, 50, 54, 131, 132, 150, 284
- comic strip characters, 85
- common law rights, 6
- communication signal, *see* broadcasts
- compilations, 52–54, 134, 209
- computer programs, *see also* integrated circuit topography**
  - after June 8, 1988, 58–62
  - before June 8, 1988, 57, 60
  - infringement, 210, 211, 245
  - lawful use of, 294, 295
  - literary works, as, 210
- “connecting factors”, 24, 96, 99, 105, 456, 457
- conversations, 56
- copying, *see* infringement
- Copyright Board**
  - annual report of, 411
  - appeal form decisions of, 414
  - chairman/vice-chairman, 404
  - composition of, 403
  - conflict of interest, 405
  - decisions of, 406, 408, 414
  - enforcement as order of court, 410
  - experts, use of, 407
  - function/purpose of, 402
  - powers of, 409
  - procedures, 409
  - regulations governing, 412
  - regulations, power to make, 413
  - studies, conducting, 411
  - Tariff 22, 242
- corrections, 130
- corporations, rights of, 145
- criminal law, *see* penalties (criminal)
- criticism/review, use for, 274

- Crown copyright**, 122, 151–154
- damages**, *see* remedies
- “**dealing**”, 273
- death of author**, 173
- defences**, *see* infringement
- definition**, 1, 24
- designs (applied to useful articles)**
- created after June 8, 1988, 227–234
  - created before June 8, 1988, 223–226
  - general, 85
- designs (general)**, 85
- dictionaries**, *see* collective works
- dolls**, 221
- dramatic works**
- definitions of, 63
  - elements of, 64, 65
  - infringement, 212–214, 249
  - literary works, as, 67
  - publication, 22, 67
  - rights of owner, 66
  - spectacles, 64
- drawings**, 56, 76
- duration of copyright**, *see* term of copyright
- educational purposes, use for**
- activities not constituting infringement, 282
  - collections, 284
  - general, 274, 280, 281, 376
  - photocopiers, liability for providing, 290–292
  - profit not allowed, 283
- electronic publishing**, 51, 133
- employment, effect on ownership**, 146–150, 459
- encyclopaedias**, *see* collective works
- engravings**
- artistic works, as, 76
  - definition of, 79
  - infringement, 222
  - ownership of copyright, 138–140
  - publication of, 23
- evidence of ownership**, as, 2
- fair dealing**, 272, 273, 274–278, 279
- free trade agreements, effect of**, 9, 12, 34
- “**ghostwriter**”, 129
- Geneva Convention**, 33
- government**, *see* Crown copyright
- ideas and schemes**, 42, 129, 208
- immoral works**, 43
- independent creation**, 41, 197
- industrial designs**, *see* designs (applied to useful articles)
- infringement**, *see also* lawful use; penalties; remedies; secondary infringement
- artistic works, 219–222
  - authorizing infringement, as separate offence, 192–195, 290–292, 325
  - author’s rights, 187, 188
  - computer programs, 210, 211, 245
  - copying/reproducing, unauthorized, 196–202
  - defences to, 330–334, 361, 363, 423, 436
  - definition of, 1, 187
  - designs applied to useful articles, 223–234
  - dramatic works, 212–214

- excepted acts, 191, 260
  - general, 187–191
  - ideas, 42, 129, 208
  - importation into Canada, 256
  - independent creation, 41, 197
  - integrated circuit topography, 467–475
  - integrity of the work, 155, 156, 190
  - intention, 201
  - literary works, 208–211
  - moral rights, 187, 188, 248–252, 477
  - musical works, 215–218, 241, 246
  - owner’s rights, 187
  - parodies, 202
  - partial infringement, 362
  - performing rights, 235, 236
  - secondary infringement, 255
  - sound recordings, 246
  - telecommunications, by, 237–241
- injunctions, *see* remedies**
- instruction manuals, 56**
- integrated circuit topography, *see also* computer programs**
- “active element”, 450
  - assignment/transfer of rights, 466
  - computer program incorporated in, 477
  - Copyright Act, applicability of, 476, 477
  - creator of, 459
  - exclusive right in, 451–453
  - first commercially exploited, 459
  - general, 449, 450
  - government use, 466
  - infringement, 467–475
  - “integrated circuit product”, 450
  - originality, 454, 455
  - registration, 451–453, 456–466
  - “topography”, 449
- international agreements**
- Berne Convention, 28
  - general, 25–27
  - Geneva Convention, 33
  - North American Free Trade Agreement, 34
  - reciprocal agreements, 37
  - Rome Convention, 31, 32
  - TRIPs, 35, 36
  - Universal Copyright Convention, 29, 30
- internet, 241, 243, 244**
- interviews, 56, 129**
- joint authorship, 114, 115, 135–137**
- jurisdiction, federal, 4**
- jurisdiction, international, 25, 27**
- knitting patterns, 85**
- law lists, 56**
- lawful use, *see also* infringement**
- agricultural exhibitions, use of musical works at, 311, 312
  - charitable organizations, use by, 313, 314
  - computer programs, 294, 295
  - educational institutions, 274, 280–284, 313, 314, 376
  - ephemeral/pre-recorded recordings, 297–300
  - fair dealing, 274–278
  - general, 271
  - incidental inclusion, 296
  - libraries/archives/museums, 274, 285–289, 376
  - moulds/casts, use by author, 306

## INDEX

---

- National Archives of Canada, 293
- newspaper reports of public lectures, 308
- perceptual disabilities, producing work for use by people with, 303
- religious organizations, use by, 313, 314
- retransmissions, 301, 302
- statutory obligations, complying with, 304, 305
- works in public places, 307
- legislation (current)**, 7–15
- legislation (historical development of)**, 5, 6
- libraries/archives/museums**
  - copies, authority to make, 286, 288, 289
  - general, 285, 376
  - National Archives of Canada, 293
  - National Library, 447, 448
  - photocopiers, liability for providing, 290–292
  - research/private study, 274, 287, 288
  - unpublished works, 289
- licence**, *see*  
**assignment/transmission/licence**
- literary works**
  - “book”, 48, 49
  - “collective works”, 50, 54
  - “compilations”, 52–54
  - computer programs, 210
  - definition of, 47, 52
  - dramatic works as, 67
  - examples of, 56
  - infringement, 208–211
  - logos, 85
  - titles, 55
- “made”, 17
- magazines**, *see* **collective works; literary works**
- “maker”, 20, 68, 71, 97, 142, 143
- “making”, 17
- maps**, 76
- moral rights**
  - assignment/waiver of, 163
  - distortion, mutilation or modification of work, 156, 158, 249, 251
  - general, 1, 155–159, 160, 252
  - honour/reputation of author, 156, 157, 250
  - infringement, 187, 188, 248–252
  - integrated circuit topography, 477
  - integrity of the work, 155, 156, 190
  - misuse of work, 249
  - remedies for infringement, 159, 252
  - term of, 161, 162
- museums**, *see*  
**libraries/archives/museums**
- musical works**, *see also* **sound recordings**
  - blank audio recording media, 204, 205
  - definition of, 72
  - infringement, 203, 215–218, 241, 246
  - internet, 241
  - “performance”, 74, 90, 218
  - private copying, 206, 207
  - publication, 22, 24, 75
  - rights of owner, 73, 74
- National Archives of Canada**, 293
- National Library**, 447, 448

- nature of copyright**, 1–4
- news reporting**, 277
- newspapers**, *see* **collective works**
- obscenity**, *see* **immoral works**
- “ordinarily resident”**, 18
- originality**
- general, 38, 39, 54
  - identical independent works, 41
  - integrated circuit topography, 454, 455
  - labour and skill, 40, 41, 54
  - test for, 38
- ownership of copyright**, *see also* **acquisition of copyright; registration of copyright**
- “author”, 71, 129
  - cinematographic works, 120, 121
  - collective works, 131, 132
  - compilations, 134
  - corporations, 145
  - Crown/government works, 151
  - employment situations, 146–51
  - engravings, 138–140
  - general, 127–130, 182
  - inability to locate owner, 180, 181
  - joint authorship, 135–137
  - photographs, 138–140
  - portraits, 138–140
- paintings/portraits**, 138–140, 222, 249
- parallel importation of books**, 262–266
- parodies**, *see* **infringement**
- parties**, *see* **remedies**
- penalties (Copyright Act)**, *see also* **infringement; remedies**
- destruction/delivery up copies/plates, 398
  - general, 394–396
  - mens rea, 397
  - parallel importation of books, 399
  - time limits on prosecuting, 399
- penalties (criminal)**, 401
- performance**
- definition, 74, 90, 218, 235, 235
  - general, 23, 24, 67
  - public performance, 235, 236, 240, 267–270
- “performer’s performance”**, 91, 123, 124
- performer’s rights**
- authorized use/agreements re, 95
  - connecting factors/points of attachment, 24, 96
  - general, 92
  - infringement, 235, 236, 247, 267–270
  - Rome Convention, 94–96
  - term of copyright, 123, 124
  - WTO members, 93
- periodicals**, *see* **collective works**
- photocopiers, liability for providing**, 290–292
- photographs**
- artistic works, as, 76, 85
  - definition of, 78, 116
  - infringement, 222
  - ownership of copyright, 138–140
  - publication of, 23
  - term of copyright, 116–119
- plans and sketches**, 76, 85
- pleadings**, *see* **remedies**
- “points of attachment”**, 24, 96, 99, 105, 456, 457
- portraits**, *see* **paintings/portraits**

- posthumous works**, 110–113
- private study**, 274, 287, 288
- pseudonymous works**, 107–109
- publication**
- definition of, 22, 23, 45
  - engravings, 23
  - first publication, 21
  - photographs, 23
  - sound recordings, of, 22, 237
  - telecommunications, by, 237
  - without consent of owner, effect of, 23
  - works, of, 22
- racing forms**, 56
- railway circulars**, 56
- registration of copyright**, *see also* acquisition of copyright; ownership of copyright
- advantages of, 183
  - certificate of, effect of, 184
  - general, 182–184, 185, 200
  - not required to assert ownership, 2
  - rectification of register, 186
- remedies**, *see also* infringement; penalties
- accounting of profits, 377
  - Anton Piller orders, 347–52
  - costs of action, recovery of, 383
  - damages (general), 367–371
  - damages (statutory), 372–376
  - delivery up, 382
  - evidence, 354–356
  - general, 315
  - injunctions (interlocutory), 335–346
  - injunctions (permanent), 360–362, 364–366
  - jurisdiction, 316, 317
  - limitation periods, 318
  - particulars, 328, 329
  - parties, 319–326
  - pleadings, 327
  - presumptions, 357–359
  - recovering possession of infringing copies, 378–382
  - seizure of imported copies, 384–393
  - summary applications for, 353
  - vicarious liability, 325
- remuneration, right to**, 123, 124
- research**, 274, 275, 287, 288
- reviews**, 131
- revisions**, 130
- rights created by 1**, *see also* infringement; specific rights, e.g., moral rights
- Rome Convention**, 31, 94–96
- royalties (cable retransmissions)**, *see also* collective administration
- collective societies, 442
  - general, 439, 440
  - local signals, 440
  - non-infringing transmissions, 441
  - royalties, right to, 446
  - tariffs (proposed), 443–445
- sale of rights**, *see* assignment/transmission/licence
- sculptures**, 76, 80, 249
- secondary infringement**, *see also* infringement
- definition of, 253
  - exceptions, 260
  - general prohibition, 254–261
  - parallel importation of books, 262–266



- permitting public performances, 267–270
- sound recordings, *see also* musical works**
  - “arrangements”, 97
  - definition of, 97
  - general, 24
  - infringement, 246, 247
  - “maker”, 97, 143
  - ownership of copyright, 143, 144
  - points of attachment/connecting factors, 96, 99
  - publication of, 22
  - remuneration, right to, 101, 102, 123, 124
  - rights of owner, 98–102
  - term of copyright, 123, 124
- statutory nature of**, 2, 3
- subject matter of copyright**
  - architectural works, 87–89
  - artistic works, 76–86
  - broadcasters rights, 103–105
  - cinematographic works, 68–71
  - computer programs, 57–62
  - dramatic works, 63–67
  - ideas and schemes, 42
  - immoral works, 43
  - literary works, 47–56
  - musical works, 72–75
  - originality, 38–41
  - performers rights, 90–96
  - publication in breach of confidence, 46
  - remuneration, right to, 101, 102
  - sound recordings, 97–100
  - unpublished works, 44, 45
- telecommunications, *see* broadcasts; royalties (cable retransmissions)**
- term of copyright**
  - abandonment to public, 126
  - anonymous/pseudonymous works, 107–109
  - assignments, effect of, 171
  - cinematographic works, 120, 121
  - communications signals, 123, 124
  - Crown copyright, 122
  - general, 106
  - joint authorship, 114, 115
  - miscellaneous, 125, 126
  - moral rights, 161, 162
  - owner unable to identify author, where, 125
  - performer’s performances, 123, 124
  - photographs, 116–119
  - posthumous works, 110–113
  - rights to remuneration, 123, 124
  - sound recordings, 123, 124
- titles**, 55, 222
- tombstones**, 85
- toys**, 221
- trademarks**, 85
- transcriptions**, 56, 129
- translations**, 56
- transmission of rights, *see* assignment/transmission/licence**
- “treaty country”**, 19
- TRIPs**, 35, 36
- “UCC country”**, 19
- Universal Copyright Convention**, 29, 30
- unpublished works**, 44, 45
- waiver of rights**, 163 , *see also* abandonment of copyright
- web sites artistic works, as**, 85

INDEX

---

**“WTO member”, 19**

## Index to Coroners and Medical Examiners

(All references are to paragraph numbers.)

- administrative law, see judicial review**
- aircraft accidents**, 71
- appointment and dismissal (Alberta), see also disqualification**
  - chief medical examiner, 8
  - Fatality Review Board, 7
  - miscellaneous officials, 9
- appointment and dismissal (British Columbia), see also disqualification**
  - chief coroner, 12
  - general, 11
  - miscellaneous officials, 12
- appointment and dismissal (general), 1, 2, see also disqualification**
- appointment and dismissal (Manitoba), 10, 18, see also disqualification**
- appointment and dismissal (Ontario), see also disqualification**
  - chief coroner, 12
  - general, 11
  - miscellaneous officials, 12
- appointment and dismissal (Saskatchewan), see also disqualification**
  - chief coroner, 12
  - general, 11
  - miscellaneous officials, 12
- autopsy, see bodies, examination of**
- bodies, examination of**
  - Alberta, 55–59
  - British Columbia, 31, 64, 67–71, 72, 184
  - Manitoba, 73, 75, 76, 80, 82–84
  - Ontario, 87, 92
  - Saskatchewan, 93–97, 184
- bodies, jurisdiction over**
  - childbirth situations, 25
  - common law, 20
  - destruction of, 21
  - human tissue donation, 24
  - interference with body, 46, 64, 80
  - missing bodies, 23, 81, 88
  - possession of body, 31, 50, 64, 72, 73, 76, 80
  - removal from province, 21
  - view of body, 24
  - warrant to take possession, 31, 64, 87, 93
- burial permits**, 8, 34, 54, 82, 97
- Canadian Charter of Rights and Freedoms**
  - application generally, 6
  - inquests, public access to, 99, 196
  - judicial review and, 196
  - self-incrimination, 153, 157
- chief coroner**, 12
- chief medical examiner**
  - Alberta, 7
  - Manitoba, 10, 18
- civil liability, see liability**
- conclusions of law, findings re**, 14
- constitutional issues**
  - Canadian Charter of Rights and Freedoms, 6

- jurisdiction, 3, 4, 101
- procedural matters, 5
- coroner's certificate**, *see* **investigations**
- coroner's inquisition**, 5, 183
- criminal law issues**
  - Canadian Charter of Rights and Freedoms, 6, 153, 157
  - inquest where charges pending, 111, 116, 119, 123, 153
  - jurisdiction as criminal court, 3, 4
  - procedural matters, 5
  - self-incrimination, 153–158
  - suspicious deaths, 61
  - warrants and recognizances, 5
- death certificate**, *see* **bodies, examination of**
- death, duty to report**
  - Alberta, 13, 32–36, 61
  - British Columbia, 13, 38–40, 208
  - Manitoba, 13, 41–43, 73
  - Ontario, 13, 44–47, 208
  - Saskatchewan, 13, 47–49
- disinterment**, 58, 95
- dismissal**, *see* **appointment and dismissal**
- disqualification**, *see also* **appointment and dismissal**
  - Alberta, 26
  - British Columbia, 27, 30
  - common law, 29
  - jurisdictional issues, 31
  - Manitoba, 27
  - Ontario, 28
  - particular investigations, from, 27, 29, 30
  - Saskatchewan, 27, 30
- duties generally**, 2
- evidence**, *see also* **witnesses**
  - admissibility, 159–161
  - copies of documents, 160
  - documents, 160, 164
  - general, 5
  - hospital patient, records re, 161
  - interpreters, use of, 166
  - public disclosure of, 161
  - recording of, 163
  - refusal to give, 161
  - report of medical examiner/medical practitioner, 161
  - use in other proceedings, 156
- execution of process, misconduct in**, 5
- Fatality Review Board (Alberta)**, 7, 62, 106
- functions, general**, 1, 2
- highway traffic deaths**, 56, 69, 88
- human tissue donation**, 24
- inquests**, *see also* **evidence; investigations; reports; witnesses**
- inquests (Alberta)**
  - bars to coroner acting, 29
  - body unavailable, where, 20, 21
  - counsel at, funding for, 141
  - death outside Alberta, 37, 63, 104
  - disclosure, Fatality Review Board, 168–172
  - discretion to require, 103
  - findings of legal responsibility, 14
  - judge, hearing by, 105
  - jury, 14, 105, 125, 126, 131, 179–182
  - public fatality inquiry, 107

## INDEX

---

- referral to Fatality Review Board, 106
  - requirement for, 103
  - standing to appear, 134, 139, 140, 143
  - staying of, 106
- inquests (British Columbia)**
- adjournments, 175
  - Attorney General ordering, 109, 111
  - bars to coroner acting, 29, 30
  - body unavailable, where, 20, 21, 110
  - chief coroner ordering, 21, 64, 109, 110
  - criminal charges pending, where, 111
  - death in police prison/lockup, 108
  - discretion to require, 21, 64, 73
  - findings of legal responsibility, 14, 182
  - jury, 14, 125–128, 133, 175–182
  - no time limit for issuing warrant, 201
  - notice to Crown, 112
  - order in court, preserving, 173
  - requirement for, 64, 108
  - standing to appear, 135, 139, 143
  - staying of, 111
- inquests (general)**
- Canadian Charter of Rights and Freedoms, 99, 196
  - closed hearings, 99, 100, 121
  - curial deference, 193
  - jury verdict, 176
  - nature of, 104
  - public nature of, 99, 100, 121
  - purpose of, 99, 101
  - start date, 200
  - state-funded counsel, 141
  - time for holding, 100
- inquests (Manitoba)**
- bars to coroner acting, 29
  - body unavailable, where, 20, 22, 114
  - chief medical examiner requiring, 113
  - criminal charges pending, 116
  - discretion to require, 113, 114
  - judge, hearing by, 111, 125
  - judge, powers of, 164
  - jury, no provision for, 125
  - minister requiring, 114
  - privilege, 165
  - report after, 185–188
  - requirement for, 113
  - standing to appear, 136, 138, 142, 143
  - staying of, 116
  - verdict and recommendations, 180–182
- inquests (Ontario)**
- adjournment, 175
  - bars to, 29, 119, 199
  - body unavailable, where, 20, 21
  - chief coroner ordering, 21
  - commissioner, hearing by, 137
  - contempt, 174
  - criminal charges pending, 119
  - delay in, effect, 199
  - findings of legal responsibility, 14, 121, 182
  - jury, 14, 121, 125, 126, 129, 130, 133, 175, 179, 181, 182
  - notice to Crown, 120, 137
  - order in court, preserving, 173
  - public interest considerations re necessity, 117
  - removal of counsel, 174

## CORONERS AND MEDICAL EXAMINERS

---

- report after, 189
  - representation at, 120
  - request for, 118
  - requirement for, 117, 118
  - scope of, 121
  - Solicitor General requiring, 118, 119
  - standing to appear, 137, 139, 142, 143
  - staying of, 119
  - verdict and recommendations, 120, 121
- inquests (Saskatchewan)**
- adjournment, 152, 175
  - bars to coroner acting, 29, 30
  - body unavailable, where, 20, 23
  - chief coroner ordering, 122
  - criminal charges pending, 123
  - jury, 98, 122, 125, 126, 131, 133, 175, 176, 179–181
  - minister ordering, 122
  - notice of, 124
  - procedure; failure to follow, 133
  - requirement for, 97, 98, 122, 123
  - standing to appear, 136, 139, 142, 143
  - staying of, 123
- inquiries, see inquests**
- interpreters, use of, 166**
- investigations, see also bodies, examination of; death, duty to report; inquests**
- investigations (Alberta)**
- assistance, obtaining of, 51
  - bars to, 29
  - bodies brought into province, 54
  - collection of bodily fluids samples, 56
  - criminal offence suspected, 61
  - death certificate, 59
  - deaths, record of, 59
  - entry onto premises, 51
  - examination of body, 55–59
  - medical records, inspection and copying of, 52, 53
  - notice to Fatality Review Board, 62
  - possession of body, 50
  - record of, 59, 60
  - report of, 59, 60
  - requirement for, 50
  - securing premises, 51
  - seizure of property, 51
- investigations (British Columbia)**
- aircraft accidents, 71
  - bars to, 27, 29, 30
  - coroners' certificate, 67
  - directions respecting witness fees/expenses, 66
  - entry onto premises, 65
  - general, 64
  - inspection of premises, 65
  - interference with, 68
  - records, inspection of, 65
  - release of body, 72
  - seizure, powers, 65
  - site of death, 69
  - warrant to take possession of body, 31, 64
- investigations (Manitoba)**
- bars to, 29
  - body unavailable, 81
  - burial permit, 82
  - entry onto premises, 75
  - general, 73
  - interference with, 76, 80
  - medical certificate, 82
  - possession of body, 73
  - prior to death, 74

## INDEX

---

- property, seizure of, 79
- records, inspection and copying, 78
- release of body, 86
- reports, 73, 85
- securing premises, 77
- investigations (Ontario)**
  - assistance, 87, 88
  - bars to, 29
  - body unavailable, 88
  - coroner's certificate, 89
  - entry onto premises, 89
  - general, 87
  - interference with, 91
  - possession of body, 87, 89
  - record of cases, 92
  - records, inspection of, 89
  - report of, 91
  - seizure of property, 90
  - site of death, 88
  - transfer of, 91
- investigations (Saskatchewan)**
  - bars to, 27, 29, 30
  - general, 93, 94
  - interference with, 189
  - site of death, 93, 94
  - warrant to take possession of body, 93–95
- investigators (Alberta), 9**
- judicial review**
  - apprehension of bias, 191
  - availability generally, 190, 194, 195
  - Charter considerations, 196
  - closed hearing, order for, 100
  - costs of application, 197
  - curial deference, 193
  - grounds, miscellaneous, 194, 195
  - natural justice, principles of, 191
  - prohibition orders, 29, 153, 191
  - standing to seek, 192
- jurisdiction, *see also* constitutional issues; criminal law issues**
  - bodies, over, 20–25, 31, 64, 87, 93–95
  - conclusions of law, 14
  - findings, making of, 14
  - general, 13, 31, 64, 87, 93
  - inquiries, 14
  - legal responsibility, 14
  - territorial restrictions, 15–19
  - unexplained deaths, 13
  - violent deaths, 13
  - warrant to take possession of body, 31
- jury, *see* inquests**
- legal responsibility, findings of, 14, 121, 182**
- liability**
  - Alberta, 203
  - British Columbia, 205
  - common law, at, 202
  - coroner's council, 12
  - Manitoba, 203, 204
  - Ontario, 206
  - Saskatchewan, 206
- medical certificate of death, *see* bodies, examination of**
- nature of office, 1, 2**
- offences**
  - contempt, 173, 174
  - failure to report death, 208
  - furnishing false information, 91
  - interference with body or wreckage, 69, 80, 208, 209
  - interference with investigation, 76, 91, 207

## CORONERS AND MEDICAL EXAMINERS

---

- non-appearance for jury duty, 128, 129, 132
- non-appearance of witness, 145, 146, 149, 151
- pedestrians**, 56
- post-mortem examination**, *see* **bodies, examination of**
- prohibition, order for**, 29, 153, 191
- property, seizure of**, *see* **investigations**
- public inquiries**, *see* **inquests**
- purpose of office**, 1, 2
- recognizances**, *see* **warrants and recognizances**
- recommendations**, 98, 122
- reporting of deaths**, *see* **death, duty to report**
- reports**
  - British Columbia, 184
  - Manitoba, 185
  - nature and scope of findings, 5
  - Ontario, 189
  - Saskatchewan, 184
- search and seizure**, *see* **investigations**
- seizure**, *see* **investigations**
- self-incrimination**, *see* **witnesses**
- suspension**, *see* **disqualification**
- termination**, *see* **appointment and dismissal; disqualification**
- trial upon coroner's inquisition**, 5, 183
- warrants and recognizances**, 5, 128, 132, 152
- witnesses**, *see also* **evidence**
  - calling of, 5
  - compellability, 119, 153
  - disclosure by, 164
  - doctors, 161
  - examination of, 5, 134, 136, 140, 142, 162
  - failure to attend or co-operate, 145, 146, 149, 151, 152
  - interpreters, use of, 166
  - medical examiners, 144, 147, 161
  - payment of, 147
  - representation by counsel, 5, 158
  - segregation of, 147
  - self-incrimination, 153–157
  - summoning of, 136, 144–152



## Index to Costs

(All references are to paragraph numbers)

- appeal, see also Supreme Court of Canada**
- Alberta, 360, 361
  - ambiguous order, 331
  - British Columbia, 359, 362–364, 366
  - denial of costs, 374–377
  - discretion of trial judge, 325, 327–331
  - factum, 371
  - general rule, 357
  - interference by appellate court, 324
  - joining appeals, 324
  - leave not obtained, 326
  - leave not required, 323
  - leave required, 322
  - Manitoba, 366
  - multiple appellants, 372
  - offer to settle, 369
  - Ontario, 365, 373
  - post-judgment interest, 330
  - pre-trial offer, 329
  - Saskatchewan, 366–368
  - separate judgments, 324
  - separate representation, 370
  - Supreme Court of Canada, 358
- assessment of costs, see also quantum of costs**
- abortive proceedings, 504–507
  - admissions, failure to make, 578
  - affidavits, 508, 509
  - amendments, 512–518
  - appeal, 489–503
  - application, 510, 511
  - assessment officer, 439–445, 474–479, 483, 484
  - Alberta, 439, 474
  - British Columbia, 440, 475, 484
  - discretion re: tariff items, 476
  - Manitoba, 442, 483
  - Ontario, 443–445, 477–479
  - Saskatchewan, 441
  - briefs, 519–521
  - change of venue, 523
  - costs already paid, recovery of, 661, 662
  - cost of assessment, 488
  - costs of the day, 524, 525
  - counsel fees, 526–542
    - counsel acting on own behalf, 541, 542
    - general, 526–531
    - junior counsel, 538, 539
    - postponement of trial, 540
    - quantum, 532–537
  - counterclaim, 543–546
  - courtroom aids, 609
  - cross-appeal (Ontario), 546
  - default judgment (British Columbia), 547
  - disallowed costs, 642
  - disbursements, 548–569
  - documents, copies of, 522
  - enforcement of payment, 649–654
  - examination for discovery, 570–577
  - execution, 655
  - execution, stay of, 656, 657
  - factors to consider, 474–484
  - foreign commission, 583–585

## COSTS

---

- assessment of costs (*cont'd*)
  - funds preserved or recovered, 647, 648
  - general, 423–438
    - Alberta, 424, 426, 431, 438
    - British Columbia, 425, 426, 431
    - evidence, 437
    - Manitoba, 427, 428, 431
    - name of procedure, 423
    - Ontario, 429, 430, 432–434, 436
    - Saskatchewan, 426
    - solicitor-and-client assessment, 435
  - individual issues, 640
  - inherent equitable jurisdiction, 643
  - interest, 485–487
  - interlocutory proceedings, 586
  - interim costs, 643
  - judgments and orders, 587–589
  - payment into court, 644–646
  - pre-trial conference, 602
  - preliminary proceedings, 593
  - proceedings in another court, 658
  - procedure, 446–464
    - affidavit evidence (Ontario), 455
    - attendance of parties (Ontario), 451
    - authority of assessment officer, 452–454, 460
    - bill of costs, 447
    - certificate of assessment (Ontario), 461–464
    - death of defendant, 450
    - failure to attend, 448
    - interested parties, 456
    - notice of appointment, 446
    - objections (Ontario), 461–463
    - reference, 449
    - scale of costs, 459
    - solicitors, 457
    - via telephone, 458
  - rate, 641
  - references, 604
  - settlements, 603
  - stay of subsequent proceedings, 659, 660
  - tariffs, 465–473
    - Alberta, 465, 472
    - British Columbia, 466, 467
    - Manitoba, 468
    - Ontario, 469, 472
    - retrospective effect, 473
    - Saskatchewan, 470, 471
  - taxes, 606–608
  - trial, new, 579–582
  - trial, preparation for, 594–601
  - trial, postponement of, 590–592
  - witness fees and expenses, 610–639
    - expert witnesses, 619–633
    - general, 610–618
      - assessment officer, 618
      - excess amount, 617
      - party responsible for payment, 616
      - time of payment, 610
      - usual practice, 611
      - witnesses attending for more than one cause, 615
      - witnesses subpoenaed but not called, 612, 614
      - witnesses unable to attend, 613
    - travel expenses, 635–639
  - witness being party to action, 634

## INDEX

---

### **Bullock order**

- general, 95
- granted where, 97, 396
- offer to settle, effect of, 98
- Sanderson order, compared to, 99, 101
- two-part test, 96

### **class proceedings**

- considerations, 351
- contingency fee agreement, effect of, 355
- instigator of, 353
- liability of class members, 352
- offers to settle, 354
- Ontario, 356
- provincial rules, 350
- purposes of legislation, 351

### **disallowance of costs**

- general, 229–238
  - appeal, 232
  - conduct, 229, 230
  - failure in part, 231
  - general interest, citizens acting in, 238
  - intervenors, 235
  - offers to settle, 237
  - public interest litigation, 234
  - unsuccessful portion of case, 236
- particular grounds, 239–256
  - baseless/scandalous allegations, 247
  - cheaper procedure available, 240
  - clarification required, 241
  - defrayed costs, 250
  - delay, 245
  - exceptional circumstances, 254
  - extravagant claims, 244

- failure to prove actual damage, 242
- fraud, unfounded allegations of, 246
- frivolous actions, 252
- meritless defence, 253
- misconduct, 255
- negligence, 256
- nominal success, 251
- novel litigation, 241
- procedural defects, 243
- provocation of litigation, 249
- public policy, 248
- scale entitled to, 239
- unnecessary action, 240

### **failure or success of proceeding, effect of**

- apportionment of liability, 198–209
- counterclaim, 211–221
  - discontinuance or dismissal, effect of, 218–221
  - general, 211–217
- discontinuance of action, 224–228
- dismissal of action, 222, 223
- divided success, 188–197
  - action divisible, 195–197
  - general, 188–194
- general, 169–178
- Mary Carter agreement, 186, 187
- no costs, 210
- successful party, 179–185

### **Federal Court**

- abandoned motion, 385
- amendments to pleadings, 387
- assessment of costs, 381, 402, 403, 405

## COSTS

---

### Federal Court (*cont'd*)

- assessment officer, 381, 402–405
- considerations, 378
- criminals, 380
- Crown, 382, 399
- *Bullock* order, 396
- denial of costs, 394–396
- discontinued action, application, or appeal, 385
- exaggerated claims, 384
- extension of time, 387
- fixed costs, 381
- general rule, 378
- judicial review, 395
- misconduct, 386, 397
- offers to settle, 379, 388–393
- public interest, 382
- security for costs, 400, 401
- simplified actions, 384
- solicitor, 383, 386
- solicitor-and-client costs, 397, 398
- award where action fails (Alberta), 17
- bill of costs, 26, 30
- directions to assessment officer, 18
- exceptions to general costs rule, 16, 31, 32
- factors considered by court, 10, 11, 26
- fees, 30
- further order re cost assessment scale, 18
- judge acting as *persona designate*, 19
- judicial exercise of discretion, 14, 15
- modern costs rules, purposes of, 12
- ordinary costs, 22
- partial indemnity costs, 23, 24
- party-and-party costs, 21, 23–25, 30
- reasonableness, principle of, 13
- refer for assessment, 26
- solicitor-and-client costs, 21, 23–25
- special costs, 22
- statutory intention to fetter discretion, 9
- substantial indemnity costs, 23, 24
- third scale of solicitor-and-own-client costs, 29
- want of jurisdiction, 20

### interlocutory proceedings

- Alberta, 333
- British Columbia, 334, 335
- compensation for work done, 343
- Manitoba, 336, 337
- Ontario, 340–342, 346
- orders for the costs of motions, 332
- penalty, 344
- Saskatchewan, 338, 339
- topped up costs, 345

### jurisdiction and discretion

- action dismissed by consent, 18
- authority of court (Ontario), 27
- award in favour of party (Ontario), 28

### nature

- compensatory, 1
- defined (Alberta), 4
- disbursements/expenses, 5, 6
- fees, 5
- not source of profit, 3
- prohibited award (Ontario), 8

## INDEX

---

- nature (*cont'd*)
  - punitive, 2
  - separate from determination of issues, 7
- offers to settle**
  - Ontario, 279–306
    - amount recovered by plaintiff, 292–297
    - appeals, 304–306
    - discretionary offers, 300–303
    - general, 279–289
      - appeal, 289
      - burden of proof, 284
      - common law, 280
      - compromise, element of, 287
      - cost consequences, 285, 286
      - counterclaim, 285
      - discretion of court, 289
      - family law, 288
      - judgment as or less favourable, 282
      - judgment more favourable, 281
      - no offer, 288
      - structured settlement, 283
      - time restrictions, 289
    - multiple defendants, 298, 299
    - timing of offer, 290, 291
    - western provinces, 257–278
      - acceptance, 269
      - discretion of court, 277, 278
      - expiry, 268
      - general, 257–265
        - Alberta, 257
        - British Columbia, 258–260
        - Manitoba, 261, 262
        - Saskatchewan, 263, 264
        - unrealistic offers, 265
      - multiple defendants, 266, 267
      - non-acceptance, effect of, 270–276
        - Alberta, 270–273
        - Manitoba, 274, 275
        - Saskatchewan, 276
      - revocation, 268
- orders**
  - costs as between solicitor and client, 112, 113
  - costs between solicitor and client, 113
  - costs if demanded, 114
  - costs in any event of cause, 104, 105
  - costs in the cause, 102, 103
  - costs of suit between solicitor and client, 112
  - costs of the trial of the action herein, 116
  - costs payable forthwith, 105
  - costs thrown away, 118
  - full costs, 117
  - increased costs, 111
  - judgment for the plaintiff with costs, 115
  - no order, 106, 107
  - ordinary costs, 108
  - special costs, 109, 110
- payment into court, effect of**
  - generally (Saskatchewan), 307
  - payment accepted, 310–313
  - payment not accepted (Saskatchewan), 308, 309
- persons entitled to or liable for costs, see also *Bullock order*; *Sanderson order***
  - *Bullock order*, 95–98
  - Crown, 33–40
  - Attorney General, intervention of, 39

## COSTS

---

- persons entitled to or liable for costs (*cont'd*)
  - constitutional cases, 33
  - Crown agencies, 34
  - provincial agencies, 35–38
  - public interest plaintiff, 33
  - Public Trustee (British Columbia), 40
  - solicitor retained by government agency, 39
  - translation services, 39
  - litigation guardian, 80, 81
  - multiple defendants, 91–94
  - non-parties, 41–52
    - Alberta, 43, 44
    - British Columbia, 45
    - corporations, 47, 48
    - intervenors, 41, 42
    - Manitoba, 46, 50, 51
    - Ontario, 49
    - witnesses, 52
  - party not liable to solicitor, 58–64
    - general, 58–62
    - salaried solicitor, 63, 64
  - persons entitled to or liable for indemnity, 82–86
  - Sanderson order, 99–101
  - self-represented litigants, 53–57
  - solicitor personally liable, 65–79
    - appeal, 78
    - authority of client, 72
    - conflict of interest, 73
    - constitutionality of rules, attack on, 79
    - circumstances unclear or unintentional, 76
    - factors, 68
    - former solicitor, 77
    - general, 65
    - inability to control client, 75
    - inept handling of case, 73
    - inherent jurisdiction of court, 69, 73
    - initiative of court, 71
    - inquiry, 66
    - negligence, 70
    - notice to client, 67
    - privilege, 74
    - third parties, 87–89
    - unnecessary parties, 90
- quantum of costs, *see also* assessment of costs**
  - change in tariff, 168
  - executors, 149
  - general, 119–132
  - lump sum, 150–153
  - solicitor-and-client costs, 133–147
    - factors, 140–147
      - authority of court, 142
      - behavior of defendant, 145
      - examples of where solicitor-and-client costs awarded, 147
      - express covenants, 141
      - failure to disclose financial matters, 145
      - interlocutory proceedings award, 144
      - lower court award, reduction of, 145
      - matrimonial matters (British Columbia), 140
      - merit of application, 145
      - mortgage, 146
      - risk of non-payment to plaintiff's lawyer (Ontario), 143
      - unsuccessful allegation, 145

## INDEX

---

- quantum of costs (*cont'd*)
  - general, 133–139
  - small claims court, 166, 167
  - special parties, 148
  - transfer of action, 164, 165
  - wrong court, 154–163
    - Ontario, 157–163
    - western provinces, 154–156
- re-hearing (Ontario)**, 349
- Sanderson order**
  - *Bullock* order, compared to, 99, 101
  - general, 99
  - two-part test, 100
- security for costs**
  - amount, 778–784
    - affidavit, 780
    - constitutional case, 784
    - costs already incurred, 783
    - discretion, 778
    - implicated defendant, 784
    - instalments, 781
    - non-resident, 782
    - scale, 779
  - appeal of order, 792
  - availability of order, 770, 771
  - co-defendant, 776
  - considerations on motion, 685–703
    - admission of liability, 694
    - appeal, 688
    - defendant indebted to plaintiff, 695, 696
    - delay in application, 702, 703
    - exercise of discretion, 685, 686
    - impecuniosity, 687, 689–693
    - lack of defense, 701
    - property within jurisdiction, 697–700
    - special circumstances, 688
  - costs of appeal, 756–769
  - costs of application, 791
  - counterclaim, 774
  - default, 664–669
  - family law, 772
  - grounds for order, 704–755
    - failure to pay previous costs, 734–738
    - frivolous or vexatious action, 747, 748
    - insufficient assets, 739–746
    - non-residence, 704–732
    - pending proceedings, 733
    - statutory requirement, 749–755
  - intervenor, 776
  - multiple defendants, 670
  - notice of compliance, 671
  - order on motion in a proceeding (Manitoba), 773
  - payment out of court, 793–796
  - procedure on motion, 675–684
    - evidence, 681–684
    - ordinary residence of plaintiff or applicant (Ontario), 679
    - provincial rules, 676, 677
    - strict adherence to, 675
    - surveillance of parties (Ontario), 680
    - timing of motion (Ontario), 678
  - served by mistake, 776
  - stay of proceedings, 663
  - term of order, 672–674
  - third party, 777
  - varying order, 785–790
  - victim of crime (Ontario), 775

## COSTS

---

### **set-off**

- amending court order, 315
- appeal, 316
- assessment considerations, 474, 475, 477, 483, 484
- claim/counter-claim as separate actions, 318
- cross-appeal, 316
- defendant successful, 320
- different actions between same parties, 318
- Federal Court, 403
- interlocutory costs, 321
- interlocutory motion, 317
- multiple defendants, 321
- mutuality of debt, 319
- provincial rules, 314
- solicitor's lien, 321

### **settlement of actions**, 347, 348

### **Supreme Court of Canada**, *see also* **appeal**

- abandoned proceedings, 410
- appeal on costs only, 406
- appeal quashed, 415
- costs in the cause, 409
- costs to respondents, 412
- Crown, 411, 422
- disallowed costs, 416–420
- discontinued proceedings, 410
- discretion of court, 358, 407, 413
- equal division of court, 414
- extension of time, 410
- leave granted, 409
- leave not granted, 406
- registrar, 410
- security for costs, 421, 422
- taxation of costs, 408



## Index to Courts

(All references are to paragraph numbers.)

### administration of courts

- annuities, 19
- appointment of superior court judges, 16
- resignation due to ill health, 20
- salaries of superior court judges, 17
- travel and other expenses, 18

### Alberta Court of Appeal

- appeal from decision on leave to appeal criminal conviction, 880
- composition, 875
- effective date of judgment, 882
- judgments after retirement, 877
- jurisdiction and powers of NWT Supreme Court, 874
- leave of justice giving judgment, 879
- orders in chambers on matters incidental to appeal, 881
- quorum, 876
- reference, 883
- restrictions on judge hearing matter, 878

### Alberta Court of Queen's Bench

- administering single body of law, 887
- admiralty jurisdiction, 887
- appellate jurisdiction, 890
- beneficiary interest or charge in land, 888
- composition, 886
- costs where matter could have been brought in provincial court, 891
- justice of the peace, 887

- order for independent medical examination, 893
- paramountcy in family law proceedings, 892
- powers and privileges, 885
- superior court, 884
- supervisory authority, 889
- Surrogate Court, 894

### Alberta courts and judges

- council of judges of Court of Appeal, 30
- council of judges of Court of Queen's Bench, 31
- judge of provincial court, 32
- mandatory retirement age, 33

### Alberta Judicial Council, 54

### Alberta Provincial Court

- adjournments, 900
- appeal, 902
- Charter relief, 897
- civil claims, 912–918
  - debts and damages between married and separated couples, 913
  - jurisdiction, 912, 917
  - no inherent jurisdiction, 916
  - rules and law of equity, 916
  - service of claim outside Alberta, 918
  - summary judgment, 914
  - transfer to Queen's Bench, 915
- court of record, 895
- Criminal Division, 903
- damages, 889
- determination of whether matter subject to arbitration, 898

## COURTS

---

- Alberta Provincial Court (*cont'd*)
  - family matters, 905–911
    - appeal, 911
    - costs, 910
    - jurisdiction, 905
    - no parens patriae authority, 906
    - powers and orders, 908, 909
  - French language trial, 901
  - powers and duties, 896
  - young persons matters, 904
- authority of judicial decisions — rule of stare decisis**
  - affirmation by appellate court on equal division, 1081
  - binding on court of inferior rank, 1079
  - consent judgment, 1085
  - courts of co-ordinate authority, 1079
  - decision cannot bind as to findings of fact, 1074
  - decision which clarifies situation of conflicting decisions, 1078
  - dicta and their effect, 1114–1116
    - binding effect, 1114
    - court of last resort, 1115
    - definition, 1114
    - weight given to obiter, 1116
  - effect of decisions in the United States, 1095
  - effect of decisions of courts or judges of co-ordinate jurisdiction, 1096–1100
    - comity, 1096
    - counsel fees in class actions, 1098
    - interpretation of federal statute, 1100
    - point not argued in other province, 1099
    - provincial court of appeal, 1097
  - effect of English decisions, 1091–1094
    - Australian courts, 1094
    - Court of Appeal, 1091
    - English tax decisions, 1093
    - House of Lords, 1092
  - effect of previous decision of same court, 1101–1113
    - court of appeal bound to follow its previous decision, 1109
    - decision regarding governing rules, 1102
    - decisions of Master in British Columbia, 1105
    - departure from previous decisions, 1107
    - factual findings, 1104
    - Immigration Appeal Decision bound by Federal Court, 1113
    - incremental change to common law, 1108
    - judicial comity, 1101
    - judgment contrary to that of another judge of same court, 1103
    - point of law of first instance, 1110
    - question of law affecting property rights, 1106
    - reconsideration of decision of Federal Court of Appeal, 1112
    - trial de novo, 1111
  - effect of Supreme Court of Canada decisions, 1086–1090
    - departure from own precedents, 1088

## INDEX

---

- authority of judicial decisions —
- rule of stare decisis (*cont'd*)
  - law in Canada binding on all lower courts, 1086
  - leave to appeal, 1089
  - obiter comments of court of appeal, 1087
  - obiter opinions, 1086
  - superior court deferring judgment where judgment reserved, 1090
  - full faith and credit in other provinces, 1084
  - incremental changes to common law, 1071
  - memorandum of judgment, 1083
  - principle disclosed, 1076
  - reserved judgments, 1083
  - strict adherence to rule, 1073
  - technical rule consistent with commercial reality, 1072
  - unreported decisions where no reasons given, 1082
  - use of precedents for propositions of law, 1075
  - want of jurisdiction not cured by instances of exercise, 1077
  - where not applicable, 1073
- British Columbia Court of Appeal**
  - appeal from discretionary order, 933
  - bench warrant/estreating bail, 931
  - composition, 922
  - effective date of judgments in criminal matters, 936
  - findings of fact, 925, 926
  - inferences of fact, 920
  - jurisdiction, 919
  - leave to appeal, 932
  - mootness, 924
  - order by single justice, 921
  - orders, 920
  - quorum, 922
  - rules, 939
  - security for costs, 935
  - stay of proceedings, 934
  - taking a view, 929
  - vexatious litigant, 930
  - view of dissenting judge on cross-appeal, 937
  - want of prosecution, 923
- British Columbia courts and judges**
  - mandatory retirement age, 35
  - rules governing conduct of proceedings, 34
- British Columbia Judicial Council**, 55
- British Columbia Provincial Court**
  - appeal in Small Claims matter, 967
  - court of record, 962
  - family law matters, 964
  - intervenor status in criminal trial, 970
  - jurisdiction, 962, 963
  - rules, 969
  - security for costs, 968
  - Small Claims Act, 965
  - transfer, 966
- British Columbia Supreme Court**
  - composition, 942
  - costs on application challenging jurisdiction, 948
  - costs where matter within jurisdiction of Small Claims, 960

## COURTS

---

### British Columbia Supreme Court (*cont'd*)

- enjoining picketing, 947
- inherent jurisdiction, 944
- inherent jurisdiction to prevent injustice, 943
- jurisdiction, 940
- lands in possession of federal Crown, 951
- practice and procedure, 945, 956
- stay of proceedings, 952
- test for jurisdiction, 941
- transfer of proceedings, 953, 957–959
- transitory action, 950
- vexatious litigant, 946

### Canadian Judicial Council

- advice and guidelines, 51
- apprehension of bias, 53
- Canadian Human Rights Commission, 50
- complaint investigation, 43
- composition, 40
- deference to provincial judicial councils, 48
- inquiry as to removal from office, 42
- integrity of judicial function, 47
- objects, 41
- paid leave of absence/annuity, 46
- powers of removal by Parliament, Cabinet, 52
- public or private inquiry/investigation, 44
- reporting of conclusions, 45
- rights of complainant, 49

### comity of courts, 277

### co-ordinate jurisdictions

- election to proceed, 271
- interference with order, 270
- overlapping jurisdictions, 272

### courts and administrative tribunals

- Commissioner appointed under authority of Competition Act, Inquiries Act, 15
- evidence and prejudice, 12
- guided by own ideas of policy and expediency, 11
- review by court of jurisdiction, 14
- tribunal exercising judicial function, 13

### courts and judges

- board having powers of court of record, 9
- court, 1
- court of record, 7, 8
- courts martial, 2
- judge, justice and court, 10
- judicial review, 6
- power conferred on administrative body of judicial nature, 4
- provincial conferring of judicial powers, 3
- transfer of jurisdiction to inferior court, 5

### courts of appeal (concurrent findings by two courts), 386, 387

### courts of appeal (credibility of witnesses — findings)

- appellate intervention limited, 357
- considering whole of evidence, 364
- demeanor, 365

## INDEX

---

- courts of appeal (credibility of witnesses — findings) (*cont'd*)
  - finding based on all elements by which it can be tested, 366
  - findings of jury, 358
  - weighing of evidence, 360
- courts of appeal (discretionary decisions)**
  - all aspects not argued adequately, 381
  - discretion of trial judge on appeal from master, 384
  - dismissing appeal for want of prosecution, 385
  - remitting matter, 382
  - test for appellate intervention, 380
- courts of appeal (interference with damages)**
  - increasing damages, 413
  - test for reducing damages, 410
  - verdict of majority of jury, 411
- courts of appeal (introducing new points and fresh evidence on appeal)**
  - affidavit on application to admit further evidence, 402
  - defence of qualified privilege, 397
  - discovery of new witnesses, 401
  - evidence on fitness of juror, 405
  - evidence on matter occurring after date of decision, 403
  - failure to object to charge to jury, 393, 406
  - illegality first raised on appeal, 399
  - new evidence for purpose of re-opening decided appeal, 400
  - point not taken at trial, 389
  - recasting of case by respondent, 394
  - rules of court, 409
  - test for fresh evidence, 390
  - where point taken for first time may be considered, 391, 392
- courts of appeal (jurisdiction)**
  - appeal under Criminal Code, 279
  - application for revision of reasons, 297
  - benefits taken under judgment, 313, 314
  - consent judgment, 310
  - converting appeal into class action, 291
  - determining inferences from accepted evidence, 290
  - duty to correct errors, 283
  - ex parte orders, 311
  - effect of filing notice of appeal, 281
  - interlocutory order in criminal proceedings, 280
  - judgment as ought to have been given in original hearing, 284
  - leave to appeal, 319
  - legal answer on differing views of facts, 315
  - mere oversight in judgment, 296
  - mootness, 300–309
  - questioning jurisdiction of appellate court, 287
  - severance, 299
  - statutory, 278
  - substantive right of appeal, 282
  - technical objection, 298
  - value of subject matter in dispute, 289

## COURTS

---

### **courts of appeal (jurisdiction to grant a new trial)**

- accused repudiating jurisdiction of court, 321
- appeal from non-suit, 325, 326
- decision of substantive question, 327
- directing that judgment be entered, 323
- judgment which facts proven at trial demands, 324
- order limiting scope of new trial, 330
- quashing appeal, 320
- re-opening of appeal, 322

### **courts of appeal (jury findings)**

- appeal of trial by judge without jury, 367
- court should not substitute its findings, 373
- findings must receive fair interpretation, 379
- findings not in accordance with principle of law, 371
- giving effect to answers of jury, 378
- jury trial, 368
- no reasonable or honest jury could have made findings, 374
- perverse verdict, 376–378
- sufficient evidence to support findings, 369
- verdict against weight of evidence, 372

### **courts of appeal (reversal of findings of fact)**

- appeal from refusal of trial judge to reverse/vary order, 340
- apportionment in negligence cases, 345
- conflicts in testimony, 342

- court must be convinced finding wrong, 332
- credibility, 350
- disputed facts, 333
- evidence upon which trial judge could find, 337
- judge alone, 343, 344
- misapprehension/failure to consider evidence, 339
- no finding of fact made on particular issues, 341
- no reasons for judgment given, 347
- test, 334

### **courts of appeal (second appeal after reversal), 388**

### **courts of appeal (undisputed facts — findings (inferences))**

- distinction between finding of fact and inference, 351
- inferences drawn from conflicting testimony of experts, 352
- jury trial, 355
- proper inferences to be drawn from accepted evidence, 353
- trial judge misunderstanding/overlooking evidence, 354
- trial judge not having found facts necessary for determination, 356

### **disqualification of judge because of bias**

- acting in judicial but not administrative/ministerial capacity, 180
- adjudication hearings of B.C. Labour Relations Board, 206
- appeal court inviting party to appeal sentence, 213
- appeal on issue of recusal, 215

## INDEX

---

- disqualification of judge because of bias (*cont'd*)
    - Charter rights to hearing before impartial tribunal, 179
    - conduct of proceedings, 202
    - conduct of Small Claims Court proceedings, 204
    - conflict of interest of law firm, 187
    - connection with counsel or other judges who have tried case, 181
    - court trying several accused on charges arising from same incident, 199
    - determination of question of law in pre-jury proceedings, 194
    - disqualification of single member of three member panel, 207
    - expression of opinion by appellate judges in unrelated appeal, 189
    - giving of advice to participant, 183
    - hearing of prior matters, 193
    - intervention in child welfare proceedings, 205
    - involvement in prior proceedings with same litigation, 191
    - judge previously Crown prosecutor, 190
    - judicial officer appearing on behalf of party, 201
    - justice of S.C.C. recusing self, 182
    - objection within reasonable time, 208
    - obligation to recuse, 209
    - onus of proof, 185
    - opinion of appellate judges when practicing lawyers, 192
    - party having lost motion/action, 195
    - practice in Alberta, 196
    - presiding in cases involving similar issues, 188
    - presiding judge raising issue, 186
    - previous representation of/acquaintance with, 184
    - prior judicial involvement with related proceedings, 198
    - questioning of witnesses by judge, 203
    - remitting case for re-hearing to same judge, 197
    - subjective presence and objective demonstration, 211
    - test for reasonable apprehension of bias, 178
- Federal Court (constitution)**
- appointment of judges, 705
  - barrister, advocates, attorneys, solicitors, 709
  - composition of Federal Court, 704
  - composition of Federal Court of Appeal, 703
  - court sittings, 710
  - deputy judges, 707
  - prothonotaries, 708
  - quorum in Federal Court of Appeal, 711
  - residence, 706
  - superior court of record, 702
- Federal Court (jurisdiction)**
- appeal from prothonotary on discretionary matter, 837
  - appeals under Citizenship Act, 790

## COURTS

---

### Federal Court

(jurisdiction) (*cont'd*)

- cause of action in contract/tort sufficiently supported by federal law, 730
- Charter issues and relief pursuant to section 24, 735, 739
- claim against federal Crown corporations, 734
- claim for damage under Crown Liability and Proceedings Act, 719
- claim for damages against member of RCMP, 738
- claim of federal Crown arising from contractual obligation, 825
- concurrent jurisdiction over constitutional issues in immigration matters, 764
- concurrent original jurisdiction where relief claimed against federal Crown, 714
- contract by federal Crown not pursuant to general federal legislation, 731
- contract entered into on behalf of federal Crown, 717
- declaratory relief, 775
- declaratory relief re federal Crown, 727
- de novo review where prothonotary fails to give reasons, 833
- determination of controversies between Canada and provinces, 783
- dispute where federal Crown may be under obligation, 721
- exclusive original jurisdiction, 720, 741
- exhaustion of alternative remedial process, 782
- existing valid federal law, 729
- express statutory right of appeal, 781
- federal board, commission or other tribunal, 742
  - body exercising powers conferred by agreement, 760
  - Canada Post Corporation, 759
  - Canadian Judicial Council, 778
  - CBC and other Canadian television networks, 753
  - Commission of inquiry, 755
  - consisting of one person, 743
  - corporation established by provincial law, 754
  - department of Public Service re reinstatement of federal civil servant, 772
  - director of CBCA corporation, 751
  - director of federal penitentiary, 758
  - electoral officer who supervises election of band councilors, 757
  - federal Crown, 744
  - federal government ministry exercising powers under federal Crown's prerogative powers, 749
  - governor in council, 745
  - Indian band and chief, 757
  - Indian band council member, 757
  - judge of Federal Court, 746
  - Minister of National Revenue, 748
  - Superintendent of Bankruptcy, 750
  - Supreme Court of Canada, 747
- federal Crown or A.G. of Canada claims relief, 722



## INDEX

---

### Federal Court

(jurisdiction) (*cont'd*)

- filing and entering written decision, 830
- inherent jurisdiction of provincial superior court to declare federal statute ultra vires, 763
- injurious affection as against federal Crown, 718
- intellectual property, 785
  - Anton Piller order, 787
  - damages as civil remedy in trademark proceedings, 788
  - ownership of patents based on series of contracts, 786
  - separate claims in trademark infringement proceedings, 789
- joinder of third parties, 829
- judicial review, 766, 769–771
- judicial review to proceed as action, 780
- land, goods or money of any person in possession of federal Crown, 716
- maritime law, 791–793, 797–824
- multiple defendants, 715
- notice of tax assessment registered with court, 832
- objection taken to jurisdiction, 737
- ousting of jurisdiction of provincial superior court, 765, 794
- panel determination under Crown Liability and Proceedings Act, 831
- performance of duties of officers or agents of federal Crown, 723
- prerogative remedies, 767
  - prothonotary, 834–836
  - provincial law to be applied, 736
  - referral to of question of law, jurisdiction or practice by federal board, 776, 777, 779
  - same cause of action being taken in two courts, 726
  - setting aside portion of award, 784
  - statutory court without inherent jurisdiction, 713
  - stay of application by provincial court in relation to constitutionality of federal legislation, 724
  - stay of proceedings, 725
  - superior court of province not subject to superintending powers, 828
  - tort claim against individual band council member, 733
  - tortious conduct of judges, 728
  - vicarious liability for employee of federal Crown, 732

### Federal Court of Appeal (jurisdiction)

- appeal from decision of CRTC, 844
- appeal of Minister's decision under Customs Act, 846
- appeals, 838
- appeals against judgment, not reasons, 839
- application for judicial review, 841
- decision not made in exercise of power conferred under federal Act, 852
- decisions of Commissioner of RCMP, 849
- determination of Canadian ownership rate, 845

## COURTS

---

### Federal Court of Appeal (jurisdiction) (*cont'd*)

- overriding right of appeal, 840
- reference by board of question of law, jurisdiction or practice, 850
- requirements for extraordinary remedies, judicial review and references, 842
- vexatious proceedings, 851

### Federal Court of Canada

- Chief Administrator, 25
- Chief Justice, 26
- Courts Administration Service, 25
- hold office during good behaviour, 27
- officers, clerks and employees of Service, 26
- retirement age, 28
- rules committee, 29

### Judicial Committee of the Privy Council

- abolished, 414
- final versions of reported decisions, 415

### judicial independence

- Alberta Judicial Compensation Commission, 70
- allowances for professional development, 68
- alteration of rules of civil procedure, 74
- application of pension statute, 68
- autonomy to hear and decide cases, 73
- costs of litigation to preserve, 64
- court reporting suspected tax evasion, 71

- damages for legislation affecting independence, 65
- essential conditions for purposes of Charter, 60
- financial security, 63
- judicial immunity, 76
- justice of the peace, 69
- recommendations of judicial compensation body, 66
- security of tenure, 61
- security of tenure of provincial court judges, 72
- test for appearance of judicial independence, 62

### jurisdiction during war, 217

### jurisdiction in cases containing foreign element

- agreement for sale of land outside jurisdiction, 227
- attorning to jurisdiction, 236
- claim involving foreign element, 235
- Crown immunity, 233
- Crown prerogative, 221
- federal Crown, 222
- foreclosure, 226
- legal obligation arising from a tort, 231
- *mareva* injunction and assets not within jurisdiction, 230
- order for examination of defendant outside province, 220
- party personally served within jurisdiction, 219
- restraining person from proceeding in foreign court, 225
- right, title or interest in land situated outside province, 228
- Saskatchewan, 240
- securities issued by federal companies, 224

## INDEX

---

- jurisdiction in cases containing foreign element (*cont'd*)
- territorial competence — British Columbia, 237
  - territorial jurisdiction, 218
  - transfer of proceedings — British Columbia, 238
  - transitory cause of action, 223
- jurisdiction of courts**
- binding judicial dispute resolution, 106
  - cases on their merits, 81
  - Charter does not apply to court orders, 120
  - Charter remedies, 116
  - conferring of jurisdiction by legislative authority, 84
  - contractual provision, 104
  - decision on jurisdiction to hear case, 95
  - declaratory judgments — Alberta, 109
  - declaratory relief, 107, 108
  - determination of specific matters in exclusive jurisdiction of inferior tribunal, 89
  - distinction between procedure and jurisdiction, 96
  - English or French language arguments, 124
  - exercise of jurisdiction as to costs, 117
  - extension of time — Saskatchewan, 123
  - failure to raise objection to authority, 92
  - hypothetical case, 110
  - informal motion challenging admissibility of evidence, 119
  - inherent jurisdiction, 98, 99
  - judicial or quasi-judicial powers given to judge or officer of court — Saskatchewan, 122
  - jurisdiction conferred by arrangement between parties, 103
  - jurisdiction not conferred by consent, 97
  - jurisdiction of the person, 110
  - latent and patent want of jurisdiction, 114
  - limited jurisdiction, 110
  - no jurisdiction in certain event, 88
  - not bound to give judgment agreed upon by counsel, 79
  - opportunity of hearing/being heard, 77
  - order as to court's own competency, 90
  - order by judge wholly without jurisdiction, 112
  - order that support be paid directly to child, 127
  - public statement by Chief Justice of British Columbia, 121
  - question of law, 101
  - raising jurisdiction at any stage of proceeding, 100
  - religious/spiritual matters, 83
  - requiring defence counsel to continue representation, 128
  - retaining jurisdiction where matter remitted, 118
  - standard of review correctness, 101
  - standing, 115
  - strict construction of statute conferring jurisdiction, 85
  - strict observance of law as to jurisdiction, 86
  - test of jurisdiction, 87

## COURTS

---

### jurisdiction of courts (*cont'd*)

- trial proceeding with improperly constituted jury, 102
- without tax support order, 126
- written submission of authorities after hearing, 78
- wrong legal result in case within jurisdiction, 113

### jurisdiction of inferior courts

- amount sued on, 267
- ascertaining jurisdiction, 268
- desist where prohibition/appeal pending, 264
- express direction, 262
- on face of the record, 263
- parties cannot confer jurisdiction, 269
- prohibition, 265

### jurisdiction of superior courts

- acting in capacity of persona designate, 252
- certiorari to review decision of judge of same court, 250
- costs on dismissal of application for lack of jurisdiction, 251
- criminal contempt, 253
- declaration that tribunal's legislation unconstitutional, 254
- declaring public records invalid, 261
- enforcement of Constitution Acts, 260
- master of its own practice, 246
- parens patriae, 255–258
- relief where constitutional validity of legislation at issue, 259
- restraining defendant from continuing proceedings in inferior court, 248
- review of warrant issued under Income Tax Act, 242

- statutory cause of action providing redress in inferior court, 245
- supervisory function re inferior courts and tribunals, 241
- taking away jurisdiction, 243

### jurisdiction over domestic forums

- exhaustion of rights, 274, 275
- internal management of company, 273

### jurisdiction over executive governments, 216

### jurisdiction to prevent abuse of process

- Charter of Rights, 166
- entrapment, 163
- inherent right of inquiry, 156
- new challenge on ground that could have been raised earlier, 165
- oppressive criminal prosecution, 160
- re-litigation, 158
- requiring litigation to obtain leave to file materials, 159
- setting aside writ of subpoena, 157
- systemic delay, 162
- unreasonable delay in criminal proceedings, 161
- workers' compensation, 164

### jurisdiction to vary orders

- altering of expressed opinion, 172
- conform to terms of decision, 167
- correct obvious error, 167
- judge in chambers, 170
- nunc pro tunc orders, 173

## INDEX

---

- jurisdiction to vary orders (*cont'd*)
- reconsideration of judgments, 175
  - reconsideration under Federal Court Rules, 176
  - rehearing order signed and completed, 171
  - sentencing circle, 174
  - set aside judgment in special circumstances, 168
  - superintend conduct of its officers, 169
  - Tax Court of Canada, 177
- jurisdiction when issues moot or hypothetical**
- advisory opinions, 133
  - Charter challenge to criminal provision in absence of adjudicative facts, 134
  - discretion to determine question of law where no dispute between parties, 129
  - discretion to hear motion where question recurring one, 131
  - hypothetical questions, 133
  - mootness, 130
- Manitoba Court of Appeal**
- appeal on issue of costs, 978
  - appeals in divorce, 980
  - appellate powers, 974
  - charge to jury in defamation action, 977
  - ex parte orders, 982
  - giving effect to equitable rights, duties, liabilities, 979
  - matters incidental to action, 973
  - new trial, 976
  - original jurisdiction, 972
  - rules, 984
  - stay of proceedings, 975
  - superior court of record, 971
  - vexatious litigant, 983
  - when no point of law raised, 981
- Manitoba Court of Queen's Bench**
- appointment of receiver, 993
  - declaratory relief, 989, 990
  - delivery of judgment after retirement, 998
  - independent examination of plaintiff, 994
  - jurisdiction of County Court, 987
  - jurisdiction of Family Division, 992
  - jurisdiction of Surrogate Court, 986
  - no appellate jurisdiction, 988
  - production of documents by person outside Manitoba, 996
  - prohibition, 995
  - public hearings, 991
  - rules committee, 999
  - superior court of record, 985
  - vexatious litigant, 997
- Manitoba Court of Queen's Bench — Small Claims**
- adjournment, 1003
  - appeal to Court of Queen's Bench, 1006
  - appeal with leave of Court of Appeal, 1007
  - default judgment, 1003
  - jurisdiction, 1001
  - rules of evidence, 1005
  - setting aside default judgment, 1008
  - third party notice, 1004
  - waiver of excess and contributory negligence, 1002

## COURTS

---

### **Manitoba courts and judges**

- amending/repeal of rules by Court of Appeal, 37
- disciplinary proceedings for conduct prior to appointment, 39
- judge of provincial court, 38
- rules committee, 36

### **Manitoba Judicial Council**

- composition/functions, 56
- judicial immunity, 57

### **Manitoba Provincial Court**

- accused not informed of change in place of hearing, 1016
- court of record, 1009
- divisions, 1010
- filing of maintenance orders, 1012
- reference to mediation, 1015
- rules, 1014
- transfer, 1013
- youth court, 1011

### **masters**

- appeals, 1146–1153
  - Alberta, 1146, 1147
  - appeal of award of costs on accounting, 1152
  - discretionary order, 1148, 1149
  - purely interlocutory matter, 1150
  - questions vital to final issue in case, 1151
- generally, 1117–1124
  - Alberta, 1117, 1118
  - British Columbia, 1119
  - Manitoba, 1120–1124
- jurisdiction of masters, 1125–1144
  - Alberta, 1125–1137

- British Columbia, 1138, 1139
- Manitoba, 1140–1144
- Referees and registrars, 1154–1159
  - Alberta, 1154
  - British Columbia, 1155–1157
  - Manitoba, 1158
  - Saskatchewan, 1159
- references to judges, 1145

### **necessity for publicity**

- ban of publication of names of witnesses, 153
- Charter rights to freedom of expression, 150
- Children’s Law Act — Saskatchewan, 155
- confidential information, 141
- confidentiality order, 154
- Criminal Code proceedings, 139
- criminal organizations or terrorism, 142
- exceptions to publicity of courts rule, 144
- fundamental principle, 135
- hallmark of judicial procedure, 136
- in camera hearing, 137, 138
- permitting jury to separate, 143
- public access to court exhibits, 151
- publication bans, 140, 145–148
- varying/vacating sealing order, 152
- witness testifying under pseudonym, 153

### **Provincial Court judges and Justices of the Peace**

- appointment and tenure of provincial judges and justices of the peace, 1161–1190
  - Alberta, 1163–1171

## INDEX

---

- Provincial Court judges and Justices of the Peace (*cont'd*)
  - appointment as judge, 1163
  - appointment as justice of the peace, 1167
  - complaints, 1169–1171
  - judicial council and judicial inquiry board, 1165, 1166
  - removal/retirement, 1164
  - termination of appointment of justice of the peace, 1168
  - appointment, 1161
  - British Columbia, 1172–1176
    - appointment of judges, 1172
    - appointment of justice of the peace, 1174
    - complaints, 1176
    - retirement of judge, 1173
    - retirement of justice of the peace, 1175
  - Manitoba, 1177–1179
    - appointment of judges, 1177
    - complaints, 1178
    - justice of the peace, 1179
  - removal, 1162
  - Saskatchewan, 1180–1190
    - complaints, 1182, 1183
    - judges, 1180
    - justice of the peace, 1185–1190
    - law society, 1184
    - retirement, 1181
  - disqualification of justice of the peace and provincial judges, 1191–1203
  - bias, 1193–1202
  - interrogating accused and witnesses, 1196
  - not prosecutor, 1193
  - order prohibiting trying of case, 1194
  - several trials involving same witnesses, 1202
  - pecuniary interest, 1191, 1192
  - prohibition, 1203
  - jurisdiction of justices of the peace and provincial judges, 1215–1249
    - absence of jurisdiction, 1234–1237
    - interpretation of statutes, 1234
    - jurisdiction under statutes other than Criminal Code, 1236
    - offence committed in another province, 1237
  - adjournments, 1233
  - excess of jurisdiction and errors, 1228–1232
    - functus officio, 1230
    - reliance on memory as to previous conviction/sentence, 1229
    - violation of principle of fundamental justice, 1228
  - general, 1215–1227
    - appearance to impugn validity of information, 1217
    - British Columbia, 1225
    - Charter, 1219
    - Chief Judge, 1223
    - Justice retiring/resigning after commencement of hearing, 1227
    - Manitoba, 1225
    - non-presiding justice of the peace, 1222

## COURTS

---

- Provincial Court judges and Justices of the Peace (*cont'd*)
- on face of proceedings, 1216
  - powers exercised by single justice of the peace — Alberta, 1220
  - preliminary inquiry, 1221
  - provincial statutes, 1218
  - rule for jurisdiction, 1215
  - Saskatchewan, 1227
  - jurisdiction to bind over to keep the peace, 1248
  - jurisdiction under federal law, 1238
  - one justice doing ministerial acts after hearing by two or more justices, 1247
  - territorial jurisdiction, 1239–1246
    - election to be tried summarily, 1246
    - indictable offences, 1243
    - issuing or backing search warrant, 1245
    - judicial notice, 1239, 1240
    - limits within which justice entitled to act, 1241
    - presence of accused, 1244
    - province wide jurisdiction, 1242
  - trials under special provisions, 1249
  - justice, 1160
  - liability for official acts, 1250–1260
    - Alberta, 1251
    - British Columbia, 1252
    - error of judgment, 1257
    - malicious abuse of legal process, 1260
    - Manitoba, 1253, 1254
    - official acts in excess of authority, 1259
    - quashing order, conviction or other proceeding, 1250
    - Saskatchewan, 1255, 1256
    - words spoken in office, 1258
  - powers and duties, 1204–1214
    - conduct of trial, 1204, 1205
    - under Criminal Code, 1206–1214
      - invalidity of search warrant, 1210
      - issuing search warrant, 1208
      - preserving order in court, 1206
      - production of documents/financial information, 1209
      - search warrant to obtain documents for trial in another province, 1211
      - service of summons, 1213
      - summary conviction appeal, 1214
      - summary conviction procedure, 1207
      - summons or warrant, 1212
- references to courts by executive government**
- advisory, 1068
  - court not engaged in disposition of rights, 1070
  - dealing only with questions expressly referred, 1067
  - interpretation of provincial statute before it is proclaimed, 1069
  - not binding, 1066
- Saskatchewan Court of Appeal**
- allowing appeal on point not raised, 1026



## INDEX

---

### Saskatchewan Court of

#### Appeal (*cont'd*)

- appeal on question of costs alone, 1029
- application for leave to appeal, 1021
- assessment of damages, 1031
- certiorari, 1033
- composition, 1018
- costs of appeal, 1030
- credibility, 1024
- further evidence, 1027
- jurisdiction, 1017
- motion incidental to matter, 1020
- quantum of counsel fees, 1032
- quorum, 1019
- rules of practice, 1034
- standard of appellate review of questions of fact, 1022, 1023
- varying judgment, 1025

### Saskatchewan Court of Queen's Bench

- altering order of costs, 1045
- appeal, 1043
- certiorari, 1038
- declaratory judgment, 1039
- decree of nullity of marriage, 1041
- Family Law Division, 1036
- inherent jurisdiction, 1046
- inquiry into accounts of executor, 1042
- jurisdiction, 1035
- rules of practice, 1047
- stay pending appeal, 1044
- supervisory jurisdiction, 1037

### Saskatchewan Judicial Council

- composition, 58
- functions, 59

### Saskatchewan Provincial Court

- court of record, 1048
- each judge of Queen's Bench also coroner, justice of the peace and provincial court judge, 1050
- jurisdiction and powers, 1049

### Saskatchewan Small Claims

- absence of plaintiff, 1058
- aggravated damages, 1055
- appeal, 1060, 1061
- application of Small Claims Act, 1051, 1054
- conduct of proceedings, 1056, 1057
- disputes between insured and insurers, 1053, 1065
- exemplary damages, 1055
- extension of time for appeal, 1059
- mediation, 1062
- res judicata, 1063
- statutory jurisdiction, 1052
- transfer, 1063

### Supreme Court of Canada (administrative matters)

- assessors in admiralty appeals, 443
- barristers, advocates, attorneys, solicitors and self-representation, 438–442
- court, 421–434
  - authority to make rules and orders, 429–434
  - constitution, 421
  - quorum, 423–425
  - sessions and appeal list, 426–428
  - tenure, 422
- interveners, 444–446
- registrar, 435, 436

## COURTS

---

Supreme Court of Canada (administrative matters) (*cont'd*)

- sheriffs, 437

### **Supreme Court of Canada (appeals from judgments in criminal causes)**

- contempt of court, 640
- criminal defined, 635
- criminal charge defined, 634
- habeus corpus, 636–638
- limitations, 633
- preventive detention, 641
- prohibition, 639
- provincial highway traffic statute, 642

### **Supreme Court of Canada (appeals not requiring leave)**

- appeals from references by lieutenant governor in council of a province, 621, 622
- intergovernmental disputes, 623
- time period for appeal, 624

### **Supreme Court of Canada (appellate jurisdiction)**

- appeals requiring leave, 547–620
  - appeals per saltum, with leave of S.C.C., 562–564
  - appeals with leave of Federal Court of Appeal, 561
  - appeals with leave of provincial court, 547–560
  - appeals with leave of Supreme Court, 565–601
  - effect of allowing leave to appeal by Supreme Court, 616, 617
  - extending or abridging time for leave to appeal and for appeal, 607–615

- in forma pauperis — appeals, defence or intervention, 618–620
- time periods applicable to applications for leave to appeal and subsequent appeal, 602–606
- general, 539–546
  - action begun prior to enactment creating right of appeal, 541
  - any other Act conferring jurisdiction, 540
  - contention trial judge lacked jurisdiction, 545
  - motion for order quashing appeal, 546
  - power to decide jurisdiction, 542
  - reconsideration of decision refusing leave, 543
  - right of appeal not clear, 544
  - Supreme Court Act, 539

### **Supreme Court of Canada (costs, terms and conditions, judgment interest)**

- costs, 493–502
  - costs adjudged to Crown, 499
  - costs at all levels, 493
  - costs by solicitor, 496
  - costs by successful party, 496
  - costs to successful party, 496
  - criminal cases, 496
  - divided success, 496
  - enforcement, 497
  - interference with discretion of provincial courts, 494
  - intermediary, 500
  - objection to taxation, 502
  - taxation, 498
  - where question of costs fairly raised, 495

Supreme Court of Canada (costs, terms and conditions, judgment interest) (*cont'd*)

- written material not complying with rules, 501
- delivery of judgments and certificate of judgment, 507–510
- delivery in open court, 507
- effective date, 509
- motion to amend, 510
- signed by judge and sealed, 508
- judgment interest, 504–506
- terms and conditions, 503

**Supreme Court of Canada (death of parties), 535–538**

**Supreme Court of Canada (general)**

- hold office during good behaviour, 21
- retired judge continuing to participate in judgment, 23
- retirement age, 22
- rules concerning practice and procedure, 24

**Supreme Court of Canada (judgments)**

- amendments, 454
- consent to reversal of judgment, 455
- discontinuance, 456
- dismissal for delay, 448
- motion for dismissal, 449, 450
- motions to quash, 452
- order for new trial, 451
- remand, 451
- vexatious proceedings, 453

**Supreme Court of Canada (matters relating to bringing an appeal)**

- constitutional issues in an appeal, 663–667
- deposit of security, 643–655
- rehearing of an appeal and leave to appeal, 668–672
- stated case on appeal, 656–662

**Supreme Court of Canada (meaning of terms in Supreme Court Act)**

- criminal cause, 700, 701
- final judgment, 681–697
- highest court of final resort, 699
- judicial proceeding, 698

**Supreme Court of Canada (nature and functions)**

- jurisdiction, 416
- jurisdiction purely statutory, 418
- right of provinces to restrict or add to jurisdiction, 419
- superintending role, 417

**Supreme Court of Canada (principles followed)**

- appeals on questions of fact, 465–476
  - conclusion reached absolutely wrong, 472
  - concurrent findings, 474–476
  - interference, 465
  - jury findings, 468–470
  - no sufficient reasons by appellate court for reversal, 473
  - where imputation of fraud unjustified, 467
- appeals relating to practice and procedure, 477
- declining to hear appeal, 459
- full rehearing, 457

## COURTS

---

### Supreme Court of Canada (principles followed) (*cont'd*)

- interference with damages, 488–491
  - amount, 488, 489
  - increase in damages, 490
- judgment which court below ought to have given, 458
- mootness, 460
- motion to quash, 459
- quash for want of jurisdiction, 461
- raising new or abandoned points on appeal, 478–487
  - discovery of new evidence, 481, 482
  - entitlement to argue point of law not previously raised, 480
  - objection waived in court appealed from, 486
  - question not presented below, 478
- remand to appellate or trial court, 463
- remit to appellate court for correction, 462
- technical grounds of appeal, 492

### Supreme Court of Canada (prohibition of appeals from discretionary judgments and orders)

- contempt of court, 630
- granting leave to amend pleadings, 628
- order denying claim of statutory right, 629
- order made in exercise of judicial discretion, 625
- order made on motion for special judgment, 627

- order rejecting application to set aside default judgment, 628
- ordering costs against intervenor, 628
- reversal of verdict because of unsatisfactory nature of trial, 631
- specific performance, 626

### Supreme Court of Canada (reference jurisdiction)

- references by Governor in Council, 673–679
  - constitutional validity of provincial Act, 676
  - duty to answer each question, 673
  - notice of hearing to interested persons, 677
  - qualified answers, 679
  - question involving opinion as to disposition of case decided by court of appeal, 675
  - receipt of original jurisdiction, 674
  - refusal to answer questions, 679
  - request of counsel to argue on behalf of interest, 678
  - scope of referrals, 673
- references by Senate or House of Commons, 680

### Supreme Court of Canada (statutory matters of evidence)

- certiorari, 521
- Commissioner of Oaths, 511–514
- examination by interrogatories or Commission, 515–520

### Supreme Court of Canada (stay of execution)

- exceptions, 527–530
- general rules, 522–526

## INDEX

---

- Supreme Court of Canada (stay of execution) (*cont'd*)
- after judgment, 522
  - after leave to appeal has been granted, 524–526
  - before leave to appeal is granted, 523
  - on appeal from Court of Appeal, 531, 532
  - sheriff's levy and poundage, 533, 534
- Tax Court of Canada**
- appeal in respect of general procedure, 864
  - barrister, advocate, attorney or solicitor, 863
  - composition, 854
  - contempt of court, 861
  - court of record, 853
  - election of appeal procedure in Tax Court of Canada Act, 869, 870
  - exclusive original jurisdiction, 857–860
  - general procedure, 871, 872
  - in camera proceedings, 862
  - informal procedure, 865, 866
  - removal/retirement of judge, 855
  - residence, 856
  - review of judgment under informal procedure, 867, 868

## Index to Criminal Law — Defences

(All references are to paragraph numbers.)

### **abandoned/lost property**

- abandoned goods, 466–468
- general, 465
- lost goods, 469, 470
- proof of ownership, 464

### **absolute liability, 10, *see also* corporations; mens rea; provincial offences; strict liability**

### **abuse of process, *see also* procedural defences; entrapment**

- application for stay, timing of, 282
- breach of police/Crown undertaking, 283, 284
- burden of proof, 280, 281
- civil debt, collection via criminal proceedings, 285
- delay as, 286
- jurisdiction of court, 279
- nature of, 276–278
- patent unfairness, 287
- perjury proceedings, attempt to re-litigate via, 288
- provincial offences, 438
- re-laid information/charges, 289, 290
- stay of proceedings, improper use of, 290

### **accident, *see also* excuses**

- complete defence, as, 146, 147
- definition, 144
- duty of trial judge, 150
- homicide/manslaughter/negligence, 147–150
- nature of defence, 145

### **act of God, 439–441, *see also* provincial offences**

### **actus reus, *see also* mens rea**

- definition, 2
- involuntary acts, 3
- necessity for, 1
- reflex action, 3, 473

### **age of offender, *see* immunity**

### **alibi**

- abandonment of defence, effect of, 381
- appeals, 377
- burden of proof, 379
- complete defence, as, 15
- definition, 365
- disbelief of, effect, 379, 380
- evidence, 374–378
- falsity of, proven, 380
- nature of, 366
- necessary information, 368
- parties, 425
- raising/disclosure of, 367–369
- rebuttal of, 382
- right to silence, effect of, 373, 375–377
- time for raising, 370–373

### **attempt offences**

- impossibility, 399–401
- intoxication, 207, 402
- mere preparation, 403, 404
- parties, abandonment, 424

### **automatism, *see also* excuses; intoxication; mental disorder**

- burden of proof, 153, 155
- causes of, 164
- definition, 151

- automatism (*cont'd*)
- internal cause approach, 159–161
  - intoxication and, 163, 213
  - mental disorder and, 106, 153, 156–162
  - nature of defence, 152
  - questions of law/fact, 154–156
  - transient disturbance due to external factor, 159
  - voluntariness, 151, 152, 157
- autrefois acquit/convict**, *see also* **res judicata; multiple convictions (rule against); issue estoppel; inconsistent verdicts**
- foreign proceedings, effect of, 332, 333
  - onus on accused, 324
  - pleading of, 37, 320–323
  - quashed indictment/information, effect of, 328
  - test for, 325–327
  - trial of special plea, 324–327
  - withdrawn information, 329–331
- burden of proof**, *see also* **essential elements; specific defences, e.g., intoxication**
- Crown, on, 23–25
  - defence, on, 26–30
  - general, 22
  - persuasive vs. evidential, 22–30
  - public welfare offence, 30
  - rebuttable presumptions, 27
- categories of offences**, *see* **absolute liability; mens rea; provincial offences; strict liability**
- Charter of Rights**, *see also* **abuse of process; procedural defences**
- corporations, 412
  - exclusion of evidence, 293–298
  - general, 291
  - legal rights, 295–298
  - reasonable limits on rights and freedoms, 299
  - remedies under, 292–294
  - right to make full answer/defence, 33
  - striking down legislation, 300
- children**, *see* **immunity; protection of persons in authority**
- chronic fatigue syndrome**, 471
- colour of right**, *see also* **excuses; lack of fraudulent intent**
- burden of proof, 168
  - definition, 165
  - mistake of fact, as, 165, 170, 232
  - mistake of law, as, 165, 169
  - nature of defence, 166
  - offences for which defence available, 167
  - reasonableness of belief, 171
- common law defences**, 16–18
- competence/compellability**, *see* **conjugal unity; immunity**
- complete defences**, 15
- conjugal unity**, *see also* **exemptions**
- competence/compellability, 46–54
  - conspiracy between spouses, 45
  - general rule, 44

- consent**
- AIDS/HIV, 386
  - assault, 383, 387–389
  - burden of proof, 386, 398
  - common law, 383–386
  - consent to be put to death, 397
  - fights, 387–389
  - fraud in obtaining, 384, 385
  - mistake, effect of, 392–394
  - serious bodily harm, 383
  - sexual assault/relations, 384–386, 393–396
  - sports, 390, 391
  - statutory exclusion of defence, 395–397
- consent to prosecution, absence of, *see also* procedural defences**
- federal attorney general, 311
  - need for consent, 312, 313
  - proof of consent, 315
  - provincial attorney general, 310
  - sufficiency of consent, 314
- conspiracy**, 316, 317, 355, 401, 424, 472, *see also* **conjugal unity**
- consular officers/employees**, 64, 65, *see also* **immunity**
- corporations**
- absolute/strict liability offences, 405
  - Charter rights, 412
  - due diligence, 405
  - mens rea offences (defences to), 408–411
  - mens rea offences (general), 406, 407
  - negligence, 406, 408, 409
- “criminal law”**, 480, 481
- Crown**, *see* **immunity; burden of proof; provincial offences**
- date/time of offence**, 462, 463
- de minimis non curat lex**
- application of, 56
  - definition, 55
  - drug offences, 416
  - provincial offences, 443
- defamatory libel**, 37
- “defence”**, 14
- defence of others, *see* self-defence/defence of others**
- defence of property, *see also* colour of right; justifications**
- enforcement of law, 115
  - personal property, claim of right, 114
  - personal property, defence of, 112
  - real property, defence of, 113
  - “justifiable force”, 111
  - retreat, when required, 116
- delusions, *see* mental disorder**
- detentions**, 297, 298
- diplomatic agents**, 66–68, *see also* **immunity**
- disease of the mind, *see* mental disorder**
- distress**, 253, 254, *see also* **necessity**
- double intent, *see* mens rea**
- double jeopardy, *see* res judicata; autrefois acquit/convict**
- drug offences, *see also* intoxication**
- agent for purchaser, 413–415
  - de minimis non curat lex, 416



- drug offences (*cont'd*)
- entrapment, 417
  - licence, 418
  - possession for innocent purpose, 419
- due diligence/reasonable care**, *see* **strict liability; mistake of fact**
- duress**, *see also* **excuses; necessity**
- aiders/abettors/participants, 182
  - burden of proof, 186
  - common law defence, 173, 175–182
  - complete defence, as, 15
  - immediacy of threat, 177, 183
  - nature of defence, 173, 174
  - necessity, comparison to, 176
  - obligation to retreat, 184
  - opportunity to evade threat, 176, 180, 183, 184
  - parties to offences, 427
  - presence of spouse, 185
  - presence of threatening party, 178, 183
  - statutory defence, 173, 183
  - threats against third parties, 179
  - unavailability of defence, 175, 181, 183
- duty of judge to submit defence to jury**, 20
- elements of offences**, *see* **essential elements**
- entrapment**, *see also* **procedural defences; abuse of process**
- abuse of process, as, 303
  - appeal court, role of, 303
  - burden of proof, 306
  - definition, 301, 302
  - drug offences, 417
  - nature of defence, 303
  - procedure for raising, 304–307
  - random virtue testing, 308, 309
  - remedy for, 301, 307
- essential elements**, *see also* **territorial jurisdiction**
- burden of proof, 25, 450
  - date/time of offence, 462, 463
  - general, 450
  - identification of accused, 451–453
  - ownership of property, 464
  - territorial jurisdiction, 454–461
- estoppel**, *see* **issue estoppel; res judicata**
- evidence**, *see* **burden of proof**
- excessive force**, *see* **specific defences, e.g., protection of persons administering/enforcing law**
- excuses**, *see also* **accident; automatism; colour of right; duress; exemptions; intoxication; justification; lack of fraudulent intent; mistake of fact; mistake of law; necessity; prank; procedural defences; provocation; specific defences, e.g. alibi; statutory authority**
- differentiation from justification, 19
  - general, 16
- exemptions**, *see* **conjugal unity; de minimis non curat lex; excuses; immunity; justifications; mental disorder; procedural defences; specific defences, e.g. alibi**
- failure to raise possible defence**, 20
- false memory syndrome**, 475

## INDEX

---

- foreseeability**, 6
- fraud**, *see* **chronic fatigue syndrome; colour of right; lack of fraudulent intent**
- general defences**, 15
- homicide**, *see also* **accident; provocation**
- intoxication, 211, 212, 422
  - mental disorder, 422
  - planned and deliberate, 420–423
  - provocation, 258, 259, 422, 423
  - suicide pacts, 474
- homosexual panic**, 476
- identification of accused**, 451–453
- immunity**, *see also* **exemptions**
- children, 57, 58
  - compellability as witnesses, 60, 64–66, 79
  - Crown (attorneys/judges), 62, 63
  - Crown (general), 59–61, 442
  - internationally protected persons, 64–76
  - military personnel, 81, 82
  - parliamentary/legislative, 77–80
- impossibility**, 399–401
- inconsistent verdicts**, *see also* **res judicata; autrefois acquit/convict; multiple convictions (rule against); issue estoppel**
- conspiracy verdicts, 355
  - general, 354
  - onus on defence, 354, 357
  - parties, 356
- indictable offences**, 11, 12, *see also* **summary offences**
- insanity**, *see* **mental disorder**
- intent**, *see* **intoxication; mental disorder; mens rea**
- international organization representatives**, 69–71, *see also* **immunity**
- inter-spousal communications**, *see* **conjugal unity**
- intoxication**, *see also* **automatism; excuses; mental disorder**
- attempted offences, 207, 402
  - automatism and, 163, 213
  - burden of proof, 221
  - definition of, 188
  - degree of, 198–200
  - evidence, cumulative effect of, 219
  - included offences, 206
  - intoxicating substances, 188, 220
  - involuntary, 195–197
  - jury instructions, 200–205, 210
  - mental disorder and, 214
  - mistake and, 215, 218, 233, 234
  - murder, 211, 212, 422
  - nature of defence, 187, 188
  - parties to offences, 208–210, 428, 429
  - provocation and, 216, 270, 271
  - role of judge, 199–205, 210
  - self-defence and, 217, 218
  - self-induced/voluntary, 191, 192, 195–197, 207, 212, 213, 234
  - specific vs. general intent offences, 190–194, 206, 207, 212, 215, 233, 234
  - test for, 189
- involuntary acts**, *see* **actus reus; automatism; duress**

- issue estoppel**, *see also* **res judicata; autrefois acquit/convict; multiple convictions (rule against); inconsistent verdicts**
- definition, 345
  - elements of, 346, 347
  - finality of decisions, 348
  - fraud, effect of, 352
  - identity of issues, 349, 350
  - perjury, 351–353
  - pleading of, 38
- jurisdiction**, *see* **territorial jurisdiction**
- justifiable force**, *see* **specific defences, e.g., defence of property**
- justifications**, *see also* **excuses; exemptions; defence of property; obedience to superior orders; procedural defences; protection of persons administering/enforcing law; protection of persons in authority; public good/obscenity; self-defence/defence of others**
- differentiation from excuse, 19
  - general, 16
- Kienapple principle**, *see* **multiple convictions (rule against)**
- lack of fraudulent intent**, 172, *see also* **abandoned/lost property; colour of right; excuses**
- legislation**, *see* **ultra vires legislation**
- limitation periods**, *see* **time limitations**
- married persons**, *see* **conjugal unity; duress**
- members of senate/house of commons/provincial legislatures**, *see* **immunity**
- mens rea**, *see also* **absolute liability; accident; actus reus; intoxication; mistake of fact; prank; provincial offences; strict liability**
- definition, 4–6
  - double intent, 472
  - intent, 4, 5
  - knowledge, 4–6
  - necessity for, 1, 7, 8
  - recklessness, 5, 229
  - transferred mens rea, 231
  - willful blindness, 4
- mental disorder**, *see also* **automatism; excuses; exemptions; intoxication**
- alcohol/drug abuse causing, 93, 95
  - “appreciate”, 102
  - automatism and, 106, 153, 156–162
  - complete defence, as, 15
  - Crown raising issue, 88–91
  - curable/incurable disorders, 99
  - delusions, 100
  - “disease of the mind”, 92–99
  - examples of, 98
  - general, 83
  - “incapable”, 101
  - intoxication and, 214
  - “knowing”, 104
  - murder (planned and deliberate), 422
  - “nature and quality”, 93, 103
  - not criminally responsible verdict, effect of, 107, 108
  - onus on defence, 86–88
  - presumption against, 84

## INDEX

---

- mental disorder (*cont'd*)
- raising of defence, 87
  - Review Board, 107
  - specific intent offences, 109, 110
  - temporary/permanent disorders, 99
  - timing of disorder, 83, 85, 94
  - transitory states/disturbances, 93, 96, 97, 99, 159
  - “wrong”, 105
- mental element**, *see mens rea*
- military personnel**, *see immunity; justifications; obedience to superior orders*
- mistake of fact**, *see also colour of right; consent; excuses; intoxication; mistake of law; provocation*
- absolute and strict liability, 9, 10
  - burden of proof, 230
  - colour of right and, 165, 170, 232
  - definition of, 222
  - due diligence, 227
  - failure to appear due to, 235, 236
  - honest belief, 222, 225, 226, 228, 232
  - intoxication and, 215, 218, 233, 234
  - nature of defence, 223, 241
  - reasonableness of belief, 224–227
  - recklessness, 229
  - sex offences, 393, 394
  - transferred mens rea, 231
  - willful blindness, 228, 229
- mistake of law**, *see also colour of right; excuses; mistake of fact*
- civil law, 240
  - colour of right and, 165, 169
  - general, 241
  - non-publication of law, 245, 444
  - obedience to de facto law, 244
  - officially induced error, 238, 242, 243, 445
  - penal law, 237–239
- multiple convictions (rule against)**, *see also res judicata; autrefois acquit/convict; issue estoppel; inconsistent verdicts*
- general, 38, 334–342
  - lesser and greater offences, 341, 343, 344
  - procedure, 343, 344
  - same transaction required, 336
- murder**, *see homicide*
- NATO representatives**, 72–75, *see also immunity*
- necessity**, *see also duress; excuses*
- arising during illegal/immoral acts, 251
  - availability of, 247–250
  - burden of proof, 252
  - complete defence, as, 15
  - distress as necessity, 253, 254
  - duress, comparison to, 176
  - nature of, 246
- negligence**, 4, 147–149, 196, 236, 406, 408, 409
- non-publication of law**, 245, 444
- obedience to de facto law**, 244

- obedience to superior orders**, 117–119, *see also* **justifications**
- obscenity**, *see* **public good/obscenity**
- officially induced error**, 238, 242, 243, 445, *see also* **mistake of law**
- onus**, *see* **burden of proof**; **specific defences**, e.g., **mental disorder**
- ownership of property**, 464, *see also* **abandoned/lost property**
- pardon**, 37
- parent**, *see* **protection of persons in authority**
- partial defences**, 15
- particular defences**, 15
- parties to offences**
- abandonment of common unlawful purpose, 424
  - alibi, 425
  - common intention absent, 431, 432
  - duress, 427
  - inconsistent verdicts, 356
  - intoxication, 208–210, 428, 429
  - mere presence/passive acquiescence, 430
  - renunciation of criminal purpose, 426
- peace officers**, *see* **justifications**; **obedience to superior orders**; **protection of persons administering/enforcing law**
- perjury**, 288, 351–353
- person standing in place of parent**, *see* **protection of persons in authority**
- physical element**, *see* **actus reus**
- pleas (general)**
- guilty, 39
  - guilty to included or other offence, 41, 42
  - not guilty, 38, 40
  - permitted pleas, 37
  - refusal to plead, 40
  - withdrawal of guilty plea, 43
- police**, *see* **justifications**; **obedience to superior orders**; **protection of persons administering/enforcing law**
- prank**, *see also* **excuses**
- examples where accepted, 257
  - examples where rejected, 256
  - nature of, 255
- presumption of innocence**, 21, 25, *see also* **burden of proof**
- privilege**, *see* **conjugal unity**
- procedural defences**, *see* **abuse of process**; **Charter of Rights**; **consent to prosecution**, **absence of**; **conspiracy**; **entrapment**; **excuses**; **exemptions**; **justifications**; **res judicata**; **specific defences**, e.g., **alibi**; **time limitations**
- property**, *see* **abandoned/lost property**; **defence of property**; **ownership of property**
- protection of persons administering/enforcing law**, *see also* **justifications**
- arrest (persons fleeing from), 122
  - arrest (wrong person), 124
  - breach of peace, preventing, 126
  - conduct required/authorized by law, 120–122, 137
  - duty of arresting person, 125

## INDEX

---

- protection of persons  
administering/enforcing  
law (*cont'd*)
- excessive force, 128
  - preventing offences, 123
  - riots, suppressing, 127
- protection of persons in authority**, *see also justifications*
- children, correction of, 129–131
  - excessive force, 130, 133
  - person standing in place of parent, 131
  - surgical operations, 132
- provincial offences**, *see also ultra vires legislation*
- absolute liability offences, 433, 437, 448
  - abuse of process, 438
  - act of God, 439–441
  - burden of proof, 448, 449
  - categories of, 433
  - collateral attack on validity, 446, 447
  - Crown immunity, 442
  - de minimis non curat lex, 443
  - invalidity of municipal by-law, 446
  - mens rea offences, 7, 433, 435, 449
  - non-publication of law, 444
  - officially induced error, 445
  - quasi-criminal nature of, 434
  - strict liability offences, 433, 436, 448
- provocation**, *see also excuses; intoxication*
- burden of proof, 275
  - definition, 259
  - elements of, 262–265
  - heat of passion, 262
  - homosexual panic, 476
  - intoxication and, 216, 270, 271
  - legal rights, exercise of not being provocation, 272
  - mistake re victim's involvement, 274
  - murder, partial defence to, 258, 422, 423
  - objective test for, 266–268
  - questions for jury, 261
  - questions of law and fact, 260
  - self-induced, 273
  - subjective test for, 269
  - suddenness of provocation, 263
  - third-party provocation, 274
  - wrongful act or insult, 264, 265
- public good/obscenity**, 134, *see also justifications*
- public officer**, *see protection of persons administering/enforcing law*
- public welfare offences**, 30
- reasonable force**, *see specific defences, e.g., defence of property*
- reasonable care/due diligence**, *see strict liability*
- reasonable explanation**, 477–479
- recent possession**, 477–479
- recklessness**, *see mens rea*
- reflex action**, *see actus reus*
- res judicata**, 38, 318, 319, *see also autrefois acquit/convict; inconsistent verdicts; issue estoppel; multiple convictions (rule against); procedural defences*
- right to be present at trial**, 31, 32
- right to counsel**, 36

- right to make full answer/defence**, 33–36
- schoolteachers**, *see* **protection of persons in authority**
- search or seizure, unreasonable**, 296
- self-defence/defence of others**, *see also* **justifications**
- burden of proof, 140
  - evidence of prior assaults/violence, 141, 142
  - excessive force, 143
  - circumstances to be considered, 136
  - general test, 135–137
  - intoxication and, 217, 218
  - prevention of immediate/serious injury, 138
  - retreat, need for, 139
- sovereigns/heads of foreign states**, 76, *see also* **immunity**
- spouses**, *see* **conjugal unity; duress**
- statutory authority**, 61
- strict liability**, 9, 30, *see also* **corporations; absolute liability; mens rea; provincial offences**
- suicide pacts**, 474
- summary offences**, 11, 13, *see also* **indictable offences**
- surgical operations**, *see* **protection of persons in authority**
- territorial jurisdiction**, *see also* **essential elements**
- offences outside Canada, 457, 458
  - offences outside county/district, 461
  - offences outside province, 459, 460
  - requirement to prove, 454–456
- time limitations**, *see also* **procedural defences**
- continuing events, 360
  - hybrid offences, 361, 362
  - included offences, 364
  - indictable offences, 358
  - summary conviction proceedings, 359–364
- ultra vires legislation**, 480–483
- unfit to stand trial**, *see* **mental disorder**
- willful blindness**, 4, *see also* **mistake of fact**
- witnesses**, *see* **conjugal unity; immunity**

## Index to Criminal Procedure

(All references are to paragraph numbers.)

- abuse of process**, 588, 1006, 1016, 1092, 1279
- access to proceedings**, *see* disclosure; exclusion of public
- accused (joinder of)**, 631, 632
- accused (severance of)**
- admissibility of evidence, 641
  - charging jury, 641
  - common design/purpose, 636
  - grounds for, 631, 636–639
  - jurisdiction of court, 633, 634
  - onus on accused, 631
  - review of order for, 642
  - timing of, 635
- acquittal**, *see* discharge of accused
- adjournments**
- amendment of indictment, after, 663
  - discovery, facilitating, 673
  - failure to proceed on fixed day, 37, 471
  - fitness to stand trial, pending determination of, 720
  - general, 544, 561
  - preliminary inquiries, 469–473, 483, 503
  - prohibition, 1278, 1284
  - refusal, 1278, 1316
  - summary conviction proceedings, 1316–19
  - trial within reasonable time, 589
- agents**, 1309
- amendments**, *see* appeals; counts; elections; indictments; informations
- appeals (general)**, *see also* extraordinary remedies (general)
- dissenting judgments, 1051
  - exclusion of public, orders re, 7, 40, 688
  - forfeiture of recognizance, 1193
  - fresh evidence, 318, 954
  - in camera orders, of, 7, 40, 688
  - letters rogatory, re, 1126
  - raising new defence, 963
  - setting aside dismissal order, 1013
  - Supreme Court of Canada, to, 1053
  - warrants (search/seizure), 70
- appeals (indictable — by accused)**, *see also* extraordinary remedies (general)
- accused absconding, 1002
  - acquittal, 1003–1007, 1008, 1009
  - charge to jury, 975
  - conduct of counsel, 983–985, 999
  - conduct of Crown, 978
  - conduct of trial judge, 979
  - conflict of interest (counsel’s), 984
  - credibility, findings re, 969, 970
  - dismissal of appeal, grounds for, 961
  - error of law, 977
  - failure to testify, accused’s, 974, 977, 986
  - grounds (general), 960–964
  - guilty plea, after, 996–1000
  - incompetence of counsel, 983, 999
  - inconsistent verdicts, 976
  - misapprehension of evidence, 971, 972, 980, 981



- miscarriage of justice, 977–986, 987–993
  - new trial, 1003, 1010–1012, 1016
  - not criminally responsible, finding of, 963
  - privilege, waiver of, 985
  - raising new defence, 964
  - reasons of trial judge, sufficiency of, 967
  - residual powers of court, 1015–1017
  - staying of proceedings, 1006, 1016
  - substituted verdicts, 962
  - unfairness, appearance of, 982
  - unfit to stand trial, finding of, 963, 1014
  - unreasonable/unsupported verdict, 965–974
  - waiver of appeal right, effect of, 1001
- appeals (indictable — by Crown),**  
*see also* extraordinary remedies (general)
- amendment of charge, 1026
  - deference to jury, 1019
  - delay, effect of, 1024
  - failure to object to jury charge, 1023
  - general, 1018
  - *Kienapple* principle, effect of, 1017, 1025
  - onus on Crown, 1019
  - test for, 1020, 1021
  - theories/arguments not raised at trial, 1022
- appeals (indictable — general),**  
*see also* extraordinary remedies (general)
- appointment of counsel, 941, 942
  - attendance by appellant, 956–958
  - charge to jury, 975
  - costs, 943
  - death of accused, effect of, 946
  - dissenting judgment, 1051
  - exhaustiveness of Criminal Code/statutes, 862
  - exhibits, production of, 930
  - forum for appeal, 864–866
  - fresh evidence on appeal, 947–953
  - frivolous appeals, 959
  - general, 559
  - grounds of appeal, specifying, 899, 900
  - interlocutory ruling, appeal of, 863
  - intervenor/third party, by, 864
  - judge’s report, request for, 928, 929
  - leave applications, 907, 908
  - overview of process, 858–861
  - powers of Court of Appeal, 928–946
  - procedure on, 894–908
  - process, issue/execution/of, 943, 945
  - question of law alone, 882–893
  - reasons of trial judge, sufficiency of, 967
  - right vs. leave to appeal, 867–881
  - service of notice, 896, 901, 902
  - special commissioner, reference to, 934–936
  - standing to appeal, 864
  - suspension of penalties pending appeal, 940
  - time for notice/leave application, 894–898

## INDEX

---

- transcripts, filing/contents, 903–906
- witnesses, 931–933
- appeals (indictable — sentence)**, *see also* extraordinary remedies (general)
  - aboriginal offenders, 1039
  - aggravating/mitigating circumstances, 1034, 1035
  - attendance/absence of accused, 958
  - consecutive sentences, 1037
  - corporations/organizations, 1040
  - credit for pre-sentence custody, 1043
  - deprivation of liberty, need for, 1038, 1039
  - disparity between sentences, 1028
  - error in principle, 1028
  - evidence on appeal, 1041, 1045, 1046
  - failure to consider relevant factor, 1028
  - fitness of sentence, 1027, 1028, 1042
  - fresh evidence on, 1045
  - general, 1027–1044
  - overemphasis of relevant factor, 1028
  - proportionality, 1033
  - purposes of sentencing, 1029–1032
  - responsibility of offender (degree of), 1033
  - second degree murder, 1049
  - “sentence”, 873, 1044
  - sentence substantially served, effect of, 1050
  - similarity of offence/offenders/circumstances, 1028, 1036
  - statutory amendments re, 1029
  - Supreme Court of Canada, to, 1067
  - varying probation order, 1048
  - varying sentence, 1047
- appeals (indictable — Supreme Court of Canada)**, *see also* extraordinary remedies (general)
  - accused’s right to, 1057–1059
  - application for leave, 1062–1068
  - appointment of counsel for accused, 1069
  - Attorney General’s right to, 1060, 1061
  - costs, 1074
  - extend time, 1063
  - general, 1052–1054
  - new arguments, 1054
  - notice of appeal, 1064
  - powers of court on, 1069–1074
  - reasons of appeal court, sufficiency, 1055
  - sentence appeals, 1067
- appeals (summary conviction — Court of Appeal)**
  - costs, 1401, 1402
  - enforcement of decision, 1404
  - general, 1395
  - leave to appeal, 1396, 1397
  - provisions re indictable appeals, 1400
  - question of law required, 1396
  - right to appeal, 1396
  - timing of, 1399
- appeals (summary conviction — general)**
  - arguments supporting, 1336
  - conviction vs. sentence, 1334, 1335
  - fees/allowances, 1405
  - forum, determination of, 1331, 1332

- general, 1330
  - grounds of, 1333
  - hybrid offences, 1332
  - jurisdiction of appeal court, 1398, 1403
  - paths of, 1337–1341
  - right vs. leave, by, 1333
  - timing of, 1334
- appeals (summary conviction — section 813)**, *see also* judicial interim release
- abandonment, notice of, 1350, 1373
  - accused, by, 1342
  - adjournments, 1372
  - appointment of counsel, 1365
  - attendance of accused, 1365
  - Attorney General, by, 1343–1345
  - conviction order, enforcement of, 1379–1381
  - costs, 1374–1378
  - date of hearing, 1361
  - expedited hearings, 1361
  - failure to appear/comply, 1373
  - findings of fact, reversing, 1345
  - forfeiture of property, 1365
  - fresh evidence on, 1365
  - frivolous appeals, 1365
  - general, 1337–1341
  - informant, by, 1343, 1344, 1358–1360
  - issues of law, on, 1345
  - location of appeal, 1352
  - materials required to be filed, 1364
  - new trial, order for, 1366, 1367
  - notice of appeal, 1346–1351
  - powers of court, 1365
  - provisions re indictable appeals, applicability of, 1365
  - restitution orders, 1365
  - section 830 appeals distinguished, 1337–1341
  - sentence appeals, 1365, 1370
  - suspension of fine pending appeal, 1362, 1363
  - transcript of trial, 1364
  - trial de novo, 1339–1341, 1368–1372
  - want of prosecution, 1373
- appeals (summary conviction — section 830)**
- “appeal court”, 1382
  - bars to, 1393, 1394
  - enforcement of decision, 1392
  - expedited hearing, 1388
  - failure to appear, 1388
  - general, 1337–1341, 1389
  - grounds of appeal, 1385
  - matters appealable, 1384
  - nature of, 1383–1385
  - notice of appeal, 1387
  - powers of court, 1390, 1391
  - release pending appeal, 1388
  - section 813 appeals distinguished, 1337–1341, 1393
  - stated case, 1339, 1340
  - transcript/statement of facts, 1386
  - undertaking by informant, 1388
  - want of prosecution, 1388
- appeals (summary conviction — Supreme Court of Canada)**, 1406
- appearance notices**, *see also* compelling appearance of accused
- confirmation by justice, 163, 164
  - contents of, 161
  - copy to accused, 162
  - general, 161, 162
  - photographing/fingerprinting, 165

## INDEX

---

- proof of, 163
- signing of, 162
- arraignment**, 677, 678, 1311, *see also* pleas
- arrest**, *see* search of persons; search warrants; seizure; summons; warrants; witnesses (warrants for)
- arrest (general)**
  - definition of, 138
  - judicial interim release, during, 270, 271
  - notice of warrant/reasons, 139
  - out-of-province warrants, endorsement of, 279–281
- arrest (without warrant — general)**
  - “criminal offence”, 144
  - delivery to peace officer, 146
  - force, use of, 158
  - grounds for, 140, 141
  - “hybrid” offences, 143
  - “indictable” offences, 143
  - police officer as private citizen, 142
  - property-owner effecting, 145
- arrest (without warrant — police)**
  - civil liability, 150, 151, 156
  - entry on property, 159, 160
  - excepted offences, 152
  - force, use of, 156, 158
  - general, 147, 148
  - outstanding warrant, effect of, 153
  - reasonable/probable grounds, 149
  - search, powers re, 154–156
- assessment orders**, *see also* mental disorder (general)
  - application/motion for, 336 — 238, 713
  - assessment report, 350
  - contents of, 340, 349
  - custody of accused during, 343, 344, 345, 346, 347, 348, 716, 1218
  - duration of, 341, 342, 715
  - grounds/authority for, 332, 333, 712, 713
  - jurisdiction of court, 334, 337, 338, 339, 712, 713, 714
  - protected statements/admissibility, 351, 352
  - time for making, 335, 713
  - treatment under, 349, 717
- autrefois acquit/convict**, *see also* pleas; res judicata
  - duplicitous/multifarious counts, 607, 609
  - “final” determination required, 699
  - general principle, 695
  - murder/manslaughter/infanticide, 698
  - onus on accused, 697
  - pleading of, 679, 696
  - “same matter” decided, 701, 702
  - verdict of not criminally responsible, 718
- bail**, *see* judicial interim release; recognizances
- bank records**, 64, 122
- bias**, 845
- certiorari**, *see also* appeals; extraordinary remedies (general)
  - appeal from grant/refusal of, 1236–1238
  - appeal right as bar to, 1200, 1223–1227
  - breach of natural justice, 1214, 1215

- committal for trial, challenging, 496–510, 1220
  - conflict of interest, order re, 1213
  - “conviction or order”, 1225
  - costs, 1233
  - cross-examination, breach of right to, 1214
  - curative provisions affecting, 1231
  - effect of application for, 1212
  - errors of law, 1216
  - grounds for, 1212–1216
  - information, challenging, 1219
  - judicial notice, effect of, 1228
  - lack/loss of jurisdiction, 1212, 1213
  - liability where order quashed, 1230
  - procedure for seeking, 1232
  - prohibition distinguished, 1273
  - publication ban, challenging, 1221
  - recognizance, requirement of, 1233
  - refusal of, enforcement after, 1234
  - stand trial, order to, 1235
  - statutory restrictions on use of, 1223–1231
  - subpoena, challenging, 1222
  - warrant, challenging, 110, 111, 1217, 1218, 1225, 1227
  - grounds, 647–651
  - onus on applicant, 647
  - rights re, 643
  - successive applications, 653
  - time for seeking, 645
  - transfer of indictment/exhibits, 655
  - transfer/transport of accused, 656
- charges**, *see* counts; indictments; informations
- Charter of Rights**
- abuse of process, 588
  - appeals re, 886
  - disclosure of evidence/information, 288, 304, 306, 320
  - freedom of press, 64, 124, 687
  - habeas corpus, 1246, 1253
  - health issues, 238
  - interlocutory rulings, appeal of, 863
  - judicial interim release, 226, 231
  - jury deliberations, 842
  - jury trial, right to, 729, 731
  - loss of evidence, effect of, 319, 324
  - preliminary inquiry, seeking remedy at, 458
  - privilege claims, 123
  - publication bans/access, 7, 39–41, 488, 687, 688
  - remedy under s. 24(1), 3, 4, 48, 63, 886
  - search/seizure (general), 46, 123, 126, 127
  - search/seizure (liability), 63
  - trial within reasonable time, 589
- compelling appearance of accused**, *see* appearance notices; arrest; identification of criminals; informations; judicial interim release; release by officer in

## INDEX

---

- charge; show cause hearings;  
recognizances; summons; warrants
- compelling appearance of witnesses**, *see* witnesses
- conflict of interest**, 984, 1213
- conspiracy**
- counts, sufficiency of, 602–604
  - jurisdiction over, 10
  - severance from substantive offence, 629
- contempt of court**, 1075, 1105–1107
- conviction**, *see* judicial interim release; record of conviction; warrant of committal
- corporations, proceedings against**, 711
- costs**
- certiorari, 1233
  - indictable appeals, 943, 944, 1074
  - summary conviction appeals (Court of Appeal), 1401, 1402
  - summary conviction appeals (general), 1328
  - summary conviction appeals (section 813), 1374–1378
- counts (general)**, *see also* indictments; informations
- amending/dividing of, 611
  - consent to indictment, stating of, 601
  - conspiracy, 602–04
  - curative provisions re, 597–601, 603, 606, 623, 624
  - dates, importance of, 596
  - duplicity/multiplicity, 590, 605–610
  - means by which offence committed, 600
  - nature of offence, specifying, 595, 602, 603
  - number of in indictment/information, 546, 1300, 1301
  - omission of key words, effect of, 592, 1280
  - order for particulars, 603
  - person/place/thing, naming of, 598
  - “reasonable notice to accused”, 597, 602, 605
  - section numbers, reference to, 593
  - separate transaction, 549
  - “single transaction”, 590, 605
  - specificity of circumstances, 594
  - statement in popular language, 591
  - strict technical compliance, 604
  - wording of Code, use of, 592
  - writings/words being subject of charge, 599
- counts (joinder of)**
- consent of accused, 551
  - from different informations, 547
  - general, 625
  - included offences, 548
- counts (particulars)**
- amendment of indictment, 621–624
  - application for, 615
  - effect of, 621, 622
  - “evidence” distinguished, 618
  - general, 603
  - grounds for ordering, 616
  - meaning of, 617–620
  - opening address not constituting, 619
  - purpose of, 612–614

- counts (severance of)**
    - complexity/nature of evidence, 628
    - conspiracy, 629
    - discretion of court, 546, 626
    - general, 626
    - grounds for, 627–629
    - nexus among offences, 627
    - timing of, 630
  - “court of competent jurisdiction”,** 4
  - “court of criminal jurisdiction”,** 5, 16
  - “criminal offence”,** 144
  - cross-examination,** *see* evidence (taken previously); witnesses (general)
  - “custody” of court,** 20
  - defamatory libel,** 13
  - directed verdicts/non-suit,** *see also* juries/jurors; trial
    - absence of jury, hearing in, 851
    - general, 850
    - grant of, 852
    - joint accused situations, 854
    - question of law, as, 853
    - timing of motion for, 851
  - discharge of accused,** 445, 446, 449, 452, 565
  - disclosure,** *see also* discovery; particulars, order for; preliminary inquiries
    - advice to unrepresented accused re, 297
    - Charter rights re, 288, 304, 306
    - computer records, 296
    - continuing nature of obligation re, 299
    - duration to withhold, 300, 301, 303–308
  - failure to disclose, challenging of, 302–309
  - fruits of investigation, 289
  - general rule re, 288, 304
  - inculpatory/exculpatory evidence, 291
  - information Crown does not intend to use, 291
  - informer privilege, applicability of, 301, 304
  - loss of evidence, effect of, 319, 324
  - miscellaneous items, 294
  - names of persons contacted, 293
  - notes, 293
  - order for, varying of, 308
  - production of witnesses for discovery, 295
  - relevance, importance of, 292
  - remedies for non-disclosure, 320–326
  - statements obtained, 293
  - summary conviction proceedings, in, 290
  - therapeutic records, 310–317
  - timing of, 297–299
  - what must be disclosed, 289–295
  - witnesses, protection of, 305
- discovery,** *see also* disclosure; particulars, order for; preliminary inquiries
- evidence not produced at preliminary inquiry, 673
  - inspection of indictment, evidence, etc., 327, 671
  - inspection of notes/memoranda of witness, 672
  - release/inspection of exhibits, 328–330, 674–676
- dismissal for want of prosecution,** 36, 1373, 1388

- dispositions re mental disorder**, *see also* mental disorder (general)
- absolute discharge, 395, 726
  - appeals, 414–421, 426
  - compelling appearance, 428
  - factors governing, 393, 394
  - fitness to stand trial, effect of, 387–390
  - hearing by court, 379–382, 726, 727
  - hearing by Review Board, 384–386, 391
  - release/detention of accused, 383, 390, 397, 398, 399, 726, 1218
  - Review Board (general), 378, 381, 728
  - review of, 422–427, 728
  - stay of proceedings, 429
  - treatment dispositions, 400–405
  - treatment orders, availability of, 396, 726
  - types of disposition, 392, 395
- “DNA warrants”**, *see* search warrants (DNA)
- dual status offenders**, *see also* mental disorder (general)
- definition of, 406
  - discharge from custody, notice re, 412
  - place of custody, change of, 409
  - placement decisions, review of, 410, 411
  - precedence of sentence/disposition, 407
  - serving of term, 413
  - Solicitor General, role of, 408
- elections (general)**
- amendment of charge, effect of, 525
  - Attorney General’s discretion, 518
  - failure to elect, effect of, 527
  - hybrid offences, 31, 519
  - joint accused, 526
  - loss of right, 530
  - multiple accused, procedure where, 526
  - non-appearance of accused, 538
  - presumptions re, 540
  - putting election to accused, 522, 523
  - re-elections, 493, 494, 526, 532–536, 537, 553
  - right to, accused’s, 29, 517
  - strict compliance with statute, 521
  - summary/indictable offences in one information, 520
  - timing of, 524
  - waiving reading of statute, 523
- elections (judge alone, for)**
- general, 556
  - limitations on, 557
- elections (judge/judge and jury, for)**
- committal for trial, 528
  - deemed elections, 529–531
  - preliminary inquiry required, 433, 527
  - record of election, 528
- emergencies**, 137
- evidence (on commission)**, *see also* juries/jurors; witnesses
- alibi evidence, 1112
  - applicants entitled to seek, 1108
  - discretion of court, 1110
  - disruption of proceedings, 1110
  - good faith requirement, 1111
  - grounds for (general), 1109–1112
  - illness/disability, 1109, 1113



- inability to observe witness, 1110
- letters rogatory, 1123–1127
- materiality of evidence, 1111, 1112
- order for taking, 1116, 1117
- prejudice to other party, 1110
- third party evidence, 955
- timing of application for, 1115
- use/admissibility of, 1118–1121
- witness outside Canada, 1114
- evidence (on sentencing)**, 685, 686
- evidence (taken previously)**, *see also* juries/jurors; witnesses
  - admissibility, 1149–1153, 1157
  - cross-examination opportunity when taken, 1132, 1133, 1141, 1144–1148
  - enumerated “previous” proceedings, 1131
  - grounds for use (general), 1128, 1131
  - nature of previous proceedings, 1128–1133
  - presence of accused upon, 1141
  - signature of justice on, 1142, 1143
  - unavailable/incapacitated witnesses, 1130, 1136–1140, 1147
  - unwilling witnesses, 1129, 1134, 1135
  - use at trial, 1155, 1156
- exclusion of public**
  - appeal of in camera orders, 7, 40
  - certiorari challenging, 1221
  - Charter issues, 39, 41
  - Dagenais/Mentuck test, 468
  - disclosure of evidence, disputes re, 307
  - general, 39, 467
  - grounds for, 39
  - inspection of information/warrant, 130–132
  - preliminary inquiry, at, 488
  - “proper administration of justice”, 39
  - publication bans, 41, 42–45, 132, 251, 464–466, 467, 687, 688, 1221
  - sexual offences, 39, 41, 43, 44
  - terrorism offences, 468
  - witnesses, protection of, 39
- exhibits**, 674–676, *see also* appeals; discovery
- explosives**, 135
- extradition**, 1244
- extraordinary remedies (general)**, *see also* appeals; certiorari; habeas corpus; mandamus; procedendo; prohibition
  - appeal, right of as bar, 1200
  - appeals distinguished, 1199
  - availability of/grounds for, 1201
  - common law governing, 1287
  - disclosure of information, 1202
  - discretion of court, 1208
  - general, 559
  - jurisdiction to grant, 1204–1206
  - procedural rules, 1209–1211
  - stay/adjournment of challenged proceedings, 1207
  - types of, 1203
- financial institutions**, 64, 122
- fingerprinting**, *see* identification of criminals
- fitness to stand trial**, *see also* mental disorder (general)
  - acquittal before fitness determined, 366, 720

## INDEX

---

- adjournment of trial, 720
  - appointment of counsel, 359
  - detention in hospital, 365, 725
  - finding of fitness, effect of, 364, 365, 725
  - finding of unfitness, effect of, 367–373, 403
  - habeas corpus, 1243
  - “mental disorder”, 355
  - motion/direction for hearing, 356, 357, 360, 361, 720
  - onus of proof, 358, 722
  - postponing fitness hearing, 360, 361
  - presumption of fitness, 353, 720
  - review of unfitness finding, 387–390
  - trial of issue by court, 363, 721
  - trial of issue by judge and jury, 362, 721
  - “unfit to stand trial”, 354, 723
- forfeiture**, *see* recognizances; seizure
- “found” in jurisdiction**, 21
- habeas corpus**, *see also* appeals; extraordinary remedies (general)
- alternative remedy, 1259
  - appeal, right of as bar, 1200, 1247
  - appeals, 1260, 1261
  - availability, 1241–1253
  - Charter grounds for, 1246, 1253
  - constitutional challenges, release pending, 1250, 1251
  - discretion of court, 1258
  - extradition proceedings, 1244
  - fitness to stand trial, errors re, 1243
  - judicial notice, effect of, 1228
  - jurisdiction of court, 1247, 1248
  - nature of, 1239
  - parole, effect of, 1248, 1249, 1252
  - refusal of, 1257, 1260, 1261
  - special confinement in institution, 1245
  - statutory limitations on, 1255–1257
  - time for seeking, 1250, 1251
  - warrant of committal, defects in, 1242, 1256
- “hybrid” offences**, *see* arrest; elections; jurisdiction
- identification of criminals**, *see also* compelling appearance of accused
- arrest without warrant, 166
  - fingerprinting, 165, 223
  - indictable offences, 165
  - photographing, 165
- in camera proceedings**, *see* exclusion of public
- income tax proceedings**, 32
- indictable offences**, *see* appeals; elections; indictments; jurisdiction
- indictments**, *see also* counts; informations
- indictments (amendment of)**
- adjournment after, 663
  - appeal, on, 937–939
  - complainant’s description, 659
  - conforming with evidence, 658
  - court moving for, 667, 670
  - date, correcting, 659
  - defect on face of, quashing for, 657
  - endorsement of, 669
  - factors affecting granting of, 662
  - form, defects in, 661
  - limitation period, effect on, 665
  - nullities not amenable, 624, 666

- particulars, effect of order for, 621–624
  - place, correcting, 659
  - plea, requirement for new, 665
  - question of law, application for amendment being, 668
  - substantive defects disclosed by evidence, 660
  - widening of count/charges not allowed, 664
- indictments (direct)**
- Attorney General/judge, by, 573–575, 580
  - disclosure of offences, 576, 577
  - ex parte proceeding, 578, 579
  - hearing on, 579
  - persons other than Attorney General, by, 576, 577, 580
  - presumptions re, 581
  - refusal of judge to consent to, 580
  - review of decision to prefer, 582
- indictments (preferring generally)**
- amendments, 621–624
  - counts, 546–551
  - forum for, 554, 555
  - “indictment”, 569
  - order of court, need for, 545
  - “preferred”, 552, 570, 571
  - prescribed form, 546, 552
  - prosecutor, by, 545
  - severance, 546
  - summons, issue of, 583
  - timing of, 552, 553
  - validity of, 572, 624, 666
  - warrant, issue of, 583
- “**informant**”, 1289
- informations**, *see also* compelling appearance of accused; counts; indictments
- amendments, 187, 1305
  - appeal of quashing/upholding of, 1219, 1341
  - certiorari challenging, 1219
  - contents of, 186, 187, 1296–1299
  - counts in, 1300, 1301
  - definition, 178
  - exceptions/exemptions, etc., need to set out, 1303
  - forum of, 182–185
  - general, 1288, 1295
  - mandamus, quashing by, 195
  - oath, 183, 1288
  - objections to, 1304
  - particulars, requirement of, 1298, 1299, 1305
  - peace bonds, 1160, 1329
  - personal knowledge/reasonable grounds, 180, 181, 1289
  - persons who may swear, 185, 1289
  - prohibition challenging, 1280
  - previous convictions, reference to, 1302
  - receiving of as ministerial act, 179, 194
  - signatures, 184
  - time for laying, 33, 188–190, 1290–1293
  - warrant of committal, 1327
  - writing required, 183, 1288
- informer privilege**, 77, 301, 304
- insanity**, *see* mental disorder (general)
- interpreters**, *see* language at trial
- intervenors**, 586

## INDEX

---

**issue estoppel**, *see* autrefois acquit/convict; res judicata

**joinder**, *see* accused (joinder of); counts (joinder of)

**judicial interim release (general)**, *see also* compelling appearance of accused; recognizances; show cause hearings

- accused in custody on other matter, 215
- arrest while on, 270, 271
- assessment orders, effect of, 346, 347
- attendance of prisoners, securing, 278
- Charter issues, 226, 231, 238
- general, 166, 210, 211, 512
- health issues, 238
- information in pursuit of peace bond, effect of, 214

**judicial interim release (pending appeal)**, *see also* compelling appearance of accused; show cause hearings

- appeal of order for, 925–927
- conviction appeals, 910–916, 923
- discretion of court, 920
- factors governing (general), 920
- general, 909, 920–924
- nature of, 916
- new trial order, effect of, 923
- notice of application for, 911, 912, 921
- order for, contents of, 922
- refusal/cancellation of, 924
- sentence appeals, 917–919
- summary conviction appeals, 1353–1357

**judicial interim release (review of)**, *see also* compelling

appearance of accused; show cause hearings

- accused/prosecutor seeking, 258
- after conviction, 268
- after preliminary inquiry, 512
- change in circumstances, 263, 265, 267
- evidence on, 264, 265
- further applications for, 266, 267
- general, 216, 257, 267
- jurisdiction over, 216, 259
- non-compliance where review required, 275–77
- notice of, 260
- onus on accused, 262, 263
- serious offences, procedure for, 269
- trial de novo vs. appeal, 261
- trial delayed, where, 272–277

**juries/jurors**, *see also* directed verdicts/non-suit; trial

**juries/jurors (challenging)**

- cause, for, 750–767
- failure of, 764, 766
- “fishing expeditions”, 751
- hearing of issue, 761–765
- improper purpose, 751
- onus of proof, 752
- panels, 737–740
- peremptory challenges, 745–749
- presumption of impartiality, 752
- pre-trial publicity, 753, 754
- procedure, 760–765
- questions, determining propriety of, 758
- race, issues re, 757
- recall where insufficient numbers, 768
- sexual assault cases, 757
- timing of, 759, 857

**juries/jurors (charge to)**

- accomplice's evidence, 824
- accused testifying, where, 790
- balanced/fair charge, 802
- burden of proof, explaining, 787, 788, 799, 815
- circumstantial evidence, 810
- consciousness of guilt, 808
- copies of charge, use in deliberations, 831
- correcting improper address by counsel, 804
- corroboration, need for, 811, 812, 813, 824
- criminal record, mention of, 823
- defences available, 798, 799
- evidence equally consistent with guilt/innocence, 808
- expert evidence, 817–820
- failure to testify, accused's, 825
- general, 787–794, 796, 797, 989
- hearsay evidence, 817
- identification of accused, 814
- lesser included offences, 805
- matters of law, 791
- multiple accused/charges, 816
- opinion of judge, expressing of, 792, 793, 848
- pre-charge conference, 786
- previous statements, use of, 822
- reasonable doubt, 787, 788
- re-charge, 835, 836
- requests for review/reiteration, 803
- review of evidence required, 794, 800, 801
- sentencing not to be mentioned, 806
- similar fact evidence, 821
- totality of evidence, considering, 789

- unanimity, need for, 807

**juries/jurors (discharge of)**

- effect of, 845
- inability to reach verdict, 838, 846–849
- individual members, during trial, 771, 772
- mistrial, 844, 845

**juries/jurors (general)**

- alternate jurors, 770
- communicating with public, 775–777
- curative provisions re, 856, 857
- discharge during trial, 771, 772
- empanelling of, 741–44, 747, 768, 769, 770, 856, 857
- food/lodging, 778, 839
- offences involving, 843
- panel, challenging of, 737–740, 747, 856, 857
- publication bans, 741, 774
- qualifications of, 734–736, 857
- sequestration/separation of, 773–778, 826
- summation to, 780–784, 796
- view, taking of, 779, 827

**juries/jurors (retirement/deliberation)**

- charge to jury, copies of, 831
- charge to jury, general, 785–795
- evidence available to jury, 827
- food/lodging, 778, 839
- impartiality, investigation of, 837
- inability to reach verdict, 838
- indictment, review of, 828
- jury tampering, 843
- questions from jury, 830, 835, 836
- secrecy re deliberations, 841, 842

## INDEX

---

- sequestration, 773–778, 826
  - statutes, copies of, 829, 830
  - time for deliberations, 840
  - transcripts/reading back of evidence, 832–834
  - unanimity, 807, 847, 849
  - unauthorized communications, 775–777, 837
- jurisdiction**, *see also* accused (severance of); appeals; elections; preliminary inquiries
- amendment of charge, effect of, 525
  - appeals, over, 7
  - Charter issues, over, 3, 4
  - conspiracy cases, 10
  - court of competent jurisdiction, 4
  - court of criminal jurisdiction, 5–7, 16
  - “custody”, 20
  - defamatory libel, 13
  - endorsement of information, need for, 539
  - extraordinary remedies, 1204–1206
  - forfeiture under recognizance order, 1178, 1179
  - “found”, 21
  - hybrid offences, 31, 519
  - indictable offences, over, 1, 5, 27–29, 433, 513–517, 527, 539
  - interlocutory matters, 38
  - issues re jurisdiction being questions of law, 19
  - justices of peace, 22
  - level of court, 1–7
  - limitation periods, effect of, 32, 33
  - loss of, 36, 37, 199–201, 845
  - offence committed outside Canada, 8
  - offence in territorial waters, 24–26
  - offence in two districts of province, 16–23
  - offence in two provinces, 9–15, 533
  - one judge acting instead of two or more justices, 34
  - presumptions re, 18, 23
  - “provincial court judge”, 28
  - subpoenas, 1080–1083
  - summary conviction proceedings, 30, 520, 1306
  - summary/indictable offences in one information, 520
  - superior court of criminal jurisdiction, 1–4
  - territorial, 8–23
  - “territorial division”, 9
  - war crimes, over, 8
- “**justice**”, 216
- Kienapple rule**, *see* res judicata
- language at trial**
- application by accused re, 282
  - change of venue accommodating, 285
  - duty of justice to advise/order, 283, 284
  - interpreter, right to, 287, 1318
  - North-West Territories Act, rights under, 286
- law offices (search/seizure)**, 64, 123, 124–129
- legal assistance**, 136
- letters rogatory**, *see* evidence (on commission)
- limitation periods**
- amendments, affect on, 665
  - common law rule, 32
  - income tax proceedings, 32

- summary conviction offences, 33, 1290–1293
- treason, 32
- mandamus**, *see also* appeals; extraordinary remedies (general)
  - act, specification of required, 1262
  - alternative remedies, 1269
  - appeal right as bar to, 1200, 1269
  - appeals, 1270
  - duty to act required, 1262
  - grounds for, 1263–1268
  - nature of, 1262
  - refusal to act vs. error of law, 1263–1265
  - right of court to be wrong, 1266–1268
- medical records**, *see* disclosure; therapeutic records
- mental disorder (general)**, *see also* assessment orders; dispositions re mental disorder; dual status offenders; fitness to stand trial
  - available procedures re, 331
  - committal, challenging by certiorari, 1218
  - definition of, 355
  - enforcement of orders/regulations, 431
  - review board, 399
  - transfer of accused persons, 430, 432
  - verdict of not criminally responsible, 374–377, 718, 719
- miscarriage of justice**
  - finality of minister’s decision, 993
  - general, 989
  - new trial, 991, 992
  - referral to court of appeal, 990
  - release pending review, 994
- mutiny**, 5
- Mutual Legal Assistance in Criminal Matters Act**, 136
- “newspaper”**, 13
- non-suit**, *see* directed verdicts/non-suit
- opening statements**, 785
- order in court, preserving**, 35
- order to stand trial (general)**, *see also* preliminary inquiry
  - consent to order for trial, 453
  - discharge of accused, 445, 446, 449, 452
  - general, 445, 447, 481
  - powers of justice, 455
  - reasons not required, 454
  - specification of charges, 445, 448
  - sufficiency of evidence, 450
- order to stand trial (review of)**, *see also* preliminary inquiry
  - adjournment, denial of, 503
  - certiorari, 496–510, 1220
  - cross-examination, unfair restriction on, 502
  - evidentiary errors, 499–501
  - general, 496
  - incomplete record, 506, 507
  - jurisdiction, loss of, 496
  - natural justice, denial of, 496, 503
  - refusal to permit submissions, 505
  - stay of trial pending, 1238
  - validity of information, 508–510
  - witnesses, refusal to allow calling of, 504
  - wrong standard applied at inquiry, 498

## INDEX

---

- particulars, order for**, 603, 1154, 1299, 1304, *see also* disclosure; discovery
- peace bonds**, 1160, 1328, *see also* recognizances
- photographing**, *see* identification of criminals
- piracy**, 5
- pleas (general)**, *see also* arraignment; autrefois acquit/convict; res judicata
- available pleas, 679
  - counsel making plea, 677
  - failure to plead, 678
  - refusal to plead, 680
  - summary conviction proceedings, 1310, 1312
- pleas (guilty)**, *see also* arraignment; autrefois acquit/convict; res judicata
- appeals re acceptance of, 690–692
  - counsel, by, 1310
  - effect of, 681
  - evidence, hearing of, 684, 686
  - exclusion of public, 688
  - included/other offence, to, 693, 694
  - inquiry by court, 683
  - publication bans, 687
  - qualified pleas, refusal of, 682
  - withdrawal of, 689, 690
- powers of judges**, *see* jurisdiction; specific powers, e.g., preserving order in court
- preliminary inquiries**, *see also* disclosure; discovery; order to stand trial
- absconding accused, 483–487
  - adjournments, 469–473, 483, 503
  - committal for trial, certiorari challenging, 1220
  - conversion into trial/inquiry, 493–495, 541
  - discharge of accused, 445, 446, 449, 452
  - disqualification of counsel, 474
  - evidence on, 443, 511
  - exclusion of public, 488
  - general, 433
  - “has been held”, 575
  - joint accused, 434
  - jurisdiction, lack of, 437, 438, 456–463, 508–510
  - oaths, 442
  - powers of judge (general), 455, 456, 474, 476
  - presence of accused, 442, 461, 483–487, 489, 490
  - procedure, 442–446, 476
  - production of documents, 501
  - publication bans, 464–466
  - purpose of, 435–438
  - record of proceedings, 442, 506, 507
  - re-election by accused, availability/effect of, 494, 535
  - refusal to hear evidence, 438
  - replacement of presiding justice, 492
  - requirement of, 433, 434, 527
  - scope of, 453
  - statement of issues, 439, 440, 441
  - submissions of counsel, 445, 505
  - transfer to another jurisdiction, 491
  - unrepresented accused, 444
  - witnesses, 438–444, 475–480, 482, 487, 488, 502, 504
- prerogative writs**, *see* certiorari; extraordinary remedies (general);



- habeas corpus; mandamus;  
 procedendo; prohibition
- preserving order in court**, 35
- prisoners, obtaining appearance of**, 278, 1075, 1094–1098
- privacy**, *see* disclosure; exclusion of public
- privilege**, *see* appeals (indictable — by accused); disclosure; informer privilege; law offices (search/seizure); protected statements; search warrants (general)
- procedendo**, 1200, 1203
- proceeds of crime**, 133
- prohibition**, *see also* appeals; extraordinary remedies (general)
- abuse of process, 1279
  - adjournment, refusal of, 1278
  - adjournment/remand, loss of jurisdiction via, 1284
  - alternative remedy, 1285
  - appeal right as bar to, 1200, 1285
  - appeals, 1286
  - availability, 1273, 1274
  - bias, 1275–1277
  - breach of natural justice, 1278, 1279
  - certiorari distinguished, 1273
  - constitutional challenges, 1282
  - defective informations/indictments, 1280
  - evidentiary rulings, challenging, 1283
  - grounds for, 1275–1284
  - nature of, 1271, 1272
  - time for seeking, 1271
  - ultra vires statutes, challenging, 1281
- promise to appear**, *see* release by officer in charge
- “proper administration of justice”**, 39
- “protected statements”**, 351, 352
- “provincial court judge”**, 28
- Provincial Judge**, 34
- “publication”**, 49
- publication bans**, *see* exclusion of public
- questions of law**, *see also* appeals
- changes in law, 883
  - characterization as, 883
  - Charter issues, 886
  - credibility findings, 892
  - erroneous conclusions of law, 884
  - evidentiary issues, 884, 887, 889, 890
  - general, 882
  - interpretation of statute as, 885
  - miscarriage of justice, determinations re, 893
  - misdirection re legal effect of facts, 891
  - new issue of law, raising, 883
  - reasonableness of verdict as, 888
- recognizances**, *see also* compelling appearance of accused; certiorari; judicial interim release; show cause hearings; witnesses (recognizances)
- acquittal, recognizance after, 1162
  - default, noting/effect of, 1165, 1166, 1176, 1192
  - defects in, 1191
  - duration/termination of, 1163, 1164
  - forfeiture (application for), 1177–1193

## INDEX

---

- forfeiture (enforcement of), 1194–1198
- form/content of, 1161
- general, 1158
- informant on section 813 appeal, 1358–1360
- informant required to enter, 1162
- origin of, 1158–1162
- peace bonds, 1160, 1329
- surety (committal of), 1198
- surety (liability/discharge of), 1167–1175, 1191
- surety (substitute), 1174, 1175
- recommencement of charges**, 585
- record of conviction**, 564, 566, 567
- re-elections**, *see* elections
- release by officer in charge**, *see also* compelling appearance of accused
  - appearance before justice, 175–177
  - arrest for out-of-province offence, 177
  - general, 166, 171
  - jurisdictional issues, 173, 176
  - “officer in charge”, 171
  - promise to appear, 167, 172
  - protection from liability, 170
  - refusal to release, grounds for, 166, 169
  - summons, 168, 174
- release of suspects**, *see* compelling appearance of accused
- res judicata**, *see also* autrefois acquit/convict; pleas
  - availability of, 703
  - general principle, 704, 710
  - judge to decide issue, 706
  - *Kienapple* rule, 704, 710
  - multiple counts tried, where, 708
  - onus on accused, 707
  - perjury cases, 709
  - timing of plea, 705
- search of persons**, *see also* arrest
  - bodily substances/DNA, 93–99
  - general, 46, 61, 91
  - incident to arrest, 91, 92, 154–156
  - prints/impressions, 100
- search warrants**, *see also* search of persons; seizure; warrants
- search warrants (admissibility of evidence)**
  - general, 46, 84, 110, 113, 118, 119
  - statements made during search, 101, 102
- search warrants (appeals)**, 70
- search warrants (applications)**
  - “backing” of warrants, 78, 79
  - cross-examination of deponent, 49
  - description of evidence, 52, 65–68, 88–90
  - description of location, 52, 61–64, 115
  - description of offence, 52–60
  - duty to examine supporting evidence, 51–53
  - form of information, 73, 82, 83
  - general Code provision, 49, 80, 81
  - grounds for belief, 69–73, 74
  - judicial act, issuance being, 51, 52, 69, 70
  - naming persons, 75, 76
  - processes leading to issue of, 49–53
  - refusal to issue, 53

- Sex Offender Information Registration Act, 60
- sources, disclosure of, 77
- statutory authority for, 49, 80, 81
- telephone/telecommunication, oath given by, 50
- territorial limitations, 78, 79
- search warrants (DNA)**
  - defective order or authorization, 95
  - destruction of bodily substances, 97, 98, 99
  - execution of warrant, 96
  - general, 93
  - grounds for, 94
  - seizure of bodily substances, 95
  - telephone applications, 94
  - terms/conditions of warrant, 94
  - unauthorized use of bodily substances, 97
- search warrants (execution)**
  - bodily substances, 97
  - demand for entry, 87, 159
  - force, use of, 87, 156, 158
  - “freezing” premises/occupants, 87, 160
  - production of warrant, 87
  - search of persons, 46, 61, 91, 92, 100
  - search of vehicle, 157
  - seizure of goods, 88–90, 103–109
  - statements made during, 101, 102
  - timing/manner of, 86, 87, 177
  - warrant from another jurisdiction, 177
  - who may execute, 76, 84, 85
- search warrants (general)**
  - Charter remedies, unlawful acts, 48, 63, 74
  - common law rule, 48
  - dating of, 86
  - exigent circumstances, 137
  - financial institutions, 64, 122
  - human bodies, 61, 64
  - interests to be balanced, 46
  - jurisdiction, 54
  - law offices, 64, 123, 124–129
  - liability on, 63, 115–117
  - media premises, 64, 124
  - necessity of warrant, 47
  - public inspection of information/warrant, 130–132
  - “reasonable and probable grounds”, 47, 74, 91
  - Sex Offender Information Registration Act, 60
  - successive/simultaneous warrants, 120, 121
  - trespass, 48
- search warrants (quashing)**
  - belief in facts, failure to pledge, 71
  - certiorari, 110, 111, 1217, 1218
  - date not on warrant, 86
  - general, 83, 86, 113, 1217
  - liability, civil, 63, 115–117
  - miscellaneous grounds, 82
  - naming of persons involved, 75
  - return of seized goods, 103–107, 109, 114
  - severability, 112
  - “standing”, 110
  - unreasonableness, 110, 111
  - unsworn information, use of, 73
- seizure**, *see also* search warrants
  - appeals, 107

## INDEX

---

- bodily substances, 95, 97
- certiorari, quashing by, 1217
- defective order or authorization, 95
- examination by third party, 108
- explosives, 135
- forfeiture, 106, 107, 133–135
- general, 88, 103, 106
- money, 90
- “plain view” doctrine, 89
- proceeds of crime, 133
- retention of illicit items, 109
- return of goods, 103–107, 109, 114
- weapons, 134
- self-incrimination**, 101, 102
- “sentence”**, 873, 1044
- sentences/sentencing**, 685, 686,  
*see also* appeals
- severance**, *see* accused (severance of); counts (severance of)
- Sex Offender Information Registration Act**, 60
- ships**, 5, 24–26
- show cause hearings**, *see also* compelling appearance of accused; judicial interim release
  - adjournment/three-day remand, 255, 256
  - bringing before justice, time for, 210
  - conditions of release, 219, 243–249
  - duration of orders, 252–254
  - evidence, 239–242
  - grounds for detention/release, 227–238
  - onus (on accused), 220–226, 233
  - onus (on prosecutor), 211, 217–219
  - publication bans, 251
  - reasons for detention, giving, 250
  - recognizance, release on, 212, 243
  - serious offences, detention for, 213
  - undertaking to appear, release on, 211, 243
- sources, disclosure of**, *see* search/seizure (warrants, applications)
- stay of proceedings**
  - abuse of process, 588, 1006, 1016
  - appeal of, 877
  - extraordinary remedies, pending application for, 1207, 1238
  - general, 584
  - non-disclosure of evidence/information, 323, 324
  - recommencement of charges, 585
  - trial within reasonable time, 589
  - withdrawal of chargees, 587
- subpoenas**, *see* witnesses (subpoenas)
- summations**, *see also* juries/jurors (general)
  - argument unwarranted by evidence, 782, 784
  - inflammatory addresses, 782, 784
  - opinions, 782
  - order of address, 780, 781, 783
- summons**, *see also* compelling appearance by accused; warrants
  - administrative/judicial functions, 194–196
  - content of, 197
  - decision to issue, 191, 583, 1294
  - defects/irregularities, 473

- evidence of witnesses, 192, 193
- informations, receipt vs. hearing of, 196
- jurisdictional issues, 199–201
- mandamus, 195
- presumption of regularity, 198–201
- “**superior court of criminal jurisdiction**”, 1
- “**territorial division**”, 9
- territorial waters**, 24–26
- therapeutic records (Crown possessing)**, 310, *see also* disclosure
- therapeutic records (third party possessing)**, *see also* disclosure
  - application for disclosure, 311
  - custodian/records, subpoena of, 313
  - jurisdictional issues, 314
  - notice, persons entitled to, 312
  - onus on applicant, 315
  - review of records by judge, 316, 317
- “**transaction**”, 590
- transfer of accused persons**, 430, 656
- treason**
  - jurisdiction of court, 5
  - limitation period, 32
- trial**, *see also* change of venue; directed verdict/non-suit; juries/jurors
- trial (indictable — continuations)**, 562, 563, 855
- trial (indictable — judge alone)**
  - court of record, acting as, 559
  - election for, 556, 557
  - exception to functus officio doctrine, 558
  - general, 568
- trial (indictable — judge and jury)**, *see also* juries/jurors
  - general, 560, 729, 730
  - jurisdiction of trial judge, 845
  - loss of right, 731
  - pre-trial conference/matters, 732, 733
  - right to, 729, 731
- trial (indictable — Provincial Judge)**
  - adjournments, 544
  - calling for plea, 539
  - conversion to preliminary inquiry, 495, 541
  - endorsement of information, 539
  - evidence, taking of, 543
  - guilty plea, effect of, 542
  - presumption of compliance, 540
- trial (summary conviction)**
  - adjournments, 1316–1319
  - appearance, 1307–1311
  - arraignment/plea, 1310, 1312
  - costs, 1328
  - evidence, taking/recording, 1313
  - exemption/exception, onus re, 1314
  - full answer/defence, elements of, 1315, 1316
  - jurisdiction, territorial, 1306
  - sentence, 1323–1326
  - verdicts, 1320–1322
- trial within reasonable time**, *see* Charter of Rights
- undertaking to appear**, *see* show cause hearings
- venue**, *see* change of venue
- verdicts**, *see* appeals; directed verdicts/non-suit; juries/jurors; trials (summary conviction)

## INDEX

---

- videotapes**, 49
- want of prosecution, dismissal for**, 36
- war crimes**, 5, 8
- warrant of committal**, 564, 1218, 1225, 1227, 1242, 1245, 1327, 1380
- warrants**, *see also* arrest; compelling appearance of accused; search warrants; summons
- administrative/judicial functions, 194–196
  - certiorari, 1218
  - contents of, 202
  - decision to issue, 191, 583, 1294, 1311
  - defects/irregularities, 473
  - direction to peace officer, 208, 209
  - duration of, 204
  - evidence of witnesses, 192, 194
  - execution by informant, 209
  - foundation for, 205, 583
  - informations, receipt vs. hearing of, 196
  - judicial function, issuance being, 206
  - judicial review, 207, 208
  - mandamus, 195, 208
  - out-of-province warrants, endorsement of, 279–281
  - staying out-of-province warrant, 203
- weapons**, 134
- withdrawal of charges**, 587
- witnesses**, *see also* evidence
- witnesses (contempt by)**, 1075, 1105–1107
- witnesses (detention of)**, 1075, 1104
- witnesses (general)**
- appeal, on, 931–933
  - cross-examination, 39, 932, 934, 1214
  - expert witnesses, 817–820
  - order to disclose whereabouts of, 1154
  - procuring attendance of, general, 1075, 1076
  - sexual offences, 39, 41
  - special commissioner, before, 935
  - under age 14, protection of, 39
- witnesses (prisoners, compelling)**
- affidavits, 1096
  - application for judge’s order, 1094
  - form/content of order, 1098
  - general, 1075
  - grounds for, 1097
  - jurisdiction, 1095
- witnesses (recognizances)**
- absconding witnesses, 1102, 1103
  - general, 1075, 1102, 1104, 1159
- witnesses (subpoenas for)**
- abuse of process, 1092
  - attendance, 1079
  - certiorari challenging, 1222
  - content of, 994
  - general, 1075, 1077
  - grounds for, 1077, 1089–1091
  - improper motive in obtaining, 1092
  - jurisdiction to issue, 1080–1083
  - quashing of, 1088–1093
  - service of, 1084–1087
  - witness not compellable, where, 1093

CRIMINAL LAW — PROCEDURE

---

**witnesses (warrants for)**

- absconding witnesses, 1102
- evading service of subpoena, 1101
- execution of, 1100, 1102, 1103
- general, 1075, 1103, 1159
- subpoena issued but not served, 1101, 1102
- subpoena not issued, 1099, 1100

## Index to Crown

(All references are to paragraph numbers.)

- actions, see also adverse possession; agency; attorneys general; contracts; corporations; courts (general); criminal law; declarations; injunctions; judicial review; jurisdiction; limitation of actions; practice; property (public lands); property rights (liability); statutes affecting rights/powers; tort liability; workers' compensation**
- administrative discretion, acts involving, 364, 369, 555
  - agents of Crown, re, 198, 222–224, 328, 344–349, 548, 549, 551, 556–565
  - aliens, by, 408
  - amendment of pleadings (general), 59
  - amendment of style of cause, 7
  - assignments, re, 409
  - bonds, re, 410
  - compensation, for, 430
  - constitutional questions, 518–521
  - contributory negligence, 340, 341
  - copyright, 470
  - Crown immunity, 70–72, 83, 171, 226, 561–563
  - death of monarch, effect, 412
  - defences, 340, 341, 356, 423–428, 431, 483
  - dower rights, re, 251
  - equitable relief available, 18
  - escheats/bona vacantia, 45, 155
  - estoppel/waiver, 423–425
  - forum, choice of, 58–60, 88
  - general procedure, 18
  - governor/lieutenant governors general, against, 111
  - grants of land, re validity of, 292, 293
  - interest on judgment, 421, 422, 494, 506
  - interpleader, 498
  - intervention by Crown, 514–516, 517, 521
  - judgments, payment of, 477, 478, 506
  - laches, 426
  - limitation of actions, 251, 321, 322, 357–361, 375–379, 394–395, 428–433, 483
  - mandamus, 119, 120
  - ministers, against, 114, 222, 223, 342, 345
  - ministries/departments, against, 125
  - negligence, re, 330, 331, 340, 341, 456, 482, 483
  - notice of, requirement for, 371, 372, 502, 503
  - parties (federal court), 484, 486
  - petition of right, 18, 179, 397, 507, 531
  - prerogative power and, 58–60
  - recovery of land, 227, 300–308
  - relator actions, 537–539
  - res judicata, 442
  - residential schools, 400
  - restitution/compensation, 228
  - service on Crown, 373, 501
  - standing to sue/be sued, 542
  - staying of, 494
  - subrogation, 447, 449
  - unjust enrichment, 214, 398
- adverse possession (over 60 years), see also property**
- aboriginal claims, 433



- Alberta, 238
  - British Columbia, 238
  - federal land, 241
  - general, 246
  - highways, 239
  - improvements, 246
  - less than 60 years, 236, 237
  - Manitoba, 238
  - Ontario, 238, 433
  - running of time, 240
  - Saskatchewan, 238
  - trust lands, 240
  - waste, 238
- agency**, *see also contracts; tort liability (provincial)*
- “agent or servant”, 241
  - authority to bind Crown, 241
  - Canada Mortgage and Housing Corporation, 550
  - Canadian Broadcasting Corporation, 553, 555
  - contracts, liability on, 222–224, 551
  - control test, 541
  - corporations as agents, 346–349, 541–547
  - individuals as agents, 542
  - ministerial liability, 549, 551
  - miscellaneous issues, 555
  - personal liability, tort, 548
  - port authorities
  - statutes not binding Crown, effect of, 554
  - taxation, liability to, 552, 553, 555
- aliens**, 408
- ambassadors/high commissioners**, *see diplomatic officers*
- appropriations**, *see also revenues; royalties*
- contracts requiring, 208–211
  - definition/nature of, 163
  - standing/statutory appropriations, 165
  - time limits on, 164, 165
  - unauthorized payments, recovery of, 166
- arbitration**, 189
- armed forces**
- administration of, 66
  - employees, injury to, 555
  - federal control of, 90
  - lands reserved for, 140
  - liability in tort, 343, 351, 352
  - pensions, 69
  - queen as commander-in-chief, 90
  - scope of employment, 351, 352
- assignments**, 409
- attorneys general**
- consent to prosecution, 512, 540
  - federal, 534
  - functions of, 513, 533
  - prosecutorial discretion, 323, 536
  - provincial, 535, 536
  - relators, 537–539
- bailment**, 396, 406
- bankruptcy**, 439
- beaches**, *see foreshore; lakes; water*
- bird sanctuaries**, 231
- bona vacantia**, *see escheats/bona vacantia*
- bonds**, 410
- bridges**, 273, 354
- builders’ liens**, *see liens*

---

INDEX

---

- buoys/beacons**, 137
- business of government**, 5
- cabinet**, *see* **Charter of Rights; executive, Crown as; prerogative powers/rules**
- Canada Mortgage and Housing Corporation**, 550, 560
- Canada Post**, *see* **postal services**
- Canadian Broadcasting Corporation**, 553, 555
- carrier, Crown as**, 412
- certiorari**, 485, 528
- Charter of Rights**, *see also* **criminal law**
- applicability to Crown, 16
  - cabinet decisions, 23
  - costs, effect on, 492
  - new trials, 65
  - prerogative rules/powers and, 23, 29
- children, protection of**, 399
- competition legislation**, 175
- constitutional law**, *see* **actions; Charter of Rights; powers under constitution; practice; prerogative powers/rules; property; statutes affecting rights/powers**
- contracts**, *see also* **agency; corporations**
- administrative practice authorizing, 202
  - agents, 196–198, 222–224
  - appropriations, requirement for, 208–211
  - breach of warranty of authority, 224
  - capacity to enter into, 82, 191–193
  - committees' powers to contract, 203
  - damages for breach, 216–219
  - extras, liability for, 213
  - fettering discretion, bar against, 193
  - franchises, grants of, 195
  - general law of applying, 212
  - good faith requirement, 192
  - guarantees, 197
  - injunctions, 220
  - interest, 217, 218
  - legislation re binding on Crown, 211
  - legislation, re passing of, 192
  - liability of agent/minister, 222–224, 551
  - orders in council, need for, 199, 202, 204, 205
  - quantum meruit, 214
  - quasi-contracts, 396, 401
  - recovery of money payable under, 215
  - rescission/restitution, 221, 369
  - set-off, 219
  - special services, re, 194
  - specific performance, 220, 443, 445, 525
  - statutes conferring authority, 200, 201
  - statutory validity, 204–207
  - subrogation, 447
  - tenders, requirement for, 207
  - unjust enrichment, 214, 398
  - writing requirements, 205, 206
- copyright**, 470
- corporations**, *see also* **actions; agency**
- agents of Crown, as, 346–349, 543–547, 555–558, 559, 561
  - CMHC, 550, 560

- criminal liability, 455, 562, 563
- escheats/bona vacantia, 50–52
- incorporation by letters patent, 69
- incorporation generally, 92
- winding up, 37
- costs, see practice**
- councils, see ministers/councils (powers/liability)**
- courts (general), see also actions; arbitration; jurisdiction; practice**
- appointment to, 11
- criminal law issues, 64, 65, 89, 323
- Crown as head of judiciary, 12
- establishment of, 11, 63, 87
- forum, choice of, 58–60, 88
- general, 89
- judges, appointment, 87
- jurisdiction, agreements re, 188
- liability for judicial acts, 376
- monarch’s personal power, 13
- prerogative powers of Crown, 12, 58–60, 63, 87–89
- creditors’ rights, 174, 175**
- crime, proceeds of, 55**
- criminal law, see also attorneys general; Charter of Rights; tort liability**
- agents of Crown, liability, 555, 562, 563
- attorneys general, 536, 540
- Charter of Rights, 65
- corporate liability, 455, 562, 563
- Crown, fining of, 455
- governor/lieutenant governors general, liability, 111
- “legal proceedings”, 458
- malicious prosecution, 378, 456, 509
- new trial, ordering, 65
- pardons, 64, 103
- police, liability, 330, 379, 380, 385–388, 510
- prerogative powers re, 64, 89
- prosecutions, 323, 380, 536, 540, 555
- prosecutors, liability of, 323, 330, 377–379, 509, 510, 536
- stay of prosecution, 64
- tort liability arising from, 323, 330, 377–379
- “Crown”**
- business of government, 5
- capacity/powers of, 14
- Charter of Rights, 16
- common law position, 17–20
- courts, 11–13
- executive, as, 6, 94, 126–129
- gender, relevance of, 2
- general, 1, 167
- governor/lieutenant governors general, 5, 9, 86
- head of government, 94, 126
- “her majesty”, 2, 3
- “her majesty in right of ...”, 7, 96
- indivisibility of, 4, 5, 95
- interpretation acts, 3
- judicial powers, 12, 13
- law/legislation, applicability, 14–20
- law making powers, 8, 10
- liens against, 20
- monarch acting in executive capacity, 1
- monarch, death of, 412
- monarch distinguished, 1
- parliament, as part of, 8

## INDEX

---

- provincial legislatures, as part of, 9
- succession, 2
- treaties, 19
- Crown lands**, *see* **property (Crown lands)**
- customs**, 330, 379, 457, 510
- declarations**, *see also* **actions**
  - federal court jurisdiction, 524, 528–530
  - federal Crown, re, 524, 525
  - general, 445, 506, 531
  - provincial Crown, re, 527, 532
- defences**, *see* **actions**
- departments**, *see* **ministries/departments**
- diplomatic officers**, 67, 103
- discovery**, *see* **practice**
- distress**, 413
- divisibility of**, 4, 5, 95
- dower rights**, 251
- duties**, *see* **actions; ministers/councils (powers/liability); tort liability**
- elevators**, 354
- employment**, *see also* **agency; pensions; prerogative powers/rules; workers' compensation**
  - conflict of interest, 418
  - discharge of officers/servants, 31, 84, 121, 368, 414, 415
  - enforcement of panel determinations, 480
  - garnishment/attachment, 419, 420
  - injuries to employees, Crown claims re, 320
  - legislation re, applicability, 416
  - nature of relationship, 418
  - whistleblower protection, 461
  - written contracts, necessity for, 206
- environmental law**, 480
- escheats/bona vacantia**, *see also* **prerogative powers/rules**
  - actions re, 45
  - applicability of, 44
  - charitable bequests, 54
  - corporate property, 50–52
  - creditor's rights, 48
  - crime, proceeds of, 55
  - definition/nature of, 42
  - federal powers/legislation, 53, 84
  - general, 31, 84, 156
  - loss of right, 157
  - nature of Crown's holding, 46, 47
  - Ontario, 155
  - provincial powers/legislation, 43, 45, 52, 53
  - unclaimed funds on deposit, 49, 52
- estoppel/waiver**, 423–425, *see also* **laches; res judicata**
- executive, Crown as**, 6, 126–129, *see also* **“Crown”; powers under constitution; prerogative powers/rules; provincial executive councils**
- executive power**, *see also* **ministers/councils (powers/liability)**
  - administrative nature of, 128
  - executive branch, 127
  - general, 126
  - types of, 127–129
- expropriation**
  - judicial review, 454
  - provincial lands, of, 133, 170

- restitution/compensation, 228
- external affairs**, 67, 91
- fiduciary obligations**, 323, 324
- finances/forfeitures/penalties**, 57, 158
- fisheries**
  - general, 150
  - proceedings against Crown, 407, 458
  - sea bed, 152
- foreshore**, *see also water*
  - beaches, 234, 235, 270, 271, 274
  - duty of Crown to protect, 146
  - general, 145, 267
  - movement of, effect, 149
  - riparian rights, 146, 274
  - road allowances, 274
  - title to, 148
  - Vancouver Island, 147
- forestry**, 231, 252, 278
- foster homes**, 399
- franchises, grants of**, 195, *see also contracts*
- freedom of information**, 459
- game preserves**, 231
- garnishment/attachment**, 419, 420
- goods and services**, *see taxation*
- governor general**, *see also lieutenant governors general*
  - appointment/tenure, 98
  - constitutional amendments re, 105, 167
  - death/incapacity/removal of, 99
  - deputies, appointment of, 100
  - general, 5, 9
  - letters patent constituting, 97
  - liability of, 111
  - powers of, 101–104
  - status of, 5, 110
- grants (public lands)**, *see also property (public lands); specific items, e.g., water*
  - Alberta (general), 245, 247
  - British Columbia (general), 245, 247
  - cancellation of, 297–308
  - correction of, 295, 296
  - forestry, 278
  - general, 242–246
  - highways/roads, 274, 279, 280
  - interpretation, 256–260
  - letters patent required, 242
  - Manitoba (general), 245
  - mines and minerals, 262–266
  - Newfoundland and Labrador (general), 245
  - occupation/improvement, effect of, 246
  - Ontario (general), 243, 244, 249–255
  - purchaser’s rights before grant, 247–252
  - Quebec (general), 245, 249
  - Saskatchewan (general), 245
  - special purposes (Ontario), 281–283
  - validity of, 284–293, 296
  - water/beds of water, 267–277
- guarantees**, 197
- harbours**, 138
- her majesty**, *see “Crown”*
- highways/roads**
  - allowances, 274
  - dedication of, 280
  - disposition of public land, effect of, 279
  - general, 230
  - lands coded to Crown, 230
  - notice of action re, 371

## INDEX

---

- Ontario, 234, 239
- historical sites**, 231
- immunity**, *see* **actions; prerogative powers/rules; statutes affecting rights/powers**
- income tax**, *see* **taxation**
- Indian reserves**, 141
- injunctions**
  - Crown agents, 555
  - duty of Crown to give effect to, 446
  - enjoining receipt of wages/salary, 419
  - general, 349, 444, 445, 525, 526, 528, 555
  - jurisdiction, acting without, 444
  - mandatory, 114
- interest**, 421, 422, 494, 506
- interpretation legislation**
  - “Crown”, 3
  - federal act, 172, 185
  - “necessary intendment”, 70, 71, 171, 182, 185
  - Ontario, 181
  - prerogative powers/rules, effect on, 80
- judges**, *see* **courts (general)**
- judicial functions, liability re**, 380
- judicial powers**, *see* **courts (general)**
- judicial review**, 114, 119, 308, 454, *see also* **actions**
- jurisdiction (federal Crown, re)**, *see also* **actions; courts (general)**
  - agreements re, 188
  - federal court, 188, 462, 465, 466, 528, 529, 559
  - forum, choice of, 58–60, 88, 464
  - provincial courts, 463, 466, 467, 479, 481
- jurisdiction (provincial Crown, re)**, *see also* **actions; courts (general)**
  - agreements re, 188
  - copyright actions, 470
  - federal court, 188, 470
  - forum, choice of, 58–60, 88, 468
  - provincial courts, 468, 469, 479
- laches**, 426, *see also* **estoppel/waiver; res judicata**
- lakes**, 139, 235, 270, *see also* **water**
- land**, *see* **actions; adverse possession; grants (public lands); property (public lands); taxation**
- letters patent**, 124, 242, 294, *see also* **corporations; governor general; grants/public lands**
- liens**, *see also* **prerogative powers/roles; trusts, deemed**
  - builders’ liens, 177
  - common law bar, 20, 427
  - statutory, in Crown’s favour, 38
  - tax liens, 413
- lieutenant governors general**, *see also* **governor general**
  - absence/illness of, 107
  - appointment/tenure, 107
  - constitutional amendments re, 109, 167
  - creation of office, 106
  - general, 5, 9, 86, 107
  - liability of, 111
  - powers of, 108
  - status of, 5, 110
- lighthouses**, 137

- limitation of actions**, *see also* **actions**
- compensation, action for, 430
  - federal court proceedings, 359, 360, 428, 429
  - general, 321, 322, 357, 483
  - Ontario, 251, 358, 394, 395, 433
  - pleading of statutes, 361
  - provincial, 375–379, 431–433
- mail**, *see* **postal services**
- malicious prosecution**, *see* **tort liability**
- mandamus**, 119, 120, 528
- military lands**, 140, *see also* **armed forces**
- mines and minerals**
- Alberta, 262
  - British Columbia, 262
  - constitutional rights re, 151, 154
  - Crown prerogative, 84
  - definition of, 153, 215
  - gold/silver, 56, 154, 263
  - grants, 262–266
  - Manitoba, 262
  - Ontario, 263–265
  - precious metals, 56, 154, 263
  - reservation of, 56, 262–265
  - Saskatchewan, 262
- ministers (general)**, 114
- ministers/councils (powers/liability)**, *see also* **executive power; orders in council**
- general, 114
  - historical development, 115
  - judicial review of exercise, 119
  - mandamus, 119, 120
  - source of, 116–118
  - statutory powers, types, 119
- ministries/departments**, 125
- monarch**, *see* **“Crown”**
- natural resources**, *see* **mines and minerals**
- navigable waters**, 144, 145, 269, 287, *see also* **water**
- negligence**, *see* **actions**
- occupier’s liability**, *see* **tort liability**
- orders in council**, 121, 122, 163
- pardons**, 64, 103, *see also* **criminal law**
- parks**, 231
- parliament**, *see* **“Crown”**; **prerogative powers/rules**
- pensions**, 69, 417, 555
- petition of right**, 18, 179, 397, 507, 531
- pleadings**, *see* **actions; limitation of actions; practice**
- police**, *see* **criminal law; tort liability**
- port authorities**
- postal services**, 435, 436, 564
- powers**, *see* **executive power; ministers/councils (powers/liability)**
- powers under constitution**, *see also* **“Crown” prerogative powers/rules**
- common law not affected, 82
  - executive powers, 81
  - general, 81
  - prerogative exemptions, 83
  - prerogative rights, additional, 84
  - prerogative rights, extraordinary, 85–92

## INDEX

---

- practice (federal court)**, *see also* **actions; courts (general); criminal law; jurisdiction**
- certiorari, 485
  - commencement/styling of, 475, 484, 485
  - constitutional questions, 519, 520
  - costs, 471, 476, 477, 492, 493
  - default judgment, 494
  - defendants, naming of, 484
  - discovery, 471, 474, 476, 488–491
  - general, 471, 476
  - intervention by Crown, 514–516
  - judgments, payment of, 477, 478
  - motions, 494
  - panel determinations as court order, 480
  - parties, 484, 486, 523
  - pleadings, 487
  - privilege/confidentiality, 488–491
  - stay of action, 494
- practice (provincial courts)**, *see also* **actions; courts (general); criminal law; jurisdiction**
- commencement/styling of, 472, 495, 504
  - constitutional questions, 518, 521
  - costs, 473, 506
  - default judgment, 473
  - discovery, 474, 496, 506, 511, 555
  - general, 473, 506
  - interest, 506
  - interpleader, 498
  - intervention by Crown, 514–516, 521
  - judgments, enforcement of, 506
  - judgments, payment of, 506
  - jury trials, 473, 500, 506
  - notice of claim/action, 371, 372, 502, 503
  - party, adding Crown as, 522
  - pleadings, 505
  - representations, attribution to defendants, 499
  - service on Crown, 373, 501
  - set-off, 497
  - striking out claims, 508, 509
  - subpoena duces tecum, 555
- precious metals**, *see* **mines and minerals**
- prerogative powers/rules**, *see also* **actions; courts (general); “Crown”; powers under constitution; property; statutes affecting rights/powers**
- actions in court, 58–60, 88, 89
  - armed forces, re, 66, 69, 90
  - cabinet decisions, 23
  - Charter of Rights and, 23, 29
  - colonies, re, 68
  - companies, incorporation of, 69, 92
  - courts/judiciary, re, 12, 63, 87–89
  - criminal law, re, 64, 65
  - definition of prerogative, 21, 24
  - delegation/divesting of, 28, 81
  - escheats/bona vacantia, 31, 42–55, 84
  - exercise by executive, 22
  - existence/scope of, 25–28
  - external affairs, re, 67, 91
  - extraordinary powers, 61–69
  - fines/forfeitures/penalties, 57
  - general, 21–26, 31
  - governor general’s role, 104, 167
  - legislation superceding, 26



- lieutenant governor's role, 108, 167
  - "new" prerogative powers, 25
  - pardons, 64, 103
  - parliament, re, 62, 85
  - precious metals, re, 56, 84
  - priority of payment, 31–41, 84, 437–439, 447
  - provincial legislatures, 9, 86
  - writs of extent, 40, 41, 453
  - treaties, re, 19, 23, 67, 91
- prerogative writs**, 528
- prescription**, *see* **adverse possession; limitation of actions**
- priority of payment**, *see also* **prerogative powers/rules**
- attachment of right, 33
  - bankruptcy, 439
  - debts covered/not covered, 35
  - general, 31, 32, 84
  - income tax, 39, 438
  - lien rights, 38
  - procedure for enforcing, 34
  - provincial infringement of, 36
  - subrogation to, 447
  - trusts, deemed, 39, 438
  - waiver of, 34
  - winding up of companies, 37
  - writ of extent, 40, 41
- prisons**, 434
- privacy**, *see* **tort liability (federal)**
- privilege**, *see* **practice**
- privy council**, 112, 115–120
- proclamations**, 123
- property**, *see also* **grants (public lands); revenues; royalties; taxation; tort liability**
- property (allocation generally)**
- Constitution Act, 1867, 132, 133
  - effect of, 134
  - expropriation of provincial lands, 133, 170
  - pre-confederation, 130, 131
- property (Crown lands)**, 229, 230
- property (federal)**
- Indian reserves, 141
  - lighthouses/buoys/beacons, 137
  - military lands, 140
  - public harbours, 138
  - public works/property, 135
  - Rideau Canal, 136
  - river/lake improvements, 139
  - Sable Island, 137
- property (provincial)**
- expropriation, 133, 170
  - fisheries, 150
  - foreshore, 145–149
  - general, 142, 143
  - mines and minerals, 143, 151
  - navigable waters, 144
  - precious metals, 151
  - residual allocation, 142, 143
  - taxation of, 170
- property (public lands)**, *see also* **grants (public lands)**
- administration of (Ontario), 12–43, 243
  - beaches, 234, 235
  - bird sanctuaries, 231
  - forestry, 231
  - game preserves, 231
  - highways/roads, 234, 239
  - historical sites, 231
  - municipal agreements, 235
  - offences re, 233
  - prohibited uses, 233

## INDEX

---

- parks, 231
- setting apart of, 231
- subdivision of (Ontario), 294
- surveys (Ontario), 294
- unauthorized occupation, over 60 years, 238–241, 246
- unauthorized occupation, under 60 years, 236, 237
- waste, 239
- zoning, 232, 237
- property (rights/liability)**
  - general, 225
  - recovery of land, 227
  - statutes affecting, 226
  - torts, 227
- property (transfers between governments), 187**
- provincial executive councils**
  - general, 113
  - powers of, 115–120
- public lands, *see* grants (public lands); property (public lands)**
- public works/property, 135**
- quasi-contracts, 396, 401**
- relator actions, *see* actions**
- releases, 440, 441**
- representatives of Crown, *see* e.g., governor general; lieutenant governors general**
- res judicata, 442, *see also* estoppel/waiver**
- residential schools, 400**
- revenues, *see also* appropriations; property; royalties**
  - appropriations, 163–166
  - consolidated revenue fund, 159–161
  - historical development, 159
  - provincial revenue funds, 162
- Rideau Canal, 136**
- riparian rights, *see* foreshore; lakes; navigable waters; rivers; waters**
- rivers, 139, 144, 145, *see also* water**
- roads, *see* highways/roads**
- royalties, *see also* property; revenues**
  - bona vacantia, 156, 157
  - escheats, 155
  - fines/forfeitures, 158
  - general, 130, 153
  - precious metals, 154
- Sable Island, 137**
- salvage**
  - general, 396, 402, 403
  - liability for (federal), 327
  - right to, 396
- sea bed, 152, 268, *see also* water**
- servants, *see* agency; contracts; corporations; employment; tort liability**
- specific performance, 220, 443, 445, 525**
- statutes affecting rights/powers, *see also* actions; prerogative powers/rules; tort liability**
  - acquisition of rights, re, 75
  - builders' liens, 177
  - competition legislation, 175
  - conflicting powers, 76
  - contracts, 184
  - Crown taking benefit burden, 71, 74, 183, 184
  - declaratory statutes, repeal of, 79
  - elections legislation, 174

- federal powers re, 77, 168, 169, 170, 173
  - federal/provincial agreements, 190
  - general, 26, 70–72, 80, 83, 93, 168, 169, 171, 226, 561–563
  - interpretation acts, effect of, 70, 71, 79, 172, 181, 182, 185
  - jurisdictional effect of, 73, 77, 78
  - miscellaneous examples, 174
  - “necessary intendment”, 70, 71, 171, 182, 185
  - office of Queen/governor general, 167
  - peace, order and good government, 168
  - provincial powers re, 77, 78, 170, 176–182
  - soldier settlement legislation, 174
  - statutory liability, 326, 362–365, 370, 374, 407
  - unproclaimed statutes, 185, 186
  - winding up/arrangements, 174, 175
- subrogation**, 447, 449
- succession**, *see* “**Crown**”
- surveys (Ontario)**, 294
- taxation**, *see also* **property (public lands)**
- agents/servants in occupation, 311, 312, 315
  - construction/interpretation of statutes, 316
  - deemed trusts, 39, 439
  - federal on provincial lands, 170, 317
  - general, 309, 313, 552, 553
  - goods and services, 460
  - income tax, 39, 439, 555
  - individual interests in Crown lands, 310
  - owner of land leased to Crown, 314
  - tax liens, 413
- timber**, *see* **forestry**
- tort liability**, *see also* **actions; adverse possession; agency; contracts; courts (general); judicial review; limitation of actions; property (public lands); property (rights/liability); statutes affecting rights/powers; workers’ compensation**
- tort liability (federal)**
- abuse of power, 331
  - bars to, 337–339, 450, 555
  - defences, 340, 341, 356
  - evidence/res ipsa loquitur, 355
  - injunctions, 114, 349
  - motor vehicles, 334
  - occupier’s/owner’s liability, 332, 333, 353, 354
  - pensions, as bar to action, 337, 338
  - postal service, re, 435, 436
  - prerogative/statutory powers as bar to, 339
  - prisons, re, 434
  - privacy, invasion of, 335, 336
  - scope of employment, 350–352
  - “servants”, 342, 343, 548
  - statutory duty, breach of, 114, 331
  - statutory liability, 326, 327
  - vicarious liability, 328, 329, 342–352
- tort liability (general)**
- agents, 328, 329, 345, 348, 549, 556
  - claims by Crown, 318–320

## INDEX

---

- contributory negligence, 340, 341
  - exemption at common law, 30, 326
  - fiduciary relationship, 323, 324
  - libel, 21
  - limitation of actions, 251, 321, 322
  - malicious prosecution, 378, 456, 509
  - ministerial liability, 549
  - operational/administrative vs. policy decisions, 364, 367, 369, 555
  - police, re actions of, 330, 379, 385–388, 510
  - prosecutors' liability, 323, 330, 456, 509, 510
  - releases, 440, 441
  - “servants”, 342, 343, 548
  - statutory duty, failure to perform, 114
  - statutory liability of Crown, 326
  - vicarious liability, 30, 326, 329, 367
- tort liability (provincial)**
- agents, re actions of, 329, 389–391
  - defences, 392, 393
  - employer, liability as, 368
  - indemnity/contribution, 381
  - limitation of actions, 375–379, 394–395
  - notice of claim/action, 371, 372
  - occupier's/owner's liability, 369
  - operational vs. policy decisions, 364, 367, 369, 555
  - “servants”, re, 382–384
  - service on Crown, 373
  - statutory liability, 326, 362–365, 370, 374
  - statutory torts, 370, 374
  - subrogation, 449
  - vicarious liability, 329, 366, 367, 382–391
- treaties**, 19, 23, 67, 91
- trusts**
- deemed, 39
  - general, 396, 404, 405
  - lands held in, 240
- unauthorized payments, recovery of**, 452
- unjust enrichment**, 214, 398
- Vancouver Island**, 147
- vicarious liability**, *see tort liability*
- waiver/estoppel**, 423–425, *see also laches; res judicata*
- water**, *see also foreshore; lakes; navigable waters; rivers*
- Alberta, 267, 277
  - beaches, 234, 235, 270, 271, 274
  - beds of water, 152, 268, 270, 272
  - boundaries, 270, 271
  - bridges, 272
  - British Columbia, 267, 277
  - common law, 268, 275
  - foreshore, 145–149, 267, 274
  - general, 268, 269
  - grants, 267–277
  - lakes, 139, 235, 270
  - Manitoba, 267, 277
  - navigable waters, 144, 145, 269, 287
  - Ontario, 273, 276, 277
  - power development, 273, 276
  - reservation to Crown, 267–269, 277
  - rivers, 139, 144, 145
  - road allowances, 274

## CROWN

---

- Saskatchewan, 267, 277
  - sea bed, 155, 268
  - tidal waters, 268
  - title to, 277
- whistleblower protection**, 461
- winding up of companies**, 37, 174, 175
- workers' compensation**, *see also* **employment; tort liability**
- Alberta, 449
  - federal, 450
  - provincial Crown, 451
  - provincial law not binding federal Crown, 448
  - subrogation, 449
- writs of extent**, 40, 41, 453, *see also* **prerogative powers/rules**
- wrongful dismissal**, *see* **employment**
- zoning**, 232, 237

## Index to Customs and Excise

(All references are to paragraph numbers.)

- abandoned goods**, 61, 123, 174,  
*see also* **release of goods**
- abatement**, *see*  
**refunds/abatement (customs)**
- accounting/payment of duties (customs)**, *see also* **collections (customs); customs legislation (general); customs tariff**
- arrears/fees/charges, 175, 176
  - code for goods, provision of, 54
  - general, 54
  - interest, 59, 60
  - interim accounting, 55, 56
  - liens, 178
  - mail, 55, 56, 204
  - notice requiring payment, 58
  - release, after, 56
  - release prior to, 54–57
  - security for release, 55
- agents/brokers (customs)**, *see also* **customs legislation (general); customs tariff**
- binding of principal, 15
  - licensing of, 13, 14
  - qualifications of, 14
- agriculture**, *see* **customs tariff**
- air transportation tax**, *see also* **Excise Tax Act**
- amount of, 416
  - failure to collect, 419
  - levy/collection of, 418, 419
  - licensing of carriers, 420
  - repayment, 437
  - returns/remittances, 421, 422
  - scope of, 415
  - time when payable, 417
- alcohol**, *see also* **Excise Act, 2001; breweries; customs tariff; denatured alcohol; distilleries; wine**
- breweries, 594, 598, 599, 622–625
  - bulk alcohol, 662–664, 667–669, 676, 679, 684, 685
  - denatured/specially denatured alcohol, 594, 665, 666, 674
  - distilleries, 593, 594
  - excise warehouse licensee/licenced user, liability for duty, 678
  - general, 232, 438, 657
  - imported spirits, special duty on, 675
  - licence, 658
  - non-duty-paid alcohol, 664, 672, 679–682, 685
  - offences/penalties, 658–661, 665, 666, 716, 717, 720, 721, 728–730
  - packaged alcohol, supply to retail stores, 683
  - packaged wine and spirits, removal of, 685
  - person responsible for, 667–670, 672, 677
  - production/packaging of alcohol, 658, 660, 717, 720, 721
  - refunds, 694, 695
  - relief from duty, 679
  - special container, removal of, 684
  - spirits, duty on, 670–674
  - still, possession of, 659
  - wine packaged in Canada, duty on, 677

- animals**, *see also* **search/seizure**
  - money/security, forfeit of, 154
  - proceeds of sale, 152
  - return to owner, 150
  - sale after seizure, 151, 152
  - value, determination of, 153
- anti-dumping**, *see* **Special Import Measures Act**
- apparel**, *see* **customs tariff; Export and Import Permits Act**
- arms/armaments**, 762, 764, 774
- assessment**, *see* **collections (customs); Excise Tax Act; Excise Act, 2001; goods and services tax**
- beer**, *see* **alcohol, breweries, Excise Act**
- bonded manufacturers, licensing of**, 597, *see also* **Excise Act**
- bonding warehouses**, *see also* **Excise Act; warehouses/duty free shops**
  - deficiencies, 600
  - effect of deposit in, 600
  - length of storage, 600
  - licensing, 596
  - risk of loss, 600
  - transfer/removal from, 601
- books**, *see also* **Excise Tax Act, Excise Act, 2001, goods and services tax, offences, records/books**
- breweries**, *see also* **alcohol, Excise Act**
  - accounts, 598
  - drawbacks, 624
  - exemptions, 622
  - general, 622
  - inventories, 599
  - licensing, 594
  - offences, 622, 625
- brokers**, *see* **agents/brokers (customs)**
- carriers**, *see* **duties, liability for; report of goods; transport/storage of goods (pre-release)**
- Charter of Rights**, *see* **forfeiture (customs)**
- cigars**, *see* **Excise Act, 2001; tobacco products**
- clothing**, *see* **customs tariff; Export and Import Permits Act**
- collections (customs)**, *see also* **accounting/payment of duties (customs); customs legislation (general); customs tariff; directors'/officers' liability; forfeiture (customs)**
  - acquisition of property/seizures, 183–186
  - amalgamation/winding up, 195
  - appeals to court, 176, 198–203
  - assessments/re-assessments, 196, 197, 203
  - certificate/memorial, 177
  - duties on mail, on, 204
  - garnishment, 181, 196, 197
  - general, 175
  - lien on goods/conveyance, 178
  - non-arm's length transfers, 182, 196, 197
  - objection to assessment, 198, 200, 203
  - partnership, liability of, 193
  - person leaving Canada, 186
  - receiver/representative, duties of, 192
  - restrictions on, 187–188
  - set off, 179, 180

## INDEX

---

- trustee, from, 191
- trustee in bankruptcy, liability of, 189
- unincorporated bodies, liability of, 194
- where receiver appointed, 190
- collections (Excise Act, 2001)**
  - acquisition of debtor's property, 752–754
  - certificate/memorial, 749
  - deduction/set-off, 751
  - directors, liability of, 745, 755
  - garnishment, 750
  - non-arm's length transfers, 757
  - procedures (general), 745, 746
  - property, charge on, 749
  - restrictions on, 747, 748
  - security, 746
  - unincorporated bodies, 756
- confidentiality**, *see* **privacy/confidentiality**
- conflict of laws**, 12
- constitutional issues**, 10
- “conveyances”**, 4
- copyrighted works**, 313, 314
- Crown, binding of**
  - Customs Act, 9, 10
  - Excise Act, 593
  - Excise Act, 2001, 626
  - Excise Tax Act, 436
  - goods and services tax, 492
- “customs duties”**, 1, 3
- customs legislation (general)**, *see also* **accounting/payment of duties (customs); agents/brokers (customs); collections (customs); customs tariff; forfeiture (customs); refunds/abatements (customs)**
  - agents/brokers, 13–15
  - applicability of, 12, 320
  - conflict of laws, 12
  - Crown, binding of, 9, 10
  - customs duties, nature of, 1, 3, 10
  - definitions, 2–8
  - native persons, binding of, 11
  - obligations on entry, 17
  - regulations under, 221, 227, 229, 231, 309–312
- customs offices, designation of**, 12
- customs tariff**, *see also* **accounting/payment of duties (customs); free trade goods; proof of origin; refunds/abatements (customs); valuation of goods**
  - administration/enforcement of, 309–312
  - agricultural goods (Mexico), 271
  - agricultural goods surtax, 262
  - alcohol, 232, 662, 675, 681
  - amendments, 227, 228, 234
  - Australia Tariff, 242
  - Canada-Israel Agreement Tariff, 247
  - Chile Tariff, 245
  - classes of tariff, 232, 233
  - classification of goods, (general), 224
  - Commonwealth Caribbean Country Tariff, 240, 241
  - contravention/failure to comply, 312
  - copyrighted works, 313, 314
  - Costa Rica Tariff, 248, 249
  - deferral of duties, 284–296
  - deferral re Canadian goods abroad, 293–295
  - deferral re subsequently exported goods, 284–286, 292



## CUSTOMS AND EXCISE

---

- direct vs. transshipment, 230
  - drawback (imported goods exported to NAFTA country), 290, 291
  - drawback/refund/remission, waiver re, 305
  - firearms, 315
  - fruits/vegetables, 253, 269, 270
  - general operation/nature, 223
  - General Preferential Tariff, 236, 237
  - General Tariff, 233
  - global emergency measures, 251–261
  - goods in transit, 278
  - interpretation, 223, 225, 226
  - Least Developed Country Tariff, 238, 239
  - marking of goods, 68,–70, 83, 231
  - Most-Favoured-Nation Tariff, 233–235
  - New Zealand Tariff, 242
  - obsolete goods, refund re, 297, 298, 300, 308
  - origin of goods, 229
  - prohibited goods, 97, 313–317
  - reduced value for duty, 281–282
  - reduction/relief, 279–283
  - refund/drawback, 299, 300, 308
  - regulations re, 227, 229, 231, 309–312
  - relief, discretionary, 301–303
  - relief, non-compliance with conditions, 304, 307
  - relief, repayment re NAFTA exports, 287–289
  - repayment of relief, by-product/merchantable scrap, 306, 307
  - special measures generally, 250
  - surplus goods, refund re, 297, 298, 300
  - surtax, China, 274–276
  - surtax, free trade partner goods, 256–260, 263–268
  - surtax protecting balance of payments, 277
  - surtax protecting financial position, 277
  - textiles/apparel goods, 272, 273
  - United States/Mexico tariffs, 243, 244
  - value for duty, 3, 72–82, 281
- deferral of tax, *see* customs tariff; refunds/abatement (customs)**
- denatured alcohol, licensing of, 594, *see also* alcohol; Excise Act; Excise Act, 2001**
- directors’/officers’ liability**
- Customs Act, under, 207
  - Excise Act, 2001, 745, 755
  - Excise Tax Act, under, 482
  - Export and Import Permits Act, under, 780
  - GST, re, 584, 585
- distilleries, *see also* alcohol; Excise Act; Excise Tax Act 2001**
- general, 593
  - licensing, 594
- “duties”, 3, *see also* valuation of goods**
- duties, liability for, *see also* customs tariff; Excise Act, 2001; goods and services tax**
- carrier’s, 46
  - duty free shops, 52
  - exclusions from liability, 39
  - exempt goods, 42
  - general, 38, 39, 223, 232

## INDEX

---

- joint/several, 39
- performance, effect of, 41
- time of imposition, 38
- warehouse operators, 52
- wrecks, 38, 40
- duty free shops, see warehouses/duty free shops**
- enforcement, see forfeiture (customs); offences; powers of officers (general); search/seizure**
- entry/arrival, obligations on, see also duties, liability for; presentation of persons, duty re; report of goods; warehouses/duty free shops**
- evidence, see Excise Act, 2001; goods and services tax; offences; search/seizure; Special Import Measures Act**
- Excise Act, see also bonded manufacturers; bonding warehouses; breweries; Excise Act, 2001; free trade goods**
  - amount of/timing of payment, 602–606, 611
  - books/returns, 598
  - collections, 611
  - Crown, liability to tax, 593
  - definitions, 592
  - interest, 605, 611
  - interpretation of, 592
  - inventories, 599
  - liability of officers, 609, 610
  - licensing, 594–596
  - offences/penalties, 605, 611, 616, 620–621, 625
  - powers/duties of officers, 602, 608
  - refunds/drawbacks, 606, 624
  - scope of, 591, 592, 626
  - search, 607, 608
  - seizure/forfeiture of property, 612–619
- Excise Act, 2001, see also Excise Act**
  - administrative penalties, 728–731
  - alcohol, 657, 658–685, 694, 695, 716, 717, 720, 721, 728–730
  - assessments, 698–705, 757
  - bankruptcies/corporate reorganizations, 711–715, 755
  - collection, 745–757
  - confidential information, 710
  - Crown, binding effect on, 626
  - directors, liability of, 745, 755
  - duty, 647–655, 670–685, 687–689
  - duty-free shops licence, 630
  - evidence, 758
  - excise warehouse licences, 628
  - fiscal month, 686
  - forfeiture, 736, 740–744
  - interest, 692, 698, 732
  - licences, 626, 627, 629–631, 633, 657, 658, 661, 665, 667, 668, 673–675, 678, 683, 731
  - offences, 632–642, 644, 658–661, 665, 666, 716–724, 727, 728–732, 737–739
  - proceeds of crime, 727
  - records, 706–710, 722
  - refunds, 689, 693–698, 722
  - registrants, 626, 628, 661, 665
  - regulations, power to make, 759
  - returns, 686, 687, 689–691, 712, 713, 731
  - scope of, 626
  - search/seizure, 733–735, 737–744, 754
  - service of documents/notices, 758
  - third party claims, 740–744

## CUSTOMS AND EXCISE

---

- tobacco, 632–655, 694–696, 706, 716–719, 728–730
  - transitional, 760
- Excise Tax Act, *see also* free trade goods; goods and services tax; refunds/drawbacks (Excise Tax Act)**
- air transportation tax, 415–422, 437
  - annual reports, 456
  - appeals, 466–473
  - assessments, 459–465
  - certificate, obligation to obtain, 458
  - collection/recovery of, 474–481
  - contents of, 405
  - cosmetics, jewellery, radios, etc., tax on, 423–431
  - Crown goods, liability for tax, 436
  - Customs Act, applicability of, 488
  - deemed manufacturer or producer, 407–408
  - exemptions, 429–430
  - exports, exemptions for, 435
  - gasoline, 426–428, 430, 440
  - inquiries under, 489
  - insurance premiums tax, 410–414
  - interest, 422, 448, 450, 451, 455, 457, 459, 461, 463–465, 471, 472, 474, 480
  - interpretation/construction of, 405
  - licences, 434
  - monthly returns, 453
  - non-arm's-length transactions, 409
  - offences, 434, 482–487
  - officers, actions against, 490
  - penalties, 455, 480, 482–487
  - “producer or manufacturer”, 406
  - purchaser, action against, 491
  - records/books, obligation to keep, 484
  - reference to court, 471
  - regulations under, 432
  - returns/payment of tax, 453–458, 463, 482, 483
  - scope of, 405
  - security, posting of, 431, 457
  - stamps, use of, 433, 434, 482
  - taxes imposed generally, 405
  - treaty Indians, liability for tax, 436
- Export and Import Permits Act**
- area control list, 763
  - arms/armaments, 762, 764, 774
  - bilateral emergency measures, 773
  - export control list, 762, 767
  - import access, 772
  - import control list, 764–772
  - natural resources, 762
  - offences/penalties, 779–781
  - permits/certificates, 774–778
  - powers of officers, 782, 783
  - scope of Act, 761
  - steel, 762, 766
  - textiles/apparel, 764, 773
- exportation, *see also* transport/storage of goods (pre-release)**
- certificate of origin, 111
  - code for goods, provision of, 109
  - “export”, 6
  - failure to export, report re, 113
  - NAFTA country, to, 111
  - records, keeping of, 112

## INDEX

---

- report of, 108, 113
- transport conditions, 110
- forfeiture (customs)**, *see also*  
**abandoned goods;**  
**accounting/payment of duties**  
**(customs); animals; collections**  
**(customs); offences;**  
**search/seizure; unclaimed**  
**goods)**
  - appeal of review, 169
  - ascertained forfeiture, 137, 157–160
  - automatic nature of, 155
  - Charter and, 155
  - collections, 175–204
  - disposal of property, 174
  - goods/conveyances not locatable/seizable, 157–160
  - report to commissioner, 161
  - review of, 156, 161–169
  - third party claims, 170–173
  - time when arising, 155
- forms, electronic filing of**, 16, 562, 690
- free trade goods**, *see also*  
**customs tariff; Export and**  
**Import Permits Act; Special**  
**Import Measures Act**
  - agricultural goods (Mexico), 271
  - export of, 111
  - proof of origin, 69–71, 84, 111
  - surtax, free trade partner goods, 256–260, 263–268
- fruit**, *see also* **customs tariff**
- gasoline**, *see also* **Excise Tax**  
**Act; refunds/drawbacks**  
**(Excise Tax Act)**
  - deemed sale of, 426–428
  - exemptions, 430
  - refunds, 440
- “goods”, 4**, *see also* **abandoned**  
**goods; animals; free trade**  
**goods; perishable goods; proof**  
**of origin; release of goods;**  
**report of goods;**  
**transport/storage of goods;**  
**unclaimed goods; valuation of**  
**goods**
- goods and services tax**, *see also*  
**Excise Tax Act**
  - action against recipient for, 524
  - administration/enforcement (general), 560, 561
  - anti-avoidance rule, 559
  - appeal of assessment, 574, 576–579
  - “arm’s length” and related concepts, 494
  - assessments, 572–580
  - audits, 565, 566
  - coin-operated devices, 507
  - collection of, 519–524, 581–586
  - confidentiality of information, 571
  - consideration, deemed, 501–505
  - coupons/vouchers, 504
  - Crown, binding effect on, 492
  - death of supplier, 508
  - deeming provisions, 494–506
  - definitions under, 493, 494
  - directors’ liability, 584, 585
  - disclosure of on invoice, etc., 523
  - discounts, 506
  - due date for payment, 510, 511
  - evidence, 589
  - financial institutions, 500
  - foreign-based information, 569
  - general, 492
  - imported goods, on, 542–548
  - imported taxable supplies, on, 549–552

## CUSTOMS AND EXCISE

---

- input tax credits, 512–518, 527
  - interest, 531, 543, 563, 572, 581, 584
  - objection to assessment, 576, 577
  - offences/penalties, 563, 564, 566, 587, 587, 588
  - participating province, property and services brought into, 493, 554–557
  - procedural matters, 589
  - rate of tax, 507–509
  - real property sales, 511, 529
  - records, keeping/inspection, 565–567
  - refunds/rebates, 530, 531, 546, 547, 553
  - registration, 538, 539, 541
  - remittance/payment of, 519, 525–533
  - reporting periods, 534, 537
  - returns, 534–536, 552, 561, 562
  - sales tax, replacement of, 492
  - search/seizure, 568–571
  - “service”, 493, 494
  - “small supplier”, 493, 499, 507, 518
  - social insurance number, provision of, 561
  - solicitor-client privilege, 570
  - “supply”, 493, 494, 508
  - supply by governments/municipalities as commercial activity, 498
  - supply by non-resident deemed made in/outside of Canada, 497
  - supply deemed in course of commercial activity, 497
  - supply deemed made in/outside of Canada, 496
  - taxi businesses, 518, 538, 540
  - telecommunication services, 492, 493, 496, 507
  - transitional provisions, 590
  - trustees/personal representatives, 526, 558
  - used tangible property, 493, 514
- illegal importation**, 36, 210, 213,  
*see also* **offences**
- “import”**, 5
- “importer”**, 2, 396
- inquiries**, 134, *see also* **Excise Tax Act; powers of officers; Special Import Measures Act**
- insurance premiums tax**
- contracts excepted, 411
  - liability to pay, 410
  - payment of, 414
  - returns, filing of, 412–414
- interest**
- customs tariff, 300, 304, 307, 308
  - Excise Act, 605, 611
  - Excise Act, 2001, 692, 698, 732
  - Excise Tax Act, 422, 448, 450, 451, 455, 457, 459, 461, 463–465, 471, 472, 474, 480
  - forfeited goods returned, 167
  - general, 59, 60, 98
  - GST under, 531, 543, 563, 572, 581, 584
  - refunds, on, 98, 105, 106, 308
- international agreements**, 222, 223, *see also* **free trade goods**
- legislation**, *see* **customs legislation (general); specific legislation, e.g., Excise Act**
- limitation of actions**, 128, 129
- liquor**, *see* **alcohol; breweries; customs tariff; denatured alcohol; distilleries; offences; wine**
- NAFTA**, *see* **free trade goods**

## INDEX

---

- native persons**, 11
- natural resources**, 762
- obsolete goods**, *see* **customs tariff**
- offences**, *see also* **forfeiture (customs); illegal importation; search/seizure**
- alcohol, 625, 658–661, 665, 666, 716, 717, 720, 721, 728–730
  - beer, re, 622, 625
  - blank documents, possession of, 211
  - collecting excess sums, 486
  - corporations, by, 207, 474
  - designated goods, re, 136
  - directors'/officers' liability, 207, 482, 584, 585, 587, 745, 755, 780
  - evasion of duties, 208
  - evasion of taxes, 485
  - evidence, 146–148, 205, 206
  - Excise Act, under, 604, 620–621, 625
  - Excise Act, 2001, 632–640, 644, 658–661, 665, 666, 716–726, 728–731
  - Excise Tax Act, under, 434, 482–487
  - Export and Import Permits Act, under, 779–781
  - exports, 108, 110, 113
  - failure to collect/pay tax, 482, 587, 605
  - false statements, 13, 208, 563, 731
  - falsifying records, 208, 563, 722
  - general, 135, 726
  - goods not released, opening etc., 212
  - GST, re, 563, 587, 588
  - illegally imported goods, re, 36, 210
  - information, disclosure, 403, 587, 724
  - licences, involving, 434
  - marking goods, 214, 231
  - miscellaneous, 215
  - misdescription of goods, 209
  - obstruction of officer, 723
  - penalties, 137–139, 207, 215–217, 487, 563, 564, 588, 716–725, 728–732, 737–739
  - proceedings re, 219, 220
  - purchaser falsely claiming exemption, 491
  - records/books, failure to keep, 65, 208, 484
  - returns, not filing, 483, 563, 587, 731
  - smuggling, 213
  - specific vs. general, 207, 216
  - tobacco, re, 136, 632–640, 644, 716–719, 728–730
- officers**, *see* **powers of officers (general); search/seizure**
- origin of goods**, *see* **proof of origin**
- payment**, *see* **accounting/payment of duties (customs)**
- penalties**, *see* **offences**
- perishable goods**, 150–154
- powers of officers (general)**, *see also* **search/seizure**
- access to warehouse/duty free shop, 51
  - as peace officer, 127, 218
  - assessment of penalties, 138
  - conveyances, aboard, 120
  - detention of goods, 121, 126
  - disposition of goods where Act breached, 123
  - disposition of samples, 122
  - Excise Act, under, 607, 608

- Export and Import Permits Act, under, 782, 783
  - inspection/unpacking of goods, 34, 115, 116, 119, 126
  - international agreements, 126
  - liability, limitation of, 128–130
  - limitation of actions, 128–130
  - power to call in aid, 125
  - questions/inquiries, 17, 34, 64, 134
  - records, examination of, 64, 66
  - search (general), 114, 117–119, 142
  - verification of origin of goods, 69
- presentation of persons, duty re**
- obligations generally, 17
  - person arriving, 18, 19
  - person entering/leaving customs controlled area, 20
  - person in charge of conveyance, 21, 22
- privacy/confidentiality**, 131–133, 402, 403, 571, 710, 724
- “producer or manufacturer”**, 406–407
- prohibited goods**, 97, 313–317
- proof of origin**, 69–71, 111, *see also* “goods”
- “record”**, 7
- records/books**, *see also* **offences; search/seizure**
- duty to keep, 64, 112, 565, 598
  - Excise Act, under, 598
  - Excise Act, 2001, 706–710, 722
  - exported goods, 112
  - failure to keep, 65, 208, 484
  - falsifying, 208, 563
  - GST, re, 563–567
  - inspection of, 64, 66
  - production on demand, 64, 67, 208
  - questions re, 64, 66
  - seizure of, 147, 148, 566–568
- refunds (Excise Act, 2001)**
- assessment, 698
  - bad debt, 696
  - deduction from duty payable, 689
  - general, 693, 694
  - interest, 698
  - offences, 722
  - overpayment, 697
  - requirement to file returns, 698
  - restrictions on, 695
- refunds/abatement (customs)**, *see also* **customs legislation (general); customs tariff**
- agreements re amount, 104
  - bars to, 107
  - based on error/overpayment, 101
  - general, 99, 100
  - inferior/defective goods, 102
  - interest on, 105
  - reduction of, 103
  - regulations re, 107
  - repayment of, 106
  - wrong goods received, 102
- refunds/drawbacks (Excise Tax Act)**, *see also* **Excise Tax Act**
- amount of payment/deduction, determination of, 452
  - application for, 448
  - availability, 437–438
  - bad debts, effect of, 438, 439
  - deduction from future return as remedy, 450, 451
  - determinations/redeterminations, binding nature, 449
  - drawback re exported goods, 447

## INDEX

---

- fuel purchased by diplomat, 446
- gasoline tax, 440, 446
- inventory, goods in, 442
- overpayments, return of, 474
- parts supplied free under warranty, 445
- sales to exempt persons, 444
- ship's stores, on, 441
- tax paid by province, 443
- release of goods, *see also* accounting/payment of duties (customs); transport/storage of goods (pre-release); warehouses/duty free shop**
  - abandoned goods, 61
  - accounting, prior to, 54, 55
  - code for goods, provision of, 54
  - definition, 8
  - general, 53
  - payment, prior to, 57
  - prohibited goods, 97
  - refusal of, 97
  - unclaimed goods, 62, 63
- report of goods, *see also* release of goods; transport/storage of goods (pre-release); valuation of goods; warehouses/duty free shops**
  - answering of questions, 34
  - illegally imported goods, 36
  - importer, by, 32, 33
  - inspection/unpacking of goods, 34
  - no title, 27, 28
  - person arriving, by, 23–26
  - person in charge of conveyance, by, 29–31
  - report of wreck, 37
  - unloading before making, 35
- returns (Excise Act, 2001)**
  - deduction of refund, 689
  - demand by minister for, 691
  - electronic filing, 690
  - extension of time, 687
  - fiscal month, 686
  - general, 687, 731
  - receiver, obligation to file, 713
  - separate returns, 687
  - trustee in bankruptcy, obligation to file, 712
- search/seizure, *see also* animals; forfeiture (customs); offences; powers of officers (general)**
  - animals, 150–154
  - conveyances, 140
  - custody left with owner, 124
  - custody with officer, 144
  - detention of goods, 121
  - evidence, 140, 144, 146–148
  - Excise Act, under, 607, 608, 612–619
  - Excise Act, 2001, 733–735, 737–744, 754
  - GST, re, 568–571
  - peace officer seizing, 145
  - perishable goods, 150–154
  - powers of officer, 114, 115–119, 125–127, 140, 607, 608
  - records, documents, 147, 148, 566–571
  - return of evidence, 146–138
  - return of goods/conveyances, 149
  - sale/destruction after, 151, 152
  - warrant for, 141
  - warrantless, 142
- ship's stores, 42–44, 284, 286, 441, 601, 624, 638, 652, 653, 655, 679, 681**
- smuggling, 213**
- Special Import Measures Act**
  - amendments to, 319



## CUSTOMS AND EXCISE

---

- amount of duty, 322
  - anti-dumping duty, 321, 322
  - appeals to court, 391, 392
  - appeals to/review by tribunal, 383–390
  - application of, 318
  - collection/recovery of duty, 338
  - confidential information, 402, 403
  - Customs Act, application of, 320
  - determination by designated officer, 378–382
  - duties imposed, 321
  - evidence, 402
  - export price, determination, 348–352, 378
  - free trade goods, 364, 365, 377, 379, 380, 381, 388, 394, 395
  - importer, designation of party as, 396–401
  - information, disclosure of, 402, 403
  - inquiry by tribunal, 362, 365–71
  - investigation by Commissioner, 353–372, 389, 397, 398
  - liability to pay, 323–328
  - normal value of goods, determination, 339–347, 378
  - order of tribunal, date of, 336
  - payment pending court/tribunal challenge, 329, 330, 332
  - preliminary determination, 360–362, 365–372
  - provisional duty, 321, 322, 331, 332
  - purpose of legislation, 318
  - reference to tribunal, 356, 357, 359
  - refunds, 333–337
  - regulations re, 318, 404
  - review, 337, 364
  - review by panel, 393–395
  - subsidized goods, countervailing duty, 321, 322
  - undertaking of exporter/government, 366, 373–377
- spirits, see alcohol; distilleries; Excise Act, 2001**
- steel, 762, 766**
- storage of goods, see bonding warehouses; transport/storage of goods (pre-release); warehouses/duty free shops**
- subsidized imports, protection from, see Special Import Measures Act**
- surplus goods, see customs tariff**
- textiles, see customs tariff; Export and Import Permits Act**
- tobacco products, see also Excise Act, 2001**
- cigarettes, 429, 438
  - dealers, licensing of, 633
  - excise warehouse, entry into/removal from, 651–653
  - imposition of duty, 647
  - inventory tax, 656
  - manufacturing equipment, 641
  - offences/penalties, 632–640, 644, 716–719, 728–730
  - packaging/stamping, 634, 639–640, 642–643
  - payment/collection of duty, 648, 649
  - personal use, for, 632, 642, 654
  - possession/production/sale, unlawful, 637–639, 717–719
  - prohibition of manufacture, 632
  - providing equipment for manufacture, 632
  - purchase or receiving for sale, unlawful, 636

## INDEX

---

- records, 706
- refunds, 694–696
- relief from duty, 650
- removal, unlawful, 635, 646, 651
- reworking/destruction, 646, 650, 652
- special duty, 654, 655
- warehousing of, 644, 645
- transport/storage of goods (pre-release), see also bonding warehouses; release of goods; report of goods; valuation of goods; warehouses/duty free shops**
- bonds/security, 46
- carrier’s liability/duties, 46, 47
- code for goods, provision of, 45
- conditions imposed, 46
- general, 43, 44
- unloading before report, 35
- unclaimed goods, 62–63**
- valuation of goods, see also customs tariff; “goods”; release of goods; report of goods; Special Import Measures Act; transport/storage of goods (pre-release)**
- appeal to federal court, 95, 98
- appeal to Canadian International Trade Tribunal, 87–94
- computed value of goods, 80
- deductive value of goods, 79
- general, 3, 72–73
- imports for GST purposes, 544
- methods used for (general), 73
- notice of method used, 73
- origin of goods, 82–85
- priority of methods, 73
- prohibited goods, appeal, 97
- reference to Canadian International Trade Tribunal, 96
- refund pending appeal, 98
- residual method, 81, 82
- tariff classification/valuation, 84–90
- transaction value of goods, 74–76
- transaction value of identical goods, 77
- transaction value of similar goods, 78
- transit through another country, 82
- “value for duty”, 3, 72
- “value for duty”, 3, see also customs tariff**
- vegetables, see customs tariff**
- warehouses/duty free shops, see also bonding warehouses; Excise Act, 2001; Excise Tax Act; release of goods; tobacco products; transport/storage of goods (pre-release)**
- access of officers, 51
- classification of goods, 48
- duties of operators, 49–51
- liability for duties/taxes, 52
- licensing of operators, 48, 630
- pricing of goods, 50
- refusal to receive, 49
- unclaimed goods, 62, 63
- wine, 438, see also alcohol; breweries; denatured alcohol; distilleries**
- wrecks, 5, 37, 38, 40, 215**

## Index to Damages

(All references are to paragraph numbers.)

- abuse of process**, 472, *see also*  
malicious prosecution
- accord and satisfaction**, *see also*  
releases
- both required, 630
  - general, 628
  - multiple defendants, 630
- agency contracts**, 239, 240
- aggravated damages**, *see also*  
punitive/exemplary damages
- assault, 23, 466
  - consumer protection, 26
  - contracts, breach of, 20
  - corporations receiving, 19
  - criminal sanctions and, 19
  - definition, 18
  - employment situations, 21
  - false imprisonment, 470
  - fatal accidents, 448
  - pleading of, 19
  - police officers, 470
  - punitive damages distinguished, 18
  - purpose of, 18, 19, 466
  - vicarious liability, 22
- anticipatory breach**, 152
- appeals**
- jury, from, 653, 654, 655, 657–661
  - Supreme Court of Canada, to, 662
  - trial judge, from, 642–652
- apportionment of**, 48
- appropriation of personality**, 495
- arbitration awards**
- collective agreements, 236
  - insurance claims, 632
  - interest on, 88
- arrest, wrongful**, 43
- assault and battery**
- aggravated damages, 22, 23, 466
  - appeals, 659
  - compensatory damages, 23
  - foreseeability, relevance, 461
  - general, 44, 461, 462, 464, 466
  - provocation, effect, 44, 467
  - punitive damages, 44, 462, 465
  - sexual assault, 22, 23, 462, 463, 466
- assessment principles**, *see also*  
general principles; time of  
assessment
- continuing causes of action, 72–74
  - difficulties in assessment, 75–77, 137
  - general, 64–67
  - mitigation, effect of, 602
  - time of assessment, 68–71
- assessment work contracts**, *see*  
mineral rights
- associations and clubs**, 241, 242
- assumption of risk**, 636
- bailment**
- bailee for hire, 243
  - conversion, 247
  - hotel keepers, 246
  - limitation clauses, 245
  - paramount title, 247
  - standard of care, 243, 244
- banks and banking**
- bills of exchange, 248, 249

## DAMAGES

---

- conversion by bank, 249
  - dishonouring cheques, 248, 249
  - fiduciary breach by bank, 573
  - punitive damages against bank, 34
  - receivership, wrongful, 550
  - sale of security, wrongful, 57
  - self-help by bank, 549
- bars to recovery**, *see* specific topics, e.g., mitigation
- bereavement**, 437
- bills of exchange**, 248–250
- breach of confidence**, 579
- breach of duty**, *see also* statutory duty, breach of; trusts
- general, 487
  - punitive damages for, 24, 37
- breach of promise**, *see* promise to marry, breach of
- builders' liens**, 203
- building contracts**
- builders' lien legislation, 203
  - building inspections, 563
  - confidential information, misuse, 204
  - contingencies, 201
  - general, 197, 198
  - Hadley v. Baxendale, 199
  - interest costs, 200
  - interference by owner, 202
  - liability to subsequent purchaser, 72
  - loss of profits, 199, 200
  - repudiation by owner, 201
- business**, *see* sale of business
- care, guidance and companionship**
- adoption/guardianship, effect, 433
  - father's death, 434
  - general, 365, 431
  - parties eligible for, 435
- carriage, contracts of**
- C.I.F. price, 205
  - cancellation after breach, 210
  - failure to load cargo, 210
  - general, 205
  - Hague-Visby Rules, 208
  - interest, 209
  - limitation clauses, 208
  - loss of profit, 207
  - maritime issues, 209
  - passengers, 206, 211
  - salvage value, 205
  - smoking prohibition, breach of, 206
  - Warsaw Convention, 211
- causation**, *see* intervening events; remoteness
- cause of action**
- continuing nature of, 72–74
  - definition (British Columbia), 83
  - interest on, 83
- champerty and maintenance**, 552, 223
- chattels, damage to**, *see also* trespass to chattels
- Collectibles, 534
  - cost of repair, 525, 527, 528
  - depreciation, 526
  - destruction, 530
  - general, 525
  - income approach, 536
  - interest costs, 532
  - loss of profits, 532
  - loss of use, 531
  - market value, 527, 528, 534, 535
  - overhead, 525

## INDEX

---

- rarities, 534
  - replacement cost, 527, 528, 534, 535
  - salvage, 528, 530
  - substitute chattel, 533
  - uniqueness, 529
  - valuation, 536
  - value to owner, 529
- cheques**, *see* bills of exchange
- children**
- bereavement claims, 437
  - birth of disabled child, 405
  - contributory negligence, 625
  - criminal injuries compensation, 595
  - fatal accidents claims by, 410, 423, 425, 426, 430, 431, 432, 433–435
  - fatal accidents claims for, 411, 428, 429
  - loss of inheritance, 426
  - maintenance for, 595
  - parents unmarried, 425
  - personal injury, 281
  - proof, 20
  - unborn, 281, 411
- clubs**, *see* associations and clubs
- companionship**, *see* care, guidance and companionship
- confidential information**, *see* employment law
- confidentiality**, *see* breach of duty
- conflict of laws (contracts)**, 112
- consequential damages (deceit)**, 486
- conspiracy**, 491, 492
- construction liens**, 203
- contemptuous damages**, 17
- contingent damages**, *see* remoteness
- continuing damage**, 72–74
- contractors**, *see* building contracts
- contracts**, *see also* interference with economic relations; liquidated damages; punitive/exemplary damages; specific contracts, e.g., sale of goods
- aggravated damages, 20
  - breach causing further breach, 95
  - conflict of laws issues, 97
  - income tax considerations, 96
  - inducing breach, 488–490
  - knowledge of parties, relevance, 87
  - loss of profits, 106, 107
  - measure of damages, 20, 49, 50, 100, 143
  - mental anguish, 109
  - nominal damages, 108
  - pleading of damages, 103
  - proof of damages, 104, 105
  - punitive damages, 490
  - purpose of award, 99
  - remoteness of damage, 49, 50, 100
- contributory negligence**
- appeals involving, 651
  - children, by, 625
  - general, 622, 623
  - safety equipment, non-use, 624
- conversion**
- bailee, by, 247
  - bank, by, 549, 550
  - cause of action, parties having, 544
  - copyright infringement and, 565, 566
  - evidence, 548

## DAMAGES

---

- general, 543
  - landlord, by, 191
  - loss of profits, 551
  - loss of use, 546
  - mixture of goods, 548
  - punitive damages, 43, 191, 547
  - receiver, by, 550
  - return by defendant, 545
  - right to damages, 544
  - wrongful seizure, 550, 551
- copyright**, *see* intellectual property
- corporations**, 394, 482, 483, 574, *see also* sale of business
- criminal injuries compensation**, *see also* penal statutes
- assisting in arrest, 594
  - deductions from award, 595
  - general, 593
  - nervous shock, 598
  - preventing offence, 594
  - property damage recovery, 596
  - scope of award, 595, 598
  - victim's conduct, effect of, 597
- criminal law, effect on damages**, *see also* penal statutes, breach of
- aggravated damages, 19
  - ex turpi causa, 638, 639
  - punitive damages, 38, 39, 40
- crops**, *see* farm land
- Crown**, *see also* municipal corporations; statutory authority, effect of; statutory duty, breach of
- negligent misrepresentation by, 455
  - punitive/exemplary damages against, 32
- dangerous activities and substances**, *see* negligence; products liability; strict liability
- deceit**, *see* fraud, deceit and misrepresentation
- defamation**, *see also* loss of reputation
- appeals, 659
  - corporations, 482, 483
  - libel, 474, 475, 476, 477, 478, 621, 659
  - mitigation, 621
  - political context, 480
  - prospective damages, 478
  - punitive damages, 43, 479, 480, 482
  - reputation, relevance, 477, 481
  - slander, 473, 478, 621, 659
  - special damages, 7
  - “trilogy” cases, 474
- distributorships**, *see* franchises
- doctors**, *see* negligence
- duty**, *see* breach of duty
- earnings**, *see* wages and earnings
- economic loss**
- general, 392, 393–395
  - negligent misrepresentation, 452
  - physical damage and, 57, 395
  - product liability cases, 556
  - remoteness, 57
- education, contract for**, 252
- emotional distress**, *see* mental distress
- employers, claims for employee injuries**, 406–408
- employment benefits, effect of**
- general, 378–381
  - pension benefits, 382
- employment contracts**, *see also* wages and earnings
- aggravated damages, 21
  - arbitration, 237

## INDEX

---

- benefits, effect on damages, 223, 224, 225, 378–382
  - collective agreements, 235–237
  - commission salespeople, 221
  - confidential information, 204
  - dental benefits, 225
  - disability benefits, 224
  - employee's liability, 233
  - finding new employment, 218
  - fixed term contracts, 213
  - fringe benefits, 222, 223, 224
  - general, 212, 219
  - harassment, 231
  - income tax, relevance, 215
  - insurance benefits, 223
  - interest, 217
  - limitations, 214
  - liquidated damages clauses, 210
  - loss of opportunity, 235
  - loss of reputation, 227
  - measure of damages, 234
  - medical benefits, 225
  - mental distress, 228–231, 484
  - mitigation, 213, 218, 219, 220, 614, 615, 617–620
  - moving expenses, 218
  - nuisance, 510
  - pension benefits, 226, 382
  - punitive damages, 35, 36, 233
  - share options, loss of, 161
  - strikes, 510
  - unemployment insurance, relevance, 215, 224
  - vacation pay, 216
  - workers' compensation, relevance, 215, 224, 634
- equipment leases**, 192
- equitable damages**, 71
- equity**, *see* trusts
- erosion**, 519, 588
- evidence**, *see also* proof of damages
- appeal, on, 278, 645
  - ascertainment of damages, difficulty, 75–77
  - contract, damages in, 104, 105
  - conversion of goods, 548
  - earning capacity, loss of, 326, 336, 337, 344–346
  - ex turpi causa and, 639
  - fatal accidents, 419
  - loss of chance, 16, 137
  - loss of profits, 106, 107
  - mitigation, proof of, 603
  - new evidence, 278, 645
  - nominal damages and, 16
  - onus generally, 67
  - reasonableness of claim, 67
  - special damages, 5
  - statutory breach as, 558
  - thin-skull doctrine and, 364
- ex turpi causa**, 638, 639
- execution**, *see* seizure of property, wrongful
- exemplary damages**, *see* punitive/exemplary damages
- failure to warn**, *see* product liability; statutory authority, effect of
- false imprisonment**
- aggravated damages, 470
  - general, 468
  - punitive damages, 43, 469
  - wrongful arrest, 43, 469
- farm land**, 500, 501, 515
- fatal accidents**
- aggravated damages and, 448

## DAMAGES

---

- bereavement claims, 437, 438–442
- calculation of damages, 412, 418, 419
- care, guidance and companionship, 430, 431, 432, 433–35
- cause of action, 410
- child care expenses, 499
- children, 410, 411, 425, 426, 428–436
- funeral expenses, 442
- general principles, 409, 410, 416
- grandparents, claims by, 415
- guardians, claims by, 415, 451
- home renovations, 452
- income tax, effect of, 444
- insurance payments, effect of, 377, 443
- interest claims, 86
- loss of amenities, 445, 447
- management fees, 450
- medical expenses, 441
- miscellaneous expenses, 446
- mitigation, 427, 609
- parents, claims by, 415, 410
- pecuniary benefit, loss, 412, 413, 416–424, 426–428
- pension benefits, effect of, 413, 443
- punitive/exemplary damages and, 448
- release of claim, 633
- search expenses, 449
- spousal claims, 410, 414, 417, 422, 425, 427
- fiduciary duty**, *see* breach of duty
- fire departments**, 459
- fires**, 516
- floods**, 515, 588
- franchises**, 251
- fraud, deceit and misrepresentation**
  - consequential damages, 486
  - fiduciary breaches, 487
  - general, 485
  - sale of land, 524
- funeral expenses**, 442
- future care**, *see* personal injury
- future damages**
  - assessment, reservation of, 74
  - pain and suffering, 301
  - personal injury, 302
  - slander of title, 520
- gasoline**, 516
- general damages**, *see also* personal injury
  - calculation of, 6
  - court’s role in determining, 276
  - definition of, 4
  - personal injury, 6
  - pleading of, 4
  - wages and earnings, 6
- general principles**, *see also* assessment principles
  - ability to pay, relevance, 66
  - additional remedies, 2
  - proof, 67
  - purpose of award, 1, 64
  - reason for awarding, 3
  - time of assessment, 68–71
- gifts, effect on award**, 391
- guarantee and indemnity**, 253
- guardians, claims by**, 452
- guidance**, *see* care, guidance and companionship
- Hague-Visby Rules**, 70



## INDEX

---

- hazardous products**, *see* dangerous activities and substances; product liability
- health insurance (provincial), effect of**, 384–386
- herbicides**, 515
- holidays, ruined**, 109, 454
- hospital visits**, 286, 404
- house upkeep/renovations**, 285, 452
- housekeeping costs**, 285, 417, 401
- illegality**, 38–41, 462, 638, *see also* criminal law, effect on damages
- impecuniosity**, 606
- income tax considerations**
- contract, breach of, 111, 215
  - employment contracts, 215
  - fatal accidents, 444
  - personal injury claims, 344, 347, 356, 357, 372
- indemnity**, *see* guarantee and indemnity
- inducing breach of contract**, 43, 110
- inflation**, 305, 307
- injunctions**
- awarding of, 2
  - liquidated damages and, 14
  - passing-off actions, 564
- insurance, effect of**
- automobile insurance, 387
  - health insurance, provincial, 384–386
  - private insurance, generally, 376, 377
- insurance contracts**
- arbitration, 632
  - interest on claim, 85
  - punitive damages, 24, 34
- insurance payments, effect of**
- criminal injuries compensation, 595
  - fatal accidents, 377
  - general, 376, 443
- intellectual property**
- copyright infringement, 565, 566
  - injunctions, 564
  - passing off, 564
  - patent infringement, 566
- intentional infliction of mental distress**, 20 231, 484, *see also* mental distress; nervous shock
- intentional torts (general)**, 462
- interception of communications**, *see* invasion of privacy
- interest (Alberta)**
- general, 78
  - just debt wrongfully withheld, 80
  - offer of judgment/payment in, 79, 81
  - pleading of claim, 81
  - prejudgment interest, 81
  - summary judgment, 81
- interest (British Columbia)**
- arbitrator's powers, 88
  - “cause of action”, 83
  - discretion of court, 84
  - general, 82
  - maintenance awards, 87
  - payment into court, 82
  - prejudgment interest, 84–88
  - rate of, 84
  - special damages, 82
  - statutory limitations, 85
- interest (general)**
- building contracts, 200

## DAMAGES

---

- carriage contracts, 209
- damage to chattels, 532
- employment contracts, 217
- interest (Manitoba)**, 89
- interest (Ontario)**
  - delay in action, 96
  - discretion of court, 95
  - exemplary damages, on, 93
  - general, 90, 374
  - non-pecuniary loss, 91
  - past pecuniary loss, 92
  - post-judgment, 94
  - prejudgment, 91–93
- interest (Saskatchewan)**
  - debt or sum certain, actions for, 98
  - general, 97
- interference with economic relations**
  - conspiracy, 491, 492
  - inducing breach of contract, 488–490
- intervening events**
  - general principle, 59
  - personal injury, 48, 60, 61, 62, 63, 362, 363, 367–370
- invasion of privacy**, 493, 494
- juries**
  - appeals from, 653–661
  - loss of earning capacity and, 327
  - quantum of damages and, 308
  - submissions to, 276, 308
  - summation to, 276
- labour law**, *see* employment law
- landlord and tenant**, *see also* trespass to land
  - blocking tenant's possession, 185, 505
  - constructive abandonment, 180, 191
  - conversion, 191
  - exclusive business, 189
  - failure to construct suitable premises, 186
  - failure to work land, 184
  - general, 179, 180
  - improper use of premises, 182
  - loss of profits, 185, 189, 190, 505
  - non-repair by landlord, 187
  - non-repair by tenant, 183
  - punitive damages, 191
  - quiet enjoyment, 188
  - reletting by landlord, 179, 181
  - wrongful eviction, 190
- leases**, *see* bailment; equipment leases; landlord and tenant
- libel**, *see* defamation
- limitation of actions**, 640, *see also* specific bars, e.g., accord and satisfaction
- liquidated damages**
  - contractual limitations to damages, 626
  - court's role, 10, 13, 626
  - definition, 8
  - employment contracts, 238
  - general principle, 626
  - genuine pre-estimate of damage, 9, 12, 626
  - injunction not barred by, 14
  - penalty vs. damages, 9, 10, 12, 13, 102, 626
  - purpose of, 8, 11
  - reasonableness of, 8–10, 12, 13
  - sale of land, 10
  - specification by parties, 8

## INDEX

---

- loss of amenities**, *see* non-pecuniary damages; personal injury
- loss of business**, *see* sale of goods
- loss of chance**
- employment contracts, 235
  - general, 16
  - investment opportunity, 311
  - marriage opportunity, 312
  - sale of land, 137, 143
- loss of competitive advantage**, 328
- loss of consortium**
- common law, 396
  - separation, effect of, 399
  - statutory rules, 397
  - substantial loss, 398
- loss of dependency**, 420, 426
- loss of expectation of life**, *see* pecuniary damages; personal injury
- loss of inheritance**, 426
- loss of profits**, *see also* economic loss
- building contracts, 199, 200
  - carriage, contracts of, 207
  - contracts, general, 106, 107
  - copyright infringement, 565, 566
  - damage to chattels, 532
  - employee injury causing, 406–408
  - fiduciary breaches, 572, 575
  - franchises, 251
  - future profits, 570
  - landlord and tenant, 185, 190
  - sale of business, 177
  - sale of goods, 114, 132
  - sale of land, 144, 146
  - trespass to land, 500
  - zoning violations, 587
- loss of reputation**, *see also* defamation
- actors, 227
  - defamation, 477, 481
  - malicious prosecution, 471
  - wrongful dismissal, 227
- loss of use**
- conversion, 546
  - damage to chattel, 531
- lottery corporations**, 453
- maintenance and champerty**, 552, 553
- malicious prosecution**, 43, 471, *see also* abuse of process
- management fees**, 373, 375, 450
- maritime law**, *see* carriage, contracts of
- “Mary Carter” agreements**, 627
- medical advances, effect of**, 355
- medical malpractice**, *see* negligence
- medical reports**, 285
- mental distress**, *see also* intentional infliction of mental distress; nervous shock
- birth of disabled child, 405
  - breach of contract, general, 20, 109
  - employment contracts, 20, 228–231
  - nervous shock and, 321, 322
  - sale of land, 136
- mineral rights**
- assessment work contracts, 254
  - drilling contracts, 256
  - exploration contracts, 255
  - royalty agreements, 258
  - working interest, loss of, 257

## DAMAGES

---

**misrepresentation**, *see* fraud, deceit and misrepresentation; negligent misrepresentation

**mitigation**

- after judgment, relevance, 601
- applicability of doctrine, 607
- cause of action, duty to bring, 608
- conduct of plaintiff, relevance, 600
- defamation, 621
- employment and employment contracts, 213, 218, 219, 220, 614, 615, 617–620
- enforcement of security as, 608
- equipment leases, 192
- failure, proof of, 603
- fatal accidents, 427, 609
- fiduciary duty, breach of, 571
- general duty, 599, 604, 607, 611, 612
- impecuniosity, relevance, 606
- increased damage caused by, 605
- mental/psychological injuries, 366
- personal injury, 610, 611, 612, 613, 616
- punitive/exemplary damages, 29
- reasonable efforts, 604, 605, 608, 612
- sale of land, 144, 153
- shares, sale of, 160
- thin skull doctrine and, 366
- time for, effect on assessment, 602
- trespass to land, 499, 503
- when duty arises, 601, 602

**mortgages**, *see also* trespass to land

- broker's fee, recovery, 193
- commitment, breach of, 193

- damage to property, 194, 539
- mortgagee in possession, 194
- refusal to discharge, 195
- sale by mortgagee, 196

**multiple accidents**, *see* intervening events

**municipal corporations**, *see also* Crown; statutory authority, effect of; statutory duty, breach of

- building inspections, 563
- nuisance, liability, 512
- sewers, 588
- streets, repair of, 562, 586
- zoning restrictions, 587

**negligence**, *see also* economic loss; fatal accidents; negligent misrepresentation; personal injury; remoteness; torts (general)

- causation, 48
- commercial hosts, 460
- contributory negligence, 622–625, 651
- design flaws, 567
- economic loss, 57
- general principles, 266, 282
- infliction of mental suffering, 231
- medical personnel, 271, 272
- punitive damages for, 41–43
- remoteness, 49–54, 55, 56, 57, 58, 59–62, 63
- solicitor's, 149, 267, 268, 269, 270
- statutory authority and, 586
- statutory breach and, 558

**negligent design**, 567

**negligent misrepresentation**

- duty of care, 55, 56
- economic loss, 55, 452
- fire department, by, 459

## INDEX

---

- lottery corporation, by, 453
  - measure of damages, 452
  - proximity, 55, 56
  - sale of land, 455
  - solicitor, by, 458, 549
  - suppliers, by, 456
  - travel agent, by, 454
  - trust company, by, 457
- nervous shock**
- foreseeability, 316–319
  - general, 316, 317
  - mental anguish, 321, 322
  - physical injury, relevance, 322
  - relationship to injured party, 319
- nominal damages**
- amount of, 15, 16
  - bills of exchange, 249
  - contract, breach of, 108
  - definition, 15
  - evidence, 16, 240
  - loss of chance, 16, 240
  - sale of goods, 122
  - trespass to land, 496
- non-pecuniary damages**, *see also* personal injury
- date for assessing, 307
  - future damages, 74, 301, 302
  - general, 283, 297, 298, 299
  - inflation and, 305, 307
  - investment opportunity, 311
  - jury's role, 308
  - limitation of, 301, 304, 305
  - loss of amenities, 297, 445, 447
  - loss of expectation of life, 297
  - loss of marriage opportunity, 311
  - multiple plaintiffs, relevance, 310
  - nervous shock, 316–322
  - pain and suffering, 297, 301
  - precedents, relevance, 301, 304, 305, 309
  - prosthetic devices, 300
  - subsequent reduction, 302
  - “trilogy” cases, 301, 304, 305
- novus actus interveniens**, *see* intervening events
- nuisance**
- defence to, 589
  - foreseeability, 509
  - general, 508, 509
  - municipal liability, 512
  - public nuisance, 7, 589
  - punitive damages, 511
  - statutory authority, effect of, 589
  - strikes, 510
- oil and gas**, *see* mineral rights
- pain and suffering**, *see* non-pecuniary damages; personal injury
- parties**, 641
- partnerships**, 577
- passengers**, *see* carriage, contracts of
- passing off**, *see* intellectual property
- patents**, *see* intellectual property
- pecuniary damages**, 6, 283, *see also* personal injury
- penal statutes**, *see also* criminal injuries compensation; criminal law, effect on damages; statutory duty, breach of
- bar to civil action, 591
  - breach of, 596
  - general, 590
  - punitive damages, 592
- penalty**, *see* liquidated damages
- pension benefits**, 226, 382, 443

## DAMAGES

---

- per quod servitium amisit**, 406, 407, 408
- personal injury**, *see also* fatal accidents; negligence; product liability; torts (general); wages and earnings; specific torts, e.g., assault and battery
- appeal of award, 274–278
  - assessment generally, 273, 278, 279, 282
  - automobile insurance, effect of, 387
  - catastrophic injury, 276, 308
  - causation, 363
  - children, 281, 336, 337
  - chronic pain syndrome, 303
  - collateral benefits, effect on award, 376–391
  - contingencies, 275
  - earning capacity, loss of, 293, 295, 323, 324, 325–329, 330, 331, 333, 334, 335–348
  - economic loss, 57, 392, 393, 394
  - employers, claims by, 394, 406–408
  - employment benefits, effect of, 378–382
  - family-provided services, 285, 345, 400–404
  - future care, 348–359
  - general damages, 6, 277, 306, 309
  - gifts, effect of, 391
  - heads of damage, 283
  - health care, free or subsidized, 390
  - health insurance (provincial), effect of, 384–386
  - hospital visits, 286, 404
  - house upkeep/renovation, 285
  - housekeeping costs, 285, 313, 345, 401
  - income tax considerations, 344, 347, 356, 357, 372
  - insurance (private), effect of, 376, 377
  - intervening events, 60, 61, 62, 63, 367–370
  - juries, 276, 308, 327
  - lack of objective symptoms, 314
  - limitation of amount of award, 301, 304, 305
  - loss of competitive advantage, 328
  - loss of consortium, 396–399
  - loss of opportunity, 311, 312, 335
  - lump sum awards, 357
  - management fees, 373, 374, 375
  - medical care, 285
  - medical reports, 285
  - mitigation, 610, 611, 612, 613, 616
  - nervous shock, 316–319, 320, 321, 322
  - non-catastrophic injury, 276, 277, 308
  - non-pecuniary loss, 74, 277, 283, 297–322, 445, 447
  - payment into court, 447
  - plaintiff's conduct, effect of, 280
  - pre-existing injury, 60, 360, 361, 364–366
  - reduction of award, subsequent, 302
  - rehabilitation therapy, 355
  - social benefits, 390
  - special damages, 5, 6, 277, 285–287
  - spousal care/loss of earnings, 286, 293
  - structured settlements, 371
  - telephone calls, claim for, 286, 404

## INDEX

---

- thin skull doctrine, 320, 360–366
- third-party claims, 285–287, 345, 400–408
- “trilogy” cases, 276, 304, 305, 306, 462, 654
- unborn children, 281
- unemployment insurance, effect of, 384–386
- wage loss, 286, 288–296, 342, 346
- welfare payments, effect of, 389
- workers’ compensation, effect of, 388
- wrongful birth, 315
- personality**, *see* appropriation of personality
- pleading**
  - aggravated damages, 19
  - contract actions, 103
  - general, 4, 103
  - interest claims, 81
  - mental distress, 230
  - parties, naming of, 641
  - punitive/exemplary damages, 27
  - special damages, 5, 241
- police officers**, 43, 469, 470
- pre-existing condition, aggravation of**, *see* thin skull doctrine
- privacy**, *see* invasion of privacy
- product liability**
  - causation, 557
  - cost of replacement, 554
  - duty to warn, 557
  - economic loss, 556
  - failure to warn, 556
  - general, 554
  - known risks, 557
  - personal injury, 555
- professional associations**, *see* associations and clubs
- professional negligence**, *see* negligence
- profits, loss of**, *see* contracts
- promise to marry, breach of**
  - abolition of action, 260
  - “citizenship” marriage, 262
  - exemplary damages, 34, 263
  - general, 259, 261
  - nominal damages, 262
- proof of damages**, *see also* evidence
  - assessment difficulties, 75–77
  - contracts generally, 104
  - general, 67
  - intervening events, 371
  - sale of goods, 121
  - thin skull doctrine, 364
- prospective damages**, 478
- prosthetic devices**, 300
- provocation**, 44, 467
- punitive/exemplary damages**, *see also* aggravated damages
  - abuse of process, 472
  - aggravated damages distinguished, 18
  - appeals re, 655
  - assault, 44, 392
  - bars to, 27
  - breach of duty, 37
  - conspiracy, 492
  - consumer protections, 26
  - contract, breach of, 33–36, 232, 490
  - conversion, 43, 547
  - criminal acts, 38, 39, 40, 41
  - Crown, against, 32
  - defamation, 43, 479, 482

## DAMAGES

---

- definition, 25
  - false imprisonment, 43, 469
  - fatal accidents, 448
  - general, 24, 25
  - honest belief, effect of, 29
  - inducing breach of contract, 490
  - insurance companies, 24, 34
  - intent to injure, 29
  - jurisdiction to award, 27
  - jury, direction by judge, 31
  - landlord/tenant, 191
  - malicious prosecution, 471
  - mitigation, 29
  - nuisance, 511
  - penal statutes, breach of, 592
  - pleading of, 27
  - purpose of, 18, 25, 27
  - quantum of award, 27, 28, 30
  - situations warranting, generally, 25, 27
  - slander of title, 523
  - statutory breaches, 45
  - torts, 41–44
  - totality principle, 506
  - trespass to land, 43, 498, 506, 507
- railways**, 585
- real estate agents**, 240
- real property, damage to**, 538, 539, 540, 541, 542, *see also* mortgages, trespass to land
- receivers**, 550
- releases**, *see also* accord and satisfaction
- agreement prior to injury, 631
  - arbitration, effect of, 632
  - fatal accidents and, 633
  - general, 628
  - setting aside, 629
  - third parties, effect on, 635
  - voluntary payments, effect of, 634
  - workers' compensation, effect of, 634
- remoteness**, *see also* intervening events
- causation, 46, 47, 48, 55, 56, 59–62
  - consequential damages, 486
  - contingency, 47
  - contracts, 49, 50
  - economic loss, 55, 57
  - foreseeability, 49–54, 55, 56, 57, 58, 513
  - general, 46–57
  - negligent medical treatment, 62
  - novus actus interveniens, 59–62, 367–370
  - pre-existing injury, 60
  - speculativeness, 47
  - torts, 49–54, 55, 57, 58
  - uncertainty, 47
- reputation**, *see* loss of reputation
- rescission**, 174
- review of award**, *see* appeals
- riparian rights**, *see* water rights
- Rylands v. Fletcher**, *see* strict liability
- salary**, *see* wages and earnings
- sale of business**
- capital loss method, 178
  - director's liability, 173
  - dissenting shareholder's rights, 176
  - general, 172
  - goodwill, 175
  - loss of profits, 177
  - rescission, 174



## INDEX

---

- specific performance, 177
- sale of goods**
  - available market for goods, 116, 121, 122
  - breach of warranty, 127–133
  - buyer refusing goods, 116–119
  - conditional sales, 133
  - diminution of sale price, 129
  - exchange rates, 125
  - foreign market sales, 125
  - general, 113, 115, 120, 122, 127, 128
  - goods to be manufactured, 119
  - illegally sold goods, 114
  - loss of business, 114, 132
  - loss of profit, 123, 126
  - loss of resale, 126
  - no available market, 118
  - nominal damages, 122
  - non-delivery or delay, seller's, 120–126
  - out-of-pocket expenses, 131
  - proof by buyer, 121
  - remoteness, 132
  - repair costs, 131
  - replacement goods unavailable, 123
  - sale by description, 131
  - sale by sample, 130
  - sale for specific purpose, 132
  - statutory warranty, 131
  - supply exceeding demand, 117
  - time for assessment, 116, 124
  - worthless goods, 129, 132
- sale of land**, *see also* slander of title
  - anticipatory breach, 152
  - area inaccuracies, 147
  - assessment difficulties, 137, 153
  - *Bain v. Fothergill*, 138–140
  - best efforts, 143
  - carrying costs, 154
  - consequential breach, 154
  - delay by vendor, 145
  - deposits, 155, 156
  - election of remedy, 150
  - equitable damages, 71
  - falling market, effect of, 153
  - fiduciary breaches, 487, 571
  - fraudulent transfer, 524
  - general, 134, 141, 150, 151, 250
  - joint breach, vendor/purchaser, 135
  - loss of bargain, 154
  - loss of opportunity, 137, 143, 157
  - loss of profit, 146
  - mental distress, 136
  - mitigation, 144, 153
  - negligent misrepresentation, 455
  - penalty vs. liquidated damages, 10
  - purchase from builder, 148
  - purchaser's action, 138–141, 142, 144–149, 269, 270
  - solicitor's negligence, 149, 269, 270
  - specific performance, effect, 141, 144, 146
  - time for assessment, 68, 71, 141, 151
  - vendor's action, 150–157, 250
- search expenses**, 449
- securities**, *see also* sale of business; shares
  - failure to deliver, by trustee, 570
  - general, 166
  - stockbroker's error, 167–171
- seizure of property, wrongful**, 34, 43, 550, 551, *see also* chattels, damage to; trespass to chattels

## DAMAGES

---

### **service contracts**

- general, 264
- vehicle, repair of, 265

**settlements**, 458, *see also*  
structured settlements

**sexual assault**, *see* assault and  
battery

**shares**, *see also* sale of business;  
securities

- controlling interest, loss of, 162
- general, 158
- loss of opportunity, 160
- mitigation, 160
- options, 161
- refusal to register, 163
- sale subject to approval, 159
- time for assessment, 158, 160
- valuation, 165
- wrongful conversion, 43
- wrongful sale, 164

**slander**, *see* defamation

**slander of title**, *see also* sale of  
land

- caveat wrongfully filed, 522,  
523
- co-owner causing, 524
- future damages, 520
- general, 520
- “haunted” houses, 521
- punitive damages, 523

**solicitors’ liability**, *see also*  
negligence

- fiduciary breaches, 571
- general, 267
- misrepresentation, 458, 549
- sale of land, 149, 269, 270
- wills, 268

**special damages**, *see also*  
personal injury

- appeal of, 648
- calculation of, 6
- conspiracy, 491
- defamation, 7
- definition of, 5, 7
- interest on (British Columbia),  
82
- mortgages, 195
- nuisance, public, 7
- personal injury, 6, 285–287
- pleading of, 5, 241
- proof of, 5, 195
- requirement for, 195
- sale of business, 177
- wages and earnings, 6

**specific performance**

- availability, 2
- mitigation and, 607
- sale of business, 177
- sale of land, 141, 144, 146

**speculative damage**, *see also*  
remoteness

- status of parties, 641

**statutory authority, effect of**

- defences arising from, 589
- failure to warn, 586
- general, 580, 581–583, 584, 585
- inevitable damage, 584
- loss of profits, 503
- municipal corporations, 586–588
- negligence, effect of, 586, 587
- nuisance, 589
- railways, 585

**statutory duty, breach of**, *see  
also* criminal injuries  
compensation; criminal law, effect  
on damages; Crown; municipal

## INDEX

---

- corporations; penal statutes, breach of; statutory authority, effect of
- bar to civil action, 560
  - general, 558, 559
  - municipal corporations, 562, 563
  - punitive damages, 45
  - streets, repair of, 562
  - tort, as, 558
  - volenti non fit injuria, 561
- stockbrokers**, 167–171
- stocks**, *see* securities; shares
- streets, repair of**, 562, 586
- strict liability**, *see also* statutory authority, effect of
- fires, 516
  - flooding, 515
  - foreseeability, 513
  - gasoline, 516
  - general, 513
  - herbicides, 515
  - replacement cost, 517
  - unnatural use, 514
- structured settlements**, 371
- surveillance**, *see* invasion of privacy
- tax**, *see* income tax considerations
- technological advances, effect of**, 355
- telephone calls, claims for**, 286, 404
- thin skull doctrine**
- evidence/proof of, 364
  - general, 360
  - mental conditions, 366
  - mitigation, 366
  - purpose of award, 365
- third-party claims**, *see* fatal accidents; personal injury
- time of assessment**, *see also* assessment principles
- continuing causes of action, 72–74
  - contract, 69
  - delay, effect of, 70
  - equitable damages, 57
  - future damages, 74
  - general rule, 68
  - mitigation, effect of, 602
  - non-pecuniary loss, 307
  - sale of goods, 116, 124, 125
  - sale of land, 71, 141, 151
  - securities, 166, 167
  - shares, 158, 160
  - time of loss, 68
- torts (general)**, *see also* fatal accidents; negligence; personal injury; remoteness; specific torts, e.g., assault and battery
- contingencies, 275
  - intentional torts, 282
  - punitive damages for, 41–44
  - remoteness, 49
- transportation**, *see* carriage, contracts of
- travel agents**, 109, 454
- trespass to chattels**, 550, 551, *see also* chattels, damage to; seizure of property, wrongful
- trespass to land**, *see also* real property, damage to
- breach of restrictive covenant, 576
  - business operations, 500
  - conduct of plaintiff, 503
  - continuing trespasses, 72, 497
  - farm land, 500, 501
  - general, 496
  - intent of defendant, relevance, 502, 506, 507

## DAMAGES

---

- lessee's rights, 504, 505
- loss of profits, 500, 505
- mitigation, 499, 503
- negligent trespass, 502
- nominal damages, 496
- punitive damages, 43, 498, 506, 507
- quantification, 497, 498
- "trilogy" cases**
- libel, 474
- personal injury, 276, 304, 305, 654
- trust, breach of**, *see also* breach of duty
  - accounting for profits, 573, 578
  - banks, by, 573
  - corporate officials, 574
  - failure to deliver securities, 570
  - fiduciary duty, breach, 37, 487, 571
  - general, 568, 569, 578
  - loss of profits, 572, 575
  - mitigation, 571
  - partnership, 577
  - punitive damages, 37, 576
  - relief for trustee, 569
  - sale of land, 571
  - solicitors, by, 571
  - technical breaches, 569
- trust companies**, 457
- uncertainty**, *see* remoteness
- unemployment insurance**
  - personal injury claims, and, 290, 384–386
  - wrongful dismissal, and, 215
- universities**, *see* education, contract for
- visits, expenses for**, 286, 404
- volenti non fit injuria**, 636, 637
- wages and earnings**, *see also* employment contracts; personal injury
  - discount rates, 388
  - earning capacity, 323–348
  - evidence, 294
  - future earnings, 6, 323–348
  - general, 288, 289
  - general damages, as, 6, 288
  - inflation, relevance of, 296
  - loss of competitive advantage, 328
  - negative contingencies, 289
  - past loss income, 284, 292
  - personal injury claims, 286, 288–296, 323–348
  - prospective earnings, 6
  - retraining periods, 295
  - self-employed persons, 293, 294
  - sources of income, 290
  - special damages, as, 6, 286, 288
  - spousal claims, 286, 293
- Warsaw Convention**, 211
- water rights**
  - erosion, 519
  - loss of access, 518
- welfare payments, effect of**, 389
- willful infliction of mental distress**, *see* intentional infliction of mental distress
- wiretapping**, *see* invasion of privacy
- workers' compensation**
  - personal injury claims, and, 388, 634
  - wrongful dismissal, and, 215
- wrongful arrest**, 43, *see also* false imprisonment
- wrongful birth**, 315

INDEX

---

**wrongful dismissal**, *see*  
employment contracts  
**zoning restrictions**, 587

## Index to Debtor and Creditor

(All references are to paragraph numbers.)

- absconding debtors**
  - Ontario, 41
  - Saskatchewan, 46
- accounts, determination/settling of**
  - “account stated”, 67, 68, 70
  - correctness of account, 69
  - evidence, 67
  - general, 67, 68
  - “paid”, 71
  - “settled”, 71
  - settled accounts, 69, 71
  - writing not required, 68
- agent, payment to, *see also* debt repayment**
  - agreement re, 98
  - general, 100
  - legislation re, 98
  - misappropriation by agent, 99
- arrest of debtors, 41**
- assignments, *see* bankruptcy/insolvency legislation; fraudulent preferences/conveyances**
- banking legislation, 1**
- bankruptcy/insolvency legislation, 2, 33, *see also* companies’ creditors arrangements; winding-up/restructuring**
- bills of exchange legislation, 3**
- bulk sales (Ontario), 34**
- collection practices**
  - Alberta, 11
  - British Columbia, 16
  - Manitoba, 25
  - Ontario, 35, 39
  - Saskatchewan, 49
- companies’ creditors arrangements, 4, 81, *see also* bankruptcy/insolvency legislation; winding-up/restructuring**
- consumer protection**
  - British Columbia, 16, 24
  - Manitoba, 25
  - Ontario, 36
- contracts, *see* specific types, e.g., loans**
- credit cards, 66**
- “creditor”, 57, 65**
- Criminal Code offences, 5**
- crop payments (Alberta), 12**
- Crown employees, 7**
- death of debtor, 80**
- “debt”, 59, 60**
- “debtor”, 65**
- debt repayment, *see also* agent, payment to; loans; set-off**
  - amount required, 78
  - application of payments, 104
  - conditional payment, 75, 76, 80, 87
  - death of debtor, 80
  - demand for, 74, 83–88
  - discharge of debt, 77
  - due date, 74, 76, 80, 85, 86
  - interest, 74
  - joint debts, 79
  - overpayments, 104
  - part repayment, 103
  - proof of, 105
  - reasonable notice, 84
  - revival of debt, 75

- “satisfaction”, 87, 103
- schemes for, 81
- sufficiency of, 82, 87
- time for, 74
- discharge of debt**, 77
- evidence**, 58, 67, 105
- examination in aid of execution**, 133, 134
- exemptions (Saskatchewan)**, 52
- farms, protection of**
  - federal, 6
  - Manitoba, 27
  - Saskatchewan, 56
- fraudulent preferences/conveyances**
  - Alberta, 13
  - British Columbia, 22
  - Manitoba, 28
  - Ontario, 33, 40
  - Saskatchewan, 53
- garnishment**
  - abuse of process, 126
  - breach of order, 127, 128
  - British Columbia, 119
  - costs of, 126
  - debts attachable, 130
  - error in summons, correction of, 122
  - extraterritorial orders, 121
  - federal legislation, 7
  - garnishee, 131
  - garnishee’s rights, 108
  - jurisdiction generally, 106
  - Manitoba, 26, 29
  - Ontario, 45
  - payment out of court, 124
  - prejudgment, 109–118
  - priorities/distribution, 132
  - provincial legislation generally, 107
  - reciprocal enforcement, 121
  - release, 119
  - Saskatchewan, 47, 52
  - setting aside order, 120, 129
  - stay of proceedings, 125
  - trial of issue, 123
- guarantees/sureties**
  - Manitoba legislation, 25, 32
  - Ontario legislation, 43
  - prejudgment garnishment of, 117
- interest**
  - accountings re payments, 135
  - Alberta, 14
  - British Columbia, 18
  - demand for repayment, effect of, 74
  - federal, 8
  - loan provisions, construction of, 135
  - Ontario, 37
  - salary adjustment re retroactive pay for public servant, 136
  - Saskatchewan, 55
  - unconscionable rates, 135
- joint debts**, 79, 101, 102
- land (Manitoba)**, 30, *see also* **farms, protection of**
- legislation (Alberta)**
  - civil enforcement, 10
  - collection practices, 11
  - crop payments, 12
  - fraudulent preferences, 13
  - interest, 14
  - limitation of actions, 15
- legislation (British Columbia)**
  - collection practices, 16
  - consumer protection, 16, 24

## INDEX

---

- Court Order Enforcement Act, 17
- currency in which debt payable, 21
- distribution of proceeds, re, 18
- fraudulent preferences, 22
- interest, 18
- limitation of actions, 23
- mediation, re, 20
- trade practices, 24
- legislation (federal)**
  - banking, 1
  - bankruptcy, 2
  - bills of exchange, 3
  - companies' creditors arrangement, 4
  - Criminal Code, 5
  - Crown employees, re, 7
  - farm debt review, 6
  - garnishment, re, 7
  - interest, 8
  - pensions/benefits, re, 7
  - wages/salary, re, 7
  - winding-up/restructuring, 9
- legislation (Manitoba)**
  - collection practices, 25
  - consumer protection, 25
  - farm protection, 27
  - fraudulent conveyances/preferences, 28
  - garnishment/attachment, 26, 29
  - land, registration against, 30
  - limitation of actions, 31
  - sureties, re, 32
- legislation (Ontario)**
  - arrest of debtors, 41
  - assignments, re, 33
  - bulk sales, 33
  - collection practices, 35, 39
  - consumer protection, 36
  - enforcement, re, 37, 38, 41
  - fraudulent conveyances/preferences, 33, 40
  - interest, 37
  - limitation of actions, 42
  - priorities/distribution, 38
  - set-off, re, 37
  - sureties/guarantors, 43
  - unconscionable transactions, 44
  - wages/salary, re, 45
- legislation (Saskatchewan)**
  - absconding debtors, 46
  - borrowing, re, 50
  - collection practices, 48, 49
  - exemptions, 52
  - farm security, 56
  - fraudulent preferences/conveyances, 52
  - garnishment, 47, 52
  - interest, 55
  - limitation of actions, 54
  - priorities/distribution, 51
- “liabilities”, 60**
- limitation of actions**
  - Alberta, 15
  - British Columbia, 23
  - Manitoba, 31
  - Ontario, 42
  - Saskatchewan, 54
- loans, 72, 73, see also debt repayment**
- merger, 102**
- “money demand”, 59**
- mortgages, 66, 99**
- offences, see Criminal Code offences**
- payments, see debt repayment**
- pension benefits, 7**



**relationship, creation of**

- “creditor”, 57, 65
- “debt”, 59, 60
- “debtor”, 65
- evidence of, 58
- general, 61–63
- fiduciary relationship distinguished, 64
- “liabilities”, 60
- miscellaneous examples, 66

**revival of debt, 75**

**“satisfaction”, 87, 103**

**set-off, *see also* debt repayment**

- availability generally, 93
- equitable grounds for, 92, 94
- establishment of right to, 91
- Federal Court, in, 97
- legal set-off, 90
- Ontario, 37, 89
- privity, requirement for, 95

- refusal of, 94, 95
- unliquidated claims, of, 93
- verbal agreement for, 96

**Statute of Frauds, 73**

**trade practices (British Columbia), 24**

**unconscionable transactions (Ontario), 44, *see also* interest**

**wages/salary**

- Crown employees, 7
- garnishment, 7, 106
- jurisdiction over, 106
- Ontario, 45

**winding-up/restructuring, 9, *see also* bankruptcy/insolvency legislation; companies’ creditors arrangements**

## Index to Deeds and Documents

(All references are to paragraph numbers.)

- age, proof of (Alberta)**, 28
- agency issues**, 118, 119, 176, 177
- alterations, effect of**, *see also*  
**rectification**
- burden of proof re, 245
  - change of name, 258
  - consent to, 245
  - date, addition of, 250
  - examples of, 244
  - general, 243–245, 248
  - land transfers, Torrens system, 248
  - materiality of, 243, 249–253
  - miscellaneous examples, 250–253, 257
  - presumption re time of making, 254–258
  - ratification of, 259–262
  - sale of goods, 248
  - seals, addition of, 251
  - stranger, by, 246
  - tearing/mutilation, 247
- attestation**, *see* **witnesses**
- cancellation**, *see* **revocation**
- “caveat” (Alberta)**, 21, 32
- “certificate of title” (Alberta)**, 19, 23
- clay and marl**, 16
- conditions**, *see also* **conveyances of land; covenants; interpretation/construction/intention**
- covenant vs. condition, 239
  - estate created on, 240
  - general, 238
  - language of, 240, 241
  - restricting alienation, 242
  - validity of, 242
- consideration**
- evidence of, 6, 61
  - general, 5
  - parole evidence of, 6
  - seal, contract under, 5
- construction**, *see* **interpretation/construction/intention**
- conveyances of land**, *see also* **conditions; covenants; interpretation/construction/intention; legislation (Alberta); rectification**
- additions to, 219
  - alterations in, 248, 258
  - construction against grantor, 221–224
  - Crown, by, 224
  - description of land, 226–230, 272
  - exceptions/reservations in, 225
  - expressio unius est exclusio alterius, 231
  - falsa demonstratio non nocet, 229, 230
  - general, 218–220
  - habendum clause, 220
  - Torrens system, alteration of transfer, 248
  - ut regis magis valeat quam pereat, 232
- copies of documents**
- electronic documents, 97
  - evidence, as, 62, 68, 72, 101, 106
- corporations**
- deeds of (Ontario), 86
  - individual’s liability for, 133
  - name on document, sufficiency, 116, 117

- seal of, 145–150
- covenants**, *see also conditions; conveyances of land; interpretation/construction/intent*
- condition vs. covenant, 239
- debts, re, 236
- definition, 233, 234, 238
- effect/scope of, 235
- sale of land, 237
- criminal offences**, 110
- Crown**, *see legislation (Alberta); conveyances of land*
- “deed”**, 1, 2
- definitions**
- caveat (Alberta), 21, 32
- certificate of title (Alberta), 19, 23
- condition, 238
- covenant, 233, 234, 238
- deed, 1, 2
- document (Ontario), 92
- execution, 122
- grant (Alberta), 18
- grant (Ontario), 82
- instrument (Alberta), 18
- instrument (Saskatchewan), 103
- land (Alberta), 22
- land (Manitoba), 74
- land (Saskatchewan), 103
- memorandum (Alberta), 19
- registration (Alberta), 20
- delivery**, *see also escrow/conditional delivery; execution (general)*
- evidence of, 152, 155
- incomplete delivery, 158–160
- intention of parties, 157, 159, 160
- registration as, 155
- requirement for, 152, 154
- retention by grantor, 153
- time of, 181
- discriminatory conditions, voiding of**, 86
- “document” (Ontario)**, 92
- dower, consent re**, 59
- easements**
- Alberta, 38, 40, 41, 45
- Ontario, 90
- elements of deeds generally**, *see also interpretation/construction/intention; legislation; operation of deeds*
- consideration, 5, 6
- testimonium clause, 4
- words of intention, 3
- encroachments**, 44, 45
- escrow/conditional delivery**, *see also delivery; execution (general)*
- clear notice re, 165
- destruction of deed, effect, 192
- evidence re intent, 164, 166
- general, 161, 163, 168, 222
- inoperative conditions, 167
- performance of conditions, 167
- retention by grantor as, 162
- Statute of Frauds, 169
- estoppel, operation of deed by**, 186
- evidence**, *see also rectification*
- alteration of deed, re, 256
- conduct of parties as, 216, 217
- consideration, of, 5, 61
- copies as, 62, 68, 72, 101, 106
- delivery, of, 152, 155
- escrow, of, 164

## INDEX

---

- execution, of, 57, 88
- extrinsic evidence, 208, 210–215, 286, 291, 294
- parties, misdescription of, 110
- execution (general)**, *see also* **delivery; escrow/conditional delivery; non est factum; parties; sealing; signatures**
  - agent, by, 176, 177
  - date of, 182, 250
  - deed executed in blank, 113
  - definition, 122, 222
  - endorsements on instrument, effect of, 132
  - non-execution, 222
  - Ontario legislation, 88
  - partial execution, 127
  - parties, number of required, 111, 123–126
  - partner, by, 178, 179
  - presumption in favour of, 156
  - proof of, 58, 88
  - undisclosed principal, 157
- false statements**
  - Alberta, 67
- forms, use of**, 121
- fraud**
  - powers of court (Alberta), 64
- “grant”**
  - Alberta, 18
  - Ontario, 82
- husband and wife**
  - change of name, 55
  - transfers to, 15
- implied covenants**, 36, 95
- incorporeal rights**
  - Alberta, 41
- “instrument”**
  - Alberta, 18
  - Ontario, 92
  - Saskatchewan, 103
- intention of parties**, *see* **interpretation/construction/intention**
- interpretation/construction/intention**, *see also* **conditions; conveyances of land; covenants; rectification**
  - absurd results, 199
  - ambiguity (general), 202–209
  - ambiguity (patent vs. latent), 214, 215
  - conduct of parties, 216, 217
  - contra proferentum, 201, 209
  - Crown leases, 201
  - election of parties, 207
  - exclusion clauses, 209
  - execution, effect of, 138, 139
  - extrinsic evidence, 208, 210–215
  - general, 3, 193–201
  - grant, 228
  - inconsistency/repugnancy, 197
  - primary meaning, 202
  - proceedings re, British Columbia, 73
  - proceedings re, Ontario, 102
  - punctuation, effect of, 200
  - recitals, effect of, 211
  - rectification distinguished, 270
  - unambiguous language, 202–204
- joint tenancies**
  - Alberta, 10, 13, 15, 39, 63
  - Ontario, 83
- “land”**, *see also* **conveyances of land; rectification**
  - Alberta, 22
  - Manitoba, 76
  - Saskatchewan, 103

**land titles, *see* legislation (Alberta); Torrens Systems**

**legislation (Alberta)**

- absolute transfers, 9
- address of owner/mortgagee, 29, 30
- age, proof of, 28
- amending agreements, registration, 56
- “caveat”, 21, 32
- certificate of title, 19, 23, 26, 27, 31, 33, 36, 50
- consideration, evidence of, 61
- consideration/separation of parcels, 46
- contracts with oneself, 11–13
- copies, as evidence, 62, 68
- court’s powers, 17, 60, 64
- Crown, binding of, 14
- documents, contents of, 30
- Dower Act, consent under, 59
- duplicate certificate of title, 26, 27, 31
- easements, 38, 40, 41, 45
- encroachments, 44, 45
- evidence, re, 61, 62, 68
- execution, proof of, 57, 58
- false statements, offence, 67
- fraud, re, 64
- “grants”, 18
- husband/wife, 15, 55
- implied covenants of transferor/encumbrancer, 35
- improper registration, effect of, 47
- incorporeal rights, 40
- “instrument”, 18, 32
- interests, passing of, 33
- joint tenancies, 10, 13, 15, 39, 63
- “land”, 22
- legal descriptions, changes in, 52
- “memorandum”, 19
- mines and minerals, 16
- notices, address for, 29, 30
- notices, omission/non-receipt of, 37
- party wall agreements, 43, 45
- plan of survey, registration of, 48, 49
- powers of attorney, 53
- proceedings re land, 65, 66
- registered plans, corrections to, 51
- Registrar’s decisions, challenging, 60
- “registration”, 20
- registration, effect of improper, 47
- registration, refusal of, 24, 30, 32, 60
- registration under land titles system, 25, 26, 30, 31
- restrictive covenants, 41, 45
- rights of way, 38
- surface rights, 16
- tenancy in common, 10, 13
- transfers, 9, 17, 27, 31–34, 38, 39, 53
- uses of privately held title to land, 42
- validity/enforceability of contracts, 11–13
- witnesses, signing by, 57
- words of limitation, 9

**legislation (British Columbia)**

- contents of deeds, 70
- copies of documents, as evidence, 72
- effect of deeds, 70
- evidence, re, 72
- miscellaneous provisions, 69

## INDEX

---

- petition re investigation of title, 71
- proceedings where construction principal question, 73
- rectification/cancellation, re, 73
- legislation (federal)**, 108–110
- legislation (general)**, *see also* **elements of deeds generally**
  - overview, 7
  - Statute of Frauds, 8, 169
- legislation (Manitoba)**
  - contents of deeds, etc., 77
  - form of instruments, 75
  - miscellaneous provisions, 74, 77
  - proceedings re deeds/instruments, 78
  - Short Forms, 76
  - wording of deeds, etc., 76
  - words of limitation, 77
- legislation (Ontario)**
  - aliens, ownership by, 100
  - contingent/future interests, 81
  - conveyances to oneself, 89
  - copies of instruments, 101
  - corporations, deeds of, 86
  - “document”, 92
  - easements, re, 90
  - effect of instruments, 98, 99
  - evidence, re, 101
  - exchanges/partitions, 81, 82
  - execution/attestation, re, 88
  - forms, re, 91, 93, 94, 98
  - “give”, 82
  - “grant”, 82
  - implied covenants, re, 87, 95
  - “instrument”, 92
  - joint tenancy, 83
  - land titles, re, 99
  - miscellaneous provisions, 98, 99
  - particulars in conveyances, 84
  - proceedings re instrument, 102
  - registration, electronic, 96, 97
  - rights of way, re, 90
  - systems of registration, 91, 98, 99
  - tenancy in common, 83
  - validity of documents, 93
  - void conditions, 86
  - void dispositions, 81
- legislation (Saskatchewan)**
  - copies of documents, 106
  - evidence, 106, 107
  - “instrument”, 103
  - “land”, 103
  - Land Titles Act, 2000, 104, 105
  - miscellaneous provisions, 103
  - proceedings involving deeds/instruments, 107
- “memorandum”**
  - Alberta, 19
- merger**, *see also* **operation of deeds**
  - errors in deed, 184
  - general, 183
  - recitals, 185
- mines and minerals**, 16, 272
- misdescription**, *see* **parties**
- misrepresentation**, 172, 173
- names**, *see also* **parties; signatures**
  - changes in, 54, 55
  - misdescription and, 112–117
- non est factum**, *see also* **execution (general)**
  - burden of proof, 174
  - diminished capacity and, 174
  - failure to read document, 171
  - general, 170, 175

- illiterate persons, 173
- misrepresentation and, 172, 173
- operation of deeds, *see also* elements of deeds generally; revocation**
- estoppel, operation by, 186
- general, 180
- irrevocability, 150, 187–190, 192
- merger, 183–185
- time of, 180–192
- parties, *see also* execution (general); names**
- agent’s liability, 118, 119
- corporation vs. individual, 133
- extrinsic evidence re, 213
- general, 111
- misdescription, 112–117
- number of, minimum, 111
- undisclosed principal, 120
- partnerships, 119, 178, 179**
- party wall agreements, 43, 45**
- plan of survey, 48**
- ratification, *see* alterations, effect of**
- recitals, 185, 211**
- rectification, *see also* alterations, effect of**
- availability generally, 263–272, 285, 286
- conduct of parties, effect of, 297
- effect of erroneous agreement, 284
- equitable remedy, as, 297
- evidence generally, 288–294
- evidence of true bargain, 279–283
- form of proceedings (British Columbia), 73
- fraud as ground for, 263, 276, 277
- general, 263–272, 285, 286
- interpretation distinguished, 270
- mutual mistake, requirement for, 276–278
- nature of, 266, 270
- printed forms, 287
- prior agreement required, 273
- Statute of Frauds, effect of, 294–296
- “registration” (Alberta), 20, *see also* legislation**
- registration of interest/title, *see* legislation (Alberta); legislation (Ontario)**
- restrictive covenants**
- Alberta, 41, 45
- revocation, *see also* operation of deeds**
- cancellation of deed, 188–190
- general bar to, 187, 192
- release of lien, 150
- removal of seal, 189
- signatures, cancellation of, 190
- rights of way**
- Alberta, 38
- Ontario, 90
- sealing, *see also* execution (general)**
- corporations, by, 145–150
- effect of, 5, 134
- examples, 136–139
- form/substance of, 136
- intention of parties, relevance, 138, 139
- removal/mutilation, effect, 142, 189, 247
- requirements of, 135
- sufficiency of act of, 140, 141
- testimonium clause, effect, 143, 144

## INDEX

---

- signatures, *see also* execution (general); names**
- cancellation of, 190
  - corporation vs. individual, 133
  - false names, effect of, 130
  - location of, 131
  - removal of, effect, 142, 190, 247
- Statute of Frauds, *see also* legislation**
- deed left in escrow, 169
  - general, 8
  - rectification and, 297
- statutory forms, 121**
- surface rights (Alberta), 16**
- tenancy in common**
- Alberta, 10, 13, 15
  - Ontario, 83
- testimonium clause, 9, 143, 144**
- Torrens System, *see also* legislation (Alberta); legislation (Ontario)**
- alteration of instruments, 248
  - transfers, effect of, 2
- witnesses**
- Alberta, 57
  - Ontario, 88
- words of intention, 3**
- words of limitation**
- Alberta, 9
  - Manitoba, 77



## Index to Defamation

(All references are to paragraph numbers.)

- absolute privilege, *see* privilege (absolute)**
- agents, liability of, 432**
- apology/retraction**
- aggravated damages, relevance to, 468
  - Alberta, 201, 214
  - British Columbia, 202, 204, 215, 216
  - content of, 219–226
  - general, 198–200, 205, 448, 450
  - Manitoba, 201, 214
  - Ontario, 183, 202, 218
  - purpose of, 219
  - Saskatchewan, 198, 217
  - sufficiency of, 219–226
  - timing of, 203
- appeals, *see also* damages (appeals); practice (general)**
- fair comment, finding re, 255
  - findings of fact, reversing, 253
  - general, 713–715
  - justification, findings re, 253
  - qualified privilege, raising on appeal, 345
  - verdict for defendant (general), 716–718
  - verdict for plaintiff (general), 719
- “article”, 234**
- banks/banking, 55**
- broadcasts, *see* newspapers/broadcasts**
- business/profession (general), *see also* defamatory statements/acts (general)**
- examples, 42–44
  - immorality, imputation of, 41
  - lack of fitness/misconduct, 40
  - libel vs. slander, 40
  - misconduct in office of honour, 43
  - plaintiff not engaged in business/calling, 40
- Charter of Rights, 18–20, 138**
- “cheat”, 42**
- churches, 92**
- clergy, 374**
- comment, *see* fair comment**
- conflict of laws, 108, 651**
- consent, 425**
- consolidation of actions, *see* joinder/consolidation**
- corporations**
- actions by/against, 16, 91, 505
  - discovery of, 682
  - employee’s acts, liability for, 507, 739
  - goodwill, injury to, 505
  - malice, 507
  - municipal corporations, 508
  - non-trading vs. trading companies, 506
  - piercing veil of, 433
- costs, *see also* security for costs; practice (general)**
- defendant denied, 707
  - discretion of judge, 704
  - divided success, 708
  - plaintiff denied, 705, 706
  - scale of, 710
  - successful defendant, against, 709

- court proceedings, see privilege (media)**
- credit agencies, 364**
- crime (allegations re), see also defamatory statements/acts (general)**
- general, 33, 35, 37, 207, 212, 451
  - innuendo, 35
  - language, specificity of, 34
  - security for costs, effect on, 228
  - special damage, requirement for, 33, 36
  - suspicion of crime, raising of, 36
- criminal law issues, 20, 91, 363, 495, 674**
- damages (aggravated)**
- appeals re, 470
  - apology/retraction, effect of, 468
  - conduct in defending action, 469
  - financial resources of defendant, relevance, 460
  - general, 462–464
  - intent of defendant, 80, 465, 467
  - joint/several liability, 463
  - malice required, 464
  - post-trial actions, 470
  - purpose of, 463
  - repetition of libel, 469
- damages (appeals)**
- aggravated damages, 470
  - error of law, 721
  - failure of jury to award damages, 726
  - general, 720, 726, 727
  - improper conduct, 724
  - judge’s award vs. jury’s, 722
  - misapprehension of evidence, 721
  - punitive damages, 474, 723
- unreasonable awards, 720, 724, 725
- damages (contemptuous), 487**
- damages (general), see also joint/several liability**
- agent’s liability for, 432
  - apology/retraction, effect of, 448, 450
  - “at large” assessment, 435, 462
  - causation, proof of, 429
  - comparison to other cases, 440–443
  - conduct of parties, relevance, 446, 447, 448, 612, 671
  - corporations, piercing veil of, 433
  - crime, allegations re, 451
  - defendant’s financial resources irrelevant, 460
  - deterrence, 456
  - expense of counteracting libel, 447
  - factors governing award, 444–461
  - freedom of expression, protection of, 461
  - goal of plaintiff in suing, relevance, 447
  - jury, 426–428, 435, 456
  - malice, effect of, 11, 80
  - mental/emotional distress, 447, 455
  - nature of libel, relevance of, 451
  - need to establish, 7–9, 93, 196, 197, 430, 445
  - particulars of, 619
  - political context, libel occurring in, 461
  - professional reputation, damage to, 451, 452
  - publication, relevance of extent/mode of, 454, 457

## INDEX

---

- purpose of award, 434, 444, 456
  - quantum, cap on, 436, 437
  - reduction where plaintiff of bad character, 458, 613–616
  - settlements, effect of, 431, 712
  - special damages, effect of award of, 438, 439
- damages (limitation to special/actual)**
- apology/retraction, 198–205, 207, 214–226
  - crime, allegations re, 207, 212
  - general, 207–209, 481
  - good faith, 207, 210
  - mistake/misapprehension of facts, 207, 213
  - public benefit, 207, 211
- damages (mitigation)**
- character of plaintiff, 458, 613–616, 622
  - intent of defendant, 80, 671
  - libel previously published, effect of, 429, 456
  - limitation to actual/special damages, 207–226
  - pleading of, 621–626
  - recoveries made in other proceedings, 110, 206, 459, 625
  - settlements with other parties, 626
- damages (nominal), 488, 489**
- damages (punitive)**
- appeal of award of, 474, 723
  - duplication of other damages, 475
  - factors relevant to award, 476, 477
  - general, 471
  - joint/several liability, 479
  - political context, libel occurring in, 478
  - purpose of, 472, 473
- damages (special)**
- business, loss of, 486, 618
  - effect on general damages award, 438, 439
  - illness caused by slander, 484
  - injurious/malicious falsehood, 738–740
  - judge, role of in determining, 480
  - loss of consortium, 483
  - loss of hospitality, 482
  - newspapers/broadcasters, limitation re, 481
  - pleading of, 617–620
  - postponement of marriage, 485
- debts, *see* insolvency (allegations re)**
- defamatory libel, 20, *see also* libel**
- defamatory statements/acts (general), *see also* business/profession (general); crime (allegations re); disease (allegations re); insolvency (allegations re); pleadings/evidence; public persons; specific groups/organizations, e.g., lawyers**
- addiction, 59
  - child abuse, 58
  - circumstances surrounding act/statement, 24, 25
  - definitions of, 22
  - direct quotation out of context, 26
  - imputations of crime, immorality etc., 23
  - malice, raising of, 28
  - mode of expression vs. context, 27

- place of making, 21
  - pornography, 57
  - public opinion, 21
  - time of making, 21
- defences (general)**, 2, 5, *see also* **consent; fair comment; justification; privilege (absolute); privilege (qualified)**
- definition**, 1–5, 22, 64
- discovery (defendant, of)**, *see also* **practice (general)**
- belief at time of publication, 252, 678, 681
  - copies vs. original, use of, 685
  - general, 667
  - informants, 674
  - innuendo, re, 672
  - intent, re, 80, 671
  - malice, re, 674, 681, 682
  - officers of, 683
  - persons libel published to, 669
  - rolled-up plea, 677
  - sources of information, 252, 675, 679
  - vexatious/oppressive questions, 684
- discovery (plaintiff, of)**
- copies vs. original, use of, 685
  - corporate plaintiffs, 682
  - fair comment, where pleaded, 680
  - jurisdiction, where pleaded, 676
  - meaning of words, re, 673
  - public office-holders, 668
  - qualified privilege, where pleaded, 674, 678
  - source of libel, disclosure of, 670
- disease (allegations re)**, *see also* **defamatory statements/acts (general)**
- actionable per se, 38, 39
  - general, 38
- doctors**, *see also* **defamatory statements/acts (general)**
- breach of confidentiality, 357
  - breach of oath/duty, alleging, 48
  - drunkenness, 45
  - failure to supervise interns, 46
  - general, 45, 372
  - privilege (qualified), 357, 367
  - professional incompetence, 46
  - public health officers, 47
  - “quack”, 47
- elements of defamation**, 517
- employment references**, 361
- evidence**, *see* **pleadings/evidence**
- examination for discovery**, *see* **discovery**
- excess**, *see* **malice; privilege (qualified)**
- fair comment**, *see also* **justification**
- appeal from findings re, 255
  - comment vs. fact, 262–267, 275
  - elements of (general), 256, 257
  - fairness, 268–276
  - judge/jury, roles of, 303, 304
  - malice, effect of, 257, 268–276, 297–302, 305
  - motive vs. conduct, 275
  - onus/burden of proof, 305
  - pleading of, 584–594
  - privilege, effect of, 258
  - public interest, on a matter of, 277–296
  - purpose of defence, 255, 261

- rolled-up plea, 306, 307, 587–594
- true facts, 256, 258–261
- freedom of information legislation**, 398, 399
- freedom of speech**, 2, 17, 18, 138, 255, 461, 502
- hate propaganda**, 91
- indemnity, agreements for**, 711
- injunctions**
  - criminal law, in aid of, 495
  - damages, relation to, 490, 491, 500, 501
  - general, 490, 492, 493
  - interim/interlocutory, 19, 496–498
  - nominal damages and, 488
  - prayer for relief, 494
  - quia timet, 499
  - special damages, requirement for, 501
- injurious/malicious falsehood**, *see also slander of goods; slander of title*
  - defamation distinguished, 730
  - elements of, 728
  - falsity, 732–735
  - general, 728–730
  - good faith, 737
  - identity of target, 736
  - malice, 737
  - pleadings, 732
  - publication, 731
  - puffery, 734
  - special damage, 738–740
  - target, 736
  - threatening customers, 735
- innuendo**, *see also natural/ordinary meaning; pleadings/evidence*
  - context/circumstances surrounding utterance, 76–78
  - definition of, 71
  - duty of judge/jury, 79
  - evidence re, 74, 76
  - false innuendo, 71, 72
  - intent of defendant, 80
  - justification, 81
  - necessity for establishing, 77
  - pleading of, 73–75, 77, 82, 546, 550, 552, 553, 566, 567, 577
  - true innuendo, 71, 73, 76
- insolvency (allegations re)**, 54–56, 77
- internet postings**, 108, 109
- interpretation**, *see innuendo; natural/ordinary meaning*
- joinder/consolidation**, *see also practice (general)*
  - causes of action, of, 658–661
  - court ordering, 657
  - damages, assessing, 233, 656
  - defendant seeking, 232–234, 655
  - misjoinder, 665, 666
  - parties, of, 662–664
  - severance, 665, 666
  - verdicts to be separate, 233, 656
- joint/several liability**
  - aggravated damages, for, 463
  - contribution/indemnity, 115
  - general, 113–115
  - punitive damages for, 479
  - settlements, effect of, 431
- justification**, *see also fair comment*
  - appeal of findings re, 253
  - beyond reasonable doubt, 247

## DEFAMATION

---

- commentary on/inferences from facts, 245
- complete defence, as, 240, 248
- danger of pleading, 254
- discovery of defendant, 252
- evidence of, order of presentation, 252
- general, 240, 254
- hearsay/rumour, repetition of, 246
- inferences drawn by others, relevance of, 249
- innuendo, proving truth of, 81
- multiple charges (Ontario), 243
- onus on defendant, 241
- partial justification, 242
- pleading of, 250, 555, 556, 572–583, 587–594
- substantial truth, 242, 244
- lawyers**, 49, 85, 88, 290, 296, 317, 323, 372, *see also* **defamatory statements/acts (general)**
- libel**, *see also* **slander**
  - actionable per se, 6, 7
  - defamatory libel, 20
  - general, 6
  - legislation governing, 9
  - statements to press, 10
- limitation periods**, 193–195
- malice**, *see also* **damages; pleadings/evidence**
  - absolute privilege unaffected by, 311
  - actual/express, 11, 14
  - corporation, by, 507
  - damages, effect on, 11, 80, 466
  - definition of, 12
  - demeanor of witness/defendant, 301
  - evidence re, 12, 14, 607–610, 612
  - fair comment, defeating defence of, 257, 268–276, 297–302
  - general, 301
  - honest belief, lack of, 298, 299
  - implied, 11, 28
  - injurious/malicious falsehood, 737
  - intended meaning, relevance of, 61, 62, 80, 550
  - justification not outweighed by, 248
  - legal documents, privilege re, 321
  - multiple defendants, imputed to, 302
  - non-disclosure of source constituting, 165
  - onus of proving, 28, 297
  - pleading of, 600–602, 604–612
  - public officials, onus on, 13
  - qualified privilege defeated by, 340, 341, 355, 360, 401–414
  - selective reporting as evidence of, 300
  - truth, relevance of, 12
- meaning**, *see* **innuendo; natural/ordinary meaning**
- municipal corporations**, 508
- natural/ordinary meaning**, *see also* **innuendo**
  - appeal court, role of, 70
  - circumstances surrounding utterance, effect of, 68, 69
  - colloquialisms, 60
  - general, 60, 70, 72
  - intent of defendant, 61, 62
  - judicial notice, 69
  - multiple meanings, 67
  - “ordinary/reasonable person”, 61, 63–66
  - slang, 60

## INDEX

---

- negligence**, 5, 100, 104, 361, 432
- newspapers (plaintiff, as)**, 50, 51
- newspapers/broadcasts**, *see also* **privilege (absolute); privilege (media)**
- “article”, 234
  - “broadcasting”, 124–126
  - consolidation of actions, 232–234
  - court proceedings, reporting, 336
  - damages (general), 196, 197
  - damages (limitation to actual/special), 198–205, 207–226
  - damages (mitigation), 183, 198–206
  - limitation periods, 193–195
  - “newspaper”, 127–129, 185
  - notice of intention (Alberta/Manitoba), 174–179
  - notice of intention (British Columbia), 180
  - notice of intention (general), 173
  - notice of intention (Ontario), 181–191
  - notice of proprietor/publisher, 166, 168–172, 187
  - “publisher”, 231
  - security for costs, 227–231
  - statutory protection, 166–172
  - waiting period (British Columbia), 192
- opinion**, *see* **fair comment**
- parliamentary proceedings**, *see* **privilege (absolute); privilege (media); privilege (qualified)**
- particulars**, *see* **pleadings/evidence**
- parties**, *see also* **reference to plaintiff; specific parties, e.g., lawyers**
- assignment of cause of action, 503
  - churches, 92
  - corporations, 16, 91, 433, 505–508
  - deceased persons, 15, 503, 512, 513
  - general, 15, 91, 502–504
  - joint/several liability, 113–115
  - library, 273
  - municipal corporations, 17
  - partnerships, 91, 513, 511
  - school boards, 17
  - trustee in bankruptcy, 514
  - unincorporated groups, 16, 91, 509
- partnerships**, 91, 510, 511
- payment into court**, 689, 690, *see also* **practice (general)**
- petitions**, 315
- place of trial**, *see also* **practice (general); trials**
- Alberta, 235
  - British Columbia, 236
  - general, 688
  - Manitoba, 237, 238
  - Saskatchewan, 239
- pleadings/evidence**
- amendment of, 558–560, 633–641, 649
  - character, evidence of, 458, 613–616, 622
  - counterclaims, 627
  - defendant’s, 518, 519
  - fair comment, 584–594
  - further evidence after trial, 626
  - general, 515–520

## DEFAMATION

---

- innuendo, 73–75, 77, 82, 546, 550, 552, 553, 566, 567, 577
  - justification, 250, 555, 556, 572–576, 578, 580–583, 587–594
  - libel by plaintiff, subsequent/prior, 569–571
  - malice, 600–602, 604, 606–612
  - material facts, statement of, 516, 517
  - meaning of words, 549–557
  - mitigation of damages, 621–626
  - oppression, 555, 556
  - particulars, providing of, 250, 520, 524, 525, 530–532, 541, 580–582, 591, 592, 594, 628–632
  - privilege, 595–603
  - publication, 93, 521–536, 579
  - reference to plaintiff, 561–565
  - regularity of pleading required, 515
  - republication, 526–528
  - rolled-up plea, 306, 307, 587–594
  - set-off, 627
  - special damages, 617–620
  - striking out (embarrassing), 642–648
  - striking out (general), 649
  - words/acts complained of, 250, 537–560, 638, 639
  - words not actionable per se, where, 568
- political discussion, *see* privilege (media); privilege (qualified)**
- practice (general), *see also* appeals; costs; discovery; indemnity (agreement for); joinder/consolidation; joint/several liability; payment into court; place of trial;**
- pleadings/evidence; security for costs; settlements**
- arising of cause of action, 650
  - conflict of laws, 108, 651
  - jurisdiction of court, 651, 652, 654
  - multiple actions, avoidance of, 110, 653
  - res judicata, 653
- privilege (absolute), *see also* pleadings/evidence**
- categories of, 309
  - connection to proceeding, 326
  - foreign state documents, 328
  - general, 308, 309
  - high executive communications, 328–331
  - investigations re crime/fraud, 327, 331
  - judicial/quasi-judicial proceedings, 310–327
  - lawyer investigating case, 323
  - malice, effect of, 311, 321
  - parliamentary proceedings, 332–335
  - pleadings/documents, 320–322, 324
  - protected courts/tribunals, 312–319
  - reporting of court proceedings, 336
  - witnesses, 323–327
- privilege (media), *see also* pleadings/evidence**
- blasphemous/indecent matters, 147, 160
  - committees/associations, findings of, 158
  - court proceedings, reports of, 143–53, 396, 400
  - evidence available but not led, reporting of, 163



## INDEX

---

- general, 130
  - government reports/bulletins, 159
  - loss of privilege, 144, 145, 147, 149, 161, 162
  - parliamentary proceedings, 153, 155, 400
  - political discussion, 136, 138–142
  - public meeting, report of, 154, 156–158
  - qualified privilege, 130–137, 394, 395
  - reporting of court proceedings, 336
  - sources, disclosure of, 135, 164, 165
- privilege (qualified),** *see also* **pleadings/evidence**
- ancillary/incidental privilege, 391–393
  - burden of proof (defendant’s), 354
  - common interest between maker/recipient, 376–385
  - communications to world at large, 339, 394, 395
  - court documents, re, 396, 400
  - court proceedings, reports re, 396, 400
  - duty/interest giving rise to “publication”, 337, 346–349, 353, 355–375
  - excess defeating, 401, 402, 415–420, 422
  - extracts from public registers, 398, 399
  - fair comment, 258
  - freedom of information, legislation, 398, 399
  - general, 337–345
  - judge/jury, role of, 347, 418, 421–424
  - malice defeating, 340, 341, 355, 401–414
  - newspapers/broadcasts, 130–137
  - occasion upon which communication made, 338, 324–344, 350–353
  - parliamentary statements/reports of proceedings, 368, 400
  - political discussion, 397
  - public persons, comments by/concerning, 365–374
  - purpose of, 337
  - self-defence/response to defamation, 386–390
  - time for raising, 345
  - uninterested party, publication to, 391–393, 420
- professions (general),** 40–44, 372, 373, 451, 452
- public interest, matters of,** *see also* **fair comment**
- abuse of political influence, 280
  - allegations in pleadings, 289
  - contractual disputes, 291
  - financial status of company, 279
  - general, 277, 278
  - governmental affairs, 281
  - lawyers, conduct of, 290, 296
  - private hospital, conduct of, 295
  - public acts of public persons, 282–288, 294
  - public health/safety, 292
  - seduction, allegations re, 293
  - “slum landlord”, 290
- public persons,** *see also* **defamatory statements/acts (general); public interest, matters of**
- examples, miscellaneous, 30, 32
  - general, 13, 29
  - privilege (qualified), 365–374

- want of integrity, alleging, 31
- publication**, *see also*  
**pleadings/evidence;**  
**repetition/republishing**
- by plaintiff, 99
- conflict of laws, 108
- connivance by plaintiff, 104
- evidence of authorship, 105, 106
- examples, 101
- general, 93–95, 98, 111
- internet postings, 108, 109
- legislation re, 96, 97
- negligence, 100
- onus of proof, 94
- parties to, 111
- proof of required, 93, 521
- recipient unable to appreciate meaning, 102
- telegraph companies, 107
- unintended recipients, 100
- volenti non fit injuria, 104
- “quack”, 47
- qualified privilege**, *see* **privilege (qualified)**
- realtors**, 42
- reference to plaintiff**, *see also*  
**parties; pleadings/evidence**
- describing by title/position, 84
- general, 83, 88
- intention of defendant, 86
- lawyers linked to clients, 85
- member of a class, 89–92
- multiple, linked broadcasts, 84
- picture of plaintiff, 84
- pleading of, 561–565
- question for jury to decide, 87
- repetition/republishing**, *see also*  
**pleadings/evidence; publication**
- general, 112, 116
- joint/several liability, 113–115
- liability of original publisher, 117–123
- separate cause of action, as, 112, 113
- slander vs. libel, 114
- res judicata**, 653
- retraction**, *see* **apology/retraction**
- rolled-up plea**, *see* **fair comment; pleadings/evidence**
- security for costs**, *see also* **costs; practice (general)**
- appeal of order re, 230
- crime, allegations of, 228
- examination of parties, 229
- general, 227, 686, 687
- “publisher”, 231
- settlements**, 431, 712
- severance**, *see*  
**joinder/consolidation**
- slander**, *see also* **libel**
- actionable per se, 8
- general, 6
- legislation governing, 9
- special damage, requirement for, 6, 8
- slander of goods**, *see also*  
**injurious/malicious falsehood**
- elements of, 748
- examples, 749, 480
- general, 729, 736, 747
- puffery, 734
- special damage, 740
- slander of title**, *see also*  
**injurious/malicious falsehood**
- elements of, 742, 743
- general, 729, 741
- pleading, 744

## INDEX

---

- registration clouding title, 745, 746
- special damage, 740, 742, 745
- “**slum landlord**”, 290
- telegraph companies**, 107
- trade unions/members**, 52, 53, 91, 509
- trials**, *see also* **practice (general)**
  - damages, assessing, 701
  - defamatory meaning, determining, 692–695
  - defences, proof of, 698
  - inferences of fact, 694
  - judge vs. jury, 691
  - malice, proof of, 700
  - place of, 235–239, 688
  - privilege, proof of, 699
  - publication, proof of, 696, 697
  - verdicts, 702, 703
- truth**, *see* **justification**
- venue**, *see* **place of trial**
- verdicts**, *see* **trials**
- witnesses**, *see* **privilege (absolute)**

## Index to Devolution West

(All references are to paragraph numbers.)

- adoption, see children;**  
**descendants or issue; intestate succession; legitimacy of children; parentage**
- adult interdependent partner, 155–159, 169, 170, 246, see also children; common-law partner; dependents relief legislation; descendants or issue; intestate succession; home property; household goods; entitlement to; matrimonial property**
- advancement, 235–240**
- “Benjamin order”, 145**
- bona vacantia, see intestate succession**
- child support obligation after death, see children**
- children, see also intestate succession; dependents relief legislation; descendants or issue; legitimacy of children; parentage**
- advancement, 235–240
  - Alberta
    - adopted children, 108–112
    - definitions, 172
    - entitlement on intestacy, 169, 171
    - legitimacy, 129
    - parentage, 130, 131, 174
    - unborn child, 173
  - British Columbia
    - adopted children, 113–117, 179
    - child support obligation after death, 86
    - definitions, 178, 179
    - distribution on intestacy, 177
    - entitlement of unborn child, 179
    - entitlement on intestacy, 175, 176
    - parentage, 132, 133, 178
    - general, 107
    - gifts/transfers during lifetime, 235–240
    - Indian Act, entitlement on intestacy, 226, 230
    - Manitoba
      - adopted children, 118–122, 184
      - definitions, 180
      - distribution on intestacy, 182
      - entitlement on intestacy, 180, 181
      - legitimacy, 134, 183
    - Saskatchewan
      - adopted children, 123–127
      - entitlement on intestacy, 186, 187
      - legitimacy, 135, 188
      - parentage, 135, 136
- common-law partner, 163–166, 180, 251, see also adult interdependent partner; children; dependents relief legislation; descendants or issue; intestate succession; home property; household goods; entitlement to; matrimonial property**
- contracting out of rights, see loss of rights**
- Crown as heir on intestacy, see intestate succession**

- curtesy**, *see* **home property**
- date for determining value of estate on intestacy**, *see* **intestate succession**
- degrees of kindred**, 201, *see also* **intestate succession**; **kin/kindred**
- dependents relief legislation**, 93, 96, 224
- deposits with financial institutions**, 31–33
- descendants or issue**, *see also* **children, dependents relief legislation**; **intestate succession**; **legitimacy of children**; **parentage**
- Alberta
  - • definition, 172, 174
  - • entitlement of unborn child, 173
  - • entitlement on intestacy, 169–171, 192, 195, 198
  - British Columbia
  - • definitions, 178, 179
  - • distribution on intestacy, 177
  - • entitlement of unborn descendant, 179
  - • entitlement on intestacy, 175, 176, 192, 195, 199
  - gifts during lifetime, 235–240
  - Indian Act, entitlement on intestacy, 226, 230
  - Manitoba
  - • definitions, 180
  - • distribution on intestacy, 182
  - • entitlement on intestacy, 180, 181, 193, 196, 200
  - Saskatchewan
  - • definitions, 189
  - • entitlement on intestacy, 186, 187
  - • unborn descendants, 189
- “Descent”**, 4
- “Devolution”**, 1, 2
- disclaimer of interest**, 203, 241
- distribution on intestacy**, *see* **intestate succession**
- dower rights (Alberta)**, *see* **home property**; **household goods, entitlement to**; **matrimonial property**
- English Statute of Distribution**, 3, 10
- escheat**, *see* **intestate succession**
- financial institutions, accounts with**, 31–33
- gift, lapse of**, 242
- gifts / transfers during lifetime**, 235–240
- grandparents / great-grandparents**, *see* **adoption**; **children**; **descendants or issue**; **intestate succession**; **legitimacy of children**; **parentage**
- home property**, *see also* **household goods, entitlement to**; **matrimonial property**
- Alberta
  - • dower rights
  - • • caveat, 47
  - • • extinguishing rights, 46
  - • • general, 43, 44, 50, 51
  - • • obligations with respect to property, 48
  - • • order dispensing with consent, 49
  - • • personal property, 45
  - • • release of rights, 47, 251
  - • • valuation of rights, 52

## INDEX

---

- home property (*cont'd*)
  - temporary possession of family home
    - agreement to waive rights, 39
    - application to court, 42
    - dower rights, 34
    - duty to maintain, 41
    - general, 34
    - nature of interest, 37
    - payment of rent and other charges, 37, 40
    - rental property, 35
    - right of inspection, 41
    - termination of right to possession, 38
  - British Columbia
    - right to acquire spousal home
      - court orders, 60
      - exercise of right, 55, 56
      - general, 54
      - notice of right, 55
      - payment of costs and expenses, 59
      - value of interest, 56–58
  - Manitoba
    - consent to disposition, 64, 66
    - dower and courtesy, 61
    - election, 63
    - life estate, 62
    - nature of interest, 68, 69
    - termination/release of rights, 65, 67, 251
  - Saskatchewan
    - application to court, 74
    - claim for exemption, 71
    - compensation for use, 75
    - dower and courtesy, 70
    - registration of interest, 72
  - vesting on death of owning spouse, 73
- homestead legislation, see home property; household goods, entitlement to; matrimonial property**
- household goods, entitlement to, see also home property; matrimonial property**
  - Alberta
    - agreement to waive right to use, 39
    - application to court, 42
    - duty to maintain, 41
    - general, 36
    - nature of interest, 37
    - payment of costs and charges, 40
  - British Columbia, 175
- Indian Act, see also intestate succession**
  - application of provisions, 231
  - distribution of estate of intestate, 226–229
  - general, 232
  - jurisdiction, 225
  - reserve land, 229, 233, 234
  - unborn descendants, 230
- infants, see children; intestate succession; descendants or issue; legitimacy of children; parentage**
- insurance, survivorship, 28**
- Intestate succession, see also loss of rights**
  - application of provisions, 137, 138, 140
  - “Benjamin order”, 145

## DEVOLUTION OF ESTATES

---

- Intestate succession (*cont'd*)
  - *bona vacantia*, 203, 204
  - brothers and sisters, 191–193, 228
  - children, descendants or issue
    - Alberta
      - definitions, 172, 174
      - entitlement, 169–171, 192, 195, 198, 200
      - unborn child, 173
    - British Columbia
      - definitions, 178, 179
      - distribution, 177
      - entitlement, 175, 176, 192, 195, 199
      - unborn child, 179
    - Indian Act, entitlement on intestacy, 226, 230
    - Manitoba
      - adoption, 184
      - definitions, 180
      - distribution, 182
      - entitlement, 180, 181
      - kindred of half blood, 185
      - legitimacy, 183
      - unborn kindred, 185
    - presumption of advancement, 235–240
    - Saskatchewan
      - definitions, 189
      - entitlement, 186, 187
      - legitimacy, 188
      - unborn descendants, 189
    - Crown as heir
      - action for possession, 211–214
      - administration of estate, 205–223
      - *bona vacantia*, 203, 204
      - claims against estate, 215–218
      - entitlement, 203, 204
      - proceeds of disposition, 219, 220
      - time limits, 221–223
    - date for determining value of estate, 149
    - degrees of kindred, 201
    - dependents relief legislation, 224
    - deposits with financial institutions, 31
    - determination date of classes of beneficiaries, 148
    - disclaimer of interest, 203, 241
    - distribution of estate, 145, 147
    - general, 106, 107, 137–147
    - gifts/transfers of property during lifetime, 235–240
    - grandparents/great-grandparents, 198–200
    - history, 3, 5, 8–10, 13, 14
    - home property
      - Alberta, 44, 50
      - British Columbia, 54–60
      - Manitoba, 69
    - Indian Act
      - application, 231
      - distribution of estate of intestate, 226–229
      - general, 232
      - jurisdiction, 225
      - reserve land, 229, 233, 234
      - unborn descendants, 230
    - kin/kindred, 172, 173, 178, 185, 188, 201, 202
    - lapse, 242
    - matrimonial property payment/entitlement, 81, 91, 92, 98
    - nephews / nieces, 194–196, 228
    - next-of-kin, 190–202, 229

## INDEX

---

- Intestate succession (*cont'd*)
  - parents, 190, 227
  - presumption against intestacy, 143
  - separation agreement, effect of, 253, 254
  - siblings, 191–193
  - spouse, adult interdependent partner or common-law partner
    - • Alberta
      - • • “adult interdependent partner”, 156
      - • • circumstances when spouse deemed to have predeceased intestate, 157, 246
      - • • entitlement, 155, 158, 159, 169, 170
      - • • former adult interdependent partner, 157, 246
    - • British Columbia
      - • • charge on estate, 175
      - • • circumstances when cease to be spouses, 161, 247
      - • • definition, 161
      - • • entitlement, 160, 175
      - • • household furnishings, 175
      - • • preferential share, 175
      - • • where two or more persons are entitled to spousal share, 162
    - • Indian Act, entitlement on intestacy, 226
    - • loss of rights, 245–248, 253, 254
    - • Manitoba
      - • • “common-law partner”, 164
      - • • entitlement, 163, 180
      - • • loss of rights, 165
      - • • preferential share, 180
    - • • rights of separated spouse, 166
    - • • presumption of advancement, 235–238
    - • Saskatchewan
      - • • entitlement, 167, 168, 187
      - • • loss of rights, 245
      - • • “spouse”, 168
    - • separation agreement, effect of, 253, 254
    - • valuation of estate, 149–154
    - • vesting of estate, 139
    - wages owed to deceased worker, 88
- issue, see children; descendants or issue; intestate succession; legitimacy of children; parentage**
- jointly owned property, 25**
- kin / kindred, 129, 132, 135, 172, 173, 178, 185, 188, 201, 202**
- Land (Spouse Protection) Act (British Columbia), see home property**
- lapse of gift, 242**
- legislation, history of**
  - Alberta, 7, 8
  - British Columbia, 10, 11
  - general, 3–6
  - Manitoba, 12–14
  - Saskatchewan, 7, 9
- legitimacy of children, see also children; descendants or issue; parentage**
  - Alberta, 129
  - general, 128
  - history, 7
  - Manitoba, 134, 183
  - Saskatchewan, 135, 188



**life estate, see home property; household goods, entitlement to**

**loss of rights**

- contracting out of rights, 250
- forfeiture of interest in mineral location, 249
- general, 243, 244
- loss of rights by spouse, 245–248, 251–254
- persons causing death
  - application of rule, 257, 262
  - civil proceedings, 259–261
  - criminal proceedings, 261
  - effect on disposition in will, 264–271
  - general rule, 255, 256
  - insanity, 262, 263
  - persons claiming under wrongdoer, 258
  - status for probate of will, 257
- separation agreement, effect of death on, 252–254

**matrimonial property, see also home property; household goods, entitlement to; loss of rights**

- Alberta
  - continuance of action, 80
  - effect of payment to spouse, 81
  - liability of personal representative, 79
  - relationship to other entitlements, 82, 83
  - restrictions on distribution of estate, 77, 78
  - time for bringing application, 76, 77
- British Columbia
  - effect of death of spouse, 85

- provision in will inadequate, 87
- spousal support obligation after death, 86
- “spouse”, definition, 84
- wages owed to deceased worker, 88
- Manitoba
  - making/continuance of application, 89, 90
  - relationship to rights under other legislation, 91–93, 167
- Saskatchewan
  - approach to application, 104
  - effect of order, 99–101, 103
  - making/continuance of application, 94, 95, 97, 105
  - nature of rights, 102
  - relationship to other legislation, 96, 98

**nephews / nieces, see intestate succession**

**next-of-kin, see intestate succession**

**parentage, see also children; descendants or issue; legitimacy of children**

- Alberta, 129–131, 174
- British Columbia, 132, 133, 178
- Manitoba, 183
- Saskatchewan, 135, 136, 188

**parents, see children; descendants or issue; intestate succession; legitimacy of children; parentage**

**personal representative, substitute, 26**

**persons causing death, see loss of rights**

**preferential share, spouse, see intestate succession**

## INDEX

---

- presumption against intestacy**, 143
- presumptions of advancement/resulting trust**, 235–240
- real property, vesting of**, *see also* **Indian Act**
- Crown grant, 18
  - history, 6, 8, 9, 11, 13, 14
  - vesting as personalty, 15–18
- reserve land**, *see* **Indian Act, intestate succession**
- resulting trust**, 235, 236
- right to acquire spousal home (British Columbia)**, *see* **home property; household goods, entitlement to; matrimonial property**
- separation agreement, effect of death on**, 252–254, *see also* **matrimonial property**
- siblings**, *see* **intestate succession**
- spousal rights**, *see* **home property; household goods, entitlement to; intestate succession; matrimonial property**
- substitute personal representatives**, 26
- survivorship**
- general, 19
  - insurance, 28
  - jointly owned property, 25
  - statutory presumptions, 20–24, 29, 30
  - substitute personal representatives, 26
  - will, contrary provision, 27
- temporary possession of family home**, *see* **home property; household goods, entitlement to; matrimonial property**
- unborn children/descendants**, *see* **children; descendants or issue; Indian Act; intestate succession; legitimacy of children; parentage**
- wages owed to deceased worker**, 88

## Index to Discovery

(All references are to paragraph numbers.)

- discovery of documents (effect of production), 215, 216**
  - • Alberta, 25
  - • British Columbia, 24
- discovery of documents (general)**
  - persons entitled by rules, 21
  - trial ends rights, 22
- discovery of documents (inspection and production)**
  - affidavit of documents (Alberta), 205
  - bankers books/books in continuous use in business, 209
  - date for inspection (Manitoba), 211
  - inspection
    - • Alberta, 206
    - • British Columbia, 201, 202
    - • Federal Court, 198
    - • Saskatchewan, 207
  - inspection by court to determine privilege, 204
  - inspection by court to determine privilege (Manitoba), 213
  - making copy (Manitoba), 212
  - notice to produce (Saskatchewan), 208
  - order for production (Federal Court), 199
  - order for production/excuse from compliance (British Columbia), 203
  - production for inspection (Manitoba), 210
  - relief from production (Federal Court), 200
  - work to produce document that does not exist, 214
- discovery of documents (interpretation)**
  - documents or records, 23–29
  - • Alberta, 25
  - • British Columbia, 24
  - • computer disk, 28
  - • Federal Court, 23
  - • Manitoba, 27
  - • Saskatchewan, 26
  - • specific entries in bank books, 29
  - • tape recording, 28
  - possession, control or power, 30–38
    - • British Columbia, 32
    - • documents listed in affidavit of documents, 36
    - • Federal Court, 31
    - • future documents, 35
    - • Manitoba, 34
    - • ongoing disclosure, 35
    - • papers held by others, 37
    - • rules, 30
    - • Saskatchewan, 33
    - • where third party can refuse to produce document, 38
  - relevance, 39–47
    - • Alberta, 41
    - • British Columbia, 40
    - • fairly lead to train of inquiry rule, 44
    - • Federal Court, 39
    - • issue not triable without amendment to claim, 45
    - • Manitoba, 43
    - • relevant pages only, 46
    - • Saskatchewan, 42
    - • test for relevance at trial and discovery, 47

**discovery of documents (list or affidavit of documents)**

- bundling of documents, 188–190
  - Alberta, Federal Court, 188
  - British Columbia, 189
  - Saskatchewan, 190
- contents, 180–187
  - Alberta, 183, 184
  - British Columbia, 181, 182
  - Federal Court, 180
  - Manitoba, 187
  - Saskatchewan, 185, 186
- continuing obligation, 191–197
  - Alberta, 193
  - British Columbia, 192
  - Federal Court, 191
  - Manitoba, 195
  - order for production of future documents, 197
  - produce and monitor for new documents, 196
  - Saskatchewan, 194
  - solicitor’s obligations, 196
- deponent, 169–173
  - Alberta, 171
  - Federal Court, 169, 170
  - Manitoba, 173
  - Saskatchewan, 172
- general, 168
- timing, 174–179
  - agreement to defer, 179
  - Alberta, 176
  - British Columbia, 175
  - Federal Court, 174
  - Manitoba, 178
  - Saskatchewan, 177

**discovery of documents (objections to production)**

- adverse effect on WCB function, 98

- clearly identifying privileged documents, 90
- confidentiality (copyright action), 99
- inconvenience or expense, 96, 100
- not a proper party to action, 95
- person not before court having interest in document, 97
- privilege
  - Alberta, 93
  - British Columbia, 92
  - Federal Court, 91
  - Saskatchewan, 94

**discovery of documents (privilege)**

- determining privilege, 166
- general principles, 101–115
  - action against trustee, 114
  - Alberta, Saskatchewan, 106
  - British Columbia, 105
  - British Columbia WCB Act, 114
  - confidentiality, 109
  - Federal Court, 103, 104
  - general duty to provide evidence subject to exceptions, 101
  - grounds on which privilege may be claimed, 102
  - Manitoba, 107
  - precise ground for claiming privilege, 108
  - purpose for which statement obtained decides privilege, 110
  - relevance objection, 111
  - report of investigators employed by government transportation safety board, 115

## INDEX

---

- discovery of documents (privilege) (*cont'd*)
  - • whole privileged if part privileged, 112
  - official documents and Crown privilege, 146–150
    - • Crown corporation and immunity from discovery, 147
    - • documents relating to trading/commercial/contractual activities, 146
    - • grounds for overriding public interest in non-disclosure, 149
    - • invoked by persons other than Minister, 147
    - • limits of rule, 146
    - • political or administrative character, 146
    - • report from governmental agency, 148
    - • subpoena to produce tax documents, 148
    - • transcript/tapes created during criminal investigation, 150
  - settlement negotiations, 138–145
    - • acknowledgement of liability in negotiations, 140
    - • agreement reached exception, 143
    - • pre-litigation settlement negotiations, 141
    - • pre-trial settlement negotiation, 141
    - • production to third party to settlement, 139
    - • protection from production to other parties/strangers, 144
    - • purpose of meeting, 138
    - • settlement agreement, 145
    - • whether settlement reached exception, 143
    - • without prejudice communications, 142
  - solicitor-client privilege, 116–138
    - • general, 116–118
      - • • discovery of relevant facts, 117, 118
      - • • legal advice privilege, 116
      - • • litigation privilege, 116
    - • legal advice privilege, 130–137
      - • • accountant and businessperson communications, 134
      - • • Crown trusts, 132
      - • • employer and salaried solicitor communications, 131
      - • • entitlement of solicitor to act in jurisdiction where cause of action arises, 137
      - • • examination by court, 130
      - • • facilitating crime/fraud, 136
      - • • fiduciary relationship of Crown with Indian bands, 132
      - • • government, 132
      - • • patent agent and client communications, 133
      - • • scope, 130
      - • • statement by defendant to ICBC, 135
      - • • tortious conduct, 136
      - • • when arising, 130
    - • litigation privilege, 119–129
      - • • documents customarily prepared, 128
      - • • dominant purpose, 120
      - • • dominant purpose test (Federal Court, Manitoba, Saskatchewan), 124
      - • • knowledge obtained by client in course of preparing for litigation, 126

## DISCOVERY

---

- discovery of documents (privilege) (*cont'd*)
  - normal course of investigating customer complaint, 128
  - related litigation, 129
  - report prepared by solicitor, 125
  - requirements, 119
  - substantial purpose and dominant purpose tests (British Columbia), 123
  - substantial purpose for preparation (Alberta), 122
  - surveillance video, 127
  - termination of litigation, 129
  - use of privileged documents, 167
  - waiver or loss of privilege, 151–165
    - advice transmitted from one government department to another, 161
    - agreement during discovery to produce privileged documents, 162
    - by client and not by solicitor, 151
    - common interest privilege, 159
    - deemed waiver by insured re medical records, 158
    - disclosure of portions of documents, 154
    - experts, 157
    - failure to claim privilege in affidavit of documents, 160
    - implied waiver, 153
    - inadvertent disclosure, 152
    - legal opinion prepared for patent litigation given to assignee, 156
    - placing medical condition in issue, 164
    - stipulation of a benefit in return for waiver, 165
    - witness glancing at notes during discovery, 155
- discovery of documents (remedies for failure to disclose or produce)**
  - effect of failure to disclose or produce, 228–235
    - Alberta, 232
    - British Columbia, 231
    - destruction of relevant records, 235
    - discretion to allow for use at trial (Federal Court), 229
    - Manitoba, 234
    - procedural and costs sanctions (Federal Court), 230
    - Saskatchewan, 233
    - use at trial (Federal Court), 228
  - general, 217–227
    - Alberta, 222, 223
    - British Columbia, 221
    - burden on party seeking further production, 220
    - cross-examination, 220
    - cross-examination and privilege, 227
    - Federal Court, 219
    - insufficiency of affidavit of documents, 217
    - Manitoba, 225
    - purpose of examination of deponent, 226
    - Saskatchewan, 224
    - striking out pleading, 220
    - sufficient identification of documents, 218

## INDEX

---

- discovery of documents (scope)**
  - general principles, 48–52
  - actions for accounting, 52
  - modern trend, 48
  - motor vehicle accident claim, 51
  - ordering of business books of firm, 49
  - partnership articles, 49
  - patent infringement action, 50
  - insurance policies, 53, 54
  - production from non-parties, 55–89
    - employment records, 88, 89
    - financial records, 75–80
      - action against lawyer re matrimonial property advice, 76
      - financial institution, 75
      - non-party bank involved in plaintiff's operations, 79
      - reasonable expectation of privacy in banking records, 78
      - records of bank lending decisions re other businesses, 77
    - general, 55–74
      - agent in action against principal, 71
        - Alberta, 61
        - British Columbia, 60
        - company in receivership, 66
        - corporation controlled by corporate party, 59
        - corporation controlled by individual party, 59
        - Crown agency to trustee in bankruptcy, 73
        - foreign non-parties, 58
        - liquidator, 67
        - Manitoba, 63, 64
  - ministers of Crown, 58
  - party acting as trustee for third party, 70
  - party with minority interest in joint corporate venture, 69
  - production compellable at trial (Federal Court), 56, 57
  - requirements, 65
  - rules, 55
  - Saskatchewan, 62
  - shareholder, 68
  - trade union official, 72
  - where production should be refused, 74
  - hospital records and medical reports, 81–89
    - copies of hospital records in personal injury action, 81
    - costs of obtaining, 87
    - edited medical records, 83
    - medical documents in control of WCB, 85
    - raw test data used by neuropsychologist, 84
    - relevancy of medical information, 82
    - representative plaintiff in certification application, 86
- examination for discovery by written questions (general principles)**
  - functions served, 237
  - mechanism in rules, 236
  - where appropriate, 238
- examination for discovery by written questions (objections)**
  - Alberta, 260
  - British Columbia, 259
  - final determination that of trial judge, 258
  - Manitoba, 261

## DISCOVERY

---

- examination for discovery by written questions (objections) (*cont'd*)
- motion to have question struck, 258
- examination for discovery by written questions (procedure)**
- Alberta, 254–256
  - British Columbia, 252, 253
  - Federal Court, 251
  - Manitoba, 257
- examination for discovery by written questions (scope and limits on)**
- Alberta, 241
  - beyond case as pleaded, 248
  - British Columbia, 240, 250
  - Federal Court, 239
  - Manitoba, 243
  - names of witnesses, 246
  - not directed to particular person, 249
  - obtaining admissions of fact, 244
  - oppressive/not raising concerns directed at matter in issue, 245
  - questions that can only be answered by experts, 246
  - Saskatchewan, 242
  - too burdensome, 247
- examination for discovery or questioning (continuing obligation)**
- Alberta, 458
  - Federal Court, 457
  - Manitoba, 460
  - Saskatchewan, 459
- examination for discovery or questioning (costs of examination)**
- Alberta, 450–453
  - British Columbia, 449
  - conduct of party, 456
  - Federal Court, 448
  - Manitoba, 455
  - Saskatchewan, 454
- examination for discovery or questioning (divided discovery)**
- Alberta, 437
  - British Columbia, 436
  - Manitoba, 439
  - order for reference/separate determination, 435
  - Saskatchewan, 438
  - two-stage discovery, 440
- examination for discovery or questioning (duty of person to inform self)**
- Alberta, 333
  - application for order that particular questions be answered, 338
  - British Columbia, 332
  - compelled to obtain information, 334
  - executor/administrator without personal knowledge, 336
  - Federal Court, 331
  - inquiries of third parties where no control over, 335
  - patent infringement action, 337
- examination for discovery or questioning (failure to attend, failure to answer or misconduct)**
- Alberta, 464
  - British Columbia, 463
  - Federal Court, 461, 462
  - Manitoba, 466, 467
  - refusal to divulge source of information in libel action, 469
  - Saskatchewan, 465



## INDEX

---

- examination for discovery or questioning (failure to attend, failure to answer or misconduct) (*cont'd*)
  - striking out defence, 468
- examination for discovery or questioning (multiple examinations)**
  - Alberta, 443
  - British Columbia, 442
  - Federal Court, 441
  - Manitoba, 446, 447
  - Saskatchewan, 444, 445
- examination for discovery or questioning (persons subject to)**
  - assignees and assignors, 293, 294
    - Alberta, 294
    - Federal Court, British Columbia, Saskatchewan, Manitoba, 293
  - auditors and former auditors, 297
  - corporate officers and employees, 284–288
    - Alberta, 286
    - British Columbia, 285
    - Federal Court, 284
    - Manitoba, 288
    - Saskatchewan, 287
  - Crown, 290–292
    - consenting to examination of deputy minister, 291
    - Crown in right of province, 291
    - immunity, 291
    - minister of Crown in constitutional challenge, 292
    - representative selected by A.G. of Canada, 290
  - experts, 316–319
    - Alberta, 317
    - British Columbia, 316
    - Manitoba, 319
    - Saskatchewan, 318
  - guardians and infants, 306–309
    - Alberta, 307
    - British Columbia, 306
    - infant's competence to give evidence, 309
    - Manitoba, 308
  - individual and corporate parties, 271–283
    - Alberta, 274, 275
    - British Columbia, 272, 273
    - co-defendant who demands notice of proceedings, 279
    - co-defendant's claim for contribution or indemnity, 280
    - defendant in action for criminal conversion, 282
    - defendant sued in representative capacity, 281
    - Federal Court, 271
    - Manitoba, 278
    - no issue in pleadings between third party and party seeking, 283
    - Saskatchewan, 276, 277
  - nominal parties, 310–315
    - Alberta, 312
    - British Columbia, 311
    - Federal Court, 310
    - Manitoba, 314
    - persons who may derive benefit from judgment, 315
    - Saskatchewan, 313
  - non-parties, 320–325
    - Alberta, 323
    - British Columbia, 321, 322
    - Federal Court, 320
    - Manitoba, 325

## DISCOVERY

---

- examination for discovery or questioning (persons subject to) (*cont'd*)
  - • Saskatchewan, 324
  - partners and former partners, 298–300
    - • Alberta, 298
    - • British Columbia, 299
    - • Manitoba, 300
  - person out of jurisdiction, 326–330
    - • Alberta, 328
    - • British Columbia, 327
    - • Federal Court, 326
    - • Manitoba, 330
    - • Saskatchewan, 329
  - persons providing services to a corporation, 289
  - persons under disability, 301–305
    - • Alberta, 303
    - • British Columbia, 302
    - • Federal Court, 301
    - • Manitoba, 305
    - • Saskatchewan, 304
  - trustees and bankrupts, 295, 296
- examination for discovery or questioning (place of)**
  - British Columbia, 381
  - Federal Court, 380
  - Manitoba, 383
  - Saskatchewan, 382
- examination for discovery or questioning (procedure on oral examination)**
  - examination and re-examination, 412–415
    - • Alberta, 413
    - • British Columbia, 412
    - • Manitoba, 415
    - • Saskatchewan, 414
  - examination under oath, 395–397
    - • Federal Court, 395
    - • Manitoba, 397
    - • Saskatchewan, 396
  - limits on examination, 424–429
    - • Alberta, 427, 428
    - • British Columbia, 426
    - • Federal Court, 424, 425
    - • Manitoba, 429
  - objections, 416–423
    - • Alberta, 419
    - • British Columbia, 418
    - • during examination, 422
    - • Federal Court, 416, 417
    - • hypothetical questions, 423
    - • Manitoba, 421
    - • Saskatchewan, 420
    - • specific questions, 422
  - production of documents, 404–411
    - • Alberta, 407
    - • British Columbia, 406
    - • cross-examination to ascertain relevancy, 411
    - • document used to refresh memory, 410
    - • Federal Court, 404, 405
    - • Manitoba, 409
    - • Saskatchewan, 408
  - recording of examination, 398–403
    - • Alberta, 400
    - • British Columbia, 399
    - • Federal Court, 398
    - • Manitoba, 403
    - • Saskatchewan, 401, 402
  - securing attendance of person to be examined, 384–389
    - • Alberta, 386
    - • British Columbia, 385

## INDEX

---

- examination for discovery or questioning (procedure on oral examination) (*cont'd*)
  - Federal Court, 384
  - Manitoba, 388, 389
  - Saskatchewan, 387
  - who may attend, 390–394
    - employee of corporate defendant, 394
    - exclusion of parties, 390
    - leave for non-parties to assist, 392
    - not open to public, 393
    - parties, 390
    - strong grounds required for exclusion, 391
    - third party not participating in main action, 393
- examination for discovery or questioning (purpose and scope)**
  - communications between spouses, 370
  - general principles, 339–358
    - Alberta, 345
    - British Columbia, 343, 344
    - broad discovery encouraged, 351
    - documents, 355
    - experts (Manitoba), 349
    - in nature of cross-examination, 352
    - inadmissible statement sworn by opposing party, 358
    - insurance policy (Manitoba), 350
    - journalists, 357
    - Manitoba, 347
    - many purposes, 339
    - names/addresses of persons having knowledge (Manitoba), 348
      - officer of corporation, 356
      - only information already received, 353
      - present officer where former officer examined, 357
      - principles governing scope (Federal Court), 341
      - question of character/credit, 352
      - relevance on oral discovery (Federal Court), 342
      - Saskatchewan, 346
      - seeking to elicit evidence in support of facts, 354
    - incriminating questions, 369
    - names of witnesses, 366–368
      - British Columbia, 367
      - having knowledge of matters in issue, 366
      - Manitoba, 368
    - opinion, 359–363
      - expert, 361
      - expert whose work called into question, 360
      - officer of corporate party possessing special skills/knowledge, 362
      - person not an expert, 359
      - state of mind in issue, 359
      - valuation of property, 363
    - questions of law, 364, 365
  - examination for discovery or questioning (right to)**
    - Alberta, 265
    - British Columbia, 264
    - co-defendants, 268
    - Federal Court, 263
    - Manitoba, 267
    - party against whom no relief claimed, 269
    - provided by rules, 262
    - Saskatchewan, 266

examination for discovery or questioning (right to) (*cont'd*)

- statutory appeal from administrative board, 270

**examination for discovery or questioning (time for and order of examination)**

- after trial has commenced, 378
- Alberta, 374
- British Columbia, 372, 373
- competing interests of discovery and summary judgment, 377
- examination on single topic, 379
- Federal Court, 371
- Manitoba, 376
- Saskatchewan, 375

**examination for discovery or questioning (undertakings)**

- Alberta, 432
- British Columbia, 431
- Federal Court, 430
- Manitoba, 434
- Saskatchewan, 433

**inspection of property**

- Alberta, 472
- British Columbia, 471
- destructive testing, 476
- Federal Court, 470
- Manitoba, 474
- necessary or expedient to obtain full information, 475
- Saskatchewan, 473

**physical examinations (availability)**

- Alberta, 478
- medical examination by duly qualified person, 477
- test whether plaintiff can avoid defence medical, 479

**physical examinations (costs)**

- Alberta, 497
- British Columbia, 496
- party requesting examination, 495

**physical examinations (failure to comply)**

- Federal Court, 498
- Manitoba, 500
- Saskatchewan, 499

**physical examinations (preparation and provision of report)**

- Alberta, 493
- British Columbia, 492
- Federal Court, Manitoba, 491
- Saskatchewan, 494

**physical examinations (scope of examination)**

- further medical examinations, 490
- order to determine dispute (Manitoba), 489
- order to limit/curtail examination, 486
- relevant to purpose of examination, 485
- Saskatchewan, 488
- taking of samples, 487

**physical examinations (who may be present)**

- Alberta, 482
- British Columbia, 481
- Federal Court, 480
- Manitoba, 484
- Saskatchewan, 483

**purposes of discovery**

- determining whether worthwhile to go to trial, 17
- distinct from particulars, 19
- harassment of witnesses, 18

## INDEX

---

- purposes of discovery (*cont'd*)
  - knowing case to meet, 16
  - obtaining admissions, 16
  - particulars, 20
- right to discovery**
  - Alberta Expropriation Act, 11
  - applications, 14
  - assisting enforcement of forfeiture/recovery of penalty, 9
  - bankruptcy actions, 13
  - examination of real or personal property, 4
  - insurer's decision under Automobile Accident Act (Saskatchewan), 12
  - interrogatories may be allowed (Saskatchewan), 3
  - intervener, 15
  - parties between whom there is issue, 6
  - parties who might have been but were not joined, 7
  - physical or mental examination, 4
  - postponement pending other litigation, 8
  - rules relating to trial, 5
  - taxpayer in judicial review, 10
  - written questions or interrogatories, 2
- use of discovery evidence (general)**
  - Alberta, 508–514
    - any portion so connected, 512
    - corporate witness, 509
    - evidence only against person questioned, 511
    - evidence only of questioning party, 511
    - expert, 510
    - filing and putting before court, 514
    - generally, 508
    - persons providing services to corporation, 510
    - witness dead/unavailable, 513
  - British Columbia, 505–507
    - any other part closely connected, 507
    - former directors/officers/employee's agents or external auditors, 506
    - generally, 505
  - contradicting evidence read-in, 525
  - Federal Court, 501–504
    - any other part so related, 502
    - discovery of adverse party, 501
    - person unavailable for trial/non-compellable, 503
    - use as prior inconsistent statement, 504
  - Manitoba, 520–523
    - generally, 520
    - impeachment, 521
    - non-parties, 522
    - past officer or employee, 522
    - person dead/unavailable/non-compellable, 523
    - person under disability, 522
  - obtaining admissions to dispense with formal proof only way in which examination should be used, 526
  - only such parts read in become part of record, 524
  - power of trial judge to exclude inadmissible/irrelevant evidence, 527
  - Saskatchewan, 515–519
    - defendant employee not bound by answers of officer of corporate employer, 518

## DISCOVERY

---

- use of discovery evidence (general) (*cont'd*)
  - generally, 515
  - non-parties, 516, 519
  - office or servant of corporation, 517
  - person dead/unavailable, 519
- use of evidence (implied or deemed undertaking)**
  - Alberta, 533
  - British Columbia, 532
  - confidentiality orders, 531
  - definition, 528
  - Federal Court, 529
  - leave to use documents subject to (Federal Court), 530
  - Manitoba, 537, 538
  - Saskatchewan, 534–536

## Index to Distress

(All references are to paragraph numbers.)

- abandonment of distress**, 51, 100, 111
- acceleration clauses**, 27, 46–48
- action for rent**, 107
- agents**, 32, 33, 94
- agreements for sale**, *see* mortgages/agreements for sale
- annuitants**, 36
- arbitration, effect of**, 21, 22
- assignments, effect of**, 29, 47, 48, 66
- attachment of rent**, 80
- bankruptcy/insolvency**
  - accelerated rent, 46, 48
  - debenture holder's priority, 154, 158
  - distress by trustee, 37
  - distress prior to bankruptcy, 152, 153
  - effect generally, 55, 145–147
  - fraudulent preferences, 152
  - landlord's preferential lien, 144, 145–149, 157–161, 176
  - leave of court, re distress, 146, 155
  - secured creditor's rights, 145, 151, 154, 158
  - taxes, priority for, 182
  - winding-up legislation, 144
- chattel mortgages**
  - actions by mortgagee, 98
  - attornment clauses, 38
  - delay in sale, 105
  - general, 38, 39, 69, 105, 165–168
  - goods removed from premises, 81
  - interest, 38
  - knowledge of mortgagee, 145
  - seizure under, effect, 55, 165
- common law principles**, 2, 7, 14, 46, 61
- conditional sales**
  - criminal law issues, 9, 118
  - interest of purchaser distrainable, 67
  - seizure by vendor, 9, 118
- contractual rights (general)**, 2, 8
- conversion**, *see* wrongful distress
- costs**, 113, 143
- criminal law issues**, 9, 118
- crops**, 58
- Crown**
  - distress against, 6
- damage feasant (animals)**
  - abandonment, 171
  - duty of care, 173
  - expenses, 174
  - general, 4, 7, 10, 171
  - impounding of animals, 174
  - loss of right, 171
- defences**
  - abandonment of prior distress, 51, 79
  - attachment, effect of, 80
  - cancellation of lease, 13, 46, 49, 85–88
  - Crown, 6
  - fraud, 16, 29
  - licensees, 6

## DISTRESS

---

- defences (*cont'd*)
- limitation periods, 91
  - misrepresentation, 16, 29
  - mistake, 16
  - non-compliance with statute, 84
  - refusal of rent, 78
  - releases, 41–43
  - removal of goods, 81–83
  - reversion, parting with, 92
  - set-off, 21, 24, 25, 41, 93
- definition**, 1, 9
- “distress”**, 1, 9
- distress for rent (general)**, *see also parties who may distrain; third party rights; wrongful distress*
- acceleration clauses, 27, 46–48
  - arrears, necessity for, 24, 41, 50, 119, 129, 133
  - assignee of tenant, against, 47, 48, 66
  - certainty of rent due, 21–23, 41
  - common law, 2, 7, 42
  - demise at specified rent, 15, 21
  - forfeiture, effect of, 13, 46, 49, 85–88, 119, 124, 125
  - interest, 38, 40
  - landlord/tenant relationship, 14–20, 37–40, 92
  - landlord’s interest expired, 13
  - licensee, against, 6, 11, 17
  - mortgages, 37–40
  - overholding tenants, 15
  - residential tenancies, 2, 11
  - reversions, 18, 92
  - set-off, 21, 24, 41, 83
  - summary remedy, as, 11
  - surrender of lease, 123
  - taxes, 10, 27
  - tenant in possession, 13, 16
  - use and occupation, 6, 11, 17
- employee’s rights**, 169
- equipment leases**, 69
- execution creditors’ rights**, 70, 164
- executors/administrators**, 35
- exemptions**, 59, 119, 129, *see also third party rights*
- fixtures**, 57
- forfeiture, effect on distress**, 13, 46, 49, 85–89, 119, 124, 125
- fraud**, *see defences; premises distrainable; property distrainable; seizure and sale*
- general matters**
- common law rights, 2, 7
  - contractual rights, 2, 5, 8
  - damage feasant, 2, 7, 10
  - definition, 1
  - nature of distress, 1–12
  - statutory rights, 2, 5, 10
  - taxes/tolls, 11
- goods distrainable**, *see property distrainable*
- guarantees**, 75
- guardians**, 31, 94
- hotels**, *see innkeepers*
- improvements by tenant**, 21
- infants**, 30, 94
- injunctions**, 136, 143
- innkeepers**
- goods of third parties, 56
  - liens, 11
- insolvency**, *see bankruptcy/insolvency*
- interest, distress for**, 38, 40



## INDEX

---

- landlord/tenant**, *see* **distress for rent (general); parties who may distrain**
- levying distress**, *see* **seizure and sale**
- licensees**, 6, 11, 17
- liens**
- innkeepers, 10
  - insolvency/winding-up, 144, 145–150, 157, 176
- limitation periods**, 49, 91
- livestock**, 52, *see also* **damage feasant**
- location of distress**, *see* **premises distrainable**
- loss of right**, *see* **defences**
- mortgages/agreements for sale**, *see also* **chattel mortgages; conditional sales**
- absence of attornment clause, 38–40
  - acceleration clauses, 46
  - attornment clauses, 38, 39, 46, 151
  - general, 8, 9, 17
  - interest arrears, 38, 40
  - land titles property, 38
  - redemise clauses, 39
  - residential tenancies and, 17
  - second mortgagees, 40
- municipal legislation**, *see also* **taxes/rates, distress for**
- nuisance**, *see* **damage feasant**
- parties who may distrain**
- agents, 32, 33
  - annuitants, 36
  - assignee of reversion, 29
  - executors/administrators, 35
  - guardians, 31
  - infants, 30
  - landlords, 27, 28
  - mortgagees, 37–40
  - receivers, 32, 33
  - trustees, 37
  - unincorporated societies, 19
- premises distrainable**
- agreement between parties, 52
  - commencement off demised lands, 52
  - demised lands, on, 52
  - fraudulent/ clandestine removal, 52, 54, 82, 97, 114
  - goods being removed, 52
  - livestock, 52
- priorities**, *see* **specific parties or transactions, e.g., bankruptcy/insolvency; execution creditors**
- property distrainable**, *see also* **third party rights**
- crops, 58
  - exemptions, 59
  - fixtures, 57
  - fraudulent/ clandestine removal, 52, 54, 82, 97, 114
  - manufacture, goods left for, 56
  - priorities, 55, 66, 67
  - purchasers, 50
  - repair, goods left for, 56
  - storage, goods left for, 56
  - third party rights, 56, 61–75
  - tools, 59
  - trade privileges, 56
- rates**, *see* **taxes/rates**
- receivers**, 32, 33, 154, 158, *see also* **bankruptcy/insolvency**
- remedies**, *see* **defences; wrongful distress**

## DISTRESS

---

- removal of goods, see premises distrainable; property distrainable; seizure and sale**
- repairs by tenant, 24, 41**
- replevin, 135, 138**
- residential tenancies, 2, 11**
- right of entry, see seizure and sale**
- sale, see seizure and sale**
- sale of goods, see conditional sales**
- schools, see taxes/rates, distress for**
- seizure and sale, see also wrongful distress**
- abandonment, 51, 100, 111
  - accountings, 109
  - appraisal of goods required, 104, 121
  - bailiff's agent/servant, by, 33
  - clandestine/fraudulent removal of goods, 52, 54, 82, 97, 114
  - constructive seizure, 100
  - costs of distress, 113, 143
  - delay in selling, 105
  - excessive seizures, 100, 122, 135
  - general, 100
  - impounding of goods, 101, 102
  - indemnity to bailiff, 95
  - legality of, 100, 104, 119, 178, 179
  - negligent conduct of sale, 109, 121, 134
  - notice of distress, 103
  - obstruction of, 112, 118
  - offences, 116–118
  - payment of rent after, effect, 102
  - pound breach and rescue, 116, 117
  - purchase by landlord, 108
  - removal after purchase/sale, 110
  - right of entry, 54, 97–99
  - stay of proceedings, 106
  - subsequent distress, 111, 112, 133
  - timing of sale, 103–106, 121
  - timing of seizure, 119
  - waiver of statutory formalities, 105
  - warrant of distress, 94, 179
- set-off**
- general, 93
  - improvements by tenant, 21
  - repairs by tenant, 24, 41
- societies, unincorporated, 19**
- Statute of Anne, 46**
- statutory rights (general), 2, 5, 9, 10, 46**
- stay of proceedings, 106**
- strangers' goods, see third party rights**
- surrender of lease, 123**
- taxes/rates, distress for**
- availability, 175
  - business tax, 175
  - general, 27, 175
  - illegality of distress, 175, 184
  - irregularity of distress, 178, 179
  - landlord recovering from tenant, 26, 149, 176
  - priorities, 66, 182
  - school rates, 175, 184
  - tender of payment, 175
  - third party rights, 180, 181
- tenant, see distress for rent (general)**

## INDEX

---

- tools, seizure of**, 56
- trade privileges**, 51
- trespass**, *see* **wrongful distress**
- trustees**, *see*  
    **bankruptcy/insolvency**
- unincorporated societies**, 19
- use and occupation**, 6, 11, 17
- what may be distrained**, *see*  
    **property distrainable**
- when distress may be made**, *see*  
    **defences; timing of distress**
- where distress may be made**, *see*  
    **premises distrainable**
- winding-up**, *see*  
    **bankruptcy/insolvency**
- wrongful distress**, *see also*  
    **distress for rent (general);**  
    **seizure and sale**
- bailiff's liability, 95, 96, 184
  - chattel mortgagee's rights, 98
  - conversion, 133, 134
  - damages, action for, 121, 122, 126, 127, 135, 137
  - damages, measure of, 126, 129, 132, 138
  - excessive seizures, 100, 122, 135
  - exemplary damages, 126, 140, 141
  - exempt goods, 119, 129
  - forfeiture, after, 119
  - goods not on premises, 119, 129, 133
  - illegal distress, 100, 104, 119, 129, 133, 178, 179
  - illegal entry, 97, 119, 122
  - injunctions, 136
  - irregular distress, 119–122, 133, 144, 178, 179
  - landlord's liability, 96
  - municipal liability, 184
  - negligent conduct of sale, 134
  - nominal damages, 138
  - non-compliance with statute, 121, 134, 178
  - punitive damages, 129
  - replevin, 135, 138
  - school trustee's liability, 184
  - special damages, 132, 138
  - statutory limitations, 132
  - summary proceedings, 137
  - surrender of lease, 123
  - tenant not in possession, 13
  - timing of distress, 119, 129, 133
  - tools, seizure of, 59
  - trespass, action for, 129, 132

## Index to Drainage

(All references are to paragraph numbers.)

- actions, *see also* specific legislation, e.g., Municipal Government Act (Alberta)**
- alteration of land affecting drainage, 1, 2, 226
  - damages, 13–16
  - defences
    - • consent, 19, 30
    - • statutory authority, 17, 22, 23
    - • vis major, 31
  - evidence, 28, 29
  - injunctions, 19, 184
  - negligence, 22, 179, 180, 187
  - non-repair of drains/ditches, re, 26, 34, 58
  - nuisance, 11, 17, 19, 58, 120, 177, 180
  - obstructions, creation of, 9–12
  - obstructions, removal of, 3, 47, 95, 120, 188
  - pleadings, 28
  - railways, against, 36
  - standing to bring, 27
  - trespass, 21, 170
  - ultra vires acts, 25
- alteration of land (general), 1, 2**
- Cemeteries Act (Manitoba), 189**
- Cities Act (Saskatchewan), 262–274**
- City of Winnipeg Charter Act, 202–208**
- Community Charter (British Columbia)**
- applicability of Charter, 128
  - dikes, duties of municipal council, 129
  - land subject to flooding, 130
  - powers of municipal council
    - • dikes, construction of, 128
    - • expropriation, 128
    - • remedial action, power to require, 133
    - • works, construction of, 128
    - • works, regulation of design and construction, 131
- consent, 19, 30**
- Conservation Districts Act (Manitoba), 190**
- culverts, 2, 4**
- damages, 13–16, *see also* actions**
- defences, *see* actions; specific defences, e.g., statutory authority**
- Dike Maintenance Act (British Columbia)**
- “dike”, 148
  - inspector of dikes, 146, 148
  - offences, 150
  - orders of inspector, 148, 149
- ditches, *see* culverts; roads/ditches; specific legislation, e.g., Drainage, Ditch and Dike Act (British Columbia)**
- Drainage Districts Act (Alberta)**
- board of trustees
    - • general, 64
    - • meetings, 72
    - • officers, 71
    - • powers/duties of board, 66–69
  - borrowing, 68
  - construction of works
    - • adjoining land, 76
    - • fences and crossings, 77
    - • powers of district, 75
    - • relief for lands outside district, 78

## DRAINAGE

---

- • Surface Rights Board, 79
- dissolution/termination of district, 94
- drainage council, 74
- drainage rates, 80
- formation/organization of district
  - • board of trustees, 64, 66–73
  - • inclusion/exclusion of lands, 65
  - • petition for, 62
  - • voting on, 64
- forms, prescribed, 97
- general, 61
- obstruction of drainage, 95
- offences under Act, 98
- procedures, adoption/prescribing of, 97
- purpose/objects of, 61
- regulations under Act, 97
- taxation
  - • alterations/cancellations, 83
  - • assessment roll, 82–85, 87
  - • collection of taxes, 91–93
  - • complaints, 84, 88
  - • drainage rates, 80
  - • general, 62, 65, 81
  - • notice of assessment, 84
- **Drainage, Ditch and Dike Act (British Columbia)**
  - approval of engineer's plan, 135
  - assessment roll, preparation of, 135
  - borrowing/finance, 138
  - commissioners
    - • appointment of, 134
    - • "district", 134
    - • general, 134
    - • powers/duties of, 134–139, 146
  - compensation of landowners, 137
  - dissolution of district, 142–144
  - district boundaries
    - • enlargement of, 141
    - • evidence re, 140
  - engineer, appointment of, 135
  - engineer's plan/estimates, 135
  - expropriation, 137
  - injurious affection, 137
  - inspections/surveys, 137
  - inspector of dykes, 146, 148
  - offences, 147
  - operation/maintenance of works, 136
  - taxation, 138, 142
  - water diversion/use/storage, 139
- **Dyking Authority Act (Manitoba)**, 191
- **easements**, 4–8
- **emergencies**
  - Alberta, 49, 54
  - Manitoba, 185
- **Expropriation Act (Manitoba)**, 192, 193
- **Greater Vancouver Sewerage and Drainage Act**, 160
- **highways**, *see* roads/ditches
- **Industrial Roads Act (British Columbia)**, 154
- **injunctions**, 19, 184
- **Land Title Act (British Columbia)**, 156
- **Local Government Act (British Columbia)**
  - acquisition of watercourses, 114
  - agreements re works, 118
  - connection to works, required, 113
  - construction of works, 113, 117, 118

## INDEX

---

- highways, 115, 119, 121
- liability, general, 120, 121, 126, 127
- limitation period, 127
- notice re works, 117
- obstructions, 120
- powers of council, limitation of, 112
- powers of council, paved or roof areas, 122
- remedial action, 120
- stream, appropriation of bed/channel of, 115
- territorial considerations, 117
- Mining Right of Way Act (British Columbia)**, 155
- Municipal Act (Manitoba)**, *see also Water Rights Act (Manitoba)*
  - by-laws, passing of, 167
  - compensation of landowners, 168
  - entry onto/use of land, 168, 169
  - intermunicipal drainage, 176
  - jurisdiction of municipality, 165, 166, 179
  - liability of municipality, 177–181
  - local improvements/special service
    - • notice/meeting re, 173
    - • objections to, 174
    - • plans/proposals, preparation of, 173
    - • tax reductions, 175
    - • works as, 172
  - maintenance of drains, 171
  - obstructions, removal of, 171
  - offences/enforcement, 182–185
  - taxation, 175
  - trespass, 170
- Municipal Government Act (Alberta)**
  - acquisition of land for works, 55
  - by-laws, 52
  - emergencies, 54
  - liability of municipality, 58, 59
  - offences, 60
  - “public utility”, 52
  - rights/duties of council, 52–57
  - subdivision of land, control of, 57
  - taxation, 56
- Municipalities Act (Saskatchewan)**, 251–261
- negligence**, 22, 179, 180, 187
- non-repair of drains/ditches, liability re**, 26, 34, 58, 253
- Northern Municipalities Act (Saskatchewan)**, 280–288
- nuisance**, 11, 17, 19, 58, 177, 180, 256, *see also actions*
- obstructions (creation of)**, 9–12
- obstructions (removal of)**
  - Alberta, 47, 95
  - British Columbia, 120
  - general, 3
  - Manitoba, 171, 188
  - Saskatchewan, 269, 276, 280
- offences, see specific legislation, e.g., Water Act (Alberta)**
- Park Act (British Columbia)**, 162
- Pipeline Act (British Columbia)**, 157
- Planning Act (Manitoba)**, 196, 197
- Public Health Act (Manitoba)**, 198
- Public Highways Development Act (Alberta)**, 99

- Public Works Act (Manitoba),** 199
- railways**
- constitutional issues, 38
  - federal legislation re, 39, 41
  - liability generally, 36, 37
  - provincial legislation re, 40
- right to drain land**
- blocking drainage, 9–12
  - easements, 4–8
  - general, 1, 2
  - obstructions, removal of, 3
  - surface water vs. natural channel, 1, 2, 9–12
- roads/ditches**
- Alberta, 99
  - British Columbia, 115, 150, 154
  - general, 33–35
  - Manitoba, 178, 189
  - Saskatchewan, 275
- statutory authority,** 17, 22
- Strata Property Act (British Columbia),** 158
- surface water,** 1, 2, 9–12, 32–35
- taxation, see specific legislation, e.g., Municipal Government Act (Alberta)**
- Transportation Act (British Columbia),** 161
- trespass,** 21, 170
- ultra vires acts,** 25
- Vancouver Charter,** 151–153
- vis major,** 31
- Water Act (Alberta)**
- “activity”, control of, 44
  - Crown bound by, 43
  - declaration as naturally-occurring water body, 46
  - “diversion of water”, 45
  - emergency measures, 49
  - enforcement orders, 50
  - offences under Act, 51
  - purpose of, 42
  - removal of works/obstructions, 47
  - “use”, 42
  - water management orders, 48
- Water Act (British Columbia)**
- competing licences, 106
  - duties of licensee, 108
  - “land improvement purpose”, 104, 105
  - licensing water use/diversion, 104–107
  - offences, 110
- Water Corporation Act (Saskatchewan),** 209–213
- Watershed Authority Act (Saskatchewan)**
- application for permit for works
    - approvals, 226–228
    - contents/materials required, 227
    - notice of, 227
    - objections, 227
    - replacement permits, 229, 230
    - “works”, 226
  - cancellation of permit, 234
  - complaint procedure, 235–245
  - general, 214–225
  - liability, 246
  - non-compliance, 248–250
  - obligations of permittee, 232, 233
  - offences and enforcement, 247
  - purpose/powers of corporation, 214, 215

INDEX

---

**Water Protection Act (British Columbia), 159**

**Water Protection Act (Manitoba), 201**

**Water Resources Administration Act (Manitoba), 11A-51§166, 179, 187, 188**

**Water Rights Act (Manitoba), 163-165, 190**



## Index to Easements

(All references are to paragraph numbers.)

- abandonment**, *see also*  
**extinguishment/loss of easements**
- acquiescence, 293, 299, 326, 346, 420
  - adverse possession, effect of, 300
  - easements by grant, 290, 301, 304, 305
  - general, 283, 288, 298, 302, 406
  - inferences, 294, 299, 302, 303
  - intention to abandon, 289–292
  - intermittent easements, 296
  - negative easements, 291
  - non-use, 290–295, 406
  - onus on non-user, 294, 297–299
  - onus on servient owner, 299, 300
  - positive easements, 291
  - proof of, 283
- abatement**, 342, 343, *see also*  
**actions (general); damages; disturbance; injunctions; nuisance**
- acquiescence**, *see* **estoppel; extinguishment/loss of easements**
- actions (general)**, *see also*  
**abatement; damages; disturbance; injunctions; nuisance**
- assignment of right of, 350
  - general, 341, 344–346
  - injury to legal rights, 341
  - intent/motive irrelevant, 341
  - right of action, party entitled to, 346
  - support, re, 457
- through dominant tenement grantee, 81
  - trespass, 327, 334, 350, 364, 377
  - unauthorized users, against, 345
- adverse possession**, *see*  
**prescription; rights of way**
- agreements**, *see*  
**construction/interpretation; grants/reservations/agreements**
- agriculture**, *see* **cattle, passing of; cultivation, right of; irrigation; profits à prendre**
- air, rights re**, *see also* **odours; pollution**
- airspace, 5, 19, 23
  - easements of necessity, 220
  - fences interfering, 414
  - general, 19, 23, 64, 65, 105, 411
  - grants re, 414
  - pollution generally, 64, 411
  - prescriptive rights, 412, 413
  - roofs, projection of, 64
  - smoke/soot/cinders, 143
  - stairs over, 5
  - trees, overhanging, 65
  - ventilation ducts, 64
- apparent easements**, *see*  
**continuous/apparent easements**
- “**appurtenance**”, 86, 89, 104, 105, 368
- architectural design, easement re**, 45
- assessment/taxation**, 242
- beaches**, *see* **shorelines**
- boats/docks**, 24, 99, 167, 202, 326, 365
- bridges**, 70, 126, 244

- burial rights**, 470
- cattle, passing of**, 92, 142, 169, 273, 398, 405
- characteristics of easements**
- covenant for title, 340
  - dominant/servient owners, different parties, 11, 12
  - dominant/servient tenements, 5–12, 49, 366, 367, 382
  - exclusive enjoyment, 330
  - general, 3
  - interest in land, 13–16
  - possession of servient owner, effect on, 3
  - statutory alteration of, 4
  - unity of ownership, rule of, 4, 306–308, 311
- chimneys**, 64, 158, 464
- classification of easements**, *see* **types of easements**
- condominiums**, 184, 253, 259
- construction/interpretation**
- “appurtenance”, 86, 89, 104, 105, 368
  - change in meaning, 95
  - circumstances at time, 93, 304, 367
  - conduct of parties, 93
  - “convey”, 89
  - covenants under seal, 88
  - docks, 99
  - duration of grant, 98
  - general, 7, 89, 93, 96
  - “grant”, 87
  - lanes, 100
  - negative easement vs. restrictive covenant, 20
  - parol evidence, 7, 72, 110, 112, 115, 120, 318, 367
  - reservations/exceptions, 101–108
  - rights of way, 94
  - scope of easement, 93–100
  - terms, change in meaning, 95
  - vagueness, 81, 252, 279
- continuous/apparent easements**, *see also* **types of easements**
- “apparent”, 25, 26
  - “continuous”, 24, 26
  - conveyances, effect of, 27–29
  - reservation in grant, 29
- “convey”**, 89
- conveyance/transfer of easements**, 281
- creation (general)**, *see also* **equitable easements; grants/reservations/agreements; implied easements; prescription; statutory easements; types of easements**
- deeds, 67
  - equity, 70
  - implied, 68
  - methods of, 66
  - parol, 67
  - prescription, 47, 69
  - statutory, 70
- cultivation, right of**, 38, 39, 204, 365, 383
- damages**, *see also* **abatement; actions (general); disturbance; injunctions; nuisance**
- excessive use, 347
  - exemplary/punitive, 356
  - general, 340, 344–347
  - nominal damages, 348, 349
  - party walls, re, 465
  - presumption of, 347
  - sewer lines, 357
  - support, right to, 339, 351–353, 445, 448, 453

## INDEX

---

- water, right to, 354
- dams, *see* mills; water**
- definition, 1, 2, 13, 240, *see also* characteristics of easements; types of easements**
- deeds, *see* construction/interpretation; evidence; grants/reservations/agreements**
- development plans, *see* subdivision of land, effect**
- discharge, *see* extinguishment/loss of easements; releases**
- disturbance, *see also* abatement; actions (general); damages; injunctions; nuisance**
  - action through dominant tenement grantee, 81
  - easements of necessity, 332
  - fences, 336, 383
  - gates, 334, 336, 383, 386, 391
  - general, 330–332, 333, 391
  - nuisance distinguished, 326
  - pollution, 340
  - proof of existence of easement, 326
  - proof of interference, 328
  - relocation, 332, 340, 362, 396
  - removal of impediments, 31
  - rights of way, 331–337, 340, 362, 396
  - support, right to, 326, 339
  - taxes, non-payment, 337, 340
  - test for, 331
  - water flow, re, 326, 329, 338, 340
- docks, *see* boats/docks**
- dominant/servient tenements, *see also* characteristics of easements**
  - accommodation of dominant, 8–10
  - contiguousness not required, 5
  - deeds, construction of, 7
  - evidence re, 7
  - general, 5
  - incidental benefits, 9
  - interest running with land, 5
  - ownership of, 12
  - repair, duty of, 10
  - specification of, 6, 78
- drainage, *see* water (drainage)**
- driveways, 124, 127, 136, 165, 193, 207, 210, 217, 237, 260, 264, 289, 368**
- duplex homes, 1**
- duration of easement, *see* expiration of term**
- “easement”, 1, 2, 13, *see also* characteristics of easements; types of easements**
- easements in futuro, 34, 35, *see also* types of easements**
- easements of necessity, *see also* types of easements**
  - burden of proof re, 231
  - doctrine of implied grant, 30, 210, 234, 235
  - fire exits, 210
  - general, 29, 220, 229, 369
  - landlocked parcels, 227, 228, 231, 233, 369
  - nature of, 30, 214, 220, 227, 234
  - persons barred from acquiring, 230, 231
  - relocation of, 332
  - reservation of, 29, 214, 368
  - tax sales negating, 235

## EASEMENTS

---

- time of creation, 227
  - vendor retaining, 228, 232, 233, 236, 369
  - watercourses, 311
- eaves, see roof, projection of**
- enforcement, see abatement; actions (general); damages; disturbance; injunctions; nuisance**
- equitable easements, see also creation (general); types of easements**
- acquiescence, 74
  - examples, 73
  - general, 37, 71, 81
  - legal easements, 36
  - Ontario, 267
  - representations, 75
  - Statute of Frauds, 72
- estoppel, 74, 75, 93, 110, 116, 136, 212, 298, 371**
- evidence, see also construction/interpretation**
- general, 7
  - parol evidence, 7, 72, 110, 112, 115, 120, 318, 367
  - plan of development, 103, 113–120
  - prescriptive easements, 173
  - Statute of Frauds, 72, 112
- excavations, see gravel pits; support, right to**
- expiration of term, see also extinguishment/loss of easements**
- conveyances, effect of, 322, 323
  - destruction of easement, 321
  - examples, 320–325
  - general, 318, 319
  - irrigation agreements, 320
  - roads/highways, 321, 322, 324
- expropriation of easements, 240, 243**
- extinguishment/loss of easements, see also abandonment; registration; releases**
- acquiescence, 293, 299, 326, 346, 420
  - destruction of easement, 310, 321
  - expiration of term, 318–325
  - “extinguishment”, 279
  - general, 279–282, 326
  - servient owner in wrongful possession, 309
  - statutory, 3, 312–314, 316, 317
  - tax sale, via, 3, 313
  - unity of ownership, by, 4, 306–308, 311
- farm crossings, 84, 169**
- fences, 62, 204, 336, 349, 383, 414, see also gates; repair, duty of; types of easements**
- fire exits, 210, 227, 388**
- fishing, 5, 65, 143**
- floods, see water**
- foreshore, see shorelines**
- fruit trees, 64**
- gardens, 64**
- gates, 334, 336, 365, 383, 386, 391**
- grants/reservations/agreements, see also construction/interpretation; creation (general); evidence; rights of way; subdivision of land, effect**
- ancillary rights, 91, 92
  - “appurtenance”, 86, 89, 104, 105, 368
  - authority of grantor, 83, 90, 238

## INDEX

---

- “convey”, 89
- conveyance of property, effect, 85, 92
- duration/extent, 76, 77, 79, 98
- enforcement of easement, 81, 91, 110
- equity, effect of, 109–111
- farm crossings, 84
- “grant”, 87
- implied, 68, 101
- language of, 87–89
- manner of creation, 81–86
- miscellaneous examples, 84
- mortgages, effect of, 107
- need for, 67
- negative rights, of, 16
- passing of easement, 85, 86
- plans of development, 103, 113–121
- railways, 73, 84, 90
- reservations/exceptions, 101–112, 367
- rights of way, 80, 86, 89, 94, 101–108, 110–112, 304, 305
- scope of, 93–96, 98–100, 304, 305, 367
- seal, absence of, 82
- specification of dominant/servient tenement, 6, 78
- time of, 15
- title of grantor, 81
- gravel pits**, 20, 38, 44, 57, 96
- highways/roads**, *see also driveways; rights of way; subdivision of land, effect*
  - access ramps, 75
  - cattle pass under, 92
  - construction of vs. use, 80
  - damages re harm to, 331, 355
  - estoppel re use of, 110
  - grants generally, 365–367
  - injunctions re, 328, 331, 361, 363
  - interference/obstruction, 328, 331, 355
  - lanes, 100, 110, 117, 388
  - lost modern grant doctrine, 140
  - maintenance of easement over/under, 92
  - prescriptive rights, 159–162, 190
  - public, effect of dedication, 115, 324, 402
  - public, legislation re, 246, 248, 249, 277
  - public vs. private rights of way, 402
  - repair of, 321
  - reservation of easement, 322, 325
  - route of, ascertainment, 190
  - sale of land, effect on easement, 322
  - winter roads, 190
- hunting**, 65, 143, 380
- implied easements**, *see also creation (general)*
  - apparent accommodations, 224–226
  - continuous/apparent use, 217, 219, 220, 222, 224–226
  - doctrine of implied grant, 210–213
  - implied reservation of easement, 214, 215, 223, 237, 232
  - mutual/reciprocal easements, 237
  - nature of, 68, 101
  - release re damage, creation of easement by, 212
  - severance of tenements, upon, 216–223
  - ways of necessity, 210, 214, 220, 227–236

## EASEMENTS

---

**injunctions, *see also* abatement; actions (general); damages; disturbance; nuisance**

- alteration of right of way, re, 396
- buildings, erection of, 422
- cattle, driving of, 169
- enlarged/excessive use, re, 304, 360
- fences, re, 349
- general, 91, 110, 344, 349, 358
- highway construction, re, 328
- highways, re, 328, 331, 361, 363
- interim injunctions, 362, 422
- land-locked parcels, 227
- lanes/roads, re use of, 110, 169, 361, 363
- light, re right to, 415, 422, 423
- mandatory, 344, 359
- obstruction of window, 423
- picketing, 326, 364
- relocation of right of way, 362
- removal of impediments, 31, 342, 344, 359
- support, re right of, 358
- walls, removal of, 415
- watercourses, re, 358
- wrongful use of easement, re, 361
- zoning restrictions, removal, 344

**interest in land**

- general, 13
- knowledge of easement, 14
- negative rights, 16
- rights of immunity, 16
- time for granting, 15

**irrigation, 246, 320**

**jus spatiiandi, 473**

**lanes, *see***

**grants/reservations/agreements;**

**highways/roads; subdivision of land, effect**

**lavatories, 64**

**legal easements, 36, *see also* types of easements**

**licences, *see also* types of easements**

- easements distinguished, 43, 45
- nature of, 43
- parol licences, 44
- repair, burden of, 44
- revocation, 44
- sale of land, 45
- termination, date of, 45

**light, right to**

- abandonment/loss of, 291, 310, 420
- acquisition of easement, 64, 415, 424, 425
- appurtenance, light as, 105
- building vs. vacant lot, 415
- derogation from grant disallowed, 416, 424
- easement of necessity, as, 220
- general, 19, 23, 64, 415, 419, 474
- injunctions, 415, 415, 416
- lateral light, 408
- leases, effect of, 416, 417, 423
- material alteration of window, effect, 291, 310, 418
- measure of damages, 330, 421
- mortgage of servient tenement, effect, 217
- nature/extent of right, 415, 419, 424
- obstruction, removal of, 346, 415, 416, 423
- prescriptive acquisition, 149, 171, 425
- proof of injury, 330, 421

## INDEX

---

- reservation of, 29
- tenant's liability re, 423
- walls, removal of, 415, 416
- livestock**, *see* **cattle, passing of**
- loading/unloading**, 332
- merger**, *see* **unity of ownership, effect of**
- mills**, 95, 96, 105, 169, 194, 199, 217, 220, 289, 345, 435, 442, *see also* **water**
- mines/minerals**, 245, 269, 326, 339, 449, 451, 452, 469, *see also* **oil and gas; pipelines; surface rights**
- mistake**, *see* **prescription (general)**
- necessity**, *see* **easements of necessity**
- negative easements**, *see* **positive/negative easements**
- noise**, 21, 64, 468
- notice**, *see* **registration; statutory easements**
- nuisance**, *see also* **abatement; actions (general); damages; disturbance; injunctions**
  - abatement, 342, 343
  - actions, 326
  - air pollution, 198
  - “disturbance” distinguished, 326
  - general, 17, 198, 471
  - navigable rivers, re, 429
  - noise, 21
  - right to commit, 64
  - sewer lines, 335
- odours**, 21, 64, 159, 217, 222
- oil and gas**, 38, 97, *see also* **mines/minerals; pipelines; surface rights**
- ornamentation**, *see* **shade/decoration**
- parking**, 45, 64, 65, 71, 364, 478
- party walls**, *see* **walls**
- perpetuities**, 34, 35
- picketing**, 326, 364, 385
- pipelines**, 64, 97, 268, 326, 365, *see also* **oil and gas; water**
- planning/zoning**, *see* **subdivision of land, effect**
- pollution**, 143, 194, 340, *see also* **air, rights re; odours; water**
- positive/negative easements**, *see also* **types of easements**
  - abandonment of, 291
  - construction of, 20
  - enforceability, 23
  - general, 17, 21
  - “negative”, 19, 22
  - noise, 21
  - odours, 21
  - “positive”, 18
  - restrictive covenants distinguished, 20, 57–60
  - rights of immunity, 18, 23
- power lines**, *see* **utility lines**
- prescription (general)**, *see also* **creation (general); rights of way; statutory easements**
  - air, right to, 412, 413
  - common law, at, 129
  - evidence against, 124
  - federal real property, over, 125
  - illegal/void grants, 126
  - inability to resist, 122
  - intermittent use, 128
  - knowledge of user, 127, 128
  - methods of claiming, 124, 125
  - mistake, effect of, 127

## EASEMENTS

---

- nature/definition of, 69, 121–123, 201
  - negative prescription, 121
  - permissive use, effect of, 127
  - positive prescription, 121
  - presumption from long use, 126, 127
  - presumption of grant, 126, 129
  - profits à prendre, 42
  - purpose/scope of easement, 123
  - statutory bars to, 47, 147
  - support, right to, 455
  - surface water, re, 431, 433
- prescription (lost modern grant),** *see also* **creation (general)**
- arising of presumption, 136–139
  - bars to, 131, 136–139
  - basis of, 131, 132
  - illegality/impossibility barring presumption, 126, 143–145
  - incapacitated owners, 126, 132, 135, 143
  - increase/alteration of use, 142, 304
  - knowledge of servient owner, 128, 138
  - length of usage, 131, 135, 140
  - Manitoba, 133
  - nature/evidence of user, 140–142
  - Ontario, 275
  - origin of, 130–134
  - owner's rights, 134
  - permissive use, effect of, 127, 136, 138
  - rebuttal of presumption of grant, 135
  - running of time period, 134
  - tenancy, effect of, 134
- prescription (statutory),** *see also* **creation (general)**
- adverse possession (Ontario), 200–207, 260, 315
  - air pollution, 198
  - Alberta, 148, 149
  - bars to, 147–150
  - British Columbia, 148, 149
  - burden of proof, dominant owner's, 170–177
  - burden of proof, servient owner's, 171
  - continuous/uninterrupted enjoyment/use, 185–192
  - Crown lands, 208, 209
  - drainage, 193, 194, 196
  - enjoyment as of right (Ontario), 158–169
  - evidence generally, 173
  - federal, 150, 209
  - general principles, 151
  - identification of route, 190, 197
  - incapacitated owners, rights of, 156
  - interruption of use, 189, 191, 192
  - knowledge of servient owner, 170, 172, 175
  - lease of servient tenement, effect, 152, 178
  - length of usage, 151, 152, 154–156
  - life tenant acquiring, 152, 188
  - light, right to, 171
  - Manitoba, 147, 149, 256
  - mistake, effect of, 165
  - Northwest Territories, 148, 149
  - Nova Scotia, 155
  - nuisance, 198
  - object of, 146



## INDEX

---

- Ontario, 152, 154, 157–169, 178, 184, 185, 188, 200–207, 264, 284, 285
  - permissive use, effect of, 154, 161, 191
  - reversioners' rights, 157
  - right acquired by, extent of, 193–199
  - tenant acquiring for dominant owner, 153, 180, 181
  - unity of ownership, effect of, 178, 182
  - unity of possession, effect of, 178–184, 191
  - “use”, 170–177, 189
  - water rights, 194–196
  - Yukon Territory, 148, 149
- profits à prendre**, *see also* **types of easements**
- assignment of, 40
  - distinguished from easement, 38, 41
  - nature of, 41
  - prescriptive claims, 42
  - revocation of, 39
  - subject matter of, 41
- public works**, 241, *see also* **utility lines**
- quarries**, *see* **gravel pits**
- quasi-easements**, 31–33, 105, *see also* **types of easements**
- railways**, 73, 84, 90, 126, 154, 163, 169, 212, 366
- registration**, *see also* **statutory easements**
- Alberta, 246
  - British Columbia, 248, 250, 252, 253
  - general, 13
  - Manitoba, 255
  - Ontario, 258–260, 263–275, 284, 285, 314, 367
  - Saskatchewan, 276–278
- releases**, *see also* **extinguishment/loss of easements**
- errors, 288
  - express, 283
  - failure to register, 284, 285
  - general, 279
  - implied, 283
  - Ontario, 284, 285
  - presumed, 283
  - registration, 284–286
  - replacement by new right of way, 287, 319
  - Saskatchewan, 278, 280
  - scope of, 283
- remedies**, *see* **abatement; actions (general); damages; disturbance; injunctions; nuisance**
- repair, duty of**, *see also* **fences; types of easements**
- cattle passes, 405
  - fences, 62
  - general, 10, 61
  - highways/roads, 321
  - licensees, on, 44
  - stairways, 63, 319, 404
- repairs, right to make**, 476
- reservations**, *see* **grants/reservations/agreements; implied easements**
- restrictive covenants**, *see also* **types of easements**
- assignment of, 54
  - definition/nature of, 55
  - easements distinguished, 57–70
  - general, 4, 51–55

## EASEMENTS

---

- negative easement distinguished, 20, 57
- privity of contract, 51
- privity of estate, 53
- sale of land, 56
- rights in gross, *see also* types of easements**
  - easements distinguished, 46
  - licence distinguished, 48
  - nature of, 46
  - rights of way, 48, 49
  - water-power rights, 50
- rights of immunity, *see* positive/negative easements**
- rights of way, *see also* disturbance; grants/reservations/agreements; highways/roads; rights in gross**
  - abandonment of, 406
  - automobiles vs. horses, 387
  - boundaries of, 400
  - conditions on, 366
  - contiguousness, 5, 49, 382
  - conveyance of subject lands, effect of, 365
  - disturbance of, 331–337, 340, 362, 396
  - drainage pipes, 407–410
  - easements of necessity, 332, 368, 369
  - excavation of road, 355, 362
  - express grants, 94, 365, 394, 395
  - extinguishment/loss, 315
  - fences, 336, 383
  - gates, 334, 336, 383, 386
  - implied, 368–371
  - increase in burden, 304, 380, 393, 394, 399
  - lanes, 366, 367, 384, 388
  - livestock, for, 398
  - location/direction of, 305, 332, 340, 362, 395–401
  - nature/characteristics of, 365–367, 391
  - obstruction generally, 328
  - picketing on, 385
  - prescriptive rights/adverse possession, 365, 372, 373–378, 398
  - private streets, 392
  - public vs. private, 402, 403
  - railroad crossings, 11–53, 366
  - repair of, 404, 405
  - roads, construction vs. travel, 365
  - scope of, 94, 304, 305, 379–381, 386, 387, 393–395, 399, 400
  - specified property, to, 305, 399, 401
  - timber, transportation of, 390
- rivers, *see* water**
- roads, *see* highways/roads**
- roof, projection of, 64, 89, 220, 315, 332, 467**
- sale of land, 13–16, 23, 27–29, 45, 56, 85, 92, 282, 322, 323, 369, 389, 398, 447**
- sand, *see* gravel pits**
- seasonal properties/uses, 128, 140, 170, 185, 190, 194**
- seaweed, 42**
- servient tenements, *see* dominant/servient tenements**
- sewer lines, *see also* water**
  - actions re, 357, 409
  - construction of grant, 34
  - damage caused by leak, 335, 410
  - easement of necessity, 408
  - general, 89, 218, 239, 241, 409

## INDEX

---

- interest in land, as, 268
- licence vs. easement, 357
- notice of easement, 407
- revocable licence re, 43
- shade/decoration**, 64, 65, 477
- shopping centres**, 326, 364
- shorelines**, 5, 21, 101, 317, 336, 366, 369, 448
- smells**, *see* **odours**
- smoke**, *see* **air, rights re**
- sounds**, *see* **noise**
- springs**, *see* **water (surface)**
- stairways**, 63, 319, 404
- statutory easements**, *see also* **creation (general); registration; types of easements**
- statutory easements (Alberta)**, 241, 246, 247
- statutory easements (British Columbia)**
  - cancellation, 252
  - conveyances/transfers, 250
  - court declaring, 251
  - general, 241, 248
  - leases, 250
  - registration of, 248, 250, 252, 253
  - tax sales, 249
- statutory easements (general)**
  - assessment/taxation, 242
  - bridges, 244
  - creation generally, 70, 238
  - drainage, 244
  - expropriation, 239–241, 243
  - hereditaments distinguished, 239
  - mines/minerals, 245
  - surface rights, 245
- statutory easements (Manitoba)**, 241, 254–257
- statutory easements (Ontario-general)**
  - Expropriations Act, 240
  - Land Titles Act, 258–260, 265
  - mines/minerals, 245
  - Municipal Act, 239, 240
  - surface rights, 245
- statutory easements (Ontario-Registry Act)**
  - actual notice, effect of, 261, 266, 274
  - building walls, use of, 266
  - equitable easements, 267
  - general, 263, 264 265, 270–273, 284, 285, 314
  - implied easements, 264, 265, 270, 275
  - “instruments”, 269
  - interest in land, 268
  - prescriptive rights, 264, 273, 275
  - presumption of lost grant, 275
  - time of notice, relevance, 262
- statutory easements (Saskatchewan)**, 241, 276–278
- steam power, use of**, 67
- storage**, 64
- streets**, *see* **highways/roads; subdivision of land, effect**
- subdivision of land, effect**, *see also* **grants/reservations/agreements; prescription**
  - binding of purchasers, 113
  - common vendor not necessary (Ontario), 114
  - estoppel, 116
  - general, 27, 28, 106, 115, 287, 379, 399
  - highways, 115

- implied right of way, 108
- lands, access to, 100, 117, 119
- parol evidence, 120
- partition by court, 210
- roads, 117, 118
- summer cottages**, 128, 170, 185
- support, right to**, *see also* **walls**
  - artificial support, sufficiency, 454
  - beaches, 448
  - buildings, 445, 453–459
  - conveyances, effect of, 447, 448
  - damages for loss of, 339, 351–353, 445, 448, 453
  - easement of vs. right to, 445, 455
  - implied reservation, 220
  - injunction protecting, 358
  - lateral, 326, 339, 444–453, 455–458
  - minerals, removal of, 326, 339, 449, 451, 452
  - negative vs. positive easement, as, 21
  - underground water, from, 444, 449, 450
  - vertical, 445, 453–460
- surface rights**, 245, *see also* **mines/minerals; oil and gas; pipelines**
- swimming pools**, 3, 64, 479
- taxation**, *see* **assessment/taxation**
- tenancy in common**, 12, 181
- term of easement**, *see* **expiration of term**
- timber**, 38, 65, 179, 326, 390, 396, 435
- transmission lines**, *see* **utility lines**
- trapping**, 64
- trespass**, *see* **actions (general)**
- tunnels/subways**, 1, 135
- types of easements**, *see* **continuous/apparent easements; creation (general); easements in futuro; easements of necessity; equitable easements; fences; legal easements; licences; positive/negative easements; profits à prendre; quasi-easements; repair, duty of; restrictive covenants; rights in gross; specific matters, e.g., sewer lines**
- unity of ownership, effect of**
  - Alberta, 4, 306
  - British Columbia, 4, 306
  - equality of estates, 307
  - general, 4, 306
  - revival of easement, 308
  - watercourses, 311
- use**, *see* **abandonment; prescription**
- utility lines**, 43, 64, 71, 93, 161, 240, 241, 345, 365, 388, 395
- ventilation**, 64
- views/vistas**, 64, 91, 417, 472
- walls**, *see also* **fences; gates; light, right to; support, right to**
  - attachments to, 64
  - general, 89
  - injunction for removal, 415
  - party walls, 278, 319, 461–466
  - prescriptive easement for support from, 459
  - protection from flooding, as, 143, 432, 433
  - protection from weather, right to, 65
  - registration of easement re, 266

## INDEX

---

- wander at large, right to**, 473
- water**, *see also* **boats/docks; irrigation; mills; pipelines; sewer lines; shorelines**
- water (diversion of)**, 73, 105, 194, 267, 326, 329, 358, 436
- easement of necessity, 408
  - eaves, discharge from, 64
  - evidence of grant, 43, 71, 89, 222
  - general, 64, 89, 143, 194, 226, 244
  - licence vs. easement, 43, 320
  - maintenance of drain, 210
  - notice of easement, 407
  - pipes, through, 24, 407
  - prescriptive rights, 193, 194, 196
  - registration of easement, 246
- water (flooding)**
- dams causing, 194, 438
  - duties re prevention, 432, 433
  - general, 194, 441
  - increased flow, 441
  - “mill privilege”, 442
  - rights re discharge, 432
- water (navigable waters)**, 167, 429, 434
- water (registration of easements)**, 246, 248, 249, 261
- water (right to supply of)**, 64, 65, 157
- water (riparian rights)**
- general, 139, 434, 435
  - marshland not water, 435, 437
  - right of interference, 139, 439
- water (drainage)**
- construction of grant, 34
  - damages from, 410
  - ditches, 67, 71, 320
- water (surface)**
- abandonment of right to, 290
  - collection/discharge, 64, 194, 432
  - general, 430, 433
  - loss of easement, 290, 316
  - pipelines to, 97, 388
  - prescriptive rights, 431, 433
  - springs, 33, 38, 64, 97, 290, 388
  - walls as protection from, 432, 433
- water (underground)**, 33, 38, 44, 354, 443, 444, 449, 450, 475
- watercourses**
- artificial, 64, 89, 311, 326, 427, 428, 434
  - definition, 426
  - discharge into by another, 64
  - discharge onto neighbour’s land, 427
  - general, 248, 249, 261
  - loss of easement, 311
  - prescriptive rights, 157, 428
  - torts re, 326
- water-power rights**, 50, 64, 143, 289
- weather, protection from**, 22, 65
- wells**, *see* **water (underground)**
- wharves**, *see* **boats/docks**

## Index to Education

(All references are to paragraph numbers.)

- administrative law, see also duty of fairness**
- certiorari, 41, 203, 303, 371, 454, 463
  - declarations, 171
  - legitimate expectation, 401
  - mandamus, 132, 133, 400, 424, 451, 463
  - prohibition, 311
- advisory councils, 388, see also school councils**
- affirmative action programs, 476**
- Alberta Teachers' Association, 208, 209, 251**
- annual report (British Columbia), 4**
- assault, see corporal punishment**
- assessment, see taxation**
- attendance, see also parents; school boards; students**
- attendance officers and boards, 140, 141, 161
  - Charter and human rights issues, 146, 147, 153, 162, 168
  - choice of school, 19, 136-138
  - compulsory nature, 139, 150, 160
  - constitutional jurisdiction over, 145, 154, 158
  - enforcing of, 140, 142, 157, 159, 163
  - health concerns, 32, 135
  - hearings concerning, 141
  - home schooling, 143, 146, 151, 156, 160
  - independent schools, 52, 151, 152, 160
  - kindergarten, 126
  - mandamus allowing access, 132, 133
  - parents' wishes, 19
  - private schools, 143
  - religion issues, 133, 146, 158, 162
  - requirement for, 139, 148, 150, 159
  - right to attend, 121-131
  - school board rules, 144
- bailment, see negligence**
- battery, see corporal punishment**
- boards of reference**
- appeals, 14, 20, 321-324, 335, 353, 355
  - application for, 371
  - appointment, 368
  - "court of competent jurisdiction", 310
  - defamation by, 67
  - good faith defence, 65
  - school divisions, establishment and dissolution, 12, 18
- bona fide occupational requirements, 263**
- boundaries, see districts and divisions (public)**
- buildings and premises, see also closing of schools; negligence**
- access to, 385, 394
  - choice of site, 24
  - construction, purchase or lease, 26-30
  - closings, 31-42
  - expropriation for, 23
  - minority language facilities, 412, 415, 421, 425
  - sale of old site, 25

- vandalism to, 126

**busing, *see* transportation of students**

**Charter and human rights**

- attendance issues, 147, 162
- court of competent jurisdiction, 310
- disciplining of students, 466
- discrimination, 220, 239, 240, 241, 255
- equality rights, 237, 319, 411
- freedom of association, 237
- freedom of conscience, 10, 179, 180, 394
- freedom of expression, 219, 374
- freedom of opinion, 11
- handicapped students, 399, 411
- independent schools, 153
- language rights, 412, 414-417, 420, 421
- life, liberty and security, 162, 319
- mandatory retirement, 273, 289, 456-458
- marital status, 263
- presumption of innocence, 319
- privacy, 205, 295
- religion, 147, 162, 174, 180, 181, 394
- schoolboard as “person”, 115
- search/seizure, 205, 206, 295
- separate schools, 47, 49
- sexual orientation, 238

**charter schools (Alberta)**

- establishment, 61
- general, 60
- operation according to charter, 62
- teachers, collective bargaining, 63

**closing of schools**

- Alberta, 31
- British Columbia, 32-35
- injunctions, 42
- Saskatchewan, 36-43

**collective agreements and contracts, *see also* Charter and human rights; teachers**

- arbitration and conciliation, 255, 256, 260, 266, 267, 270, 277, 280
- administrative appointments, 247
- bargaining parties, 227, 278
- breaches and damages, 269
- charter schools (Alberta), 63
- classification of teachers under, 242
- conseil scolaire, 279
- deceit in negotiating, 257
- disability benefits, 283
- discrimination in, 255
- employment standards legislation, 225
- enforceability, 286, 287
- grievance committees, decisions by, 254
- illegal contracts, 274
- jurisdiction of court, 254, 286
- leaves of absence, 252
- length of contract, 243, 252, 276
- mandatory retirement, 264, 273, 289
- noonhour supervision, 282, 284
- notice to negotiate, 218
- oral agreements, 246
- part-time teachers, 242, 248
- professional association dues, 251, 268
- salaries and deductions, 250, 251, 261, 262, 268
- school days, number of, 253

## INDEX

---

- sick leave and pay, 271, 272, 285
  - spouses in same school, 263
  - strikes, 266
  - terms and conditions (Alberta), 244
  - terms and conditions (British Columbia), 258, 259
  - terms and conditions (Manitoba), 266, 268, 329
  - terms and conditions (Saskatchewan), 275-277
  - transfer of teachers, 249, 276, 304
  - writing, need for, 246, 247, 265, 275, 360
- colleges, *see* universities**
- compulsory retirement, *see* mandatory retirement**
- conseil scolaire, *see* collective agreements and contracts; school boards**
- constitutional law, *see also* Charter and human rights**
- attendance, 145, 154, 158
  - Charter provisions, 47, 49
  - formation of school divisions, 8
  - handicapped students, 411
  - jurisdiction over education, 2, 44
  - language rights, 168
  - section, 106
  - rights, 2, 46, 47
  - separate schools, guarantees, 44-49
- contracts, *see* collective agreements and contracts; school boards**
- corporal punishment**
- Criminal Code provisions, 182-187
  - provincial legislation, 188, 189
- corporations, tax support by, 58, 59**
- courses of study**
- Alberta, 3
  - British Columbia, 4
  - Manitoba, 5
  - Saskatchewan, 6
- courts**
- appeals to, 34, 357
  - jurisdiction generally, 74
- curriculum, *see* courses of study**
- deceit, 257**
- declarations, 171**
- defamation, 67, 69, 366, 367**
- “denominational cause”, 49**
- department of education**
- Alberta, 3
  - British Columbia, 4
  - Manitoba, 5
  - Saskatchewan, 6
- detention, *see* suspension and expulsion (students)**
- discrimination, 220, 255**
- districts and divisions (public), *see also* separate schools**
- alteration and dissolution, 16, 17-21
  - formation, 7-15, 22
- duty of fairness**
- discipline proceedings, 226, 227, 297, 308, 309, 314-317, 324, 343, 346, 363 365, 441
  - handicapped students, placement, 400
  - school closures, 34, 35
  - suspension and expulsion, students, 192, 196, 463
  - tenure hearings, 452
  - university senate appeals, 468



## EDUCATION

---

- duty to provide education**, 121, 124, 281
- duty to warn, breach of**, 320
- expropriation**, 23
- expulsion**, *see* **suspension and expulsion (students)**
- fees/finance**, *see* **school boards**
- field trips**, 110, 386
- foreign students**, 469
- freedom of association**, *see* **Charter and human rights**
- freedom of conscience**, *see* **Charter and human rights**
- freedom of expression**, *see* **Charter and human rights**
- freedom of opinion**, *see* **Charter and human rights**
- handicapped students**, *see* **students**
- “hard to serve” pupil hearing**, 408
- health and safety**, 32, 135
- home schooling**, 143, 151, 152, 160
- hours of instruction (Alberta)**, 3
- human rights**, *see* **Charter and human rights**
- independent schools**, 52, 152, 153, 160
- injunctions**, 39, 42, 43, 152, 163, 409, 441, 445
- instructional materials**, 5, 116
- kirpans**, 181
- language rights**
- Alberta, 413-415
  - appeal to minister, 383
  - British Columbia, 416, 417
  - Charter s. 23, 412, 414-417, 420, 421
  - contracts concerning programs, 422
  - discrimination against, 168, 420
  - immersion programs, 417
  - Manitoba, 418-422
  - Saskatchewan, 423-425
- legislation**
- constitutional jurisdiction, 2
  - departmental or ministerial control, 3-6
- legitimate expectation, doctrine of**, 401
- liability**, *see* **negligence; school boards**
- libel**, *see* **defamation**
- life, liberty and security**, *see* **Charter and human rights**
- limitation of actions**
- extension of time, 90
  - property damage, 68
  - waiver of limitation period, 73
- Lord’s Prayer**, *see* **religious and patriotic exercises**
- malpractice**, 83
- mandatory retirement**
- professors, 456-459
  - teachers, 264, 273, 289
- Manitoba Teachers’ Society**, 225
- minister of education**
- Alberta, 3
  - British Columbia, 4
  - liability, 75
  - Manitoba, 5
  - Saskatchewan, 6
- ministry of education**
- Alberta, 3

## INDEX

---

- British Columbia, 4
- liability, 75
- Manitoba, 5
- Saskatchewan, 6
- natural justice, *see* duty of fairness**
- negligence**
  - applicability of Charter to school board, 119
  - bailee, school board as, 117
  - bannisters, 97
  - buses and conveyances, 111, 112, 113, 114
  - dangerous machinery, 93
  - defective equipment, 78, 97
  - educational malpractice, 83, 84, 294
  - experiments, 97
  - field hockey, 99
  - field trips, 110
  - general, 92, 95, 98-102, 104, 107
  - gymnasiums, 98-107
  - gymnastics, 100, 102
  - handicapped students, 93
  - harassment by classmates on basis of sexual orientation, 118
  - outside school hours and strict boundaries, 107-110
  - physical education generally, 106
  - playgrounds, 98-107
  - premises generally, 94-97, 105, 108
  - rifles, 97
  - school patrols, 70, 80
  - sporting activities, generally, 81
  - stairways, 97
  - standard of care, 92-110
  - statutory protection of authorities, 69-71, 77-80, 82, 110, 114
  - students injuring others, 103
  - swings, 99
  - teeter-totters, 103
  - tender years, children of, 105
  - tort of educational malpractice, 120
  - visually impaired students, 81
  - work education programs, 79
- noonhour supervision, 282, 284**
- northern school division, 13**
- notice of intention, 36**
- occupiers' liability, *see* negligence, premises generally**
- parents**
  - definition, 378
  - district parents' advisory council, 389
  - duties and liabilities, 68, 142, 146, 148, 149, 155, 157, 159, 376, 377, 392, 393
  - review of student record, 380
  - rights and powers, 332-37, 339, 341, 344-45, 347
  - right to be informed of student's attendance, 387
  - school community council (Saskatchewan), 396
- patriotic exercises, *see* religious and patriotic exercises**
- principals and administrators, liability of**
  - negligence, statutory protection, 69-71, 77-80, 82
  - teacher evaluation, 89
- private schools, 143**
- professional associations, *see* teachers**

## EDUCATION

---

### **professors, *see also* universities**

- collective agreements, 428, 445, 450, 453, 458
- dismissal and discipline, 440-443, 445-447, 448
- employment contracts, 428, 444, 450
- mandatory retirement, 456-459
- standard of care towards students, 461
- tenure, 440, 449-455
- treatment by university authorities, 440

### **property tax, *see* taxation**

### **religious and patriotic exercises, *see also* Charter and human rights**

- attendance, 133, 146
- Charter concerns, 147, 162, 174
- exemption from, 133, 172, 175, 178
- kirpans, 181
- Lord's Prayer, recital, 174, 178
- mandating of, 5, 172, 175-178
- national anthem, singing, 179
- prescribing of, 173
- saluting flag, 194

### **Saskatchewan Local Teachers' Federation, 278**

### **Saskatchewan Teachers' Federation, 278**

### **school boards, *see also* negligence; teachers; transportation of students; trustees**

- appeals to, 382
- applicability of Charter to school boards, 119
- attendance, rules concerning, 144
- contracts by, 76, 88

- deceit, liability for, 257
- defamation, 67
- discrimination, liability for, 220
- duty to provide education, 122, 124, 128, 195
- educational malpractice, 83, 84, 294
- fees, imposition of, 116
- good faith defence, 65, 75
- indemnification by, 71
- interference with school attendance, 130
- legitimate expectation doctrine, 401
- liability of members, personal, 87
- liability of trustees, employees of board, council members, 66
- minority language representation, 415, 425
- procedural fairness, 400
- property of, damage to, 68, 72
- screening of students, 404
- statutory protection, 65, 67, 69, 70, 73-75, 77-79, 90
- unauthorized expenditures, 64
- vicarious liability, 69

### **school councils, 331, *see also* advisory councils**

### **school districts and divisions, *see* buildings and premises; closing of schools; districts and divisions (public); school boards; separate schools**

### **school patrols, 70, 80**

### **school year, 253**

### **schools, *see* buildings and premises; closing of schools; districts and divisions (public); school boards; separate schools; universities**

### **scope of title, 1**

## INDEX

---

### **separate schools**

- administration of, 49
- constitutional guarantees, 44-49, 55
- formation, 50-55
- tax support for, 56, 57-59
- teacher qualifications, 236

### **sexual harassment, 447**

### **slander, *see* defamation**

### **special education programs**

- entitlement to, 397, 410
- handicapped students, 399, 400, 402, 403
- placement in, 397, 398, 383, 403, 410
- Saskatchewan, 405-407

### **special needs tribunals, 381, 398**

### **statutes, *see* Charter and human rights; constitutional law; legislation**

### **strikes, 266**

### **students (general), *see also* attendance; Charter and human rights; corporal punishment; negligence; parents; suspension and expulsion (students); transportation of students**

- definition (British Columbia), 126
- enrollment in educational program (British Columbia), 125
- health and safety of, 32, 135
- privacy rights, 205
- property damage by, 68, 126, 377, 391
- records of, 316, 380, 387, 390
- search/seizure, 205, 206
- transfer of (Alberta), 31

### **students (handicapped)**

- court intervention concerning, 402, 403
- duty of care owed, 93
- human rights legislation, 399
- injunction requiring integration, 409
- mandamus requiring placement, 400
- presumption re integrated schooling, 411
- screening for by board, 404
- transportation, provision of, 166
- visually impaired students, 81

### **students (university)**

- admission, 462
- affirmative action programs, 476
- breach of contract, action for, 464
- degrees, granting of, 465, 468
- disciplining of, 466, 467
- duty of fairness, 463
- fees, 469-471, 473
- grades, 462, 465
- loans, 472, 473, 476
- withdrawal, forced, 463

### **suspension and expulsion (students)**

- Alberta, 190-194
- British Columbia, 195-197
- discretion, fettering, 197
- effect of, 196
- hair length, 203
- Manitoba, 198
- national anthem, refusal to sing, 179
- publication bans, young offenders, 204
- review by court, 197
- saluting flag, refusal, 194
- Saskatchewan, 199-203

- singing, offensive, 112
- taxation**, 49, 56-59
- teachers (general)**, *see also*  
**Charter and human rights;**  
**collective agreements and**  
**contracts; negligence;**  
**professors**
  - actions by, 220
  - assignment to schools, 41
  - certification and classification, 6, 207, 212, 214, 215, 217, 221, 223, 227-230, 242, 248
  - criticism of colleagues, 219
  - discipline (general), 209, 210, 211, 216, 218, 219, 224-227, 231-236
  - duties and responsibilities (general), 290-293
  - evaluation and review, 89, 231, 232, 233
  - freedom of association, 237
  - freedom of expression, 219
  - interference with students' access, 130
  - jurisdiction of College of Teachers re teachers hiring teachers, 222
  - malpractice by, 83, 84
  - mandatory retirement, 264, 273, 289
  - music teachers, 230
  - negligence, statutory protection, 69, 70, 77-80, 82, 110
  - noonhour supervision by, 282, 284
  - professional associations, 208, 209, 225, 230, 237, 251, 268, 278, 288
  - religious instruction, 236
  - staff reductions, 41
  - termination and discipline
  - transfer of, 249, 276, 304
- teachers (termination and discipline)**
  - anti-Semitic statements, 274
  - appeals and reviews, 299, 300, 311, 321-324, 331, 334, 335, 345, 350, 355
  - arbitration and conciliation, 331, 332, 334, 349, 375
  - boards of reference, 299, 300, 310, 321, 351, 352, 353, 368, 371
  - breach of duty to warn, 320
  - breach of teaching duties, 327, 328
  - cause discovered after termination, 333
  - common law obligation on school division, 358
  - constructive dismissal, 91, 304
  - criminal activity, 298, 305
  - demotions, 361
  - “denominational cause”, 49
  - evidence, 315, 316, 354, 366, 367
  - general, 209, 211, 224, 227, 275, 296, 312, 336
  - gross misconduct, 301, 303, 336
  - minister’s authority, 337
  - misconduct, 313, 374
  - mitigation of damages, 306, 333
  - mutual agreement, 298
  - notice of, 297, 298, 330, 338-340, 245, 365, 370, 373
  - procedural fairness, 297, 308, 309, 314-317, 324, 325, 343, 346, 362, 365
  - proof of misconduct, 322, 344
  - reasonableness, 297, 312, 326
  - reasons, general, 301, 340
  - reasons, provision of, 297, 317, 325, 331, 340-342, 369
  - reinstatement, 216, 299, 321, 323, 326, 336, 353

## INDEX

---

- sexual activity with student, 216
  - suspension, 301, 302, 312, 319, 348, 361
  - teacher, by, 298, 347
  - tenured and non-tenured staff, 329
  - unnecessary positions, 326, 339, 363
  - unprofessional conduct, 84, 210, 219, 213, 234, 235, 247, 318, 340, 375
  - validity of termination, 307, 333, 338, 345, 359, 372
  - wrongful dismissal, 91, 306, 311, 325, 331, 345, 349, 362, 364
- textbooks, *see* instructional materials**
- transportation of students**
- declaration of right to, 171
  - drivers, corporal punishment by, 187
  - fees for, 164, 168, 170, 420
  - handicapped students, 166
  - mandatory provision of, 164, 166, 167, 169, 171
  - negligence in, 111, 113
  - school board rules, 165
- trustees**
- liability, 64-67, 69-71, 76-79, 88
  - removal, Charter considerations, 11
- tuition fees (schools), 12**
- unauthorized expenditures, liability for, 64**
- universities, *see also* professors; students (university)**
- actions against, 437
  - application of Charter, 429
  - board of governors, 437, 438
  - contracts, 437
  - funding, interest in, 460
  - immunity, waiver of, 427
  - legal status, 426
  - officers, 437, 439
  - visitor, office of, 430-436, 442
- vaccinations, 135**
- vandalism, *see also* students, property damage by**
- vicarious liability, 69**
- work education programs, 79**
- wrongful dismissal, *see* teachers, termination and discipline**

## Index to Elections

(All references are to paragraph numbers.)

- aboriginal rights**, 7
- acclamation, return by**, *see*  
**candidates**
- advertising/broadcasting issues**
  - air time, allocation/limitation, 9, 125–127
  - authorization for, 151
  - blackout periods, 123
  - constitutional issues, 8, 9, 123, 283
  - offences, 124
  - opinion polls, 8, 123
  - restrictions, 4
  - signs, 384
- agents**, *see* **candidates; offences/penalties; parties**
- audits**, *see*  
**contributions/expenditures**
- ballots (federal)**, *see also* **polling of votes**
  - counterfoils still attached, effect of, 94, 108
  - cross, necessity for/position of, 91, 92
  - general validity of, 88, 89
  - initials of returning officer, absence of, 96
  - ink vs. pencil, 90
  - ties, 106
  - torn ballots, 97
  - words/marks, by returning officer, 96
  - words/marks, identifying elector, 93
- ballots (municipal)**, *see also* **polling of votes**
  - cross, necessity for/position of, 425, 426
  - general validity of, 421–423
  - initials of returning officer, absence of, 427
  - ink vs. pencil, 424
- ballots (provincial)**, *see also* **polling of votes**
  - ballots marked by returning officer, 257
  - counterfoils still attached, effect of, 255
  - cross, necessity for/position of, 251, 252
  - identifying words/marks, effect of, 253, 254
  - initials of returning officer, absence of, 256
  - torn ballots, 258
  - validity generally, 248–250
- boundaries**, *see* **electoral boundaries**
- calling of election**, *see*  
**declaration of election**
- campaign expenses**, *see*  
**contributions/expenditures**
- campaigning**, *see*  
**advertising/broadcasting issues**
- candidates (federal)**, *see also* **contributions/expenditures**
  - acclamation, return by, 48
  - agents of, 49–55, 114
  - death of, 47
  - deposits, 59
  - eligibility/disqualification, 17–19, 42–45, 168
  - expenses, 56–59
  - liability of, 53, 54
  - nomination, 41
  - withdrawal by, 46

**candidates (municipal)**

- acclamation, return by, 401, 402
- agents of, 403
- death/withdrawal of candidate, 400
- eligibility/disqualification, 390–394
- nomination, 395–399
- residence, 394

**candidates (provincial)**

- acclamation, return by, 219
- agents of, 220–223, 301
- death/withdrawal of, 218
- eligibility, 17–19, 212–217
- nomination, 210, 211
- residency, 217

**Charter of Rights, see constitutional issues**

**constitutional issues**

- aboriginal rights, 7
- advertising/broadcasting restrictions, 8, 9, 123, 283
- chief electoral officer, 29
- discrimination, 236
- electoral boundaries, 25–27
- eligibility issues (candidates/office holders), 4, 17–19
- eligibility issues (voters), 4, 10–16, 76–79
- general, 1–9
- history of legislation, 1
- mental incompetence, 15
- opinion polls, 8
- referenda, 6
- reimbursement of expenses, 277, 278
- residency restrictions, 233, 234
- restriction of political activities, 20–22
- right to vote, 4, 10–16, 237

- signs, 382
- standing to raise, 5
- terms of office, 23, 24
- voting qualifications, 4, 10–16, 76–79

**contributions/expenditures (federal), see also advertising/broadcasting issues; candidates; offences/penalties**

- agent as only authorized recipient, 115
- auditing/declaration of, 119–121, 191
- examples of, 115
- general, 56–59, 110
- limitation of, 117, 118, 123
- reimbursement of, 122

**contributions/expenditures (municipal), 445, 446, see also advertising/broadcasting issues; candidates; offences/penalties**

**contributions/expenditures (provincial), see also advertising/broadcasting issues; candidates; offences/penalties**

- agents of candidate, 220
- Alberta, 270–273
- British Columbia, 274, 275
- Manitoba, 276–278
- Ontario, 279–281
- reimbursement of, 277, 281
- Saskatchewan, 282

**controverted elections (federal), see also ballots; offences/penalties; polling of votes**

- appeals, 198–203
- applications, procedure/requirements, 173–178
- costs, 197
- dissolution of Parliament, effect of, 195



## INDEX

---

- evidence, 189–191
  - frivolous applications, 194
  - general, 109, 166–168
  - ineligibility of candidate, 168
  - irregularities/misconduct, effect of, 98
  - jurisdiction of court, 171, 172
  - resignations, validity of, 166
  - service of petition, 179–183
  - status of petitioner, 169, 170
  - trials, 184–197
  - voiding of election, 162–165
- controverted elections (municipal)**, *see also* **ballots; offences/penalties; polling of votes**
- appeals, 510
  - burden of proof, 495–499
  - costs, 507–509
  - curative provisions, 457–462
  - death of petitioner, effect of, 488
  - disclaimer of office, by candidate, 489–492
  - evidence, 493, 494
  - general, 468–71
  - irregularities/misconduct, effect of, 428, 429, 456, 461, 462–467
  - judgments/dispositions, 501–506
  - jurisdiction of courts, 472
  - parties, substitution of, 484
  - petition or action, abatement of, 488
  - petitioner or plaintiff, substitution of, 484
  - petitions, amendment of, 485
  - petitions, form/content of, 478–483
  - practice/procedure, 473
  - quo warranto, 392
  - secrecy, 500
  - senatorial selection, 511
  - status of petitioner, 474–477
  - time for challenging election, 486, 487
  - trials, 493–500
- controverted elections (provincial)**, *see also* **ballots; offences/penalties; polling of votes**
- appeals, 364, 370–375
  - costs, 376–380
  - curative provisions, 362, 363
  - death of petitioner, effect of, 345
  - disclaimer of office, by candidate, 346
  - evidence, 235, 353–361
  - general, 318
  - inquiries (British Columbia), 381
  - irregularities/misconduct, effect of, 259
  - judgments/reports, 364–369
  - jurisdiction of courts, 319–321
  - particulars of complaint, 335–338
  - parties, substitution of, 344, 345
  - petitions, abandonment/withdrawal, 341–344
  - petitions, amendment, 339, 340
  - petitions, form/content, 328
  - practice/procedure, 322, 323
  - preliminary objections/setting aside petition, 333–335
  - service of petition, 329–332
  - status of petitioner, 324–326
  - time for challenging, 327
  - trial of petition/action, 347–361
- corrupt practices**, *see* **offences/penalties**
- declaration of election (federal)**, 31, 33

**declaration of election (provincial)**

- Alberta, 204
- British Columbia, 205
- Manitoba, 206
- Ontario, 207
- Saskatchewan, 208

**disabled persons**, 81, 238, 239, 419

**disclaimer of office**, 346, 489–492

**election officials (federal)**

- chief electoral officer, 28–32, 35
- deleting party from register, 30
- deputy returning officers/poll clerks, 36–39
- liability/immunity of, 29, 40
- returning officer, 33–35

**election officials (municipal)**

- abdication of duty, 388
- general, 386
- judicial review of decisions, 389
- jurisdiction, 388
- liability for acts of, 415, 428
- production of documents by, 387, 410

**election officials (provincial)**, 209

**electoral boundaries**, 25–27

**electors**, *see also* **ballots; polling of votes**

**electors (eligibility — federal)**

- constitutional issues, 4, 10–16
- mental incompetence, 15
- prisoners/inmates, 12–15

**electors (eligibility — municipal)**

- general, 404
- residence, 405–408

**electors (eligibility — provincial)**, 230, 231

**electors (register of — federal)**

- copies of, 70
- final list, 72
- general effect of, 73
- in-person-registration, 71, 74
- obstruction of officers, 68
- official list, 70, 73, 74
- preliminary list, 67
- preparation/maintenance of, 60–69
- residence, 75
- revision of list, 70–74
- transfer certificates, 73, 83, 84

**electors (register of — municipal)**

- conclusiveness of, 412
- general, 409
- spelling mistakes in names, 410

**electors (register of — provincial)**

- Alberta, 225
- British Columbia, 226
- conclusiveness of voters list, 235, 236
- Manitoba, 227
- Ontario, 228, 229
- residence, 232–234
- revision of list, 231
- Saskatchewan, 227

**employees, time off to vote**, 149, 295

**expenses**, *see*

**contributions/expenditures**

**finance**, *see*

**contributions/expenditures**

**inquiries (British Columbia)**, 381

**legislation**, *see* **constitutional issues**

**mental incompetence**, 15

**municipal elections (general)**, 383–385

## INDEX

---

- native persons**, *see* **aboriginal rights**
- offences/penalties (federal)**, *see also* **controverted elections**
- advertising/broadcasting, re, 124, 143, 151, 153
  - agents, liability for acts of, 159
  - ballots/ballot boxes, re, 144
  - bribery, 129–134, 155
  - candidate's liability, 158, 159
  - contributions, re, 117, 118, 150
  - corrupt practices generally, 128, 191
  - criminal offences, 155–157
  - disqualification, 161
  - donations/subscriptions, 135
  - election officers, by, 40
  - employers, intimidation by, 149
  - evidence/burden of proof, 158
  - false oaths, 145, 157
  - false/misleading statements, 68, 146
  - fettering of candidate's discretion, 152
  - fines, 160
  - identification, misuse of, 68
  - imprisonment, 160
  - interference with public meeting, 142
  - intimidation, 140, 141
  - job offers, 134
  - misuse of register, 69
  - non-citizens/residents, canvassing by, 147
  - obstruction of returning officer, 68
  - past leader's name, use of, 154
  - payments to election workers, 138
  - perjury, 157
  - personation, 139, 157
  - results, announcing of, 153
  - travelling expenses, payment of, 137
  - treating, 136
  - undue influence, 140, 141
  - vandalizing election notices/documents, 148, 156
  - voiding of election, 162–165
  - voting when not qualified, 139
  - wagers, 133
- offences/penalties (municipal)**, *see also* **controverted elections**
- agents, liability for acts of, 456
  - bribery, 449, 450
  - disqualification, 463–467
  - general, 447–449
  - mens rea, 448
  - miscellaneous offences, 455
  - personation, 453
  - travelling expenses, payment of, 452
  - undue influence/intimidation, 451
  - voting when not qualified, 454
- offences/penalties (provincial)**, *see also* **controverted elections**
- agents, liability for acts of, 301
  - ballot tampering, 294
  - betting, 293
  - bribery, 286
  - contributions, unauthorized/excessive/disclosure of, 271, 273, 276, 279
  - corrupt practices generally, 284, 285
  - criminal offences, 302
  - disqualification/voiding of election, 304–317
  - documents (posted), interfering with, 296

## ELECTIONS

---

- employees, refusing voting time to, 295
  - fines, 303
  - imprisonment, 303
  - personation/suborning personation, 291
  - polling day offences, 298–300
  - proxies, improper use of, 297
  - travelling expenses, payment of, 290
  - treating, 287
  - undue influence/intimidation, 289
  - vote buying, 288
  - voting when not qualified, 292
- officials**, *see* **election officials**
- opinion polls**, 8
- parties**
- agents, 113
  - registration (federal), 111, 112
  - registration (provincial), 224
- political advertising**, *see* **advertising/broadcasting issues**
- poll clerks**, *see* **election officials**
- polling of votes (federal)**, *see also* **ballots; controverted elections; electors**
- advance polls, 85–87
  - complaints re, 109
  - disabled voters, assisting, 81
  - electronic counting equipment, 99
  - eligibility of voters, 4, 10–16, 76–79
  - employees, time off to vote, 149
  - gifts, 116
  - irregularities/misconduct, effect of, 98
  - polling stations, 80
  - polling stations, moving of, 83
  - recounts, 100–108
  - secrecy requirements, 82, 192
  - transfer certificates, 73, 83, 84
- polling of votes (municipal)**, *see also* **ballots; controverted elections; electors**
- disabled voters, assisting, 419
  - irregularities/misconduct, effect of, 428, 429, 456, 461
  - recounts, 431–436, 438–444
  - right to vote, 414–418
  - scrutiny proceedings, 437
  - secrecy requirements, 420
  - ties/casting vote, 430, 440, 442
- polling of votes (provincial)**, *see also* **ballots; controverted elections; electors**
- absentee voting (Saskatchewan), 241, 242
  - advance polls, 246
  - disabled persons, 238, 239
  - irregularities/misconduct, effect of, 259
  - mobile polls (Saskatchewan), 243
  - proxies (Ontario), 240
  - recounts, 260–269
  - right to vote, 237
  - secrecy requirements, 239, 244, 358
  - ties/casting vote, 247
  - transfer certificates, 245
- polls**, *see* **opinion polls**
- prisoners/inmates**, 12–15
- recounts**, *see* **polling of votes**
- referenda**
- Alberta, 515
  - British Columbia, 516
  - constitutional issues re, 6, 233
  - federal (general), 512–514

## INDEX

---

- register/registration**, *see* **electors (register of)**
- residence**, 75, 217, 232–234, 394, 405–408
- restriction of political activities**, 20–22, *see also* **constitutional issues**
- returning officers**, *see* **election officials**
- right to vote**, *see* **constitutional issues; electors (eligibility); polling of votes**
- secrecy**, 82, 192, 239, 244, 358, 420, 500
- senators (Alberta)**, 382, 511
- signs**, *see* **advertising/broadcasting issues**
- sittings of Parliament/legislatures**, 23, 24
- terms of office**, 23, 24
- voters/voting**, *see* **ballots; electors; polling of votes**
- writs of election**, 31, 33

## Index to Employment Insurance

(All references are to paragraph numbers.)

- absence from Canada, *see also***  
**coverage**
- armed forces members, 29
  - convalescence, 27, 31
  - exceptions, 27
  - extensions of coverage, 29
  - general, 18, 20
  - job interviews/searches, 27
  - maternity cases, 30
  - medical treatment, for, 30
  - police, 29
  - residence, 27
  - U.S./Canada agreements, 28
- adoption benefits, 76, 206, 218, 219, *see also* claims; maternity benefits**
- agreements with self-employed persons relating to benefits**
- benefits not payable where inmate or not in Canada, 572
  - benefits period, 567–570
  - compassionate care benefits, 562, 563
  - election as to benefits, 566
  - entitlement to receive benefits, 557
  - indefinite duration, 556
  - parental benefits, 559–561
  - pregnancy benefits, 558
  - qualifying period, 565
  - rate of weekly benefits, 571
  - self-employed premium, 573, 574
  - violations, 564
- agriculture, *see* farmers**
- appeals, *see also* claims; contributions/premiums; coverage**
- appeals (board of referees)**
- absence of employer’s oral testimony, 487
  - absence of party, 490, 500
  - absence of tape recording or transcript of hearing, 503
  - bias, 481–483
  - composition of board, 480, 481
  - conduct of, 484–490, 493, 494, 500
  - conflict between oral and written testimony, 486
  - decisions on, 481, 502
  - disqualification periods, re, 501
  - education/instruction referrals, re, 507
  - evidence, 463
  - fairness/natural justice, 493, 500
  - filing of, 477
  - general, 477, 504
  - grounds of, 477
  - investigations, ordering, 492
  - jurisdiction of board, 495–497, 504, 515
  - notice of hearing, 500
  - objectivity, 481
  - parties entitled to, 478
  - powers of board, 480, 488, 495, 497–499, 504, 515, 523
  - representation on, 488
  - representative appeals, 479
  - standard of review, 501
  - statements, 485
  - telephone conference hearings, 491
  - time for, 477
  - trial de novo, 484
  - writing requirement for, 477

## EMPLOYMENT INSURANCE

---

- appeals (Federal Court)**, 530, 531
- appeals (Tax Court)**, 529
- appeals (umpires)**
- bias, 516
  - Charter issues, 508
  - evidence, 521, 525
  - fairness/natural justice, 517
  - filing of, 510
  - form of, 511
  - general, 288, 508
  - grounds for, 510, 511
  - important hearings/issues, 524
  - jurisdiction, 497, 499, 508, 512, 513, 515, 518–520, 523, 528
  - nature of, 508
  - “new facts”, 525, 526
  - notice of, 511, 517
  - parties entitled to, 508
  - practice guidelines, 522
  - reconsideration of decisions, 524, 525
  - referral back, 497, 515, 527
  - statement of observations/representations, 511
  - time for bringing, 509
- applications**, *see* **claims; contributions/premiums; coverage**
- armed forces members**, 29
- athletes**, 51, 91, 171
- availability/capability for employment**, *see also* **claims; coverage; disqualification/disentitlement; labour disputes; misconduct; voluntary leaving**
- absence from home, 27, 234–237
  - “capability”, 282, 283
  - disqualification for unavailability, 240
  - domestic/child-care restrictions, 262, 263
  - education/instruction, 265–270
  - evidence establishing, 284–288
  - failure to register/report, 271
  - following spouse, 248, 429
  - general, 225–229
  - geographic area, 244–246
  - job search, 230–233
  - jury duty, effect of, 223, 281
  - limited labour market, moving to, 247
  - part-time work, refusal of, 255
  - part-time work, seeking only, 251–254
  - question of fact, as, 225
  - recall, awaiting, 258, 259, 278
  - restricted shifts/hours, seeking, 260, 261
  - self-employment, effect of, 272–275
  - suitable employment, 289–296
  - temporary employment, refusing, 276–279
  - union work, seeking only, 256, 257
  - unreasonable restrictions/expectations, claimant’s, 238–240, 285
  - wage expectations, 249, 250
  - warning re inadequate effort, 241, 242
  - work permits, inability to obtain, 280
- benefit period**, *see* **claims; coverage**
- capability**, *see* **availability/capability for employment**
- casual labour**, *see* **insurable employment; teachers**

## INDEX

---

- Charter of Rights**
- false/misleading statements, 535
  - farmers, re, 33, 80
  - fishers, re, 45, 46
  - jurisdiction to hear, 508
  - labour disputes, disentitlement during, 309
- claims (antedating/delay), see also claims (general)**
- belief documentation needed, 188
  - belief still employed, claimant's, 184
  - expectation of finding work, 186
  - expectation of settlement/indemnity, 185
  - family obligations, 190
  - general, 153, 172–182
  - “good cause” required, 172, 176–195
  - ignorance of law, effect, 176, 179, 180, 192
  - misinformation from commission, 193, 194
  - misinformation from others, 195
  - negligence of claimant, 191, 192
  - onus on claimant, 172
  - pregnancy/incapacity/illness, 189
  - promptness requirement, 147, 151
  - renewal claims, 172
  - unavailability of, 174, 175
- claims (general), see also appeals; availability/capability for employment; coverage; disqualification/disentitlement; false/misleading statements; labour disputes; maternity benefits; misconduct; overpayments; sickness benefits; voluntary leaving**
- address of claimant, 149
  - adoption benefits, 76, 206, 218, 219
  - benefit period (cancellation of), 196
  - benefit period (duration), 156–160
  - benefit period (initial), 151, 153, 161
  - benefit period (reactivating), 148, 161
  - benefit rate, 163, 164
  - continuing claims, supporting of, 148
  - discretion of commission, 148, 155
  - disqualification period, 161
  - filing of, 146, 147, 151
  - form of, 146
  - general, 146–151
  - jury service, 223
  - law applicable to, 146
  - parental benefits, 215–217
  - promptness, 147, 151
  - reconsideration by commission, 150, 547
  - record of employment, 147, 151
  - registering for employment, 149
  - renewal of, 148, 161, 172, 174
  - repayment of benefits, 555
  - report cards, 148, 174
  - teachers, 171
  - time for making, 146, 147, 151–153
  - waiting period, 108, 161, 162
  - “week of unemployment”, 165–171
  - weekly insurable earnings, 163
- compassionate care benefits, 221, 222**



## EMPLOYMENT INSURANCE

---

- contributions/premiums, see also claims; coverage**
- appeals, 12, 13
  - distribution by responsible representative, 20
  - employer's share, 16, 17, 20
  - failure to make deductions, 18
  - failure to remit, 19
  - statutory trust for, 19
  - wage-loss plans, effect of, 16
  - while outside Canada, 29
- coverage, see also appeals; availability/capability for employment; claims; disqualification/disentitlement; earnings; false/misleading statements; labour disputes; maternity benefits; misconduct; overpayments; sickness benefits; specific occupations, e.g., teachers; voluntary leaving**
- absence from Canada, 27–31
  - benefit period, cancellation, 85
  - benefit period, commencement, 84
  - benefit period, establishing, 69, 70, 85
  - Charter issues, 33, 45–47
  - earnings (allocation), 119–145
  - earnings (general), 92–108, 113–118, 126–141
  - eligibility, 67–76
  - extension of qualifying period, 72
  - farmers, 32–42, 80, 124, 274
  - fishers, 43–49, 72, 124
  - general, 32
  - initial claims, 68
  - inmates, 50
  - insurable employment, 12, 22–26, 77–83
  - interruption of earnings, 86–93, 109–112
  - job interviews/searches, 27
  - major attachment claimants, 76
  - minor attachment claimants, 76
  - professional athletes, 51, 91, 171
  - qualifying period, 69, 71–74
  - readiness to accept employment, 27, 67, 214
  - realtors, 111
  - renewal claims, 68
  - seasonal employment (general), 32, 33
  - self-employment (general), 32, 124
  - special benefits, 76
  - teachers, 52–66, 91, 111, 171, 211, 277
  - waiting periods, 108, 161, 162, 299
  - “week”, 70
- CUBs, 2**
- definition/nature of, 1**
- dependants, see insurable employment**
- disability/sickness benefits, see earnings; sickness benefits**
- disqualification/disentitlement, see also availability/capability for employment; claims; coverage; labour disputes; misconduct; voluntary leaving**
- appeals re, 306, 501
  - bars to, 302, 305
  - carrying forward, 300
  - deferral of, 301
  - “disentitlement”, 297, 303
  - “disqualification”, 297
  - general, 297
  - grounds, 297
  - non-availability for work, 240

## INDEX

---

- running of term, 299–301
- suitable employment, refusing, 289–296
- teachers, 61
- term of, 298, 304
- waiting periods, effect on, 299
- earnings (allocation)**, *see also coverage; earnings (general); interruption of earnings*
  - commissions, 125
  - disability/sickness benefits, 141
  - general, 119–123
  - lay-days/payments, 143, 144
  - miscellaneous, 142
  - retroactive payments, 145
  - self-employment, 124
  - termination/lay-off, payments on, 126–137
  - wrongful dismissal, 138–140
- earnings (general)**, *see also coverage; earnings (allocation); interruption of earnings; overpayments*
  - classification of benefits/payments, 99, 113–118, 141
  - damages, 103, 118, 138–140
  - definition of, 94
  - “employment”, 100
  - exemptions from, 97
  - general issues, 92, 93, 103
  - gross earnings, 105, 116
  - “income”, 102, 107
  - investment income, 105
  - non-pecuniary income, 113–118
  - payments made in error, 98
  - R.R.S.P.s, 103
  - self-employment, 105
  - severance payments, 126–137
  - vacation pay, 103, 132–136
  - waiting period, during, 108, 162
  - workers’ compensation, 117
  - wrongful dismissal, 103, 138–140
- education**, *see availability/capability for employment; teacher*
- eligibility**, *see also coverage*
  - benefit period, establishing, 69, 70
  - continuing claims, 68
  - extensions, 72
  - general, 67, 72
  - initial claims, 68
  - major vs. minor attachment claimants, 76
  - new/re-entrants, 71, 72, 81
  - qualifying period, 65, 71–74
  - regional unemployment rate, 71
  - renewal claims, 68
  - special benefits, 76
  - “week”, 70
- “employment”**, 100, *see also coverage; earnings*
- Employment Insurance account**
  - general, 14
  - premium rate, 15
- false/misleading statements**, *see also claims*
  - alteration of, 536, 541
  - appeal of penalty, 512
  - Charter rights, 535
  - errors, reasonableness of, 542
  - failure to report absence from Canada, 534
  - general, 532
  - knowledge/intent, 539–541
  - notice to claimant, 538
  - onus/burden of proof, 537
  - particulars of, 538
  - penalties, 532, 533

## EMPLOYMENT INSURANCE

---

- reconsideration of claims, 547
- farmers, see also coverage**
  - allocation of earnings, 124
  - Charter issues, 33, 80
  - during farming season, 35, 38
  - “earnings”, 39, 42
  - “farming operations”, 40
  - hired hands, 37, 42
  - minor farming operations, 35–37, 274
  - occasional industrial work, 41
  - off-season, 34, 38
  - self-employment, 34, 39
- fishers, see also coverage**
  - allocation of earnings, 124
  - availability for employment, 47
  - boat construction, during, 49
  - Charter issues, 45, 46
  - definition, 43
  - earnings, 48
  - general, 43, 44
  - labour dispute provisions, 48
  - qualifying period, 72
  - self-employment, 43, 44
- hospitalization, see absence from Canada**
- income, see earnings**
- inmates, 50**
- insolvency/bankruptcy/receivership, 17**
- insurable employment, see also coverage**
  - appeals, 12
  - applications determining, 82
  - casual employees, 22
  - contravening immigration legislation, 24, 83
  - dependants, 22
  - excepted employment, 22, 79, 80
  - general, 22, 77, 79
  - jurisdiction re, 82
  - maximum insurable earnings, 25
  - regulations, 81
  - spouses, 22
  - work week, 81
- interruption of earnings, see also coverage; earnings**
  - causes under regulations, 87–90
  - “definition”, 86, 87, 110
  - expiration of contracts, 111
  - general, 86, 88, 91–93, 109
  - leaves of absence, 112
  - professional athletes, 91
  - regulations re, 87–90, 110
  - “separation from employment”, 88
  - teachers, 91, 111
- jury service, 223, 281**
- labour disputes, see also claims; coverage; disqualification/disentitlement**
  - airlines, 325
  - “at place of employment”, 324–328, 339
  - campsites, 326
  - Charter issues, 309
  - construction sites, 327
  - construction/interpretation of legislation, 312
  - definition, 329–334, 337–339, 385
  - direct interest in, 356–366
  - discontinuance of business, effect of, 377
  - disentitlement during, rationale, 307, 308
  - duration of, 313, 314, 338
  - “employee”, 317, 330, 345, 346

## INDEX

---

- exemption from disentitlement, 307, 311, 346–361
  - “factory”, 324
  - financing of, 354–356
  - finding other employment, 373–375
  - general, 307–315
  - illness, effect of, 314
  - layoffs/leaves/vacations, 319, 320, 330, 352
  - logging operations, 326
  - loss of employment required, 317–323, 330, 385
  - maternity, effect of, 314, 322
  - matters in dispute, 337
  - non-participation in, 307, 311, 346–361
  - non-union workers, effect on, 336, 345, 357
  - onus on claimant, 312, 315
  - onus on commission, 310, 315
  - parties to, 334–336
  - part-time/casual employees, 323, 345, 359
  - “premises”, 328
  - replacement workers, 321
  - representation of parties, 334
  - settlement of, 376
  - sickness benefits, 322
  - status of employee irrelevant, 345, 346
  - stoppage of work, 340–344, 369–372
  - strikes/lockouts, 331, 342, 347–353, 355
  - sympathetic disputes, 339
  - termination of disentitlement, 368–377
  - termination of work stoppage, 369–372, 376
  - tugboats, 325
  - vehicles, 325
  - “workshop”, 324
- legislation**
- administration of, 10
  - collection procedures, 21
  - complexity of, 6
  - constitutional issues, 3
  - financing, 11, 14–17, 21
  - intent/purpose of, 7–9
  - intergovernmental agreements, 8
  - U.K. legislation, patterning after, 4
  - 1971 legislation, 5
  - 1990-96 legislation, 5
- maternity benefits, *see also* availability; claims; coverage**
- absence from Canada, 30, 211
  - adoption, 218, 219
  - availability, 76, 206
  - availability for work, 214
  - benefit period, 209
  - commencement of, 207
  - deduction of earnings, 213
  - disentitlement, 210, 314
  - general, 30, 31, 206
  - jurisdiction to award, 208
  - labour disputes, 314, 322
  - parental benefits, 215, 216, 220
  - proof of pregnancy, 206
  - qualifying period, 72, 206
  - teachers, 65, 211
  - termination, 207
  - waiting period, 212
- medical treatment, *see* absence from Canada; coverage**
- misconduct, *see also* claims; coverage; disqualification/disentitlement**
- absences/lates, 464, 465
  - causal connection between misconduct/firing, 444

## EMPLOYMENT INSURANCE

---

- cause for dismissal vs. basis for disentitlement, 439, 445
- competition with employer, 463
- criminal offences committed outside work hours, 455–462
- deemed loss by misconduct, 442
- degree of, 445–449
- destruction of property, 472
- disqualification period, 439, 476
- drinking/drug use, 473, 474
- employment lost, 440
- fighting, 472
- general, 438–454
- hostile acts, 472
- illegal strikes/walkouts, 475
- incompetence, 445, 466
- insubordination, 467–472
- meaning of, 439
- negligence/carelessness, 445, 466, 468
- personality conflicts, 447
- probationary employees, 449
- reasons/information re, provision of, 441
- union activities as, 475
- offences, see false/misleading statements; overpayments**
- overpayments, see also claims**
  - earnings received, payment over, 545
  - employer's/trustee's duties, 545
  - minimization of, duty re, 543
  - recovery generally, 543
  - release upon discharge of bankrupt, 546
  - time limits on recovery, 547
  - writing off, 544
- parental benefits, 215, 216, 220, see also claims; maternity benefits**
- penalties, see false/misleading statements; overpayments**
- police, 29**
- prisoners, see inmates**
- professional athletes, 51, 91, 171**
- quitting, see voluntary leaving**
- realtors, 111**
- record of employment, see claims**
- repayment of benefits, 555**
- scope of title, 1, 2**
- seamen, 143**
- self-employed persons**
  - allocation of earnings, 124
  - availability for other employment, 272–274
  - general, 32
  - working week of, 170
- sickness benefits, see also availability; claims; coverage; maternity benefits**
  - bars to, 199, 202
  - benefit period, 198
  - earnings, deduction of, 205
  - extensions, 202
  - general, 76, 197
  - labour disputes, effect, 314, 322
  - major attachment claimants, 76, 197
  - minor attachment claimants, 76, 197, 201
  - pregnancy, 203
  - proof of illness, 204
- spouses/dependants, see insurable employment**
- statutes, see legislation**
- strikes/lockouts, see labour disputes**

## INDEX

---

- teachers, *see also* claims; coverage**
- availability for employment, 277
  - “casual” employment, 59
  - definition, 52
  - earnings, 91
  - general, 53, 55, 171
  - hiring date, effect of, 60
  - insurable employment period, 57, 58
  - interruption of earnings, 61–64, 91, 111, 171
  - maternity benefits, 65, 190
  - “non-teaching” period, 57, 58
  - part-time teachers, 59, 60
  - private schools, 56
  - regulations re, 57, 58
  - “school year”, 56
  - sickness benefits, 66
  - termination of contracts, 61–64, 91
  - voluntary leaving, disentitlement for, 61
- trusts, statutory, 17**
- vacation pay, *see* earnings**
- violations**
- accumulation of violation, 552
  - administrative penalty, 553
  - appeal from imposition, 553
  - increase in hours required to qualify for benefits, 548, 549
  - not taken into account in more than two initial claims, 551
  - notice of violation, 553
  - self-employed individual, 550
- voluntary leaving, *see also* claims; coverage; disqualification/disentitlement**
- anticipation of other employment, 410
  - bankruptcy, possibility of, 401
  - change in work, 407–413
  - Charter issues, 418
  - child/family member care, 432–436
  - choosing to allow another employee to continue to work, 420
  - deemed voluntary leaving, 382
  - discrimination, 414, 422
  - disqualification period, 437
  - dress/appearance restrictions, 409
  - early retirement, 396, 397
  - education/instruction courses, 417
  - employment amenities, 427
  - general, 378–393
  - harassment, 415
  - health/safety reasons, 394, 395, 405
  - hours of work/shifts, 402
  - just cause for (general), 229, 264, 387–390, 436
  - labour dispute, anticipation of, 385, 401
  - lay-offs, 386
  - leaves of absence, 382, 386
  - living expenses, failure to provide, 426
  - “loss of employment”, 379
  - meaning of, 384
  - miscellaneous conditions, 416–437
  - nature of work, 406
  - onus to establish/rebut, 383
  - overtime requirements, 403
  - personal reasons, 418
  - reasons for leaving, provision by claimant/employer, 381
  - religious/moral objections, 424
  - spousal moves, 428–431

## EMPLOYMENT INSURANCE

---

- strike/lockout, non-return after, 386
  - suspensions, 379
  - teachers, 61
  - transfer, refusal of, 423
  - transportation difficulties, 421
  - union activities, 422
  - vacations/rests, taking, 419
  - wages, 398–400
  - working conditions, 394, 404, 405, 407, 409, 427
- wage loss plans**, 16, 114
- waiting periods**, *see* **claims; coverage**
- workers' compensation**, 117
- wrongful dismissal**, *see* **earnings (general)**

## Index to Employment Law

(All references are to paragraph numbers.)

- absence from work**, 225, *see also* **leave of absence**
- adoption leave**, 649–651
- advertising**, *see also* hiring
- discrimination, 563–565
  - jurisdiction over, 565
  - misrepresentation, 561, 562
  - negligent misstatement, 567
  - notice to treat, 566
- aeronautics**
- aircraft maintenance/fuelling, etc., 27, 28
  - airport administration, 30
  - baggage/passenger services, 27
  - bookings/ticketing, 33
  - building maintenance, 31
  - general, 26
  - parking lots, 29
  - pilot training instructors, 32
  - runway maintenance, 30
  - security/pre-flight training, 34
- age**, *see also* **children; termination (retirement)**
- age (Alberta)**
- “adolescent”, 582
  - farm employment, 579
  - 15 to 17, 581
  - hours of work, 582, 583
  - legislative authority re, 581
  - school attendance, 580
  - under 15, 578
  - under 12, 581
  - “young person”, 583
- age (British Columbia)**, 584–587
- child under 15 years of age, 584, 587
  - entertainment industry, 585
  - school attendance, 586
- age (federal)**, 577
- age (Manitoba)**
- offence, 593
  - school attendance, 591
  - under 18, 590, 592
  - under 16, 588, 589
  - underground employment, 592
- age (Saskatchewan)**, 594, 595
- agents**, 144–146, 164, 221, *see also* **employees; employment agencies**
- agricultural workers**, 537, 558, 579
- appeals (Alberta)**, *see also* **complaints/investigations**
- abandonment of, 740, 750
  - availability of, 718, 721, 736
  - awards on, 751–754
  - effect of, 719
  - failure to appear, 750
  - fees/security/payments, 738
  - further appeals, 754
  - notice of, 718, 737
  - parties, 739
  - powers on, 748, 750, 751
  - procedure, 749
  - referral to umpire, 739
  - settlement after referral, 752
  - time for, 718
  - umpires, 748
- appeals (British Columbia)**, *see also* **complaints/investigations**
- availability of, 741
  - decisions on, 757, 760



- further appeals, 762
- general, 755
- panels, establishment of, 757
- powers on, 756, 758–760
- procedure on, 758
- reasons for, 741, 760
- reconsideration, 761
- referral back to director, 758, 761
- request for, 741
- stay of, 742
- time for, 741

**appeals (Manitoba), *see also* complaints/investigations**

- availability of, 743
- deposit payable on, 744
- further appeals, 767
- hearing of, 763
- orders on, 766
- powers on, 763–765
- procedure, 764
- time for, 743

**appeals (Saskatchewan), *see also* complaints/investigations**

- adjudicator, selection of, 747, 768
- availability of, 745
- decisions on, 770
- deposit payable on, 746
- failure to appear, 769
- further appeals, 771
- hearing of, 768
- notice of, 745, 747
- powers on, 768–770
- procedure on, 769
- setting of time/place, 747
- standing of director, 772
- time for, 745

**apprentices, 157, 574, *see also* employees**

**assault, *see* liability**

**atomic energy, 35, 36**

**bailment, 221**

**banking**

- automatic tellers, 39
- “bank”, 37
- “banking”, 37, 39
- chartered bank, 37
- general, 20, 37, 39
- security/maintenance staff, 39
- trust companies, 38

**bankruptcy/insolvency, 165, 181, 404, 668**

**bereavement leave, 652–654**

**bonuses, *see* payment for work; termination (constructive dismissal); wages**

**breach of contract, *see* termination**

**broadcasting**

- advertising/commercial sales, 42
- ambulance transmissions, 43
- cable television, 44
- carrier systems, 41
- content of broadcasts, 41
- fire department transmissions, 43
- general, 40, 44, 57
- pagers, 43
- peace, order and good government, 40
- police transmissions, 43
- subsidiaries, 42
- telecommunications, 88
- telegraphs, 86, 88
- telephones, 43, 86, 87, 89
- television, 44

**bus depots, 78**

**“business efficacy” test, 169**

- Canada Employment and Immigration Centres**, 559, 560
- Canada Labour Code**, 103–105, *see also* **International Labour Code**; **treaties**
- capacity**, *see also* **hiring**
- children, 573–576
  - mental incompetence, 568–572
- chandling**, *see* **shipbuilding/repairing/chandling**
- Charter of Rights**, *see also* **Canada Labour Code**; **constitutional jurisdiction**; **discrimination**; **International Labour Code**
- collective bargaining, 120
  - court of competent jurisdiction, 121
  - freedom of association, 120
  - freedom of speech, 246
  - general, 117, 118
  - jurisdiction of boards to apply, 121
  - mandatory retirement, 384
  - picketing, 120
  - strikes, 120
  - union dues, compulsory payment of, 119
- children**, *see also* **age**
- apprenticeship, 574
  - capacity to contract (general), 573, 574
  - “education and training”, 574
  - emancipated minors, 575
  - employers, as, 576
  - “necessaries”, 573
  - parents’ rights re child’s income, 575
- collective agreements**, *see also* **Charter of Rights**; **unions**
- fishers, re, 54
  - general, 1, 17
- commodity trading**, 60
- common employment**, *see* **liability (employee injuries)**
- competence**
- area of responsibility, 237
  - fairness, 234
  - general, 234, 235
  - negligence/damages, 238
  - proof of incompetence, 237
  - training, 236
  - transferred employees, 236
- complaints/investigations**, *see* **appeals**; **wages (recovery of)**
- complaints/investigations (Alberta)**
- general, 682, 683
  - orders/determinations, 711–722
  - powers re, 693–695
  - refusal to investigate, 683, 718
  - settlement/mediation, 703–705
  - time for making, 682
  - writing required, 682
- complaints/investigations (British Columbia)**
- director-initiated investigations, 685
  - general, 684–701
  - opportunity to respond to investigation, 687
  - orders/determinations, 723–729
  - powers re, 696, 697
  - refusal to investigate, 686
  - settlement/mediation, 706, 707
  - time for making, 684
  - writing required, 684
- complaints/investigations (Manitoba)**
- general, 681, 687–689, 690, 691, 732

- orders/determinations, 730, 731
- powers re, 698, 699, 700
- refusal to investigate, 689, 708
- settlement/mediation, 708
- time for making, 688
- writing required, 688
- complaints/investigations (Saskatchewan)**
  - general, 692
  - powers re, 701
  - settlement/mediation, 709, 710
- conditions of employment, see specific issues, e.g., hours of work**
- condonation, see termination**
- confidentiality, see good faith/fidelity**
- conflict of interest, see fiduciary duties; good faith/fidelity**
- constitutional jurisdiction (federal), see also Charter of Rights; specific subjects, e.g., banking; treaties**
  - change in activities, effect of, 98–100
  - consultant to federal undertaking, 12
  - criminal law, 17, 23
  - emergency situations, 17, 18, 99
  - essential/necessarily incidental, 10, 11
  - extraterritoriality, 101, 102
  - “federal work, undertaking or business”, 8
  - foreign employees in Canadian undertaking, 13
  - general, 7, 15, 17, 18, 20
  - inflation, 17
  - nature of operation, 9
  - peace, order and good government, 16
  - remote/fringe operations, 11
  - treaties, re, 16
  - unions, 14, 16
  - war, 17
- constitutional jurisdiction (general), see also Charter of Rights; specific subjects, e.g., broadcasting; treaties**
  - change in activities, effect of, 98–100
  - characterization, 3–6
  - concurrent hearings, 97
  - court’s role, 2
  - division of powers, 2, 4
  - elements for determining, 3–6
  - express jurisdiction, 2
  - extraterritoriality, 101, 102
  - judicial review, 93, 95
  - “jurisdiction shopping”, 4
  - objections to, 93–97
  - proof of, 94
  - reference to court re, 96
- constitutional jurisdiction (provincial), see also Charter of Rights; specific subjects, e.g., fisheries; treaties**
  - advertising, re, 565
  - change in activities, effect of, 98–100
  - criminal law, 23
  - general, 19, 20
  - head office, location of irrelevant, 21
  - incidental federal effect, 22
  - multi-province undertakings, 24
  - overlapping projects, 22, 25
  - penal sanctions, 23
  - place of work governing, 21
  - wages, minimum, 610
- construction industry**
  - construction vs. maintenance, 46

## INDEX

---

- general, 45
- interprovincial transport of equipment/materials, 47
- constructive dismissal**, *see* **termination (constructive dismissal)**
- contract of service**, *see* **employees; written employment contracts**
- contracts**, *see* **age; capacity; duress; duties; hiring; liability (inducing breach of contract); restrictive covenants; termination**
- control test**, 130, 131, 339, *see also* **employees; specific persons, e.g., independent contractors**
- conventions**, *see* **treaties**
- copyright**, 346, 347
- criminal law**, 17, 23, 125, *see also* **offences/penalties**
- Crown corporations**, *see* **government/Crown corporation employees**
- customs brokers**, 48
- damages**, *see* **fiduciary duties; liability**
- defamation**, 219
- defence**, 49, 50
- definitions**, *see* **specific terms, e.g., employee**
- dependent contractors**, 142, 143, *see also* **employees**
- development of employment law**, 122–29
- directors**, *see* **shareholders/officers/directors**
- discrimination**, *see* **advertising; Charter of Rights; employment agencies; hiring; leave of absence; mental incompetency; wages (gender equality)**
- dismissal**, *see* **termination**
- domestic workers**, 537
- dredging**, 85
- duress**, 494
- duties (employee to employer)**, *see also* **good faith/fidelity**
  - competence, 234–238
  - duty to work, 222–233
  - general, 220, 221
  - illness, effect of, 227
  - indemnification for negligence, 261
  - lateness for work, 226
  - morality, 239
  - negligence, damages for breach, 238
  - “officious bystander” test, 169, 220
  - orders, obeying, 222, 229–233
  - responsibility for conduct of others, 233
  - unauthorized absence, 225
- duties (employer to employee)**, *see also* **payment for work; safety**
  - benefits, advice re, 183
  - “business efficacy” test, 169
  - discipline, 189, 190
  - expenses/gratuities, 213, 214
  - general, 169, 170, 458
  - lay-offs, 212
  - “officious bystander” test, 169, 220
  - payment for work, 172–185, 211, 217
  - provision of work, 210, 211
  - references, provision of, 219
  - safety, re, 191–209, 232

## EMPLOYMENT LAW

---

- sick pay, 215–217
  - termination, notice of, 186–188, 458
  - terms of contract, 169, 170
  - training, 218, 236
- emergencies**, 17, 18, 99
- employees (common law)**
- agents, 144–146
  - apprentices, 157
  - contract of service, 130, 134
  - control test, 130–132
  - definition of, 130–135
  - dependent contractors, 142, 143
  - general, 129–135
  - independent contractors, 137–141
  - integrated part of business, 132
  - joint venturers, 149
  - office-holders, 153–155
  - ownership of tools, 132, 138
  - partners, 147, 148
  - risk of profit/loss, 135
  - shareholders/officers/directors, 150–152
  - tenant, services in exchange for accommodation, 136
  - tests for determining, 130–135
  - transfer of contracts, 161, 166
- employees (statutory)**, 156, 422, 537–541
- employers (common law)**
- borrowed servant doctrine, 159–162
  - definition of, 158
  - employment of another’s employee, 159
  - general, 158
  - purchase/sale of corporation, 166–168
  - receivers as, 165
  - related corporation, transfer to, 163, 164
  - transfer of contracts, 161
- employers’ organizations**, *see* **collective agreements; unions**
- employers (statutory)**, 542, 543
- employment agencies**, *see also* **hiring**
- agent for employer/employee, 551
  - discriminatory practices, 554, 555
  - employment agents, 548
  - licensing of, 548–550
  - payment of, 548, 552, 553
  - referral where strike in progress, 556
- employment records**, 664, 665
- employment standards (general); specific issues, e.g., leave from employment**
- expenses/gratuities**, 213, 214
- family responsibility leave**, 655
- “federal work, undertaking or business”**, 8
- ferries**, 52, 57
- fiduciary duties**, *see also* **good faith/fidelity; restrictive covenants**
- accounting for profits, 242, 252, 260
  - competing with employer, 252, 344
  - damages for breach, 255, 256
  - disclosure of future plans, 253
  - former employees, 248–250, 254–256, 511
  - general, 171, 221, 248
  - non-solicitation period, 251
  - release from, 254

## INDEX

---

- resignation, after, 393
- trade secrets, 511, 512, 529
- fisheries**, 53, 54
- freight forwarding**, 55, 56, *see also* **interprovincial transportation**
- frustration**, *see* **termination**
- gender equality**, *see* **wages (gender equality)**
- good faith/fidelity**, *see also* **duties (employee to employer); fiduciary duties; restrictive covenants**
  - account shortages, effect of, 245
  - accounting for profits, 242, 252, 260
  - breaches, examples generally, 241, 300
  - evidence of breach, 245
  - fiduciary duties, 221, 242, 248–256, 260, 344, 393, 511, 512, 529
  - free speech, 246
  - general, 240
  - honesty, 240, 245
  - notes/letters, 347
  - offer to buy corporate employer, 244
  - secret commissions, 242
  - seeking other employment, 247
  - testifying against employer, 243
  - use of confidential information, 257–259, 300, 393
- government/Crown corporation employees**, 57, 58, 156, 422
- grain elevators/mills**, 59, 60
- gratuities**, 214, 605
- highways**, 61
- hiring**, *see also* **advertising; age; capacity; employment agencies**
  - Canada Employment and Immigration Centres, 559, 560
  - discrimination, 599, 600
  - information/forms required, 603, 604
  - labour contractors, 557, 558
  - “suitable employment”, 598
  - testing/interviewing/investigation, 596, 597, 599–602
- historical development**, 122–29
- holidays (public)**, *see also* **wages (vacation pay)**
  - day off, on, 629
  - general, 625
  - legislation re, purpose of, 626
  - non-working days, on, 629
  - payment for, 627–630
  - vacation, during, 630
- hotels**, 73
- hours of work**, *see also* **payment for work; wages**
  - Alberta, 615, 617, 665
  - British Columbia, 615, 616, 618
  - excessive hours, 616
  - extension of, 615
  - lunch breaks, 617
  - Manitoba, 615, 617, 619
  - record-keeping, 664
  - rest periods, 618
  - Saskatchewan, 615, 617
  - shift breaks, 618
  - Sundays, 619
- illness**, 227, 419, 420
- incompetence**, *see* **competence; duties (employee to employer)**
- independent contractors**, *see also* **employees; liability**
  - contract for/of service, 137

- control test, 137, 138, 141
- delegation of work, powers re, 140
- discretion of, relevance of, 139
- factors for determining status as, 141
- general, 137
- inflation**, 17
- injunctions**
  - binding effect/duration of, 366
  - mandatory retirement, 385
  - restrictive covenant, enforcing, 524
  - wrongful resignation, 395
- insurance companies**, 64
- International Labour Code**, *see also* **Canada Labour Code; treaties**
  - Committee of Freedom of Association, 112
  - general, 110
  - labour standards, 108, 110
  - ratification by Canada, 111
- International Labour Organization**, *see also* **treaties**
  - founding of, 106
  - freedom of association, 107, 112, 116
  - goals/principles of, 107, 108
  - labour standards, 108, 532
  - preamble of, 109
- interprovincial transportation**, *see also* **freight forwarding**
  - bus depots, 78
  - construction equipment/materials, 47
  - general, 51, 75
  - maintenance work, 77
  - manufactured goods, 51
  - separate entities functioning together, 76
- interviewing**, *see* **hiring**
- inventions**, 345
- investigations**, *see* **complaints/investigations; hiring**
- joint ventures**, 149, *see also* **employees**
- “jurisdiction shopping”**, 4
- jury duty**, 658, 659
- labour contractors**, 557, 558
- labour unions**, *see* **unions**
- lateness**, 226
- lay-offs**, *see* **duties (employer to employee); termination**
- leave of absence**, *see also* **absence from work; duties (employee to employer)**
  - adoption leave, 649–651
  - bereavement leave, 652, 653
  - compassionate care leave, 662
  - discrimination as result of, 660
  - employment deemed continuous, 661
  - family responsibility leave, 655
  - jury duty, 658
  - parental leave, 646, 647
  - pregnancy leave, 643–645
  - reinstatement, right to, 659
  - reservist’s leave, 663
  - termination barred, 660
  - voting/seeking office, 656, 657
- legislation (general)**, *see also* **specific issues, e.g., leave of absence; specific legislation, e.g., Canada Labour Code**
  - administration/enforcement of, 681

## INDEX

---

- applicability of, 156, 536, 537, 538, 560
  - civil remedies, effect on, 156, 546, 547
  - contracting out of, 459, 544, 545
  - purpose of, 532–534
  - scope of, 547
- liability (employee injuries)**
- acts in course of employment, 312
  - assaults by third parties, 314
  - causation, 310
  - common employment, defence of, 319, 335–342
  - contributory negligence, employee's, 318, 319, 323–325
  - defences, 318–362
  - duty of care, 308, 309, 311, 317, 318
  - employee violating rules, 321, 322
  - general, 306–312
  - indemnification of employee, 315
  - negligence of employer (general), 307
  - per quod servitium amisit, 353–358
  - Rylands v. Fletcher, doctrine in, 313
  - statutory duty, breach of, 317, 318
  - temporary employer's liability, 316
  - volenti non fit injuria, 319, 326–334
  - workers' compensation, 319, 320
- liability (employee's)**
- injunctions, 366
  - limitations clauses, 364
  - respondeat superior, doctrine of, 262, 263, 363
  - vicarious liability, 365
- liability (inducing breach of contract)**
- causing dismissal, 362
  - combinations, 360
  - expiration of contract, 361
  - general, 359
  - preventing hiring, 362
- liability (vicarious)**
- acts in course of employment (general), 264–274, 281–286
  - assaults, 288, 289
  - borrowed servant doctrine, 159–162
  - breach of confidence, 300
  - carriers, 277
  - control test, 131
  - criminal acts, for, 283
  - deliberate acts outside scope, 269, 286
  - disciplining of employee, effect of, 286
  - discriminatory acts, 301
  - employee's, 365
  - fraud/deceit, 299
  - general, 262, 263, 271, 292
  - hospitals, 280
  - independent contractors, for, 303–305
  - independent unauthorized acts, 270, 271, 284
  - intentional torts, 287, 289
  - motor vehicles, re, 275, 276, 291
  - municipal corporations, 278, 279
  - negligence, 264, 281, 290, 291, 293–296
  - non-profit organizations, 285
  - orders, breaches of, 268
  - permission re acts outside scope of, 267



- respondeat superior, doctrine of, 262, 263, 363
- sale of goods, 298
- slander/libel, 297
- terms of contract, relevance of, 265
- torts generally, 264, 281
- trespass, 293, 294
- unauthorized connected acts, 270, 271, 284
- lie detectors**, 596
- longshoring**, 65, 83
- manufacturing**, 51
- “master and servant”**, 125, 126, 129
- maternity leave**, 643–645, 666
- mediation**, *see*  
**complaints/investigations**
- medical exams**, 597
- mental incompetence**
  - discrimination, 571, 572
  - general, 568, 570
  - knowledge of parties, 569
  - quantum meruit, 570
  - unconscionability, 569
- military operations**, 49, 50
- mills**, *see* **grain elevators/mills**
- minimum wage**, *see* **wages (minimum)**
- misrepresentation**, 561, 562, 567
- mitigation**, *see* **termination**
- morality**, 239
- Native persons**, 62, 63
- nature of employment relationship**, 129, *see also*  
**specific issues, e.g., duties (employer to employee)**
- navigation**, *see*  
**shipping/navigation**
- negligence**, *see* **duties; liability; safety**
- notice**, *see* **termination**
- offences/penalties**, 593, 799, 800,  
*see also* **criminal law**
- office workers**, 66
- office-holders**, 153–155, *see also*  
**employees**
- officers**, *see*  
**shareholders/officers/directors**
- “officious bystander” test**, 169, 220
- oil and gas**, 91
- overtime**, *see* **wages (overtime)**
- parental leave**, 646–648
- parimutuels**, 67
- partners**, 147, 148, 178, *see also*  
**employees**
- patents**, 345
- pay equity**, *see* **wages (gender equality)**
- payment for work**, *see also*  
**duties (employer to employee); quantum meruit/restitution/unjust enrichment; right to earnings/profits; wages (recovery of)**
  - amounts beyond wages, 176
  - bonuses, 180
  - general, 172–177
  - interest, 177
  - misconduct, effect of, 175
  - piece-rate workers, 211, 217
  - priorities, 181
  - profit-sharing, 148, 178–180, 350

## INDEX

---

- rebuttal of presumption re, 173, 174
  - recovery, proceedings for, 182–185
  - restitution/quasi-contract, 172
- per quod servitium amisit**, *see also liability (employee injuries)*
- corporate employers, action by, 355
  - damages, 353, 357
  - death of employee, 356
  - general, 353
  - scope of action, 354
  - spousal claims, 358
- picketing**, 120, *see also Charter of Rights*
- piloting of ships**, 68
- pipelines/refineries**, 69
- police officers**, 537
- postal service**, 70
- pregnancy leave**, 643–645
- professionals**, 537
- profit-sharing**, 148, 178–180, 350, *see also partners; payment for work; right to earnings/profits*
- provision of work**, *see duties (employer to employee)*
- quantum meruit/restitution/unjust enrichment**, *see also payment for work; wages (recovery of)*
- general, 172, 349, 508
  - legacy, expectation of, 351
  - mental incompetency, 570
  - overtime, 352
  - profit-sharing, 350
- racetracks**, 67
- radio**, *see broadcasting*
- railways**
- general, 71
  - hotels, 73
  - integral peripheral operations, 74
  - maintenance of right-of-way, 72
- ranch workers**, 537
- receivership, effect of**, 165, 404
- record-keeping**, 664, 665
- references, provision of**, 219
- resignation**, *see termination*
- restitution**, *see quantum meruit/restitution/unjust enrichment*
- restrictive covenants**, *see also fiduciary duties; good faith/fidelity; written contracts*
- assignability of, 531
  - consideration for, 519, 520, 529
  - enforceability generally, 509, 510, 515, 526–531
  - justification for, 511–513
  - non-competition covenant vs. non-solicitation covenant, 518
  - reasonableness of restraint, 514–517, 529, 530
  - reasonableness, proof of, 521
  - remedies for breach, 524, 525
  - restricting competition, 512, 529, 530
  - severance for unreasonableness, 522, 523
  - solicitation of customers, 513
  - trade secrets, re, 511, 512, 529
  - vendor/purchaser vs. employer/employee, 528
  - wrongful dismissal, effect of, 526
- retirement**, *see termination*
- right to earnings/profits**, *see also payment for work; profit-*

**sharing; quantum meruit/restitution/unjust enrichment**

- copyright, 346, 347
- general, 343, 344
- inventions, 345
- testimonials, 348

**safety, *see also* duties (employer to employee); liability (employee injuries)**

- delegation of responsibility, 195
- equipment, 196
- exposure to danger, 197–199
- failure to follow rules, employee's, 203, 209
- general, 191–195, 306
- instructions/warnings, 205–209
- negligence, 191
- refusal to obey order, 232
- superintendence/regulation, 200–204

**sale of business, effect of, 168, 666**

**salvage, marine, 85**

**scope of Title, 1**

**search/entry, *see* complaints/investigations**

**servitude, 479**

**settlement, *see* complaints/investigations**

**shareholders/officers/directors, 150–152, *see also* employees; termination (wrongful dismissal); wages (recovery of)**

**shipbuilding/repairing/chandlery, 79–81**

**shipping/navigation**

- booking/ticketing agents, 84
- dredging, 85
- general, 82, 83

- longshoring, 65, 83
- navigation, 85
- piloting of ships, 68
- salvage, 85

**sick pay, 215–217**

**sitters, 537**

**strikes, 120, *see also* Charter of Rights**

**students, 537**

**telecommunications, *see* broadcasting**

**telephones, *see* broadcasting**

**television, *see* broadcasting**

**termination (by agreement)**

- bars to, 370
- fixed term contracts, 186–188, 372, 373, 375–380
- general, 368–370, 394
- unconscionability, 187, 370

**termination (constructive dismissal)**

- bonus, loss of, 432
- breach of promise of promotion, 431
- change in conditions, temporary, 450
- change in duties/reporting, 429
- change in hours/days of work, 436, 437, 446
- change in location of work, 442–444
- change in remuneration/benefits, 427, 432–436
- change in responsibilities/prestige, 427, 438–441, 444
- condonation by employee, 451, 452
- criticism/abuse, 445
- demotion as, 428–431

## INDEX

---

- employee's remedies, 454, 456
- evidence, 427
- forced resignations, 448
- general, 423–425, 426
- lay-offs as, 403, 449
- mitigation, 453
- promotion of subordinate, 430
- safety, endangering employee's, 447
- termination (for cause)**
  - absence, unauthorized, 225
  - age, mandatory retirement, 383
  - condonation by employer, 478
  - “dismissal”, 473
  - failure to work, 223
  - general, 472–475, 477
  - illness, 227, 419
  - interpretation of contract, 476
  - lack of work/redundancy, 399
  - lateness, 226
- termination (frustration)**
  - acts/events not constituting, 421
  - general, 418
  - illness causing, 419, 420
- termination (general)**
  - general, 127, 367
  - liquidation/receivership of company, 404, 405
  - redundancy/elimination of position, 413
- termination (lay-off)**
  - constructive dismissal, as, 403
  - damages for, 402
  - general, 212, 399
  - implied right to, employer's, 401
  - “lay-off”, 398, 399
  - wrongful dismissal, 399, 400
- termination (probationary employees)**
  - cause, 408
  - definition of, 406
  - extension of probation period, 400
  - fairness, 408
  - notice, 408–410
  - permanent employees placed on probation, 412
  - term of probation, 407, 411
  - training/evaluation, 408, 409
- termination (reinstatement)**
  - Alberta, 720
  - British Columbia, 724
- termination (repudiation/breach)**
  - employee, by, 414
  - intention to repudiate, 416
  - variation of contract, unilateral, 415
  - wrongful dismissal, 417
- termination (resignation)**
  - absences not constituting, 391
  - evidence, 390
  - fiduciary duties after, 393
  - forced resignation, 388–390
  - general, 386, 394
  - intention/competence, 392
  - notice requirements, 387
  - remedies of employer, 395–397
  - wrongful resignation, 395–397
- termination (retirement)**
  - Charter of Rights, 384
  - forced early retirement, 382
  - general, 381
  - injunction against, 385
  - mandatory retirement, 381, 383–385
- termination (winding-up), 405**

**termination (with notice/pay)**

- alteration of employment conditions, 671
- bad faith, 458
- delivery of notice, 465, 467
- employment past notice period, effect of, 672
- form of notice, 464, 466, 470
- general, 457–462, 667, 668
- group terminations, 11–54, 669, 670
- lay-offs (common law), 399, 401
- lay-offs (statutory rules), 677–679
- mitigation, effect on duty of, 463, 673
- notice not required, where, 461, 674, 680
- notice period (common law), 462, 471, 544
- notice period (statutory), 667, 669
- notice period required of employee (Manitoba), 676
- probationary employees, 408–410
- redundant/eliminated positions, 399, 413
- resignation, re, 387
- right to notice (common law), 186–188, 372, 373, 375, 377–380, 399, 401, 413, 544
- right to notice (statutory), 380, 544, 667, 669
- seasonal employees, 377
- starting of notice period, 468, 469
- sufficiency of payment, 460
- transfer to another provincial jurisdiction, 675
- waiver of notice, 459, 544

**termination (written contracts)**

- cause, for, 500
- clauses re, enforceability of, 502, 504
- fixed term contracts, 501
- general, 495
- hiring at will, 499
- indefinite hiring term, 499
- mandatory retirement, 503
- notice, where not required, 471, 497
- reasonable notice, 495, 496, 498, 499
- rectification, 506
- remedies, 505–508
- repudiation by employer, 502
- statutory notice, 496
- unconscionability, 504

**termination (wrongful dismissal)**

- borrowed servant doctrine, effect of, 162, 164
- corporate veil, piercing of, 164
- directors'/officers' liability, 370
- earned wages vs. wrongful dismissal, 182
- fixed term contracts, 156, 374
- forced resignation as, 388–390, 448
- forced retirement, 382, 503
- general, 1, 156, 472
- joint liability for, 162, 164
- lay-off, 212, 399, 400, 403, 449
- mitigation, duty of, 374, 453, 463, 598
- purchase of corporation causing, 168
- repudiation of contract, as, 417
- restrictive covenant, effect on, 526

**terms of contracts, see duties; written contracts**

## INDEX

---

- testimonials**, 348
- testing**, *see* **hiring**
- third-party demands**, *see* **wages (recovery of)**
- tips**, 214, 605
- torts**, *see* **duties; liability; safety**
- trade secrets**, *see* **fiduciary duties; restrictive covenants**
- trade unions**, *see* **collective agreements; unions**
- training**, 218, 236
- transportation**, *see* **freight forwarding; interprovincial transportation**
- treaties**, *see also* **Canada Labour Code; Charter of Rights; International Labour Organization**
- conventions ratified, 113
  - general, 16
  - International Covenant on Civil and Political Rights, 116
  - International Covenant on Economic, Social and Cultural Rights, 115
  - Universal Declaration of Human Rights, 114
- trespass**, *see* **liability**
- trust companies**, *see* **banking**
- unconscionability**, 494, 504, 569
- underwater exploration**, 91
- unemployment insurance**, 598
- unions**, *see also* **collective agreements**
- dues, compulsory payment of, 119
  - dues, use of, 23
  - employers' organizations, 90
  - general, 90
  - internal affairs, 14, 16
- unjust enrichment**, *see* **quantum meruit/restitution/unjust enrichment**
- vacation pay**, *see* **wages (vacation pay)**
- voting/seeking office**, 656, 657
- wages**, *see also* **appeals; complaints/investigations; holidays (public); hours of work; leave of absence; payment for work**
- wages (gender equality)**
- action to recover difference, 640
  - equal pay, 642
  - equal work, 642
  - general, 637, 642
  - reductions to achieve equality, 639
  - “substantially the same work”, 637, 638
  - work of equal value, 642
- wages (general)**
- bonuses, 605
  - continuity of employment, 666
  - definition of, 605, 606, 635
  - exclusions from, 605
  - payment in Canadian currency, 607
  - record-keeping, 664, 665
  - sale of business, 666
  - statement of, 607
- wages (minimum)**
- exemptions, 608
  - federal vs. provincial rates, 611
  - general, 608, 612
  - jurisdiction to set, 610
  - minimum wage boards, 609
  - offence re working for less, 545

**wages (overtime)**

- Alberta, 620, 623, 624, 665
- British Columbia, 620, 621, 623, 624
- exclusions, 622
- hours per day/week, 620
- Manitoba, 620, 622
- public holidays, 623
- rates of, 620
- record-keeping, 664, 665
- right to require working of, 622
- Saskatchewan, 620–623
- time of in lieu of, 624

**wages (recovery of), see appeals; complaints/investigations; payment for work; quantum meruit/restitution/unjust enrichment**

**wages (recovery of – Alberta)**

- directors' liability, 773
- filing of orders, 773
- general, 712–716
- land, registration against, 774
- reciprocal enforcement, 775
- third-party demands, 785–788

**wages (recovery of – British Columbia)**

- filing of orders, 776
- general, 724–726, 729
- letter of credit, provision of, 778
- seizure of assets, 777
- third-party demands, 789–791

**wages (recovery of – general)**

- benefits not paid, 183
- deemed debt due, 613
- deemed trusts, 613
- earned wages vs. wrongful dismissal, 182
- employer from employee, 184
- legislation (general), 185, 546

- lien for, 613
- minimum wage, 612
- mitigation, duty of, 613
- persons liable for, 613, 614, 731
- priorities, 181
- statutory procedure barring civil remedy, 546
- vacation pay, 635

**wages (recovery of – Manitoba)**

- deposit of bond/security, 780
- filing of orders, 779
- general, 730–733, 743
- reciprocal enforcement, 781
- third-party demands, 792–794

**wages (recovery of – Saskatchewan)**

- directors' liability, 783
- fees, payment of, 783
- filing of certificates, 782, 783
- general, 692, 734, 735
- reciprocal enforcement, 784
- third-party demands, 795–798

**wages (termination pay)**

- Alberta, 677
- British Columbia, 678
- Saskatchewan, 679

**wages (vacation pay)**

- continuity of employment, 636, 661, 666
- duration of vacation, 631, 636
- exempt persons, 634
- protection for, 635
- rates of pay, 632
- record-keeping, 664
- time for taking, 633

**war, 17**

**warehouses, 48, 59, 92**

**workers' compensation, see liability (employee injuries)**

## INDEX

---

- written contracts, *see also***  
**termination (written contracts)**
- changes in duties/position, 488
  - consideration, 481
  - custom, effect of, 482
  - duration of, 483
  - duress, 494
  - elements of, 480
  - general, 479–482
  - intention of parties, 480, 486
  - interpretation, 490
  - permanent or fixed-term contract, 484
  - policy manual as part of contract, 493
  - rectification, 487
  - remuneration, stating of, 489
  - servitude, 479
  - signing of, 486
  - standard form contracts, 491
  - uncertainty, 508
  - unconscionability, 494
  - validity of, 486–494
  - variation/amendment of, 492
  - voidable/illegal contracts, 485
- wrongful dismissal, *see***  
**termination**



## Index to Environmental Law

(All references are to paragraph numbers.)

- agricultural chemicals**, *see* pesticides
- air pollution (Alberta)**
- general, 221
  - halocarbons, 222
  - ozone-depleting substances, 222
  - public health legislation, 234
- air pollution (British Columbia)**, 223, 224
- air pollution (common law)**, 2, *see also* liability; pollution; shipping
- air pollution (federal)**, *see also* shipping
- general, 216–218
  - motor vehicles, 219
  - smoking, 220
- air pollution (Manitoba)**
- injunctions, 226
  - ozone-depleting substances, 227
  - regulations, 225
- air pollution (Saskatchewan)**
- control orders, 234, 239
  - Crown bound by legislation, 229
  - general, 228
  - halocarbons, 237–239
  - offences/penalties, 235, 236, 238
  - permit requirements, 228, 232, 233
  - regulations, 229–231
- aircraft**, 242, 339
- biotechnology (federal)**, 38, 39
- birds**, *see* migratory birds
- chemicals**, *see* oil and gas; pesticides; shipping
- cigarettes**, *see* smoking
- coal (Alberta)**, 175, 176
- conflict of interest**, 71
- conservation**, *see* land conservation/reclamation; land use planning
- criminal law**, *see* mischief; nuisance; prosecutions (statutory)
- dangerous goods (transport — Alberta)**, *see also* pesticides
- emergency measures, 363
  - inspectors, 362
  - offences/penalties, 359–361
  - permits, 358
  - prohibitions generally, 357
  - regulations, 364
  - report of release/anticipated release, 363
- dangerous goods (transport — British Columbia)**, *see also* pesticides
- emergency measures, 369
  - exemption permits, 367
  - inspectors, 368
  - offences/penalties, 370
  - prohibitions generally, 367
  - regulations/bylaws, 371
  - report of emissions, 369
  - safety marks, 367
- dangerous goods (transport — federal)**, *see also* hazardous products; pesticides; shipping
- application of legislation, 339

- dangerous goods (transport — federal) (*cont'd*)
  - defences, 344
  - emergency response assistance plans, 346
  - inspectors, powers/duties, 340, 345
  - means of containment, 345, 347
  - notice for disclosure, 349
  - offences, 340, 343
  - penalties/sentencing, 341–343
  - powers of minister, 350
  - prohibitions generally, 340
  - reporting of release/anticipated release, 348
  - safety marks/standards, 340
- dangerous goods (transport — Manitoba), see also pesticides**
  - advisory committees, 378
  - appeals, 380
  - director's powers, 377
  - “environmental accident”, 381
  - environmental officers, 378
  - financial responsibility, evidence of, 377
  - inspectors, 378, 379
  - licensing, 375
  - manifests, 376
  - offences/penalties, 382
  - prohibitions generally, 373
  - registration, 374
  - regulations, 315, 383
  - remedial orders, 377
- dangerous goods (transport — Saskatchewan), see also pesticides**
  - emergency plans, 386
  - exemptions, 385
  - inspectors, 387, 388
  - offences/penalties, 390
  - prohibitions generally, 384
  - regulations, 391
  - report of discharge, 389
- ecological reserves, see special areas**
- emergencies, see also dangerous goods (transport)**
  - Alberta, 62, 72
  - British Columbia, 96, 422
  - federal, 23
  - Manitoba, 137
  - Saskatchewan, 158
- endangered species, see special areas**
- Energy Efficiency Act (British Columbia), 129**
- Environment Act (Manitoba)**
  - abatement projects, 141
  - administration of, 130–137
  - advisory committees, 132
  - appeals, 140
  - approval of proposals, 139
  - Clean Environment Commission, 133–136
  - Department of Environment, 131
  - director, appointment of, 132
  - investigations/inspections, 135, 138
  - mediators, 132, 134
  - offences/penalties, 144–146
  - officers, 132, 137, 138
  - public hearings/meetings, 134, 135
  - purpose of, 130
  - restriction of development, 142
  - Sustainable Development Innovations Fund, 143
- Environment and Land Use Act (British Columbia), 127**

## INDEX

---

### **environmental assessments (Alberta), 84**

### **environmental assessments (British Columbia)**

- emergency measures, 96
- entry/seizure, powers re, 99
- environmental management plans, 95
- environmental protection orders, 94
- general, 91–93
- offences/penalties, 97, 98

### **environmental assessments (federal)**

- access to information, public, 56
- agreements, ensuring assessment required by, 55
- Canadian Environmental Assessment Agency, 58
- Crown bound by, 44
- elements of process, 46
- general, 44
- joint review panels, 46
- mandamus quashing licence, 17
- mediation/review panel, referral to, 51, 52
- minister’s powers, 57
- projects excluded from, 44
- responsible authority, powers of, 50, 51
- screening/comprehensive study reports, 46, 50
- substitute processes, 53
- termination of, 51
- timing of, 45
- trans-boundary environmental effects, 54,
- when required, 44, 55

### **environmental assessments (Saskatchewan)**

- approval of minister, 164, 166
- changes in development, 166
- compliance, ensuring, 167
- “development”, 161, 165
- environmental impact assessments, 161, 162
- exempt developments, 165
- general, 161, 162
- injunctions/orders, 168
- inspections/investigations, 167
- inquiries, 163
- liability (civil), 170
- offences/penalties, 169, 171
- public hearings, 163

### **Environmental Management Act (British Columbia)**

- appeals, 90
- environmental impact assessment, 91
- evidence, 101
- offences/penalties, 92
- powers of minister, 89
- protection of authorities, 100

### **Environmental Management and Protection Act (Saskatchewan)**

- emergency environmental protection orders, 158
- environment officers, 156, 157, 159
- environmental protection orders, 154
- general, 152
- inspections/entries, 157, 159
- investigations, 154
- minister’s duties, 152
- object of Act, 155
- offences, 159

- Environmental Management and Protection Act (Saskatchewan) (*cont'd*)
- pollutant control facilities, 188, 189
  - protection of Crown/officers, 160
  - spills, 153–155
- Environmental Protection Act (federal)**, *see also water pollution*
- actions/investigations, 28–35
  - biotechnology, 38, 39
  - injunctions, 35
  - inspections/seizure/forfeiture, 43
  - marine pollution from land source, 40
  - offences/penalties, 41, 42
  - pollution prevention plans, 36, 37
  - toxic substances regulation, 21–27
- Environmental Protection and Enhancement Act (Alberta)**
- aboriginal/treaty rights, 80
  - appeals, 61, 64, 74–83
  - approvals, 61, 65–68
  - assessment process, 84
  - balancing of interests, 67
  - certificate of qualification, 65
  - conflict of interest, 71
  - “designated activities”, 66
  - “directly affected”, 75
  - disclosure of information, 87
  - enforcement orders, 63, 64, 73
  - environmental protection orders, 70–73
  - general, 221
  - injunctions, 88
  - inspections/investigations, 85
  - limitation periods, 15
- Natural Resources Conservation Board, 60, 61
  - offences/penalties under, 69, 86, 88
  - regulations, 68
  - “reviewable projects”, 60
- fires**, 14
- fisheries**, *see also water pollution*
- civil liability, 253, 254
  - Crown bound by legislation, 244
  - defences, 249, 250
  - “deleterious substance”, 244, 245, 248
  - “deposited”, 249
  - depositing deleterious substance, 246–252
  - fisheries officers, 259
  - general, 244
  - harmful work, 246
  - Manitoba, 285–287
  - penalties, 251, 252
  - persons liable, 249
  - regulation of undertakings, 255, 256
  - regulations governing substances/concentrations, 247
  - reporting of deposits, 257, 258
  - strict liability, 249
  - unusual occurrences, 257, 258
- forests**, *see also parks; special areas*
- Alberta, 317, 476–478
  - British Columbia, 14, 485–487
  - Manitoba, 500
  - national, 468
  - Saskatchewan, 490
- halocarbons**, *see air pollution*

## INDEX

---

- hazardous goods**, *see* **dangerous goods (transport); pesticides; workplace safety**
- hazardous products (federal)**, *see also* **dangerous goods (transport — federal); pesticides; workplace safety**
- controlled products, 351
  - general, 350
  - Hazardous Materials Information Review Act, 355
  - ingredients, disclosure list, 352
  - inspectors/analysts, 353
  - penalties, 354
  - prohibited products, 350
  - regulations, 350
  - restricted products, 350
  - workplace safety, 356
- hazardous substances (Alberta)**, 365, 404, *see also* **pesticides**
- hazardous waste**, *see* **waste management**
- herbicides**, *see* **pesticides**
- hydro and electric power**, 204–206
- injunctions**
- Alberta, 88
  - environmental assessments (federal), re, 35
  - federal/provincial jurisdiction, 7
  - general, 4, 6
  - Manitoba, 225
  - oil spills, 11
  - riparian rights, re, 10, 11
  - Saskatchewan, 168
- land conservation/reclamation (Alberta)**
- public lands, 452
  - soil conservation, 444–450
  - specified land, order re, 451
- land conservation/reclamation (British Columbia)**
- contaminated sites, remediation of, 454
  - offences/penalties, 453
  - regulations re use, 454
  - use of agricultural land, 453
- land conservation/reclamation (Manitoba)**, 461, 462
- land conservation/reclamation (Saskatchewan)**, 463
- land use planning**
- Alberta, 459
  - British Columbia, 458
  - Manitoba, 461, 462
  - Saskatchewan, 463
- legislation**, *see also* **specific acts, e.g. Environmental Protection Act (federal)**
- legislation generally (Alberta)**, 58–60
- legislation generally (British Columbia)**
- Energy Efficiency Act, 129
  - Environment and Land Use Act, 127
  - Social Service Tax Act, 130
  - Sustainable Environment Fund Act, 128
- legislation generally (federal)**
- international agreements, enforcement, 20
  - minister’s powers/duties, 18
  - national round table, 19
- legislation generally (Manitoba)**
- Public Health Act, 147–149
  - Trans-boundary Pollution Reciprocal Access Act, 151
  - Workplace Safety and Health Act, 150

- legislation generally (Saskatchewan)**, 171
- liability**, *see* **limitation periods; negligence; nuisance; prosecutions (statutory); riparian rights; statutory liability; strict liability; trespass**
- licensing**, *see* **environmental assessments/reviews**
- littering**, 340, 330, 334
- mandamus**, 17
- marine pollution**, *see* **water pollution**
- migratory birds**, 263
- mines/minerals (Alberta)**, 175, 176
- mines/minerals (British Columbia)**
- appeals, 181
  - compliance orders, 179
  - health, safety and reclamation code committee, 179
  - inspections, 179
  - offences/penalties, 180, 181
  - permits, 177, 178
  - plan of proposed works, 177
  - reclamation plan, 177, 178
  - responsibilities of owner/agents, 180
  - security deposit, 178
- mines/minerals (Manitoba)**
- closure plan, 186
  - correction orders, 187
  - damages, recovery of, 184, 185
  - general, 183, 187
  - inspectors, 187
  - protection/rehabilitation of site, 186
- mines/minerals (Saskatchewan)**, 188, 189
- mischief**, 276
- motor vehicles**, 219, 243, 328, 329, 330
- negligence**, 14, *see also* **liability; pollution**
- noise/vibration**, *see also* **liability; pollution**
- aircraft, 242
  - criminal offences, 240
  - freedom of religion, 24
  - general, 2, 240
  - jurisdiction over, 240
  - motor vehicles, 243
  - municipal bylaws, 240
  - nuisance/trespass, as, 13
- noxious fumes/vapours/liquids**, *see* **air pollution; shipping**
- noxious weeds**, 442, 443, *see also* **pesticides; plant protection**
- nuisance/nuisance trades**, *see also* **liability; pollution**
- air pollution, 2
  - artificial structures, 3
  - common law rights, effect of, 4, 5
  - criminal offence, 275
  - damage, proof of not required, 1
  - definition of, 174
  - federal/provincial jurisdiction, 7
  - general, 1–5, 174
  - injunctions, 4, 6, 7
  - noise, 2
  - occupiers' rights generally, 3
  - public nuisance, 6–8
  - statutes, effect of, 4, 5, 172–174

## INDEX

---

- odours**, *see* **air pollution**
- offences/penalties**, *see*  
**prosecutions (statutory),  
specific acts, e.g.,  
Environmental Protection and  
Enhancement Act (Alberta)**
- oil and gas (Alberta)**
- approval of storage/processing schemes, 196
  - Energy Resources Conservation Board, 195
  - pipeline leaks/breaks, 200
  - shutdown/remediation/suspension orders, 197–199
- oil and gas (British Columbia)**, 204, 205
- oil and gas (common law)**, 7, 8, 11
- oil and gas (federal)**, *see also shipping*
- abatement of spills, 7
  - conservation engineer, 191
  - chief conservation officer, 190
  - damages, 8
  - environmental protection program, 193
  - export/import licences, 204
  - injunctions, 7, 11
  - inspection officers, 194
  - investigations/hearings, 190
  - legislation generally, 190
  - maintenance manuals, 193
  - plans/designs, 192
  - regulations, 190, 191
  - reasonable measures/steps, 191, 192
  - surveillance programs, 193
  - suspension/remedial measures orders, 194
- oil and gas (Manitoba)**, 201, 202
- oil and gas (Saskatchewan)**, 153, 203
- ozone**, *see* **air pollution**
- parks**, *see also* **forests; special areas**
- Alberta, 478
  - British Columbia, 488–494
  - Manitoba, 499
  - national, 277, 278, 464, 465
  - Saskatchewan, 489
- pesticides**, *see also* **dangerous goods (transport); liability; noxious weeds; plant protection; pollution**
- pesticides (Alberta)**
- disposal of, 403
  - general, 403
  - storage/transport, 365, 404
  - strict liability re, 9
- pesticides (British Columbia)**
- administrator, powers of, 414
  - appeals, 418–420
  - disposal of, 412
  - emergencies, 422
  - equipment for applying, 413
  - exemptions, 422
  - handling/storage/transport, 411
  - inspectors, 405
  - municipal bylaws/regulations, 423
  - offences/penalties, 405
  - permits/licensing/certification, 405
  - pest management plans, 406
  - protection of authorities, 421
  - restrictions re sale/use, 407–410, 416
  - seizures, 415–417
  - strict liability re, 9

**pesticides (federal)**

- Crown bound by legislation, 392
- general, 392
- inspectors, 399, 400
- municipal bylaws, 393
- offences/penalties, 394
- packaging/labelling, 392
- pesticide residue compensation, 401, 402
- registration of products, 392
- seizure/detention, 400
- storage/transport of, 365
- strict liability re, 9
- unsafe storage/display, 392

**pesticides (Manitoba)**

- applicator's licence, 425, 426
- disposal of, 425
- fertilizer dealers, 424
- general, 425
- inspectors/supervisors, 425, 426
- licensing/permits, 425–427
- offences/penalties, 429
- strict liability re, 9

**pesticides (Saskatchewan)**

- appeals, 432, 434
- contaminated matter, 431
- control orders, 433
- damages/compensation, 431
- prohibitions generally, 430
- strict liability re, 9

**pipelines, see oil and gas**

**plant protection, see also noxious weeds; pesticides**

- compensation, 438
- Crown bound by legislation, 435
- duty to notify minister, 436
- inspectors, 437

- offences/penalties, 440
- prohibitions generally, 436
- provincial legislation, 441
- regulations, 439

**pollution, see air pollution; legislation; negligence; noise/vibration; nuisance; pesticides; riparian rights; statutory liability; strict liability; trespass; water pollution**

**prosecutions (statutory), 16, 17**

**public health**

- Alberta, 234, 281, 297, 309
- British Columbia, 302–303
- Manitoba, 147–149, 304
- Saskatchewan, 308, 316

**recycling**

- Alberta, 322
- British Columbia, 324–326
- Manitoba, 333
- Saskatchewan, 335

**religion, freedom of, 241**

**riparian rights, 10–12, see also liability; water pollution**

**sewage, see waste management**

**shipping, see also dangerous goods (transport — federal); water pollution**

- air pollution, 217, 218
- chemicals/noxious liquids, 222
- dangerous goods, 223
- detention/sale of ships, 209
- emissions regulations, 219
- garbage pollution, 221
- general, 207
- offences/penalties/prosecutions, 210, 213–215
- officers/analysts, designation of, 208



## INDEX

---

- shipping (*cont'd*)
- oil pollution, 219
  - reporting of discharge, 212
  - pollutant substances, 220
  - regulations generally, 211
- smells, see air pollution**
- smoke, see air pollution**
- smoking, 220**
- Social Service Tax Act (British Columbia), 130**
- special areas, see also forests; parks**
- special areas (Alberta)**
- ecological reserves, 471
  - heritage rangeland, 472
  - minister's powers, 472, 473
  - offences/penalties, 475
  - prohibited activities, 474
  - restricted development areas, 469, 470
  - water conservation areas, 469, 470
  - wilderness areas, 471
- special areas (British Columbia)**
- ecological reserves, 479, 480
  - greenbelt land, 481–484
- special areas (Manitoba)**
- conservation districts, 496–498
  - ecological reserves, 495
  - endangered species, 502–544
  - Manitoba Habitat Heritage Corporation, 501
  - wildlife conservation, 501
- special areas (Saskatchewan)**
- conservation and development areas, 508
  - ecological reserves, 505–507
  - wildlife protection, 511
- Sustainable Development Innovations Fund (Manitoba), 143**
- Sustainable Environment Fund Act (British Columbia), 128**
- tidal rivers, see riparian rights; water pollution**
- toxic substances list (federal), 23**
- Trans-boundary Pollution Reciprocal Access Act (Manitoba), 151**
- transport, see dangerous goods (transport); shipping; workplace safety**
- trespass, 13, see also liability; pollution**
- vibration, see noise/vibration**
- virtual elimination list (federal), 22**
- waste management (Alberta)**
- disposal sites/facilities, 309
  - hazardous waste, 318, 319
  - recyclable containers, 322
  - sewage, 296, 297
  - solid waste, 317, 320, 321
- waste management (British Columbia)**
- abatement orders, 121
  - appeal of orders/decisions, 117, 118
  - disposal sites/facilities, 310–312
  - enforcement of legislation, 119–122
  - hazardous waste, transport/storage of, 106, 110, 311
  - inspections, 120
  - littering, 323
  - motor vehicles, 328, 329

waste management (British Columbia) (*cont'd*)

- offences/penalties, 124–126, 323, 324, 327, 328
- ownership of waste, 312
- permits/approvals, 103–108, 119
- prevention orders, 121
- prohibitions/exceptions, 102, 298
- purchase of contaminated land, 123
- recycling, 324–326
- remediation orders, 115, 116, 123
- restraining orders, 122
- sewage, bylaws re, 301
- sewage control areas, 300
- sewage control officers/managers, 300
- sewage disposal regulation, 302
- sewage disposal systems, 303
- solid waste, 340–329
- spills, prevention/reporting of, 111–114
- storage of waste, 109
- “waste”, 102
- waste management plans, 109, 299, 310

**waste management (federal),**  
336–338

**waste management (Manitoba)**

- disposal sites/facilities, 315–317
- hazardous waste, 315
- licensing, 375
- littering, 340, 341
- registration, 374
- sewage, 304, 305
- solid waste, 330–333
- waste reduction, 332, 333

**waste management (Saskatchewan)**

- disposal sites/facilities, 316
- littering, 334
- recycling, 335
- sewage, 306–309
- solid waste, 334, 335

**water pollution, see also fisheries; liability; pollution; riparian rights; shipping**

**water pollution (Alberta),**  
280–281

**water pollution (British Columbia),** 282–283

**water pollution (federal)**

- cleaning products, sale/import of, 265
- criminal offences, 275, 276
- detention/seizure/forfeiture, 267
- disposal of substances at sea, 264
- disposal permits, 266
- injunctions, 7
- international treaties, 273, 274
- international waters, 269–271
- land based sources of, 40
- liability (civil), 268
- migratory birds, 263
- national parks, 277, 278
- navigable waters, protection of, 260–262
- Northwest Territories, 279
- tidal rivers, 7
- water conditioners, sale/import of, 265
- water quality management areas, 272

**water pollution (Manitoba),**  
284–288

## INDEX

---

- water pollution (Saskatchewan),**  
289–295
- weather modification,** 512
- wells, *see* water pollution  
(Manitoba); water pollution  
(Saskatchewan)**
- wildlife, *see* special areas**
- workplace safety**
- Alberta, 366
  - British Columbia, 372
  - federal, 356
  - Manitoba, 150

## Index to Equity

(All references are to paragraph numbers.)

- acquiescence**, *see*  
**laches/acquiescence; waiver**
- ademption**, 38
- availability of equitable doctrines**, 11, 16
- bill of discovery**, 9
- breach of confidence**, 7
- clean hands doctrine**
- ex turpi causa, 93
  - general, 93, 94
  - matrimonial property actions, 96
  - relief against forfeiture and, 50
  - specific performance and, 95
  - trusts and, 95
- common law vs. equity**, 1, 11
- confidential information, misuse of**, 62, 82
- constructive notice**
- agency situations, 57–59
  - bills of exchange, 60
  - commercial contracts, in, 54
  - discretion of court, 54
  - existence of instrument vs. contents of, 56
  - nature of, 53
  - promissory notes, 60
  - solicitor/client situations, 59
  - test for, 52
  - trusts, 55
- contribution**, 25, 26
- conversion**, *see* **equitable conversion**
- conveyances**, 12
- Crown**, 15
- damages**, 6, 7
- declaratory orders**, 3, 13
- delay**, *see* **laches/acquiescence**
- discovery**, *see* **bill of discovery**
- election**, *see also*  
**laches/acquiescence; waiver**
- accepting of benefit, 28
  - adoption of whole instrument, 28
  - exclusion of, 27
  - general, 27
  - non-applicability of, 29, 30
  - waiver and, 34, 35
- equitable conversion**
- general, 21
  - infant's estate, 24
  - specific performance and, 23
  - succession, 24
  - wills, directions in, 22
- equitable subordination**, 87
- equity looks to the intent rather than to the form**, 100, 101
- equity will not suffer a wrong to be without a remedy**, 99
- estates**, *see* **ademption; election; equitable conversion**
- estoppel**, *see* **waiver**
- ex turpi causa**, *see* **clean hands doctrine**
- family law situations**
- clean hands doctrine, 96
  - laches, 78
- forfeiture, relief from**, *see* **relief against penalties/forfeiture**
- fraud**
- laches and, 72

## EQUITY

---

- legislation, effect of, 12
- rescission for, 11
- general matters**
  - common law vs. equity, 1, 11
  - Crown, rights, 15
  - equitable doctrines generally, 14, 16, 69
  - jurisdiction of courts, 2, 13
- improvements on land**, 14
- indemnity**, *see* **contribution**
- injunctions**, 6, 62, 76, 77
- jurisdiction of courts**
  - damages, 6
  - declaratory order, 3
  - general, 1, 2, 13
  - injunctions, 6
  - relief against penalties, 4
  - specific performance, 6
  - vesting orders, 8
- laches/acquiescence**
  - “acquiescence”, 64
  - affiliation/child support, 78
  - conduct of parties, 72
  - explanations for delay, 72
  - fraud, effect of, 72
  - general, 69, 71, 73, 75
  - injunctions and, 76
  - “laches”, 64
  - knowledge of plaintiff, 66, 67
  - prejudice, need to show, 68, 70
  - specific performance and, 75
  - summary judgment, effect on, 79
  - time limitations, 64–66
- land, errors re**, 14
- limitation of actions**, 77
- looking upon that as done which ought to have been done**
  - dishonoured cheques, 92
  - equitable conversion, 21
  - general, 88, 91
  - nature of, 89
  - substitution of acts, 90
- marshalling**
  - assets, order of availability for debts, 41
  - charities not entitled to, 42
  - definition, 39
  - first mortgagee’s rights, 43
  - requirements for availability, 40, 43, 45
  - unsecured creditors’ rights re, 44, 45
- negligence**, 35
- notice**, *see* **constructive notice**
- priorities between equitable claims**, 61–63
- rectification orders**, 10
- relief against penalties/forfeiture**
  - clean hands doctrine, 50
  - commercial contracts, 5
  - discretionary nature of, 48
  - general, 4, 5, 46
  - mortgages, 49
  - reservation of existing right vs. penalty, 51
  - statutory forfeitures, 47
- rescission**, 11
- res ipsa loquitur**, 35
- restitution**, *see* **unjust enrichment**
- satisfaction**, 38
- specific performance**
  - clean hands doctrine and, 95
  - conversion and, 23
  - damages and, 6
  - general, 11
  - laches and, 75

## INDEX

---

- Statute of Frauds**, 12
- statutory benefits, waiver of**, 37
- subrogation**
- actions by subrogation, 19
  - definition, 17
  - general, 17, 20
  - insurance situations, 18, 19
- those seeking equity must do equity**, 97, 98
- unconscionable transactions**, 83–85
- unjust enrichment**, 26, 80–82, 86
- vesting orders**, 8
- waiver**, *see also* **election; laches/acquiescence**
- conditions precedent, of, 31
  - definition, 31
  - election and, 34, 35
  - knowledge and intention, 32
  - res ipsa loquitur, of, 35
  - retraction of, 33
  - statutory benefits, of, 37
  - vested rights/interest, of, 36
- wills**, *see* **ademption; election; equitable conversion**

## Index to Estoppel

(All references are to paragraph numbers.)

- abandonment**, *see also*  
**acquiescence; delay; non-assertion of rights**
- acquiescence and, 68
  - delay and, 57
  - general, 1, 53
  - intention, representation about, 17
- abuse of process, for**, 13–64, 189–192, 197
- acquiescence**, *see also*  
**abandonment; delay; non-assertion of rights**
- children, by, 97
  - contracts, 70
  - general, 1, 44, 66, 67, 70
  - laches distinguished, 68
  - property rights, 69
  - timing of conduct, 71
  - trespass and, 150
- administrative law**
- habeas corpus, 211
  - mandamus, 212
  - res judicata, 187
- agency**
- absence of authority, 114
  - bills of exchange, 119
  - corporations, 125
  - estoppel against third party, 115
  - negligence, 267
  - negotiable instruments, 119
  - ostensible authority, 63, 111
  - ratification, 113
  - res judicata and, 263, 267
  - undisclosed principal, 112, 263
- approbation**, 80, 81
- arbitration**, 116, 232
- assignments**, 138
- bailment**, 117
- bankruptcy**, 220
- banks and banking**, 118
- bills of exchange**
- fraud and, 121
  - general, 119
  - negligence and, 120
- cause of action estoppel**, *see* **res judicata**
- children**
- deeds by, 182
  - general, 95, 96
  - post-infancy acquiescence, 97
- class proceedings**, 254
- collective agreements**, 78
- collusion**, 246
- common law doctrine**, 5
- conduct or representation**
- acceptance of cheque/payment, 39, 135, 141, 148
  - agency, 63, 111–115
  - agreement, estoppel by, 34
  - applicability of doctrine, 14, 31–33, 39
  - arbitration, 116
  - authority to contract, lack of, 19
  - bailments, 117
  - banker/customer matters, 118
  - bills of exchange, 119–121
  - books and records of, 127
  - boundaries, concerning, 124
  - building schemes, concerning, 122
  - children, 95–97

## ESTOPPEL

---

- common law doctrine, 5
  - conduct generally, 38, 39
  - contracts, 19, 22, 34, 53, 70, 78, 79, 95-97, 130-132, 158
  - convention, effect of, 2
  - conversion and, 133
  - counsel's statements, 108
  - criminal cases, 14
  - Crown liability, 76, 87
  - damage resulting, scope of, 20
  - debentures, 128
  - debtor/creditor matters, 115
  - definition, 4, 9, 15
  - delay, 57-59
  - detrimental reliance, 10, 39, 40
  - effect of doctrine, 24
  - elements of, 4, 9, 10, 15-23, 25-30, 38, 39
  - estoppel by deed and, 163
  - evidence re, 8, 109, 110, 127, 146
  - fraud and, 12, 75, 95
  - general, 125
  - general principle, 4, 9, 15, 40
  - holding out, 60-65
  - inaction, 41, 42
  - inconsistent acts, 78-86
  - innocent parties, 13, 60-64
  - insurance matters, 134, 135
  - intention of representor, 4, 9, 29, 30, 39
  - intentions, representations concerning, 17
  - knowledge of party raising estoppel relevance, 4, 9, 19, 22, 23
  - landlord/tenant matters, 136-142
  - language of representation, 21
  - legal rights, loss of, 66-77
  - making representation good, 18
  - married persons, 94
  - mistake (mutual) and, 23, 38
  - mistaken payments, 39
  - monetary expenditures, 47, 48
  - municipal corporations, 41, 78, 88-93
  - mutuality, requirement for, 31-33
  - nature of, 4, 9-12
  - negligence, 12, 38, 54-56, 120
  - negotiable instruments, 119-121
  - non-assertion of rights, 42, 53
  - omissions, 38
  - operation of doctrine, 24
  - ostensible authority, 63, 111
  - parties entitled to raise, 31-33
  - partnerships, 143, 144
  - payments and receipts, 135, 141, 148
  - pleadings, 103-107
  - prejudice, requirement for, 25-28
  - principles of construction, 5
  - representation of existing fact, 15-17, 38
  - silence, 38, 43-46, 151
  - status, concerning, 65, 143
  - statutory powers and rights, 39, 89, 98-102
  - sword or shield, 10
  - trespass, 150-153
  - ultra vires acts, 126
  - waiver and, 77
  - withdrawal of representation, 28
- consent judgments/orders**, 228, 229
- construction**, *see* **interpretation and construction**
- contracts (general)**, *see also* **specific contracts, e.g., insurance**
- acquiescence and, 70
  - authority, lack of, 19, 129



## INDEX

---

- children, 95–97
- estoppel by, 2, 34
- frustration, 53
- general, 130
- inconsistent acts and, 78, 79
- promissory estoppel and, 156–162
- specific performance, 78, 213
- statements in, truth of, 132
- variation by estoppel, 131
- convention, estoppel by**, 2, 35–37, 159
- conversion of property**, 133
- corporations**
  - books and records of, 127
  - debentures, 128
  - general, 125
  - ultra vires acts, 126
- counsel's statements, effect of**, 108
- criminal law, effect on**, 14, 102, 204, 253
- Crown**, 76, 87, 271
- debentures**, 128
- debtor/creditor issues**
  - creditor's conduct, 115, 147
  - joint debtors, 264–267
- deed, estoppel by**, *see also* **land transactions**
  - after-acquired estates, 178–180
  - children, 182
  - collateral actions, effect on, 174, 175
  - contents of deed, 164, 165
  - estoppel against estoppel, 181
  - estoppel in pais and, 163
  - execution of, 166
  - forgery, 167
  - fraud, 167, 183–186
  - general, 163–165
  - grantor/grantee, between, 168
  - illegal deeds, 165
  - innocent parties, 180, 184
  - misrepresentation, 186
  - money, receipt of, 176, 177
  - parties entitled to raise, 33
  - parties/privies, bound, 170, 172, 173
  - pleading of, 273
  - recital as to title, 166
  - recitals, 166, 169–171, 177
  - unregistrable deeds, 165
- default judgments**, 230
- definitions**
  - conduct or representation, 4
  - general, 1
- delay**
  - acquiescence distinguished, 68, 73
  - Crown, by, 76
  - fraud and, 75
  - general, 57, 72, 74
  - legal rights and, 73
  - limitations statutes, 72
  - relevant considerations, 59
  - title to land, 58
- detrimental reliance**, *see* **conduct or representation**
- discontinuance orders**, 235
- duress**, 183
- election**
  - acceptance of payment, 148
  - general, 68, 82, 84
  - illegal instruments and, 83
  - wills and, 85, 86
- encouragement by property owner**, 50–52

- equity/equitable estoppel**, *see* **conduct or representation; promissory estoppel**
- estoppel against estoppel**, 77
- estoppel by agreement**, *see* **conduct or representation**
- estoppel by conduct or representation**, *see* **conduct or representation**
- estoppel by contract**, *see* **contracts (general)**
- estoppel by deed**, *see* **deed, estoppel by**
- estoppel by pleading**, 103
- estoppel by record**, *see* **res judicata**
- estoppel by title**, *see* **title by estoppel**
- estoppel in pais**, *see* **conduct or representation; convention, estoppel by**
- evidence**
- admissions, 110
  - corporate records, 127
  - estoppel as rule of, 8, 195
  - judges remarks/observations, 243, 244
  - oaths, 207
  - onus of proof, 109
  - receipts, 146
- execution**, 78
- failure to reply**, *see* **silence**
- “feeds the estoppel”**, 178
- foreign judgments**, 249, 250
- forgery**, 120, 121, 167
- fraud**
- acquiescence and, 150
  - agent’s, 167
  - children’s contracts, 95
  - deeds, 167, 183–186
  - estoppel in absence of, 12
  - judgment obtained by, 245, 246
  - laches and, 75
  - negotiable instruments, 121
  - trespass and, 150
- frustration, effect of**, 53
- gifts**, 18
- habeas corpus**, 211
- historical considerations**, 1
- holding out**, *see* **conduct or representation**
- husband and wife**, *see* **married persons**
- illegal instruments**, 83, 165, 183
- inaction**, 41, 42
- inconsistent acts**
- approbation, 80, 81
  - contract governing, 79
  - election, 82–86
  - general, 78, 79
  - reprobation, 80, 81
- infants**, *see* **children**
- innocent parties**, 13, 60–64, 180, 184
- insurance contracts**
- acceptance of premiums, 135
  - late payments, 135
  - waiver of conditions, 134
- interlocutory judgments**, 224, 226
- interpretation and construction**, 5
- issue estoppel**, *see* **res judicata**
- judgments**, *see* **res judicata**
- labour law**, 78
- laches**, *see* **delay**

## INDEX

---

- land transactions, *see also deed, estoppel by; trespass***
- adverse possession, 81
  - approbation and reprobation, 81
  - boundaries, 124
  - building schemes, 122, 123
  - conveyance by estoppel, 11
  - delay and, 58
  - expenditures on by non-owner, 47–49
  - innocent parties, 13
  - ostensible ownership and, 62
  - proprietary estoppel, 154, 155
  - sales generally, 149
- landlord and tenant**
- acceptance of rent, 141
  - assignments, 138
  - general, 136, 139
  - option to purchase, 142
  - surrender, 140
  - tenant purchasing premises, 138
  - tenant raising, 137, 138
  - tenant vacating, 139
- legal rights, loss of**
- acquiescence, 68–71
  - knowledge of rights, 66, 67
  - laches, 72–76
  - waiver, 77
- liens, 47–49**
- limitation periods, 39, 59, 72**
- “lulling to sleep”, 41**
- merger, 259–261**
- minors, *see children***
- misrepresentation, *see conduct or representation; deed, estoppel by***
- mistake, mutual, 23, 37, 38**
- mistake, payment based on, 39**
- monetary expenditures on land**
- common law rule, 47
  - general, 50–52
  - lien resulting from, 49
  - statutory modifications, 48
- municipal corporations**
- by-law challenges, 41, 92
  - defective notices, 92
  - employee conduct, 90
  - general, 78, 93
  - irregular proceedings, 92
  - limitation periods, 91
  - statutory violations, 88
  - ultra vires acts, 89, 129
- mutuality, 31–33, 258**
- negligence**
- contribution between tortfeasors, 265
  - estoppel founded on, 38, 39, 54–56
  - estoppel in absence of, 12
  - negotiable instruments, forging of, 120
- negotiable instruments**
- forgery of, 120
  - fraud and, 121
  - general, 119
  - negligence and, 120
- non-assertion of rights, 42, 53, *see also abandonment; acquiescence***
- oaths, 207, 272**
- occupation, 65**
- omissions, 38**
- ownership, 60–64**
- parliamentary acts, *see statutory powers and rights***
- parties, *see conduct or representation; res judicata***

- partnerships**, 143, 144
- patents**, 145
- payments and receipts**
- agency situations, 115, 147
  - damages, of, 239
  - election and, 148
  - insurance, 135
  - landlord and tenant, 141
- penal statutes**, *see* **criminal law**
- pleadings**
- amendment, 107
  - estoppel by deed, 273
  - estoppel raised by, 103
  - requirements for, 104–106, 259, 272–274
  - *res judicata*, 270, 272–274
  - waiver and, 106
- principles of construction**, *see* **interpretation and construction**
- promissory estoppel**
- contractual provision barring, 158
  - effect of, 156
  - estoppel by convention distinguished, 159
  - general, 154, 158, 159, 162
  - public interest exclusion, 161
  - relationship between parties, 157
  - reselling by promisor, 156, 160
- proprietary estoppel**, 154, 155
- public policy**, *see* **statutory powers and rights**
- public rights**, *see* **statutory powers and rights**
- ratification**, *see* **acquiescence; agency**
- record, estoppel by**, *see* ***res judicata***
- releases**, 238
- replies**, *see* **silence**
- representation**, *see* **conduct or representation**, *see also* **representations involving specific issues, e.g., ownership**
- reprobation**, 80, 81
- real property**, *see* **land transactions**
- res judicata**
- abuse of process, 189–192, 197
  - action in personam, 248
  - action in rem, 248
  - adjudication on merits required, 206
  - administrative tribunals, 187
  - agency issues, 263, 267
  - alternative claims, 262, 263
  - appeal court rulings, 215
  - arbitration awards, 232
  - basis for, 196
  - causes of action, 200–204, 268, 269
  - collateral issues, 198
  - confessions, 231
  - consent judgments/orders, 228, 229
  - criminal law and, 204, 253
  - crown and, 271
  - default judgments, 230
  - defences not barred by, 268
  - demands, distinctiveness, 269
  - discontinuance orders, 206, 235
  - divided court, 236
  - dual cause of action, 262
  - erroneous judgments, 237
  - exceptions, 202, 227
  - foreign judgments, 249, 250
  - fraud, judgment by, 245, 246
  - general principle, 187, 188, 189, 193, 194, 196

## INDEX

---

- habeas corpus and, 211
- identity of issue, 198, 199
- interlocutory judgments, 224, 226, 227
- issue estoppel, 193, 202, 227
- joint debtors/wrong-doers, 264–267
- judgment, of conclusiveness, 208–215
- judgment, finality of, 222–233, 235–239
- judgment, scope of, 240–244
- judgments in rem, 247, 248, 256
- jurisdiction of court, 216–221
- mandamus and, 212
- merger and, 259–261
- new cause of action, 200, 252
- new trials, 215
- oaths, effect of, 207, 272
- parties, 255–258
- payment of damages, 239
- pleading of, 270, 272–274
- removal of bar, 210, 251–253
- rule of evidence, as, 196
- scope of, 188, 193, 194
- specific performance and, 213
- statutes, effect of repeal, 234
- rule of evidence, estoppel as**, 8, 195
- sale of goods**, 60, 61, 63, 64
- sale of land**, *see* **land transactions**
- shield or sword**, 10
- silence**
  - acquiescence and, 44
  - duty to speak, 38, 43
  - failure to reply, 45
  - general, 38, 43
  - mistake and, 46
  - knowledge of silent party, 43
- solicitor's statements, effect of**, 108
- specific performance**, 78, 213
- stare decisis**, 221
- status**, 65, 143
- statutory powers and rights**
  - duty to obey law, 99
  - estoppel available, 100
  - estoppel not available, 39, 98
  - penal statutes, 102
  - public policy, 100
  - ultra vires, 89, 100
  - waiver, 101
- surrender by operation of law**, 140
- sword or shield**, 10
- terminology**, 1
- trespass**
  - acquiescence and, 150
  - conduct of owner, 150, 151
  - joint trespass, 267
  - knowledge of owner, 152
  - prejudice to trespasser, 153
- ultra vires acts**, 89, 100, 126, 129
- unconscionability**, 3
- waiver**
  - general, 77
  - insurance contracts, 134, 135
  - option to purchase, 142
  - pleadings giving rise to, 106
  - statutory provisions, 101
- wills and estates**, 85, 86

## Index to Evidence

(All references are to paragraph numbers.)

- admissibility of evidence**
    - admissibility by consent, 54–56
      - express and unequivocal, 54
      - residual discretion to limit/exclude, 55
      - retroactive argument re reliability, 56
    - conditional admissibility, 51, 52
    - curative admissibility, 53
    - general, 48, 49
      - focus of rules of evidence, 48
      - question of law for trial judge, 49
    - limited admissibility, 50
    - procedural issues, 57–60
      - failure to object, 59, 60
        - civil trial, 59
        - criminal jury trial, 60
        - non-jury trial, 60
      - objections to admissibility, 57, 58
        - exclusion of jury, 58
        - explanation by tendering party, 57
        - timing and specificity of reason, 58
      - voir dire, 61–65
        - issue estoppel and res judicata, 65
        - procedure, 62–64
          - application to have evidence admitted in trial, 64
          - mini-hearing on particular issue, 62
          - timing of, 63
        - purpose, 61
  - contesting evidence, 81
  - findings of fact based on evidence before tribunal, 81
  - reliance on hearsay/inadmissible opinion evidence, 81
  - statutory requirements, 80
  - strict rules of evidence not applicable, 80
  - arbitrations, 78, 79
    - commercial arbitrators, 79
    - labour arbitrators, 78
  - criminal proceedings, 82–96
    - bail hearings, 84, 85
    - extradition hearings, 83
    - other criminal proceedings, 93–96
      - breach of conditional sentence order, 93
      - firearm prohibition, 95
      - forfeiture hearing, 96
      - recognizance, 94
    - preliminary hearings, 86 — 88
      - credible or trustworthy evidence, 87
      - right of defence to call witnesses, 88
      - sufficient evidence, 86
  - sentencing, 89–92
    - calling of evidence, 89
    - court not bound by ordinary rules of evidence, 90
    - dangerous or long term offender proceedings, 92
    - dispute of fact, 91
    - jury trial, 89
  - general, 82
  - custody and child protection hearings, 76
- application of law of evidence**
  - administrative tribunals, 80, 81

## EVIDENCE

---

- discovery, 75
- general, 74
- small claims court, 77
- calling and failing to call witnesses**
  - defence in criminal cases, 205–207
    - • latitude of prosecution in commenting on failure, 207
    - • limited discretion to comment upon failure, 206
    - • no obligation to answer prosecution case, 205
  - parties in civil cases, 199–201
    - • adverse inference discretionary, 200
    - • failure to call witness having important evidence, 199
    - • notice of persons who will not be called (Alberta), 201
  - prosecution, 202–204
    - • duty to present evidence essential to narrative, 202
    - • jury charge where explanation provided for not calling material witness, 204
    - • jury instruction re unexplained decision to not call material witness, 204
    - • no legal obligation to call any particular witness, 203
  - trial judge, 208–211
    - • at close of prosecution case, 211
    - • civil case, 208
    - • considerations of trial judge, 210
    - • criminal case, 209
    - • cross-examination, 211
- character evidence (civil proceedings)**
  - character as material fact, 519, 520
  - character of litigant, 521
  - character of non-litigant, 522
- character evidence (criminal proceedings)**
  - character of co-defendant, 511, 512
  - character of deceased victim, 514–517
    - • cases where evidence admitted, 515
    - • evidence of good character to rebut defence allegation, 517
    - • generally irrelevant, 514
    - • reputation, specific acts, psychiatric evidence, 516
  - character of other witnesses, 518
  - character of third party suspect, 513
  - defendant — evidence of bad character, 498–510
    - • defendant putting character in issue, 502–505
      - • • cannot be put into issue involuntarily, 504
      - • • claim to be person of character, 502
      - • • line between permissible repudiation of prosecution case and putting character in issue, 503
      - • • self-represented defendant, 505
    - • effect of character evidence, 510
    - • general rule, 498–501
      - • • admissibility in certain circumstances, 500
      - • • prima facie inadmissible, 498
      - • • use by trier of fact to assess credibility where admitted for another purpose, 501

## INDEX

---

- very old rule of common law, 499
  - types of permissible evidence, 506–509
    - cross-examination of witnesses re good reputation in community, 508
    - cross-examination on acts of discreditable conduct, 507
    - prior convictions, 509
    - relevant, material and compliant with rules, 506
  - defendant — evidence of good character, 495–497
  - expert opinion re lack of disposition, 496
  - limitations, 495
  - unlikely to have committed crime, 495
  - use of evidence by trier of fact, 497
- circumstantial evidence**
- consciousness of guilt or innocence, 32–41
  - after the fact conduct in criminal cases, 34
  - commission of lies, threats in civil actions, 32
  - conduct after event, 32
  - defendant admitting culpability for another offence, 37
  - evidence not capable of establishing, 36
  - evidence of consciousness arising in variety of ways, 35
  - limiting jury instruction re dangers, 39–41
  - remedial steps after accident, 33
  - term “consciousness of guilt” avoided, 38
  - distinguishing between direct and circumstantial evidence, 24
  - important examples, 25–47
    - general, 25
    - motive, 26–31
      - absence of, 26
      - charge to jury re evidence of absence of, 31
      - establishing, 28
      - identity and intent, 27
      - probative force balanced against prejudicial effect, 29
      - rarely required but relevant, 26
      - warning to jury of limited use, 30
  - opportunity and alibi evidence, 42–47
    - alibi evidence, 43
    - court scrutiny re whether evidence constitutes alibi, 44
    - evidence of opportunity, 42
    - failure to disclose alibi, 45
    - identification evidence clashing with alibi evidence, 47
    - timeliness of disclosure of alibi, 46
- class privileges involving confidential information**
- adultery, 889, 890
  - informer privilege, 896–906
    - procedure, 906
    - rationale, 896, 897
    - scope, 898–901
      - general, 898
      - information provided to parties other than police who engage in form of investigation, 899
    - privilege not extending beyond that of identity, 901



## EVIDENCE

---

- • • restriction on release of any information that may compromise safety of informant, 900
  - • waiver and exceptions, 902–905
    - • • agent provocateur, 905
    - • • innocence at stake exception, 903, 904
    - • • material witness to crime possessing information necessary to demonstrate innocence, 905
    - • • no court discretion to set aside, 902
    - • • no exceptions to rule in civil proceedings, 903
    - • • no unilateral waiver, 902
    - • • vital in determining search unreasonable, 905
  - juror deliberations, 886–888
    - • cannot be waived, 886
    - • matters intrinsic to deliberative process, 887
    - • trial relating to obstruction of justice re juror, 888
  - marital communications, 883–885
    - • intercepted communications, 884
    - • privilege must be raised in front of jury, 885
    - • statutory privilege, 883
    - • strictly confined to communications, 884
  - personal records in sexual offence proceedings, 891–895
    - • applications for production, 893
    - • personal information of all sorts, 892
    - • reasonable expectation of privacy, 892
  - • record having bearing on competence of witness to testify, 894
  - • statutory restriction, 891
  - • whether evidence should be disclosed to defendant, 895
- common law privilege**
- introduction, 907, 908
  - operation of privilege, 909–911
    - • balancing inquiry, 911
    - • confidentiality, 909
    - • valuable relationship, 9110
- communicating with witnesses during testimony**
- communicating during adjournment, 245
  - defendant in criminal case, 246
  - examination for discovery, 247
  - improper once witness begins giving testimony, 243
  - leave to communicate prior to re-examination, 245
  - no ethical rules in some provinces, 244
  - rules of professional conduct, 244
- compellability (parties and spouses: civil cases), 184**
- compellability (parties and spouses: criminal cases)**
- comment on failure to testify, 192–195
    - • Canada Evidence Act prohibition, 192
    - • comment on co-defendant’s failure, 193
    - • commenting on evidence generally, 194
    - • drawing proper inferences, 195
    - • judge sitting alone, 195

## INDEX

---

- • right of defence counsel to offer explanation, 193
- defendant, 185–190
- • compellability by co-defendant, 190
- • directors and officers of corporation, 186
- • immunity against compulsion personal, 186
- • multiple defendants jointly charged or tried together, 189
- • person charged with offence, 185
- • proceeding not criminal in nature/outcome not true penal consequence, 187
- • professional disciplinary proceedings, 187
- • residual protection invoked in other proceedings, 188
- opposing counsel, 196
- spouses, 191
- compellability (state officials)**
- board and tribunal members, 180–182
- • examination of decision making process, 181–182
- • immunity where operating in manner of court, 180
- Crown officials and members of Parliament, 174–176
- • compellability of Crown at discovery, 175
- • no special immunity, 174
- • parliamentary privilege, 176
- • scrutiny to avoid harassment, 174
- foreign officials, 177
- judges, 178, 179
- • professional immunity, 178, 179
- ombudsman, investigators and mediators, 183
- confessions (exclusionary rule)**
- derived confessions, 728, 729
- evidence revealed by involuntary confession, 730, 731
- onus of proof, 723–726
- • evidential burden, 725
- • person in authority, 724
- • ultimate burden re voluntariness, 723, 726
- person in authority, 719–722
- • conversations between private citizens, 719
- • definition, 720
- • mere fact that recipient works for state, 721
- • working for state not absolute requirement, 722
- police warning, 727
- scope, 699–701
- • real or physical evidence obtained from defendant, 700
- • used to identify defendant by comparison to recording, 701
- • voluntariness requirement, 699
- voluntariness, 702–718
- • fear of prejudice/hope of advantage, 704–709
- • • fear of prejudice, 706
- • • hope of advantage, 705
- • • induced by person in authority, 704
- • • moral or spiritual inducements, 707
- • • threats or promises not aimed directly at suspect, 709
- • • whether confession affected by inducement/threat, 708
- • generally, 702, 703
- • operating mind, 712, 713
- • oppression, 710, 711

## EVIDENCE

---

- tricks and misinformation, 714, 715
- young persons, 716–718
- caution by police required, 717
- legislation, 716
- statement made spontaneously before opportunity to comply with statutory requirements, 718
- confessions (functions of judge and jury)**
- jury, 734
- removal or prejudicial or irrelevant portions, 733
- voluntariness, 732
- confessions (introduction)**
- exclusion of statements received by persons not persons in authority, 696
- objective of confessions rule, 695
- statement made freely and voluntarily, 695
- confessions (right to silence)**
- breach of right under Charter, 740
- obtained by person not person in authority, 739
- right to not be spoken to by state authorities, 741
- confessions (voir dire)**
- appeal where not held, 738
- legal obligation to hold, 735
- right of co-defendant to participate, 737
- scope, 736
- waiver by defence, 735
- corroboration (civil proceedings)**
- approach to corroboration, 949–952
- by some other material evidence, 949
- independence an essential ingredient, 950
- material corroboration, 951
- testimony disbelieved, 952
- specific instances requiring corroboration, 932–948
- action by or against deceased person's estate, 935–940
- action by or against mentally disordered person, 941, 942
- breach of promise of marriage, 932–934
- abolishment of action, 932
- circumstantial evidence consistent with existence/non-existence of engagement, 934
- proof of breach and of promise, 933
- other cases, 946–948
- unsworn evidence of child, 943–945
- corroboration (criminal proceedings)**
- approach to corroboration, 953–955
- historically, 953
- instruction to jury, 955
- relaxed approach, 954
- corroboration warning, 966–983
- form of judge's warning, 975–979
- clarification of type of evidence capable of offering support, 978
- clear and sharp warning, 975
- drawing attention of jury to evidence in need of scrutiny, 976

## INDEX

---

- explanation of why special scrutiny required, 977
  - not required to outline every piece of evidence capable of providing confirmation, 979
  - is warning required?, 968–974
  - caution not automatically mandated, 973
  - dangers of convicting on uncorroborated evidence of child, 969
  - factors to be wary of, 972
  - formal rules changed at common law/by statute, 968
  - jailhouse informant, 974
  - need for clear and sharp warning, 971
  - unsavoury witness, 970
  - rationale and application, 966, 967
  - reviewing cautions on appeal, 980–983
    - failure of counsel to object, 982
    - focus on content of charge/not precise wording, 983
    - limited power to review, 980
    - warning of greater significance in jury trial, 981
  - corroboration where required by Criminal Code, 956–965
  - admissible evidence believed by trier of fact, 961
  - appellate intervention, 965
  - direct or circumstantial, 962
  - elements of technical definition, 959
  - independent of witness's testimony, 960
  - judge must define legal meaning for jury, 963
  - offences formally requiring corroboration, 956
  - perjury or subornation of perjury, 964
  - requirement applies only at trial, 958
  - where corroboration not required, 957
- credibility (attacking opposing party's witness)**
- collateral fact rule, 365–368
  - definition, 365
  - definition of collateral fact, 367
  - illustration of collateral issue, 368
  - importance of rule, 366
  - exceptions to collateral fact rule, 369–386
    - bias or interest in outcome, 383
    - general reputation for veracity, 384, 385
    - lack of testimonial qualifications, 386
    - prior conviction, 369–377
      - all witnesses including defendant in criminal case, 370
      - considerations in exercising discretion to exclude, 373
      - convictions having little bearing on credibility, 375
      - discretion of trial judge to exclude, 371
      - jury instruction, 372
      - legislation, 369
      - probative value enhanced by importance to trial, 374
      - similarity of to charges being tried, 376

## EVIDENCE

---

- timing of application to exclude, 377
- prior inconsistent statements, 378–382
  - cross-examination without first showing statement to witness, 379
  - drawing attention to any part of statement containing contradiction, 379
  - failure to strictly comply with legislation, 381
  - proof that statement authored by witness, 380
  - related to subject matter of case, 378
  - requirements where statement not recorded, 379
  - where admissible to prove truth of contents, 382
- limits on cross-examination, 346–364
  - good faith basis, 348–350
    - ethical rules of conduct, 350
    - hypothesis honestly advanced, 348
    - voir dire, 349
  - prior judicial findings on credibility, 359
  - prior sexual experience, 351–358
    - admissibility of evidence of sexual nature, 353
    - disputing physical symptoms attributed to defendant’s conduct, 355
      - in camera hearing, 358
      - jury instruction, 358
    - no factual basis to believe evidence would advance material issue, 357
    - prohibitions, 351, 352
- providing context to encounter, 356
- weakening credibility for reasons other than sexual nature of activity, 354
- question must be relevant to credibility, 346, 347
- special rules re defendants in criminal trials, 360–364
  - access to witness statements, 363
  - co-defendant questioning defendant about pre-trial silence, 362
  - exercise of pre-trial right to silence, 360
  - explanation of why other witnesses may be lying, 364
  - where defendant’s silence may become relevant issue, 361
- **credibility (attacking own witness)**
  - adverse party as witness, 339–344
    - agents of, 340
    - employees of, 340
    - notice of intention to call witness, 344
    - other party undertaking to call person, 341, 342
    - partners, officers, directors of, 340
    - person already having testified, 341
    - process of examination, 343
    - special provisions, 339
  - adverse witness, 331–338
    - generally, 331, 332
    - impeachment by prior inconsistent statement, 333, 334

## INDEX

---

- • permissible use of prior inconsistent statement, 335–338
  - • • features enhancing reliability of, 337
  - • • hearsay purpose, 336
  - • • impeaching credibility, 335
  - • • strikingly similar to other evidence, 338
  - • • truth of contents if adopted, 335
- attacking by contradiction, 325
- general prohibition, 323, 324
- hostile witness, 326–330
  - • determination of hostility, 328
  - • extinguishment of common law discretion, 330
  - • hostile animus toward party calling witness, 326
  - • judge must rule on whether witness hostile, 329
  - • scope of cross-examination, 327
- **credibility (demeanour)**, 299, 300
- **credibility (limits on enhancing)**
  - • prior consistent statements, 304–322
    - • • adoption of video recording, 312–315
      - • • • children/persons suffering from disability, 312
      - • • • not restricted to discussion of facts in indictment, 315
      - • • • person must adopt video in court, 313
      - • • • recording made within reasonable time after offence, 314
    - • • exculpatory statements made upon arrest, 321, 322
    - • • generally, 304, 305
    - • • prior identification, 311
  - • recent complaint and narrative, 316–320
    - • • evidence of narrative exception, 318
    - • • jury instruction on use of evidence of narrative, 320
    - • • narrative exception limited in scope, 319
    - • • victim of sexual crime exception, 316
    - • • victim of sexual crime exception abrogated, 317
  - • recent fabrication, 306–310
    - • • allegation arising implicitly from circumstances, 307
    - • • fabrication must be recent, 308
    - • • inconsistent versions of event, 309
    - • • prior consistent statements to rebut allegation, 306
    - • • recall of witness, 301
    - • • witness testified to something not raised earlier, 309
  - rule against self-serving evidence, 301–303
  - • defendants in criminal cases, 302
  - • general, 301, 302
- **cross-examination**
  - • any witness called by opponent, 231
  - • any witness in criminal proceedings, 231
  - • civil cases and multiple parties, 232
  - • failure to cross-examine a witness, 233–237
  - • recall of witness, 237
  - • rule in *Browne v. Dunn*, 233–235

## EVIDENCE

---

- • story incredible/romancing, 236
- improper restriction, 228
- leading questions, 229
- power to limit, 230
- purpose, 228
- scope, 229
- documentary evidence (authentication)**
  - attested document, 427, 428
  - authentication not required, 424–426
    - • admission of opposing party, 425
    - • ancient documents produced from proper custody, 424
    - • variety of common law and statutory provisions, 425
  - generally, 421–423
  - • doctrine of documents in possession, 423
  - • procedural requirement, 421
  - • proof of authenticity, 422
- documentary evidence (best evidence rule)**
  - exceptions, 408–420
    - • banker's book or records, 418
    - • business records, 416, 417
    - • document possessed by third party, 411
    - • document possessed or controlled by other party, 410
    - • electronic records, 419, 420
    - • general, 408
    - • judicial and public records, 413–415
      - • • admissibility of different types by copy, 415
      - • • legislation, 414
      - • • secondary evidence, 413
    - • primary evidence lost or destroyed, 409
    - • production inconvenient or impossible, 412
    - modern application, 404–407
      - • alteration of rule in Saskatchewan, 404
      - • any sort of written, audio or video recordings, 405
      - • application in Quebec civil proceedings, 404
      - • doubt about absolute nature of rule, 404
      - • evidence offered for purpose other than truth of contents, 406
      - • multiple originals created and executed, 407
      - • secondary evidence supplementing, 405
      - • technology enabling copies to be accurately made, 404
- evidence in rebuttal**
  - civil cases, 254–256
    - • leave to admit to rebut allegations made by defence witnesses, 255
    - • splitting of plaintiff's case, 254
    - • where not permitted, 256
  - criminal cases, 248–253
    - • by prosecution after close of case for defence, 250
    - • defence that might possibly be raised, 249
    - • evidence in reply, 252
    - • prejudice from improper splitting of case, 253
    - • rule against splitting case, 248
    - • where not permitted, 251
- evidence on appeal**
  - application by opposing party to tender reply evidence, 272
  - cogency of evidence, 268

## INDEX

---

- due diligence requirement, 267
- exceptions to restrictive approach, 273
- family law actions, 274
- reasonably capable of belief, 270
- reasonably expected to have affected verdict, 271
- test to admit fresh evidence, 266
- whether evidence decisive/potentially decisive, 269
- examination-in-chief**
  - prohibition against leading questions, 226
  - rule against leading questions not absolute, 227
- exclusion of witnesses**
  - contempt of court where order violated, 217
  - defendant in criminal proceedings, 219
  - duration of order, 216
  - exclusion of testimony where order violated, 217
  - experts, 218
  - invariably granted on request of party, 213
  - officer, 218
  - one order covering all witnesses, 215
  - opposing party from discovery, 221
  - party attending discovery of co-plaintiff/defendant, 220
  - party in administrative proceeding, 219
  - party in civil proceedings, 219
  - power to order exclusion, 212
  - presence essential to instruction of counsel, 218
  - wording of form of order, 214
- formal admissions**
  - civil proceedings, 66–69
  - agreed statement of facts, 68
  - conclusive regarding matters admitted, 66
  - leave to resile from, 69
  - made through pleadings, 67
  - request to admit, 67
  - criminal proceedings, 70–73
    - agreed statement of facts, 72
    - dispensing with proof of particular facts, 71
    - guilty plea, 70
    - informal admissions, 73
- fundamental conditions of admissibility**
  - judicial discretion to exclude, 17–23
    - focus on probative value and prejudicial effect, 17
    - prejudicial effect, 20
    - probative value, 18, 19
      - appraisal of credibility, 19
      - measuring, 18
    - threshold for exclusion, 21–23
      - civil case, 23
      - evidence tendered by defence, 22
      - prejudicial effect outweighs probative value, 21
  - relevance, 9–16
    - circumstantially relevant, 14
    - contextual inquiry, 13
    - direct evidence, 14
    - low threshold for admissibility, 16
    - nature of inquiry, 10
    - proof of facts material to matters in issue, 9
    - question of law for judge, 12
    - test for relevance, 12
    - testing reliability of witness, 11



**general nature and purpose of law of evidence**

- development, 2, 3
- • child of jury system theory, 2
- • hearsay and adversary system, 3
- purposes, 4, 5
- • autonomy of litigations, 4
- • competing social policy concerns, 5
- • search for the truth, 5
- scope, 1
- sources, 6, 7
- • Charter of Rights and Freedoms, 7
- • judge-made, 6
- • supplemented by legislation, rules of procedure, 6

**hearsay (approach to hearsay exceptions)**

- consideration under traditional exception and/or principled approach, 574
- numerous exceptions emerged incrementally, 571
- principle of reliability, 572
- principled approach to hearsay exceptions, 572
- reliability guaranteed, 572
- traditional exceptions modified to comply with principled approach, 573

**hearsay (definition of rule)**

- application of, 552
- explanations for existence of rule, 551
- most basic form, 549
- not rigidly enforced in every judicial forum, 553
- notoriously difficult to identify, 550

**hearsay (double hearsay)**

- each incidence must fall within exception, 577
- probative value more difficult to assess, 576
- twice removed from witness, 575

**hearsay (exceptions)**

- admissions by a party, 655–669
  - • adoptive admission, 660–663
    - • • contradicted or explained, 663
    - • • denial may equate to admission, 661
    - • • expressly or through action, conduct, demeanour, 660
    - • • particular difficulty in jury trial, 662
  - • effect of party’s admission against others, 669
  - • express admissions, 656–659
    - • • adverse interest, 656
    - • • entirety of admission tendered, 658
    - • • oral or in writing, 657
    - • • party not bound by informal admission, 659
  - • general, 655
  - • vicarious admission, 664–668
    - • • partner, 666
    - • • person in privity with party, 667
    - • • reports or entries as part of employment, 665
    - • • statement by representative party, 668
    - • • statement by third person admissible against a party, 664
- business records, 607–626
- banking records, 626

## INDEX

---

- • Canada Evidence Act, 614–620
  - • • admission of facts and opinions, 615
  - • • business defined broadly, 614
  - • • copy supported by authenticating affidavit, 619
  - • • double hearsay, 617
  - • • made during ordinary course of business, 616
  - • • procedural formalities, 618
  - • • records excluded from exception, 620
- • common law, 608–613
  - • • focus on reliability, 610
  - • • not necessary that declarant be deceased, 612
  - • • personal knowledge component, 611
  - • • requirements of common law exception, 608
  - • • statutory provisions, 613
- • general, 607
- • provincial legislation, 621–625
  - • • business, 622
  - • • double hearsay, 624
  - • • in usual and ordinary course of business to record statement of type, 623
  - • • made in regular course of business, 623
  - • • notice requirements, 625
  - • • record, 622
  - • • restriction on admission of opinion evidence, 622
  - • • some degree of contemporaneity, 623
  - • • specific rules in all provinces excepting Alberta, Newfoundland and Quebec, 621
- • co-conspirators statements, 670–678
  - • • against every member of conspiracy, 670
  - • • approach to admissibility in civil hearing, 678
  - • • general compliance with principled approach, 677
  - • • made for purpose of advancing conspiracy, 672
  - • • proof of conspiracy, 673, 674
  - • • proof of membership beyond reasonable doubt, 676
  - • • rationale for rule, 671
  - • • whether defendant member of conspiracy, 675
- • declarations against interest, 583–590
  - • • acknowledgement of lesser financial interests, 587
  - • • consequences cannot be too remote, 589
  - • • declarant must have known statement against interest, 585
  - • • declarant unavailable to testify, 584
  - • • declaration against penal interest, 588
  - • • exculpate person charged but not inculpate person named, 590
  - • • pecuniary, proprietary or penal interest, 583
  - • • personal knowledge of facts asserted, 586
  - • • dying declaration, 578–582
    - • • content must be admissible if deceased was witness, 582
    - • • homicide cases, 579
    - • • limited to discussion of circumstances relating to injuries causing victim's death, 581

## EVIDENCE

---

- • settled hopeless expectation of death, 578, 580
- historical declarations, 637–646
  - • aboriginal histories, 643
  - • ancient documents, 641, 642
  - • declarations as to pedigree or family history, 644–646
    - • • deceased member of family in relation to family genealogy, 644
    - • • oral or written statements, 646
    - • • spoken at time before any controversy began, 645
    - • • spoken by member of family, 645
  - • reputation evidence, 637–640
    - • • oral or written, 639
    - • • prove/disprove marriage/legitimacy of child, 640
    - • • public or general rights that affect all members of a community, 638
    - • • subject of declaration to ancient in time for primary evidence, 637
  - official records, 627–635
  - convictions and judgments of a prior court, 627–631
    - • • acquittal inadmissible in civil action to prove innocence, 630
    - • • Alberta, British Columbia, 627
    - • • civil judgment as proof of fact in issue, 631
    - • • common law, 628
    - • • production of certificate, 629
  - public documents, 632–635
    - • • admissibility requirements, 633
    - • • common law, 632
    - • • opinions/recommendations taken in nature of public inquiry, 635
    - • • personal knowledge of all facts recorded, 634
    - principled exception to hearsay rule, 679–694
      - • introduction, 679
      - • necessity, 690–694
        - • • deceased/cannot be located/non-compellable, 690
        - • • full rendition not possible without hearsay, 691
        - • • witness mentally or physically unfit, 693
        - • • witness provides different version and original version necessary to party's case, 694
        - • • witness refuses to testify, 694
        - • • witness residing in another jurisdiction, 692
        - • • witness unable to recollect details, 694
    - reliability, 680–694
      - • • acceptable indicators, 681–689
        - • • • adequate substitute to assess truth/accuracy, 686
        - • • • availability of witness, 687
        - • • • means of establishing inherent trustworthiness, 682
        - • • • highly contextual and fact driven, 681
        - • • • motive to fabricate, 693
        - • • • other factors considered, 684
        - • • • reliability of witness providing hearsay, 685

## INDEX

---

- substitutes that provide ability to assess demeanour, 688
  - surrounding circumstances inherently trustworthy, 681
  - surrounding evidence, 689
  - trier of fact able to assess truth and accuracy notwithstanding absence of cross-examination, 681
  - general meaning, 680
  - res gestae, 591–606
  - general, 591
  - spontaneous or excited utterance, 592–595
  - assessment of reliability, 593
  - contemporaneity, 592
  - necessity component, 595
  - statement made by non-participant, 594
  - statement accompanying and explaining fact in issue, 596, 597
  - statement of contemporaneous physical sensation, 598–600
  - contemporaneous, 598, 599
  - unavailability to testify not a pre-condition, 600
  - statement of contemporaneous state of mind, 601–606
  - circumstances of suspicion, 603
  - not used to establish intention of third party, 604
  - past state of mind, 603
  - relevance, 601
  - statement from testator, 605, 606
  - utilized for all purposes in relation to declarant, 602
  - statements in a document, 636
  - testimony in prior proceedings, 647–654
    - civil cases, 648–650
    - residual exception, 650
    - rules of court or evidence Acts, 649
    - three strict criteria, 648
    - criminal cases, 651–654
    - discretion to exclude notwithstanding compliance with statute, 652
    - residual exception, 654
    - statutory conditions, 651
    - warning to jury, 653
    - general, 647
- hearsay (non-hearsay statements)**
- generally, 558–561
  - particular circumstances of hearing and question in issue, 561
  - pointed and clear direction to jury as to use, 560
  - purpose relevant to proceeding, 559
  - truth of contents, 558
  - implied assertions, 569, 570
  - state of mind of listener, 567, 568
  - state of mind or knowledge of speaker, 564–566
  - circumstantial information re knowledge possessed, 566
  - proof of declarant's symptoms, 564
  - revealing speaker's emotional state, 565
  - verbal acts, 562, 563
- hearsay (statements covered by rule)**
- animal's conduct, 557

## EVIDENCE

---

- assertive conduct equivalent to statement, 555
- calculations/entries made by computer, 557
- not product of human witness, 556
- out-of-court statement, 554
- statement interpreted extremely broadly, 554
- **hypnosis, use of to revive memory**
  - evidence tendered by defence, 294
  - historical approach repudiated where testimony tendered by prosecution, 293
  - historically matter to be resolved by trier of fact, 292
  - no testimony in relation to any topic covered during hypnosis, 295
- **improperly obtained evidence**
  - Canadian Charter of Rights and Freedoms
    - appellate review, 787–790
      - considered afresh when exclusion decision made in alternative, 788
      - failure to consider factors critical to inquiry, 789
      - findings based on appreciation of testimony, 790
      - not possible to assess rationale for discretion, 789
      - reasonableness, 787
      - undue emphasis on one set of factors, 789
    - bringing administration of justice into disrepute: general framework, 759–761
      - considerable appellate deference, 761
  - factors, 759
  - objective to preserve public confidence in law, 760
  - burden of proof and procedural issues, 756–758
    - default option to admit evidence, 756
    - information establishing breach residing with state, 758
    - notice of intention to bring motion for exclusion, 757
    - ultimate burden of persuasion re s. 24(2), 756
  - court of competent jurisdiction, 748–750
    - old approach to s. 24(2), 750
    - tribunals, 748, 749
  - exclusion under section 24(1), 795, 796
  - impact on defendant's interests, 777–783
    - bodily evidence, 780
    - derivative evidence, 783
    - general, 777
    - non-bodily physical evidence, 781, 782
    - statements, 778, 779
  - introduction, 746, 747
  - obtained in a manner to bring administration of justice into disrepute, 752–755
    - absence of temporal, contextual or causal connection, 755
    - contextual or casual connection, 753
    - temporal connection between evidence and violation, 752
    - where presence of temporal link alone insufficient, 754

## INDEX

---

- • section 24(2) and civil cases, 791–794
  - • • evidence obtained by one government actor tendered by a different one, 793
  - • • evidence seized by government actor/tendered by private party, 794
  - • • government actor, 791
  - • • government actor responsible for violation party to civil action, 792
- • seriousness of Charter infringing conduct, 762–776
  - • • deceit or falsehoods by police, 774
  - • • good faith, 763–767
    - • • • absence of bad faith, 765
    - • • • continuum between extreme good faith error and blatant disregard for constitutional rights, 763
    - • • • deliberate failure to adhere to well-established legal standard, 766
    - • • • exceeding carefully tailored lawful authority, 767
    - • • • knowing and deliberate breach, 766
    - • • • police acting in accordance with statute, judicial decision ultimately found in conflict, 764
    - • • • unreasonably subjective belief in lawfulness, 766
  - • • gravity of breach, 768–770
    - • • • number of persons affected by police conduct, 770
    - • • • violations vary in terms of intensity/degree, 768
  - • • introduction, 762
  - • • pattern of disregard, 775, 776
  - • • systemic concerns, 773
  - • • urgency, 771, 772
- • society's interest in adjudication on merits, 784–786
  - • • exclusion extracting too great a toll on truth seeking goal, 784
  - • • importance of evidence to prosecution's case, 785
  - • • seriousness of offence, 786
  - • • value of evidence to trial, 785
- • standing, 751
  - common law, 743–745
  - exclusion in civil cases, 745
  - expansion of common law rule, 744
  - no discretion to exclude
- incompetence by rule of law**
  - children, 146–161
  - appreciation of moral obligation to tell truth, 147
  - common law, 146
  - inquiry, 147, 158–161
  - effect of taking evidence without securing promise to tell truth, 159
  - failure to conduct, 159
  - improper exclusion of child witness, 161
  - in jury's presence, 158
  - no expert evidence, 158
  - no right of examination/cross-examination, 158
  - omitting consideration of competence to testify under oath, 160
  - question of law for trial judge, 158

## EVIDENCE

---

- timing, 158
- presumption of competence, 155–157
  - children of any age competent, 155
  - discretion to allow testimony despite lack of understanding, 157
  - federal legislation, 156
- promising to tell truth, 152–154
  - any child under age of 14, 152
  - capable of observing, remembering, communicating, 153
  - understanding of what it means, 154
- statutory alteration of common law, 148
- unsworn evidence, 149–151
  - child of tender years, 149
  - short judicial inquiry, 150
  - warning to jury re frailties, 151
- judges, jurors and counsel, 171, 172
  - counsel, 172
  - judge, 171
  - jurors, 171
- incapacity owing to mental deficiency, 142–145
  - assessment of challenge by trial judge, 144
  - capacity to perceive, remember and communicate, 142
  - challenge to capacity of adult witness, 143
  - mute person, 145
  - testimony upon promise to tell truth, 144
- incompetence arising from commission of prior criminal acts, 162
- incompetence by interest in proceeding, 163
- oaths and affirmations, 131–141
  - affirmation, 138–140
    - equivalent to oath, 140
    - standard form, 139
    - witness can choose to affirm for any reason, 138
  - exceptions, 141
  - oaths at common law, 131–134
    - historical test of capacity to take oath, 131
    - no infringement of right to freedom of religion, 134
    - no particular form of oath prescribed, 133
    - relaxed test of capacity to take oath, 132
  - statutory requirements re oaths, 135–137
    - assumption of legal obligation to speak truth, 137
    - Canada Evidence Act, 135
    - detailed requirements in some provinces, 136
    - provincial legislation, 135
- spousal incompetence, 164–170
  - application of rule, 164–166
    - common law rule, 164
    - common law spouses, 166
    - divorced or irreconcilably separated, 165
    - marriage existing at trial date, 165
    - sham marriage, 165
    - statutory alteration of common law rule, 164
  - exceptions, 167–169

## INDEX

---

- • • certain types of offences regardless of victim, 169
- • • offence against person/liberty/health of spouse/child, 167, 168
- • • victim under 14 at time of crime, 169
- • incompetence rule extends to out-of-court testimony, 170
- judge's role in questioning witnesses**
- intervention necessary to ensure justice done, 238
- limits of permissible questioning, 239
- necessity to protect child's interest, 240
- unrepresented defendant, 240
- judicial notice**
- general, 984, 985
- judicial notice of fact, 986–998
  - • facts capable of authoritative demonstration, 998
  - • standard of proof required, 986–989
    - • • adjudicative fact, 987
    - • • adjudicative, legislative and social facts, 986
    - • • on point proving essential element of prosecution case or undercutting defence argument, 989
    - • • social or legislative facts, 988
  - • types of facts that may be judicially noted, 990–997
    - • • basic scientific principles, 994
    - • • fact proven before another court, 991
    - • • matters of commerce/trade that are notorious, 995
    - • • matters of common human experience, 993
    - • • matters of private nature, 996
    - • • particular location, 992
    - • • social and legislative facts, 997
    - • • variation over time, 990
- judicial notice of law, 999–1001
  - common law and statutes within areas where judge sits, 999
  - foreign law, 1000
  - law of other provinces, 1000
  - proclamations, 999
  - regulations, 999
  - subordinate legislation, 1001
- legal advice privilege**
- exceptions, 840–850
  - • furtherance of crime/fraud, 840–843
    - • • communications made for deliberate purpose of breaking law, 841
    - • • made for improper purpose, 843
    - • • whether purpose needs to be criminal in nature or made for lesser illegal objective, 842
  - • innocence at stake, 845–848
    - • • heavily restricted, 845
    - • • limited exception, 848
    - • • two prongs to exception, 846
  - • unclear whether communication would establish innocence, 847
  - • limitation by statute, 849, 850
  - • public safety, 844
- generally, 814–818
- definition, 814



## EVIDENCE

---

- duration, 818
  - requirements, 816
  - significance where person charged with crime, 815
  - substantive rule of law, 817
  - required elements, 819–828
  - communication between lawyer and client, 819–822
    - client, 822
    - indirect connection, 821
    - law students working in legal clinic, 819
    - licensed paralegals providing legal advice, 819
    - properly qualified lawyer, 819
    - technical inability to practice in jurisdiction, 820
  - communication made in confidence, 823–825
    - expectation or intention of parties, 823
    - no common interest between corporation/shareholders, 825
    - other parties present when communication made, 823
    - parties sharing common interest at time of communication, 825
    - presence of third party who shares common interest, 824
    - relative privilege where parties become adversaries, 824
  - communication made in course of seeking legal advice, 826–828
    - before formal retainer established, 826
    - facts or acts no part of communication made for purpose of legal advice, 828
    - received or made in non-legal capacity, 827
  - waiver, 829–839
    - accidental disclosure, 838, 839
    - compelled disclosure, 837
    - express waiver, 831–833
      - closely related information, 833
      - limited waiver, 832
      - prerequisites, 831
    - implied waiver, 834–836
      - client and lawyer becoming adversaries in litigation, 836
      - client putting knowledge of law in issue by relying on privilege communications, 834
      - state of mind, 835
    - right to waive, 829, 830
- legal burden of proof**
- burdens of proof generally, 98–100
    - definition, 98
    - evidentiary burden, 99
    - evidentiary burdens where party not having legal burden, 100
    - specific burdens on individual issues, 98
  - evidential burden of proof, 101–114
    - civil cases, 105–109
      - jury trial, 109
      - non-suit, 105
      - procedure governing non-suit, 106–108
    - criminal cases, 101–104
      - assessment of credibility on directed verdict, 102

## INDEX

---

- directed verdict of acquittal, 101
- limited weighing of evidence re circumstantial, 103
- withdrawing case from jury, 104
- evidential burdens upon defendant, 110–114
  - air of reality standard, 114
  - civil cases, 111
  - criminal trials, 112
  - particular defences, 113
  - significant in jury cases, 110
- ultimate burden of proof, 115–120
  - balance of probabilities, 115
  - burden on defendant of proving issue in criminal case, 120
  - guilt beyond reasonable doubt, 117
  - preponderance of evidence, 116
  - proof beyond reasonable doubt applied to case as whole, 119
  - requirements to establish proof beyond reasonable doubt, 118
- litigation privilege**
  - created for dominant purpose of actual or contemplated litigation, 854–859
    - absolute requirement, 854
    - copies made by lawyer of unprivileged documents, 859
    - not restricted to communication between parties or to lawyer-client relationship, 855
  - surrounding factors to assess purpose for creation, 857
- time for considering author's purpose, 856
- work product privilege, 858
  - limitations, 860–869
    - end of litigation, 864, 865
    - statutory intervention, 860–863
      - discovery provisions re information contained in report/document, 862, 863
      - expert opinions and reports, 861
      - names/addresses of persons expected to have knowledge of transaction, 861
      - statute and rules of court, 860
    - waiver and exceptions, 866–869
      - actionable misconduct, 869
      - legal advice exceptions, 866
      - material prepared for litigation relevant to testimony of witness, 868
      - waiver, 867
  - rationale, 851–853
    - claims carefully examined, 853
    - facilitation of investigation/preparation, 852
    - related but separate from legal advice privilege, 851
- opinion evidence (expert witness)**
  - admissibility question of law for trial judge, 437
  - court appointed experts, 477
  - dangers in use of experts, 435
  - exclusionary and procedural rules, 459–463
    - limiting number of experts, 459–461
      - procedural irregularity, 461
      - statutory, 459

## EVIDENCE

---

- whether applicable to individual issues or action, 460
- notice requirements, 462, 463
- factual foundation, 471–476
- data or material gathered specifically for opinion, 475
- facts indirectly learned, 472
- hypothetical scenario, 472, 473
- opinion based on facts personally observed, 471
- procedure re examining witness on different sources, 476
- second hand source material, 474
- function, 434
- necessity, 453–458
  - considerable deference by appellate courts, 455
  - contextual consideration, 454
  - information outside experience and knowledge of judge and jury, 453
  - ordinary person unlikely to form correct judgment if unassisted by person with special knowledge, 453
  - ultimate issue, 456–458
    - necessity requirement more strictly applied closer opinion comes to ultimate issue, 458
    - traditional approach, 456
    - traditional approach no longer applicable, 457
- opinion as to particular matters, 478–490
- credibility of a witness, 479–481
- disposition evidence, 485–487
- general, 478
  - law, 488–490
  - providing context to human behaviour, 482–484
- overwhelming of factual inquiry and diversion into collateral matters, 435
- qualification of expert, 464–470
  - expertise in specialized area, 465–467
    - beyond that of ordinary person, 465
    - deficiencies in practical/theoretical knowledge/ability, 466
    - opinion within scope of expertise, 467
  - general, 464
  - independence, 468–470
    - disqualification, 469
    - fulfillment of requirement, 470
    - duty to assist court, 468
- relevance, 438–452
  - logical relevance, 438
  - probative value and prejudicial effect, 439–444
    - extent to which assumptions controversial, 442
    - extent to which inquiry founded on unproven facts, 440
    - extent to which opinion supports inference requested, 441
    - level of complexity of expertise, 442
    - limitations on expert evidence, 443
    - special scrutiny, 439
    - tendered by defence in criminal proceedings, 444

## INDEX

---

- • • whether jury able to make effective/critical assessment of evidence, 442
- • • whether trial unduly lengthened/complicated, 442
- • reliability, 445–452
- • • flexible test re novel scientific theory/technique, 447
- • • general acceptance of theory/technique, 451
- • • judicial precedent re reliability of science, 452
- • • novel theory or scientific technique, 446, 448
- • • opinion merely conjecture, 445
- • • peer review and publication, 450
- • • technique successfully tested, 449
- weight of expert opinion, 491, 492
- opinion evidence (lay witness opinion), 432, 433**
- past recollection recorded**
  - criteria, 280
  - genuineness of absence of memory, 284
  - limited to evidence otherwise admissible, 285
  - reliability requirement, 281
  - separate rule of law, 279
  - timeliness requirement, 282
  - verification that details accurate when provided, 283
- present memory revived**
  - procedure by which memory revived in court, 277
  - prior to giving evidence, 276
  - quality of evidence/validity of memory questions of weight, 278
- presumptions**
  - Charter, 125–127
  - evidentiary burden to establish defence, 126
  - permissive presumptions, 126
  - reverse onus provisions, 125
  - test to determine validity of presumption, 127
  - general, 121
  - presumptions of fact, 122
  - rebuttable presumptions, 123, 124
- privilege against self incrimination**
  - common law and statutory privileges, 800–803
  - Charter, 803
  - does not extend to civil liability, 802
  - legislation, 801
  - objection to any answer tending to incriminate, 800
  - general, 799
  - section 7 of Charter, 808–813
  - principle of fundamental justice, 808
  - residual protection against use of derivative evidence, 809
  - section 13 of Charter, 804–807
  - evidence tendered on voir dire, 806
  - evidentiary burden re derivative use immunity, 810
  - information compelled by statute, 811–813
  - no form of objection required, 804
  - preconditions, 805
  - protection against subsequent use of evidence, 804

## EVIDENCE

---

- • protection from being indirectly compelled to incriminate, 806
- • when decision made, 807
- procedure in using testimonial aids**
- memory refreshed outside of court, 286–288
- • manner of refreshing memory legitimate area of cross-examination, 286
- • production of material utilized, 287
- • production of notes/documents reviewed by witness, 288
- • reference to any materials, 286
- refreshing memory in court, 289–291
- • independent recollection of facts contained therein, 290
- • production of documents to opposing party, 291
- • voir dire, 289
- public interest immunity**
- cabinet confidences, 925–928
- • certification, 927
- • immunity from disclosure for twenty years, 925
- • immunity over material inadvertently turned over, 928
- • material constituting, 926
- information in the public interest, 914–919
- • balancing test, 914, 915
- • jurisdiction and procedure, 917–919
- • • common law claim, 917
- • • hearing under Canada Evidence Act, 917
- • • order of production to inspect validity of objection, 918
- • • rules of evidence relaxed in Canada Evidence Act hearings, 919
- • manner of objection, 916
- raised by federal/provincial/territorial governments, 913
- special information, 920–925
- • procedure, 921–924
- • • ex parte representations by Attorney General, 922
- • • notification of Attorney General, 921
- • • residual power of government to issue certificate prohibiting disclosure, 924
- • • stay of proceedings or dismissal of counts, 924
- • • transfer to Federal Court to determine objection, 922
- • • two stage process to consider release of material, 923
- • type of information covered, 920
- withholding information on grounds of public interest, 912
- real evidence**
- appearance, 390
- audio recording, 394–396
- characteristics of testimonial evidence, 394
- • relevance, 396
- • requirements for interception of private communications, 395
- experiments and demonstrations, 400
- film and videotape, 392, 393
- photographs, 391
- physical objects, 388, 389

## INDEX

---

- video and computer reconstructions, 401
- view, 397–399
  - any stage of trial, 398
  - discretionary decision, 398
  - place, thing or person, 397
  - purpose, 399
- re-examination**
  - leave to re-examine on unexplored issues/ground covered in direct, 242
  - matters arising out of cross-examination, 241
- re-opening the case**
  - civil cases, 257–260
    - complexity of evidence/need to call evidence in reply, 259
    - criteria considered, 257
    - once judgment pronounced, 260
    - reasonable diligence in discovering evidence, 258
  - criminal cases, 261–265
    - considerable deference on appeal, 265
    - defence seeking to re-open, 263
    - once verdict entered, 264
    - prosecution permitted to re-open, 262
    - test, 261
- settlement privilege**
  - exceptions, 876–882
    - separate proceedings, 880–882
      - admissions having different purpose, 880
      - compelling reason to set privilege aside, 881
      - criminal proceedings, 882
    - threats and fraud, 877–879
      - fraudulent communications, 878
      - objective evidence, 879
      - oppressive threats, 877
      - threats of legal nature, 877
      - threats with objective contrary to public interest, 877
  - waiver, 876
  - scope and rationale, 870–875
    - admissions made during plea bargaining, 875
    - bona fide effort to reach compromise, 873
    - conditions for privilege, 871
    - encouragement of negotiation, 870
    - implied condition of negotiations, 870
    - negotiations conducted in confidence with intention that admissions not utilized, 872
    - terms of settlement, 874
    - words “without prejudice”, 872
- similar fact evidence (civil proceedings)**, 548
- similar fact evidence (criminal proceedings)**
  - balancing probative value and prejudicial effect, 526–537
    - generally, 526, 527
    - link to defendant, 529
    - prejudice, 533–537
      - acquittal on facts providing basis of similar fact, 537
      - judge alone trials, 536
      - moral prejudice, 533
      - reasoning prejudice, 534
    - probative value, 530–532
  - requisite degree of similarity, 528

## EVIDENCE

---

- instructing the jury, 542–545
  - • limited purpose, 542
  - • no general disposition inference, 542
  - • no limiting instruction where evidence has value in establishing motive, 544
  - • satisfaction that incident occurred and committed by defendant, 543
  - • special instructions where evidence used to prove identity in multi-count indictment, 545
  - similar acts to establish identity, 538–540
  - similar facts to establish motive, 541
  - timing, 546, 547
- **similar fact evidence (introduction)**
    - categorical approach, 525
    - exception to rule against evidence of bad character, 523
    - potential for prejudice, distraction, time consumption, 524
  - **witness testimony and language**
    - Charter right of witness to assistance of interpreter, 223
    - interpreter, 222
    - interpreter, form of oath, 225
    - interpreter, inquiry by judge of skill, 225
    - judge not to act as interpreter, 225
    - official language legislation, 224

## Index to Execution

(All references are to paragraph numbers.)

- absconding debtors**, 189, 190,  
*see also* attachment of property;  
Mareva injunctions
- affidavits (garnishment)**
- addresses, 734
  - amendment, 726, 729
  - amount due, 725, 728, 730
  - before judgment, 719
  - deponent's qualifications, 717, 718, 726
  - errors in, 725–729, 731, 733, 735
  - examination on, 777
  - forms, sufficiency of, 732
  - “information and belief”, 723, 724
  - jurisdiction of court, and, 716
  - nature and cause of action, 719, 720
  - non-compliance with rules, 722, 726, 731
  - sufficiency/contents of, 719–721, 725, 727, 730, 732
  - time for swearing, 715
- agreements for sale**
- crops, effect on, 97, 102
  - execution against, 80–86, 97, 102
  - garnishment of payments, 622, 623
- agriculture/farming**, *see* cattle;  
crops/grain; exemptions
- arbitration awards**, 50
- arrest/imprisonment of debtors**, 807, 808, 809, *see also*  
examination in aid of execution
- attachment of property**, *see also*  
garnishment; Mareva injunctions
- affidavits, 545, 548–554
  - Alberta procedure, 547, 766
  - availability, 545, 546, 550
  - British Columbia procedure, 543, 580
  - compliance with Rules, 549
  - evidence, 548
  - general, 543, 544
  - Manitoba procedure, 548, 551
  - priorities, 547
  - Saskatchewan procedure, 13, 548, 552
  - service of order, 555
  - setting aside, 551, 553, 556, 557
- automobiles**, *see* exemptions
- “bailiff”**
- Alberta, 5
  - Saskatchewan, 8
- bankruptcy/insolvency**
- charging orders, 805
  - exemptions, 218, 219
  - garnishment and, 670, 676
  - priorities and, 437, 453, 487–489, 762, 767, 769, 770
- book debts/choses in action**, 127, 759, 765
- builders liens**, *see* priority  
(garnishment)
- cattle**, 69, 180
- charging orders**
- bankruptcy proceedings, 805
  - contempt proceedings, 804
  - costs, securing, 804
  - Federal Court, 14, 806
  - funds in court, on, 802, 803



- shares, on, 115–118
- chattel mortgages**
  - execution, 87
  - exemptions, 136–138, 186, 193
  - garnishment, 707
  - priority, 231, 470, 471
- chauffeurs**, 145, 146
- choses in action**, *see* book debts/choses in action
- civil enforcement**, *see* “execution”
- common/joint tenancy**, 150
- conditional sales**, 87, 135
- condominiums**, 153
- constitutional issues**
  - arrest/imprisonment of debtors, 531
  - paramountcy, 69
- contempt**, *see* arrest/imprisonment of debtors; charging orders; examination in aid of execution; Mareva injunctions; sheriffs; writ of sequestration
- contents of writ**, *see* issuing writ of execution
- coroner, as sheriff (British Columbia)**, 6
- corporations**, *see also* shares
  - examination of, 505, 517, 520
  - execution against generally, 58, 59
  - exemptions, 143, 188, 189
  - extraprovincial corporations, 122–124
  - shareholder loans, 684
- costs**, *see* examination in aid of execution; garnishment; priority/distribution (execution creditors); seizure
- creditor**, *see* “execution”
- criminal law**
  - arrest/imprisonment of debtors, 531, 807, 808
  - compensation under, effect, 3, 188
  - seizure and, 132, 257, 287, 309
- crops/grain**
  - crop payment agreements, 102–105
  - execution against generally, 94–97, 239, 240
  - exemptions, 132, 165, 167
  - federal legislation, paramountcy, 69
  - fraudulent transfers, 98–101
  - seizure of, 262, 303
  - title/right to, 378
- Crown claims/agencies**
  - Crown prerogative, 431, 432
  - execution against, 62
  - general, 48
  - priority, garnishment, 761
  - writ of extent, enforcement by, 24
- death of debtor**
  - exemptions, effect on, 220–225
  - joint tenancy, effect on, 75
- debtor**, *see* “execution”
- debtor’s prison**, *see* arrest/imprisonment of debtors
- declaratory judgments**, 50
- definitions**, *see* specific entries, e.g., execution
- distribution among creditors**, *see* priority/distribution (execution creditors); priority (execution creditors/third parties); priority (garnishment)
- dower interests**, 152

## INDEX

---

- duration of execution**, *see* expiry/renewal; satisfaction
- effect of execution**, *see* lien, execution as
- elegit**, 11
- enforcement creditor**, *see* “execution”
- enforcement debtor**, *see* “execution”
- entry on land**, *see* seizure
- equitable execution**
- Alberta legislation, 494, 495
  - availability, 14, 490
  - charge, creation of, 493
  - equitable interest in land, against, 176
  - estate in remainder, against, 492
  - impediments justifying, 491
  - money subject to charging order, against, 177
  - shares, against, 121, 122
- examination in aid of execution**
- Alberta, 496, 517, 529
  - British Columbia, 496, 497, 500, 501, 510, 521, 530–532
  - committal, refusing to answer, 529–538
  - costs of, 539, 540
  - court’s power re, 516
  - federal court, 496, 501, 503, 510, 513, 523, 536
  - general, 518, 524, 527
  - Manitoba, 496, 498, 501, 519, 520, 534
  - non-attendance, committal for, 529–538
  - notice to debtor, 509
  - objection to questions, 515, 525, 526, 529–538
  - parties examinable, 501–508, 517, 520, 523
  - procedure, 509–513, 514
  - procuring attendance, 509
  - production of documents, 528
  - return of nulla bona not required, 338, 496
  - right to (Alberta), 496
  - right to (British Columbia), 496, 500, 501
  - right to (federal court), 496, 501
  - right to (general), 496, 490
  - right to (Manitoba), 496, 498, 501
  - right to (Saskatchewan), 496, 501, 502
  - Saskatchewan, 496, 501, 502, 522, 535
  - use in other proceedings, 541, 542
- “execution”**, *see also* lien, execution as; issuing writ of execution
- Alberta, 5, 68
  - British Columbia, 6
  - criminal law compensation, 3
  - Federal Court, 9
  - general, 2
  - Manitoba, 12
  - Saskatchewan, 8, 13, 231
- exemptions**
- abandoned goods, 188
  - bankruptcy/insolvency, 218, 219
  - burden of proof re, 174, 195–199
  - chattel mortgage, goods subject to, 136–138, 186, 193
  - chauffeur’s, 145, 146
  - conditional sale goods, 135
  - construction/interpretation, 129, 194
  - crops, 165, 167
  - death of debtor, effect, 220–225

## EXECUTION

---

- determination by court, 134, 171
- exceptions, 185–189, 195
- farming operations, 131, 139–141, 147, 148, 175, 179, 180, 197
- fraudulent conveyances/preferences, 210–217
- goods, 130–148, 185–187, 200, 201
- “goods and chattels”, 194
- history/purpose of, 128
- household furnishings, 130, 133
- insurance proceeds, 141
- jewellers, 145, 146
- land/homestead, 149–167, 178, 196, 198, 199, 202–209
- livestock, 179, 180
- loss of, 171–175, 200–209
- “materials”, 155
- mobile homes, 157
- nature/extent, generally, 171–180
- partnership property, 168–170
- persons entitled to, 181–184, 220–225
- pianos, 130
- proceeds of sale, 201, 202
- provincial/federal conflicts, 21
- rents/profits, 165–167, 183
- sale of exempt chattels, 381
- selection of property, 171, 172, 191–193
- tools/trade implements, 131, 139–148, 151
- transfer/mortgage of property, effect, 200–217
- **expiry/renewal**, *see also* satisfaction
  - Alberta, 387
  - British Columbia, 388
  - execution prior to, effect, 392
  - renewal writs, 390, 391
  - Saskatchewan, 389
  - time for, 386
  - withdrawal of writ, 421
- **extent**, *see* writ of extent
- **farming**, *see* cattle; crops/grain; exemptions; stay of execution
- **fees**, *see* seizure
- **fieri facias de terris**, 11–13
- **fixtures**, 91–93, 251
- **floating charges**, 475
- **forgery**, 43
- **forum of writ**, *see* issuing writ of execution
- **fraudulent conveyances/preferences**, 98–101, 210–17
- **garnishment**, *see also* affidavits (garnishment); attachment of property; Mareva injunctions; priority (garnishment)
  - affidavit in support, 715–735, 777
  - after judgment, 576, 577, 578
  - agent’s commission, 627
  - agents holding money, 677
  - agreements for sale, payments under, 622, 623
  - assignments, effect of, 599, 671
  - bailments and, 570
  - bankruptcy/insolvency situations, 670, 676
  - before judgment, 579–588, 646
  - bills of exchange, 624, 653–655
  - binding nature of, 569, 592–594
  - building contracts, 628–630
  - charging orders, 115–118, 802–804
  - chattel mortgagee selling goods, 707

## INDEX

---

- cheques deposited, 680
- conditional debts, 650
- costs, 589, 752, 754, 755
- “current obligation”, 590
- damages claims, 602
- debt accruing due, 566, 567, 591, 595, 613, 650, 652, 701
- “debt or liquidated demand”, 583–86
- defences, 703, 711
- difficulty in calculating amount owing, 601
- discharge of garnishee, 704–706
- discontinuance of underlying action, 710
- effect of order, 685, 686, 687, 701
- equities subject to, 574
- execution, surplus of funds of, 679
- exempt property, sale of, 673
- “future obligation”, 590, 618
- future unascertained/unassignable debts, 651, 652
- garnishee/garnishor relationship, 688
- general, 14, 564–570, 578, 601, 700
- government, of, 626, 645, 646, 681–683
- grounds/availability, 564–570, 576–589
- guaranteed investment certificates, 608
- impecuniosity of garnishee, 702
- indebtedness disputed, 687, 698, 699, 700, 701–703
- insurance proceeds, 615–617, 669
- joinder of parties, 736, 737
- joint debts, 603, 656–659
- jurisdiction of court, 565, 695, 716
- jurisdiction, territorial, 748–50, 753
- just discounts, 728
- legacies, 618–620
- liens, effect of, 675
- lines of credit, 611
- liquidation proceedings, effect of, 670
- maintenance payments, enforcement, 571–575
- maintenance payments, of, 631, 632
- money in bank, 603–612
- money in court, 660, 681
- mortgage payments, 621
- native persons, 609, 647–649
- non-appearance/failure to pay, 687, 689–691, 692
- partnership debts, 656–659
- payment into court, 575, 692, 693–697, 702, 744, 775
- payment out, 702, 738–745, 801
- pensions, 572, 644, 666
- procedure (general), 708–714
- promissory notes, 624, 653–655
- property attachable (general), 590–594, 595
- R.R.S.P.s, 666
- rent payments, 625, 626
- sale of goods and, 597, 672, 673, 678
- service of order, 592, 714, 782
- setting aside, 586, 714, 766, 771–801
- settlement payments, 180, 596, 600
- shareholder loans, 684
- situs of debt, 565
- solicitor holding funds, 613, 614, 671

## EXECUTION

---

- stay pending appeal, 751
- stockbroker holding funds, 598
- taxes, 661
- trial of issue, 743, 746, 747
- trust moneys, 610, 613, 619, 623, 630, 662–669, 675
- varying of order, 766
- wages, of, 612, 633–646, 675
- general matters**, 1
- goods**, *see* exemptions; priority (execution creditors/third parties); property/interests subject to execution; seizure
- grain**, *see* crops/grain
- guarantors/sureties**, 52
- historical issues**, 3–13
- homestead**, *see* exemptions
- hotels**, 164
- household furnishings**, *see* exemptions
- imprisonment**, *see* arrest/imprisonment of debtors
- improvements**, 84
- injunctions**, 22, *see also* Mareva injunctions
- insurance proceeds**, 141, 615–617, 669
- interests**, *see* property/interests subject to execution
- interpleader**, *see* garnishment; priority (execution creditors/third parties); priority/distribution (execution creditors)
- introduction**, 1–3
- issuing writ of execution**
  - form/contents, 42–46
  - general, 15, 25, 26, 29, 40
  - irregularities in, 30–35, 36, 40, 41, 46
  - loss of, after, 25
  - registration of writ, 68
  - setting aside, 36–38
  - spelling errors, 41
  - when writ may issue, 27, 28, 40
- jewellers**, 145, 146
- joint tenancies**, 63, 74–76, 150, 353
- judgment**, *see* “execution”
- judgment creditor**, *see* “execution”
- judgment debtor**, *see* “execution”
- land**, *see* agreements for sale; exemptions; lien, execution as; mortgages; priority (execution creditors/third parties); property/interests subject to execution; seizure
- leases**, 152
- legislation**
  - British, applicability, 115
  - construction/interpretation, 129
  - paramountcy, 69
- “levy”**, 255, 441, 442
- lien, execution as**
  - Alberta, 226, 227, 302, 461, 462, 472–475
  - British Columbia, 228, 229, 476
  - loss of, 245–249
  - maintenance orders, 233
  - Manitoba, 230, 477
  - property bound, 237, 239–241, 243, 244, 256
  - registration, 37, 234–236
  - Saskatchewan, 231, 232, 465, 478, 479
  - subsequent court orders and, 440
- limitation periods**, 28, 388, 389

## INDEX

---

- loss of execution**, *see* lien, execution as
- maintenance orders**, *see also* matrimonial property
- execution to enforce, 53, 233, 356
  - garnishment of, 631, 632
  - garnishment to enforce, 571–575
  - priority, 464
- Mareva injunctions**, *see also* attachment of property; garnishment
- breach of, 563
  - factors governing grant, 561
  - jurisdiction of court, 558, 559, 560, 562
- matrimonial property**, *see also* maintenance orders
- exemptions and, 188, 190
  - home, execution against, 74, 156
- mines/minerals**, 90
- mobile homes**, 157, 251
- money/security for money**
- guaranteed investment certificates, 608
  - method of attaching, 110
  - money garnished by debtor, 107
  - property given as security, 112
  - R.R.S.P.s, 111
  - seizure of, effect, 106, 397, 437, 438
  - surplus after sale, 108
  - undelivered cheques, 109
- mortgages**, *see also* chattel mortgages; exemptions
- executions, sharing in (Saskatchewan), 429, 486
  - foreclosure, surplus, 434, 446
  - garnishment and, 617, 621
  - insurance proceeds, 617
  - merger, 242, 365
  - priority, 476, 478, 479, 484–486, 489
  - rents, collection of, 406
  - seizure of, 77–79
- motor vehicles**, 250
- municipal corporations**, 58, 59
- partnerships**
- execution against property of, 56, 57
  - exemptions, 168–170
  - garnishment of, 658, 659
  - receivership of, effect, 443
- patent rights**, 126
- persons entitled to execution**
- arbitration award recipients, 50
  - assignee of judgment creditor, 51, 52
  - criminal law compensation, 3
  - Crown, 48
  - guarantors/sureties, 52
  - judgment creditors, 49
  - maintenance order recipients, 53
  - personal representatives, 54
  - solicitor for plaintiff, 47
  - specific performance recipients, 55
- persons subject to execution**
- corporations, 58, 59
  - Crown agencies, 62
  - joint tenants, 63
  - partnerships, 56, 57
  - personal representatives, 61
  - public utilities, 58
  - school boards, 59
  - trade unions, 60
- pianos**, 130
- possession**, *see* writ of possession

- poundage**, *see* seizure
- praecipe**, *see* issuing writ of execution
- prejudgment remedies**, *see* attachment of property; garnishment; Mareva injunctions
- priority (execution creditors/third parties)**
- insolvency proceedings, effect of, 487–489
  - land, 67, 472–486
  - maintenance orders, 464
  - personal property, 231, 279, 280, 457–471
- priority/distribution (execution creditors)**, *see also* attachment of property
- Alberta procedure, 422
  - bankruptcy assignment, subsequent, 437
  - British Columbia procedure, 424, 425, 433
  - concurrent seizures, 423
  - costs, as to, 452–455
  - court orders, effect of, 440
  - Crown claims, 431–433
  - federal procedure, 737
  - foreclosure surplus, 434, 446
  - funds in court, 446, 447
  - garnishment proceedings, 448, 449
  - general, 67, 231, 422–440
  - interpleader proceedings, 450, 451
  - maintenance orders, 464
  - Manitoba procedure, 426, 427
  - money not levied out of debtor's property, 441–445
  - money seized in specie, 437, 438
  - municipal tax claims, 432
  - preferred creditors, 435
  - repayment after distribution, 436
  - Saskatchewan procedure, 231, 429, 430
  - social service tax claims, 433
  - timing of, 439
  - wages, 455–456
  - workers compensation claims, 432
- priority (garnishment)**
- Alberta procedure, 758
  - assignment of book debts, 759, 765
  - bankers liens, 768
  - British Columbia procedure, 759
  - builders liens, 759, 760
  - Crown claims, 761
  - floating charges, 756
  - general, 737, 757, 762, 763
  - insolvency proceedings, 769, 770
  - liquidation proceedings, 762, 767
  - statutory “freeze order”, 764
- prison**, *see* arrest/imprisonment of debtors
- property/interests subject to execution**, *see also* exemptions; priority
- agreements for sale (land), 80–86, 97, 102
  - book debts/choses in action, 127
  - cattle, 69
  - chattel mortgages, 87
  - conditional sales, 87
  - crops/grain, 69, 94–105
  - fixtures, 91–93
  - general, 64–69
  - goods/chattels, 87–90
  - improvements, 84
  - land, 68, 70–86

## INDEX

---

- matrimonial property, 74
  - mines/minerals, 90
  - money/security for money, 106–11
  - mortgages held by debtor, 77–79
  - patent rights, 126
  - priorities and, 64
  - R.R.S.P.s, 89, 111
  - shares, 113–125
  - survivorship rights, effect of, 75
  - trust property, 65, 72, 83
  - vessels, 88
- public utilities**, 58
- receivership**, *see* equitable execution; partnerships; property/interests subject to execution
- registration**, *see* issuing writ of execution; lien, execution as
- renewal of execution**, *see* expiry/renewal
- rents/profits**, 165–167, 183
- returns**
- amendment of, 335, 336
  - duty of sheriff/bailiff, 331
  - estoppel arising from, 334
  - location for filing, 333
  - nulla bona, 337, 338
  - timing of, 332
- R.R.S.P.s**, 89, 111, 350, 666
- sales (general)**
- adjournment/cancellation of, 372
  - debtor's right to, 382
  - execution creditor purchasing, 382, 383
  - irregular sales, 384
  - right/title of purchaser, 375–381, 384
  - sheriff's powers/duties/liabilities, 366–374, 379, 381
  - statutory compliance, 385
  - void sales, 385
- sales (goods)**
- Alberta, 339
  - British Columbia, 340, 349
  - election re land/goods, 349
  - excessive sales, 348
  - Federal Court, 343
  - Manitoba, 341
  - notice of, 351, 352
  - payment upon sale, 344
  - R.R.S.P.s, 350
  - refusal of order for, 346
  - Saskatchewan, 342
  - third party claimants, 347
  - warranties excluded, 345, 373
- sales (land)**
- Alberta, 353
  - British Columbia, 354, 355
  - compliance with procedure, 362
  - confirmation of, 364
  - duty of court, 363
  - election re land/goods, 350
  - Federal Court, 359
  - Manitoba, 356
  - mortgages, 365
  - notice/advertising of, 358–361
  - return of nulla bona, 332, 357
  - Saskatchewan, 357
- satisfaction**, *see also* expiry/renewal
- payment, by, 393, 394
  - release of seizure, by, 396, 397
  - seizure, by, 395
- school boards**, 59
- scope of title**, 1
- securities**, *see* money/security for money; shares



## EXECUTION

---

**seizure**, *see also* priority (execution creditors/third parties); returns; sales

- abandonment of, 272–280, 334
- costs of, 276, 316, 317, 319, 330
- effect of, 284–288
- entry upon land, 305–307
- Farm Debt Review Act, 258
- fees/expenses/poundage, 315, 316, 318–324, 329, 330 (Supp.)
- generally, 14, 250–255, 295
- goods already under seizure, of, 281, 283
- invalidity of, 30, 33, 39, 294, 301, 309, 325, 327
- “levy”, 255, 441, 442
- liability of sheriff, 308–314, 325–329
- motor vehicles, 250
- notice requirements, 258
- objection to, 252
- obstruction of officer, 257
- powers/duties of sheriff, 289–294, 295, 296–307
- release of, 396, 397
- right of distress (Alberta), 282
- satisfaction, as, 395–397
- setting aside, 38, 394
- sufficiency of (goods), 259–265, 277
- sufficiency of (land), 266–271
- third party rights, 279, 280
- trespass, 39, 301, 309, 327
- wrongful seizure, 325–329

**sequestration**, *see* writ of sequestration

**shares**

- British statutes, applicability, 115
- charging orders, 115–118
- equitable execution, 121, 122

- execution generally, 113
- extraprovincial companies, 122–124
- receivership and, 119
- registration of transfer, 120
- seizure of, 251
- street certificates, 118, 123

**sheriffs**, *see also* returns; sales; seizure

- contempt of court by, 88
- definitions, 5, 6, 8
- liability of, 37, 308–314, 325–329, 348, 368–370, 379

**ships**, *see* vessels

**specific performance**, 55, 86

**stay of execution**, *see also* garnishment

- costs of application, 417
- federal, 411
- general, 388, 398–404, 409–411
- pending appeal, 407–420
- refusal, grounds for, 403
- statutory, 398
- text for, 414
- withdrawal of writ by creditor, 421

**sureties**, *see* guarantors/sureties

**tax claims**, *see* garnishment; priority/distribution (execution creditors)

**tools/trade implements (exemption)**

- “calling”, 142–145
- corporate ownership, 143
- farming operations, 131, 139–141, 147, 148
- insurance proceeds, 141
- materials, 155
- “occupation”, 144
- “profession”, 145

## INDEX

---

- “trade”, 142–145
- vehicles, 139–141, 146, 147
- trade unions**, 60
- trespass**, *see also* seizure
  - general, 309, 327
  - irregular judgment, seizure under, 39
  - third party’s property seized, 301
- trial of issue**, 747
- trusts/trustees**, 65, 72, 83, 117, 151, *see also* garnishment
- vehicles**, *see* exemptions
- venditioni exponas**, 13
- vessels**, 88, 283
- wages**, *see* garnishment; priority/distribution (execution creditors)
- winding-up**, *see* bankruptcy/insolvency
- withdrawal of writ**, 421
- workers compensation**, *see* priority/distribution (execution creditors)
- writ of assistance**, 18
- writ of attachment**, 13, *see also* attachment of property
- writ of delivery**
  - availability, 10–13, 14
- writ of elegit**, 11
- writ of execution**, *see* “execution”; specific subjects, e.g., issuing writ of execution
- writ of extent**, 24
- writ of fieri facias de terris**, 11–13
- writ of possession**
  - availability, 10–13, 14, 15
  - effect of, 18
  - execution of, 16, 300
  - issue of, 16
  - parties entitled to, 17
- writ of sequestration**
  - availability, 10, 11, 13, 14
  - breach of injunction, for, 22
  - chose in action, against, 22
  - conditions precedent to, 21
  - court’s powers re, 23
  - nature/effect of, 20
  - property subject to, 20, 22
  - writ of possession and, 17
- writ of venditioni exponas**, 13
- writs available**
  - Alberta, 10
  - British Columbia, 11
  - Manitoba, 12
  - Saskatchewan, 13

## Index to Executors and Administrators

(All references are to paragraph numbers.)

- acceptance of office**, *see also*  
appointment
- application for probate, by, 11, 12
  - conduct, by, 14
  - defence of action, by, 13
- accountings**, *see also*  
compensation; costs; receivers  
(appointment of); security bonds;  
solicitor's fees
- appointment/order for, effect of service, 537
  - approval by beneficiaries, 642, 643
  - conversion of estate before, 213
  - costs of, 519, 636, 637
  - debts owed by executor to testator, 632, 640
  - devastavit, 480, 481, 644
  - discretion of court re, 624, 625
  - dispensing with, 642
  - duty to keep accounts, 205, 628
  - evidence on, 638, 646
  - examination of witnesses, 638
  - executor exercising duties, 625
  - executor purchasing estate lands, 320, 382
  - failure to make
    - judgment against executor, 490
    - liability general, 205
    - removal for, 39
  - foreign executor, to, 28
  - form of, 628
  - income tax penalties, disallowance, 633
  - justification of payments, 629
  - liability re failure, 205, 490
  - litigation pending as bar to, 645
  - notice to pass accounts
    - parties entitled to, 634, 635
    - waiver, 642
  - order for, effect of, 639
  - persons entitled to seek, 226, 626
  - sale of land, re, 558
  - statutory (two year) requirement, 624
  - time period subject to, 641, 646
  - waiver of, 643
- actions**, *see also* administrator ad litem; administrator pendente lite; contracts; costs; insurance; limitation of actions
- actions (debts, on)**, *see also* debts (payment of)
- executor's liability, 426, 542, 632
  - executor's personal debts, 445
  - fraudulent transactions, 447
  - garnishment, 448
  - judgments, 481
  - negotiable instruments, 129, 444
  - plene administravit, failure to plead, 426
  - set-off, 446, 675
  - situs of debt, 129, 444
- actions (foreign executor/administrator)**, 29–31; 454–457
- actions (general)**
- abuse of process, 461
  - before probate/administration granted, 406, 653
  - beneficiary commencing, 120, 448, 546
  - breach of trust, 390

## EXECUTORS AND ADMINISTRATORS

---

- commencement generally, 118, 119, 128, 172, 397, 413
  - conditions precedent to, 374
  - continuation on executor's death, 405
  - deceased, against, 410
  - discretion re bringing, 209, 231, 269
  - executor under incapacity, where, 413
  - improper commencement of, 407, 414
  - jurisdiction for bringing, 125
  - loans to estate, re, 356
  - official administrator, involving, 140
  - power of public trustee, 416
  - removal from Surrogate Court, 169–171
  - representation of estate, adequacy of, 477, 656, 657
  - security bonds, on, 389
  - wills, re challenging of, 67, 68, 185, 188, 412
  - wills, re variation of, 415, 473
- actions (judgment/execution)**
- costs, 476, 481, 484
  - default judgment, 478, 481
  - devastavit, 480, 481
  - executor commencing, 546
  - form of, 476
  - garnishment, 482–484
  - general, 476, 480, 481, 488, 490
  - litigation between two beneficiaries, 546
  - personal judgment against executor, 485, 486, 488
  - plene administravit, failure to plead, 488
  - representation of estate, adequacy of, 477, 656
  - setting aside, 479, 486
  - warrant for distress, 487
- actions (parties)**
- administrator ad litem, 408
  - beneficiaries', 397, 453
  - cestui que trust, 399
  - co-executors, 401
  - counterclaims, in, 402, 404
  - executor de son trot, 25, 409
  - executor only in capacity of executor, 414
  - infants/minors, 394, 397
  - joinder of, 397
  - land, actions re, 397
  - mortgage actions, 411
  - native persons, involving, 398
  - personal representative required, 119, 400
  - public trustee, 416
  - specific performance actions, 404
  - status, challenging of, 419
- actions (practice)**
- appeals, on, 420, 429, 432
  - discovery, 417, 418
  - estoppel, 429
  - evidence, corroboration, 427
  - extensions of time, 432
  - injunctions, 421
  - location of proceedings, 422, 423
  - res judicata, 425
  - status, challenging, 419
  - stays of proceedings, 424
  - striking out claim, 428
- actions (tort)**
- against executor/administrator, 438
  - by executor/administrator, 434–436, 535
  - conflict of laws, 442

## INDEX

---

- defamation, 438
- fatal accidents, 435, 440
- funeral expenses, recovery, 437, 535
- insurance benefits, re, 441
- personal property, re, 443
- undue influence, involving, 439
- administration**, *see* grants; official administrator; powers (administration/management)
- administration de bonis non**, 649
- administration durante absentia**, 164
- “administrator”**, 1, *see also* official administrator
- administrator ad colligenda bona**, 612
- administrator ad litem**, *see also* actions
  - action brought before appointment, 408
  - adequacy of representation, 477, 656, 657
  - appointment (Alberta), 470
  - appointment (grounds for), 654, 656, 657, 659
  - commencement of action by, 662
  - definition of, 652
  - duration of appointment, 658
  - fatal accident cases, 668
  - general, 408, 652
  - guardian ad litem, 661
  - ICBC as, 669
  - incapable, 45
  - mortgage/foreclosure actions, 665–667
  - necessity for, dispensing with, 657
  - official administrator as, 653
  - powers/rights of, 662–664
  - premature actions, 653, 661
  - probate, effect of grant of, 658
  - Public Trustee as, 660
- administrator pendente lite**, *see also* grants
  - general grant of administration, 142
  - official administrator, role of, 140
  - part of estate, for, 138
  - powers/rights, 139
  - purpose of appointment, 138
  - remuneration of, 141, 611, 612
- advertising for creditors**, 360, 538
- advice/directions of court**
  - actions, re whether to bring, 209, 231, 269, 395
  - appeal of application for, 276–279
  - classes of beneficiaries, re, 272
  - compromise of claim, re, 254
  - conditions precedent, re, 431
  - costs of application for, 277–280, 500, 506–508
  - determining rights of parties, 203, 266
  - discretion of representative, hampering, 209, 231, 261
  - effect of court order giving, 279
  - family relief provisions, re, 270
  - interest, re right to, 274
  - interpretation of will, 267, 280
  - market for/price of shares, 264
  - next-of-kin, determinations re, 272
  - notice limiting questions answerable, 265, 267
  - notice of application for probate, re, 273
  - place for seeking, 281

## EXECUTORS AND ADMINISTRATORS

---

- premature/hypothetical questions, 263
  - revocation of grant, re, 186
  - right to death benefits, disputes re, 271
  - service of notice, re, 275
  - survivorship issues, effect of, 282
  - whether property being homestead, 270
  - whether property part of estate, 268
- agents**, *see* powers (agent, appointment of)
- ancillary grants**, *see* foreign executors/administrators; resealing/ancillary grants
- appointment**, *see also* discharge; grants; removal
- acceptance of office, 11–14
  - committees, appointment of, 45
  - corporations, 6
  - death of executor/administrator, 5
  - definitions, 1
  - discretion to interfere with, 7, 8, 37, 39
  - evidence of, 2
  - executor, appointment of, 4
  - executor according to tenor, 15
  - executor de son tort, 14, 23–27
  - foreign executors/administrators, 28–34
  - infants as, 35, 36
  - intention of testator, 15
  - interim administrators, 10
  - jurisdiction re, 56
  - presumption of good faith, 38
  - renunciation of, 12, 16–22
  - scope of, 3
  - substitute executors, 5
  - time limitations on, 5
  - trust companies, 232
  - trustees, replacement, 4
  - witnessing of, 2
  - wording of, 2
- beneficiaries (executors as)**
- common law, at, 670
  - general, 674
  - presumptions re, 572, 573, 671, 673
  - statute, under, 670
- bodies, rights re**, 381
- bona vacantia**, 309
- bonds**, *see* security bonds
- borrowing**, *see* powers (borrowing)
- breach of trust**, *see also* contracts; duties; powers; trusts/trustees
- accounting, 320, 382
  - action for, 390
  - bank accounts, closing of, 394
  - costs of action re, 527
  - court approval, failure to obtain as, 393
  - creditor conniving in, 385
  - devastavit, 480, 481, 644
  - fraudulent conversion, 384
  - general, 391
  - liability for, 384
  - mortgages, involving, 392, 545
  - negligence as, 388
  - presumption of good faith, 38
  - purchase of estate assets, 320, 382
  - sale of land, re
    - excessive sales, 317
    - improper purpose, for, 383
    - inadequate price, 390

## INDEX

---

- • liability, 384
- security bonds, action on, 389
- unauthorized contracts as, 386
- waste as, 387
- burial instructions**, *see* funeral expenses/monuments
- carrying on business**, *see* powers (carrying on business)
- children**, *see* infants/minors
- claims**, *see also* actions; debts, payment of; powers
- claims (compromise of)**
  - advice and directions re, 254
  - approval by court, 254
  - challenge by beneficiaries, 257
  - costs of, 258
  - fatal accident claims, 255
  - former executor, suit against, 259
  - general, 254
  - legatees, with, 260
  - Public Trustee, by, 256
- claims (evidence of)**
  - co-executor acknowledging debt, 467
  - corroboration, need for
    - • general, 427, 547
    - • independent corroboration, 549, 553
    - • nature of, 548, 550, 552
    - • not required, where, 554, 555, 556
    - • statutory requirement, 548, 551, 556
  - debt, of, 289, 467, 555
  - legacy, re agreement to leave, 531
  - solicitor for claimant giving, 549
- claims (general)**
  - advertising for creditors, 360, 538
  - corporate debts, deceased shareholder's liability, 541
  - Crown, by, 539
  - executor/administrator personally, against, 426, 542
  - extension of time, 540
  - infants/minors, support of, 532
  - initiated by deceased, 396
  - land, promise to devise, 533
  - legacy, agreement to leave, 531
  - notice disputing, 460, 463, 536, 537
  - set-off, 675
  - trust moneys, right to, 534
  - trust property, right to, 545, 656
  - vesting orders (Saskatchewan), 543, 544
- committee, appointment of**, 45
- compensation**, *see also* accountings; costs; solicitor's fees
- compensation (from income/corpus)**, 615, 616
- compensation (jurisdiction re)**, 617–619
- compensation (measure of)**
  - accountant's fees, 597, 598
  - administrator pendente lite, 141, 611, 612
  - basic work, 599
  - collection of income, relevance, 609
  - criteria for determining (general), 585, 586
  - estate management, for, 594
  - fixed by will, 571–574, 576, 596, 598
  - general rule, 582
  - gross sum/annual salary, 599

## EXECUTORS AND ADMINISTRATORS

---

- increase/special circumstances, 581
- inequality between trustees, 603
- interior compensation, 577, 589
- management fees, 578
- multiple capacities, acting in, 596
- percentage, use of, 582, 584, 586, 606
- phases of administration, 583
- “professional” charges, 595, 598
- reduction of
  - • delay, 600
  - • failure to account, 560
  - • fiduciary breaches, 560, 602
  - • misconduct generally, 600
  - • negligence, 203, 580
  - • profiting from trust, 578
  - • set-off, 489, 601
  - • unnecessary work by solicitor, 564
  - • unprofessional administration, 561
  - • unreasonable expenses, 246
  - • unreasonable sales, 580
- set-off against, 489, 601
- solicitor’s fees, 590–593, 595
- tariffs, 605
- compensation (right to)**
  - accountant’s fees, for, 562
  - agreements outside of will, 576
  - appeals re, 579
  - carrying on testator’s business, 567, 568, 599
  - disallowance (general), 629
  - estate management, for, 594
  - evidence, 587
  - executor acting as witness not affecting, 559
  - general, 557, 559
  - gifts, setting aside, 575, 576
  - indemnity re costs of carrying on business, 567
  - interim compensation, 577, 589
  - legacy vs. compensation, 572, 573, 671, 673
  - loss/reduction of
    - • careless record handling, 562
    - • failure to account, 560
    - • fiduciary breaches, 560, 602
    - • negligence, 580
    - • profit from trust, 578
    - • unnecessary work by solicitor, 564
    - • unprofessional administration, 561
    - • unreasonable expenses generally, 246
    - • unreasonable sales, 580
  - pre-estimate/pre-taking of, 577
  - profit from trust, deduction of, 578
  - real estate commissions, for, 570
  - salaries, 563, 599
  - services outside official duties, 563, 566
  - solicitor’s fees, for
    - • debt collection, re, 569
    - • deduction from executor’s compensation, 564
    - • double payment barred, 565
    - • executor’s personal liability for, 293
    - • general, 558, 590, 613, 630
    - • resealed letters, re, 614
    - • taxation of, 590, 631, 634, 635
  - support and maintenance from estate, 672
- compensation (value of estate)**
  - bank deposits, 621
  - collection of income, 609



## INDEX

---

- debts not to be deducted, 620
- general, 586, 588, 606, 610
- gross income, 608
- in specie transfers, 610
- land, 622
- resealed letters, re, 614
- securities, 623
- shares, 607, 621
- conflict of interest**, 43, 47, *see also* breach of trust, duties (general); trustees
- contracts**, *see also* breach of trust; claims against estate; duties; mortgages; powers
  - administrator entering before grant, 451
  - agreements for sale, 210, 452
  - beneficiary having power of attorney, 449
  - duty to perform, 197, 229
  - executor de son tort, by, 24, 27
  - funeral expenses, re, 247
  - guarantees, 283
  - insurance, 217, 218, 430
  - land, agreement to devise, 533
  - legacy, agreeing to leave, 531
  - legislation affecting, 446
  - liability on, 225, 450
  - mistake, 201
  - quantum meruit, 293, 552
  - signing of, 319
  - specific performance, 404
  - unauthorized, 386
  - with estate (executor's), 199, 343
- corporations**
  - as executors, 6, 91
  - shareholder liability for debts, 541
  - winding-up of, 287
- corpse, rights re**, 381
- costs**, *see also* accountings; compensation; solicitor's fees
  - accountings, of, 519, 636, 637
  - action establishing agreement re life estate, of, 494
  - administration costs as estate debt, 292–294
  - administrator acting for two estates, where, 492
  - advice/directions, effect of, 277–280, 500, 506–508
  - appeals (unwarranted), of, 499, 506
  - application for advice/directions, of, 277–280, 500, 506–508
  - application for grant, of, 76
  - beneficiary defending action, 515
  - bills of, form/content, 604
  - breach of fiduciary duty, alleging, 527
  - dependants' relief matters, 520, 521
  - discretionary nature of, 520, 528
  - distribution of estate, disputes re, 379
  - executor indebted to estate, effect of, 498
  - executor's personal liability for, 491, 500, 505, 506, 510, 512, 514, 518, 519, 527, 529
  - failure to deliver up documents, effect of, 516
  - form of order for, 476
  - fraud allegations, effect of, 517
  - full indemnity, 528
  - judgment/execution, on, 476, 481, 484
  - ownership of award, 497
  - partial success, effect of, 493
  - payment out of estate, 497, 501, 506–508, 510–513

## EXECUTORS AND ADMINISTRATORS

---

- portion of estate liable for, 501, 507
  - protection from unreasoned litigation, 529
  - reasonableness/good faith, effect of, 510, 514
  - removal of administrator, motion for, 50, 502
  - sale of property, leave for, 509
  - security for, 520, 522
  - settlement costs re, 258, 504, 518
  - solicitor-and-client, basis for awarding, 495, 496, 502, 526
  - special costs, 503, 524, 525
  - taxation, 604
  - testamentary capacity, challenging, 514
  - unauthorized actions, of, 505
  - undue influence, action alleging, 514
  - unsatisfied judgments fund, against, 523
- death, of executor/administrator**
- administration de bonis non of original estate, 649
  - administrator of deceased administrator, status of, 651
  - co-executor still living, 650
  - continuation of action after, 405
  - executor of deceased executor, status of, 647, 650
  - general, 5, 93, 105
  - multiple executors, death of one, 175
  - resealing, rights re, 158, 648, 159
- death, proof of**, 58, 63, 126
- debts (payment of)**, *see also* actions (debts on); claims against estate; powers
- administration costs as, 292–294
  - Crown liability for, 309
  - evidence of debt, 289, 555
  - executors' fees and expenses, 615, 616
  - foreign jurisdiction, in, 305
  - general, 288, 297, 542
  - general estate vs. specific bequests, liability of, 295
  - intestate succession legislation, 304
  - limitation periods, effect of, 197, 293
  - mortgage of land for, 298
  - personalty vs. realty, liability of, 296, 299–305
  - priority among claimants, 306–309
  - priority over legacies, 288, 290
  - quantum meruit claims, 293, 552
  - residue, charging of, 303
  - sale of land for, 298, 302, 317
  - solicitor's fees, 293
  - time for, 236
  - wrongful payment of, 291, 555
- dependants'/family relief**, 9, 362, 462, 474, 520, 521, *see also* infants/minors
- devastavit**, 480, 481, 644, *see also* accountings; breach of trust
- disbursements**, *see* compensation; costs; solicitor's fees
- discharge**, *see also* appointment; removal; renunciation of office
- advisory executor/trustee, 55
  - effect, 52
  - general, 51–54, 619
  - jurisdiction re, 56, 619
  - statutory provision for, 51

## INDEX

---

- distribution of estate**, *see also* debts, payment of; powers
- administrator pendente lite, by, 139
  - advertising for creditors, 360, 538
  - agreements re, approval by court, 372
  - classes of beneficiaries, 272
  - corporate assets, sale of, 376
  - costs, disputes re distribution, 379
  - dependant's relief applications, effect of, 362
  - determination of shares by court, 374
  - discretion re, 365
  - distribution of property
  - "executor's year", 361
  - general powers re, 357, 360, 367, 448
  - homestead, sale of, 302, 312, 377
  - income from property, 367
  - infant's share, 364, 372
  - interest on legacies, 361, 368
  - land/proceeds of land, 121, 176, 178, 366, 370, 371, 377, 378, 380
  - legatee not found, 329
  - liability of personal representative, 204, 360, 373
  - life estate, valuation of, 377
  - Manitoba, 203
  - moneys paid into court, 375
  - negotiable instruments, 129
  - next-of-kin, to, 359
  - overpayments, rectifying, 369
  - personal property, law governing, 117
  - real property, law governing, 117
  - relief from, 359
  - residue of estate, 262, 367, 371
  - timing of, 361
- duties**, *see also* breach of trust; powers; trustees
- duties (general)**
- accounting, 205
  - care of assets, 196
  - clearing estate, 195
  - contracts, performance, 197, 229
  - contracts, with estate, 199
  - creditors, to, 195, 196, 209
  - education/maintenance of children, 220
  - fiduciary, 199
  - good faith, presumption of, 38
  - initiate proceedings, 395
  - intermingling of funds, 202
  - Manitoba, 203
  - minors, to, 204
  - mistakes, effect of, 201
  - payment of debts, 195, 197
  - payment of money owed, 228
  - probate applications, on, 64
  - pursuing claim initiated by deceased, 396
  - trustee, as, 195, 196, 198–200, 209
  - wishes of testator, re, 207
- duties (insurance)**, 217, 218
- duties (life tenant/remaindermen, to)**
- conversion, effect of, 214, 348
  - encumbrances, effect of, 215
  - even handedness, 214
  - succession duties/debts, liability for, 216
- duties (realization of assets)**
- agreements of sale, 210

- discretion re actions, 209, 231, 269
- possession, obtaining, 208
- succession duties, 216
- trustee, as, 209
- undervalued sales, 318
- duties (repairs/maintenance)**, 219
- duties (selling/converting)**
  - accounting, 213
  - construction of will, 211
  - errors/mistakes re, 489
  - even handedness between beneficiaries, 211
  - investment after conversion, 213
  - life tenant's rights, 214
  - postponement of, 211, 212
  - wasting/hazardous assets, 348, 349
- duties (standard of)**
  - exemptions, 206
  - general, 205
  - gross negligence, 206
  - liability for breach, 203, 205, 206, 489
  - wishes of testator, re, 207
- escheat**, 75, 309
- estoppel**, *see also* res judicata
  - delay in seeking revocation, 187
  - notice of dispute, effect of service, 537
  - variation of trust, action re, 429
- evidence**, *see* claims against estate (evidence); grants (applications)
- execution**, *see* actions (judgment/execution)
- “executor”**, 1
- executor according to tenor**, 15
- executor de son tort**, *see also* appointment
  - actions against, 25, 409
  - actions by, 24, 26
  - contracts with, 24, 27
  - definition of, 23
  - general, 14
  - judgment against, payment of, 25
  - subsequent appointment, effect of, 24
  - trespass, 23
- family relief**, *see* dependants'/family relief
- fees**, *see* compensation; costs; solicitor's fees
- fiduciary duties**, *see* breach of trust; duties
- foreign executors/administrators**, *see also* resealing/ancillary grants
  - accounting by local executor, 28
  - actions by, 29–31, 454–457
  - administrator durante absentia, 164
  - Alberta, 31, 33
  - British Columbia, 110
  - jurisdiction over, 28
  - Manitoba, 30
  - money paid into court, 34
  - negotiable instruments, 29
  - sale of land, 32
  - Saskatchewan, 32
  - testator/intestate domiciled abroad, 115
  - trusts, administration of, 33
- funeral expenses/monuments**
  - common law duty, 245
  - contracts re, 247
  - monuments/tombstones, 245, 250
  - payment by executor, 245

## INDEX

---

- reasonableness, 246
  - recovery, 247–249, 437
  - small estates, 246
  - spousal liability for, 247
  - wishes of testator, 245
- garnishment**, *see* actions (debts, on); actions (judgment/execution)
- good faith**, *see* breach of trust; duties
- grants**, *see also* administrator pendente lite; resealing/ancillary grants; security bonds
- grants (applications for)**
- amendment of letters, 72
  - bonds (administration) need for, 71
  - capacity of testator, challenging, 68
  - costs of, 76, 82, 83
  - duty of executor, 64
  - escheat to Crown, effect of, 75
  - evidence, 68, 69
  - general vs. special purpose executors, 72
  - laches, 78
  - notice to parties, 66, 273
  - probate to one party, letters to another, 88
  - proof in solemn form, 67, 68, 185, 188
  - search for will, 73, 136
  - solicitor, need for, 64
  - survivorship legislation, 63
  - testamentary documents, disputes re, 64
  - timing of, 65, 66
  - trust company, by, 74
  - widow seeking in maiden name, 77
- grants (effect of)**, *see also* death of executor/administrator
- date of, 118, 127, 128, 172–174
  - death, testator’s not proved by, 126
  - evidence of will, 173
  - general, 123, 124, 128, 172, 177, 180
  - land, dealing with, 121, 176, 178
  - territorial jurisdiction of, 125
  - title of executor/administrator, 128, 172–174
- grants (general)**
- amendment of, 192
  - fees, 79, 82, 83
  - need for, 5
  - refusal of (grounds for), 7
  - relation back to testator’s death, 2, 118, 128
  - temporary grants, 85
  - testators/intestates domiciled abroad, 115–117
  - variation of, 12
- grants (inventory of property)**
- binding nature of, 79
  - errors, damages for, 81
  - fees for filing, effect on, 79
  - oath required on filing, 80
  - valuation of property, 79
- grants (jurisdiction re)**
- common law, 37
  - death, proof of, 58, 63
  - general, 37, 56, 59, 62
  - intestate persons domiciled abroad, 115
  - mandamus, availability of, 61
  - “matters and causes testamentary”, 56
  - native persons, 57
  - property within jurisdiction, 59

## EXECUTORS AND ADMINISTRATORS

---

- removal from Surrogate Court, 169–171
- survivorship, 63
- territorial, 125
- testamentary instruments, powers re, 60
- testators domiciled abroad, 115–117
- grants (limited)**
  - Alberta, 164
  - discretion of court, 160, 162
  - executors appointed until their death, 167
  - general, 160, 162, 168
  - infant's share, re, 166
  - multiple executor situations, 163
  - partial intestacies, 165
  - will prepared but not signed, 167
- grants (necessity for)**
  - actions, authority re, 118–120
  - authority of executor/administrator, 118, 172–174
  - evidence of title, as, 118, 173
  - judicial trustees, powers of, 122
  - land, dealing with, 121, 176, 178
- grants (persons entitled to),** *see also* death, of executor/administrator
  - administrators
    - • adoption, effect of, 103
    - • creditors as, 99
    - • discretion of court, 101
    - • general, 94
    - • grounds for opposing, 98, 101
    - • person causing death, 107
    - • powers of attorney, 102
    - • priority of applicants, 97, 99, 100
    - • renunciation by prior rights holders, 102, 104
  - adoption, effect of, 103
  - beneficiaries, 96
  - common law, at, 37, 84
  - corporations, 6, 91
  - creditors, 99
  - executors (alternate), 92
  - executors (general), 84, 86, 88
  - executors (non-resident), 88, 90
  - guardian of minors, 35
  - infants/minors, 36
  - loss of right, 18, 86, 87
  - official administrator (British Columbia)
    - • administrator ad litem, as, 653
    - • appointment by testator, 113
    - • discretion of court, 114
    - • fee paid before grant, 82
    - • foreign executor's rights, 110
    - • general, 108, 110, 113
    - • intestate non-resident person's estate, 110
    - • legal status of, 112
    - • renunciation by others, effect, 109
    - • revocation of appointment, 108
  - official administrator (general), 108, 140
  - person causing death, 106
  - powers of attorney, effect of, 88, 89, 102, 449
  - probate to one party, letters to another, 88
  - renunciation by prior party, 17, 102, 104
  - survivorship, effect of, 107
  - temporary grants, 85
  - transmission of executorship, doctrine of, 93

## INDEX

---

- grants (revocation of)**, *see also* wills (revocation of)
- advice/directions, motion for, 186
  - Alberta, 190
  - British Columbia, 183
  - conflict of interest, 43
  - consent of equal rightsholder not obtained, 182
  - costs, 188–190
  - estoppel, 187
  - ex parte grants, 183
  - failure to appear on citation, 49
  - fraud/falsity, 180, 181
  - general, 123
  - jurisdiction re, 56, 62, 179
  - notice of application re, 184
  - official administrator's, 108
  - onus of proof, 185
  - payments, reimbursement of, 190
  - Saskatchewan, 179, 191
  - will, attacking validity, 67, 68, 185, 188
  - will annexed, where, 137, 184
- grants (will annexed)**
- Alberta, 133
  - clearing off executors, 132
  - infant testators, 135
  - nominee of executor, to, 133
  - powers of administrator, 131
  - refusal of, 135
  - revocation of, 137
  - search for will, 136
  - when required, 130, 134
- guarantees**, 283
- guardian ad litem**, *see* administrator ad litem
- homesteads**, 270, 302, 312, 377
- income tax**, 222
- infants/minors**
- compromise of claims involving, 255
  - death after majority, effect, 135
  - distribution (general), 364, 372
  - executor, acting as, 35
  - fatal accidents, 255
  - leases involving, 327, 334
  - letters of administration, 135, 166
  - maintenance/education of, 220, 327, 532
  - payment into court of child's share, 166, 204
  - representation of, 397
  - sale of real estate of, 327
  - trusts, 204, 220
- injunctions**, 421
- insurance**
- actions re, 430, 441, 669
  - duties re, 217
  - trustee's powers re, 218
- interim administrators**, 10
- inventory**, *see* grants (inventory of property)
- investments**, *see* powers (investments)
- judgment**, *see* actions (judgment/execution)
- judicial trustees**, *see* trustees
- jurisdiction**, *see* grants (jurisdictions re)
- laches**, 78
- leases**, *see* powers (leases)
- “legal representatives”**, 1
- letters of administration**, *see* grants
- liability**, *see* accounting; actions; breach of trust; distribution of

- estate; duties; limitation of actions; powers
- limitation of actions**, *see also* actions
- abatement of cause, effect of, 468
  - abuse of process, 461
  - acknowledgement of debt/claim, 467
  - acknowledgement of liability, effect, 471
  - date of issue of probate (British Columbia), 472
  - debt claims, 197, 293, 475
  - dependants' relief matters, 462
  - family relief (Alberta), 474
  - notice disputing claim, 460, 463, 536
  - notice of claim, 464
  - quantum meruit claims, 468
  - running of period, 458, 459, 464, 465
  - substitution of executor, 469
  - trustees, 466
  - wills, variation (British Columbia), 473
- liquidators**, 48
- matrimonial property (Manitoba)**, 226
- mistake**, 201
- monuments**, *see* funeral expenses/monuments
- mortgages**
- actions re, 411
  - breach of trust involving, 392, 545
  - foreclosure, failure to prevent, 252
  - interest/principal, payment of, 215
  - liability of executor/trustee on, 252, 350
  - power to mortgage estate assets, 251, 253, 298
- native persons**, 57, 398
- negligence**, *see* accountings; actions; breach of trust; distribution of estate; duties; limitation of actions; powers
- negotiable instruments**, 129, 444
- official administrator (British Columbia)**
- administrator ad litem, as, 653
  - appointment by testator, 113
  - discretion of court re appointment, 114
  - foreign executor's rights, 110
  - general, 108, 110, 113
  - intestate non-resident person's estate, 110
  - legal status of, 112
  - renunciation by others, effect, 109
  - revocation of appointment, 108
- official administrator (general)**, 108, 140, 161
- parties**, *see* actions (parties)
- passing accounts**, *see* accountings
- "personal representatives"**, 1
- powers**, *see also* advice/directions of court; claims; contracts; debts (payment of); distribution of estate; duties; funeral expenses/monuments; grants; mortgages
- powers (administration/management)**
- actions, discretion re, 209, 231
  - "administration", 227
  - contracts, performance of, 197, 229



## INDEX

---

- liability re, 228
- payment of money owed, obtaining, 228
- retaining solicitors, 230
- powers (agent, appointment of)**
  - general, 242
  - solicitors, 243, 244
- powers (borrowing)**
  - actions re loans, 356
  - general, 353
  - liability of executor for, 355
  - promissory notes, 357
  - subrogation of lender, 353, 354
- powers (carrying on business)**
  - general, 283, 568
  - guarantees, 283
  - indemnity from estate, 285
  - liability re, 284, 285, 567
  - payment for goods out of assets, 287
  - rental properties, 284
- powers (exercise of)**
  - court's power to interfere, 235, 236, 241
  - delegation, 237, 239
  - discretion, 235–237, 239
  - power of appointment, 240
  - power of attorney, via, 237–239, 449
  - public trustee (Saskatchewan), 111
  - sale, power of, 237
  - trustees acting unanimously, 234
- powers (general)**
  - borrowing funds against real property to pay mortgage, 358
  - capital vs. revenue, decisions re, 222
  - discretion re exercise of, 220, 221
  - education/maintenance of children, 220, 221, 223
  - personal estate not disposed by will, re, 224
  - spousal claims (Manitoba), 203, 226
- powers (investments)**
  - annuities, 352
  - considerations governing, 337
  - delay in making, 340
  - hazardous/wasting assets, conversion, 348, 349
  - liability of representative, 338–340
  - mortgages, 350
  - repudiation by beneficiaries, 351
  - statute, authorized, 344, 345–347
  - unauthorized funds/securities, 339, 345–347
  - will provisions re, 342–346
- powers (leases)**
  - approval of court, 330–334
  - executor, lease to, 333
  - infant's rights, protecting, 334
  - “lease”, 331
  - oil leases, 331
  - profits à prendre, 335
  - void vs. voidable, 330
- powers (sale of land)**
  - consent of interested parties, 310, 321, 324
  - court's powers re/approval of, 310, 317, 322–326, 558
  - debts, for payment of, 298, 302, 318
  - discretion re price, 317
  - exchange of lands, 313
  - executor purchasing, 252, 320
  - executor selling land when legatee not found, 328, 329

## EXECUTORS AND ADMINISTRATORS

---

- for purpose of distribution, 321–326
  - general, 310, 452, 558
  - “good faith”, requirements re, 321
  - homesteads, 270, 302, 312
  - implied power, 311
  - infants/minors, protection of, 327
  - liability for improvident sale, 318
  - options to purchase, 314, 315
  - signing of offer, 319
  - uncertainty/remoteness, power void for, 316
  - when power arising, 314
- powers (sale of personalty)**, 336
- powers (trust companies)**, 232, 233
- powers (trusts distinguished)**, 235, 237–239, 241
- practice**, *see* actions (practice)
- probate**, *see* grants
- profits à prendre**, 335, *see also* powers (leases)
- proof in solemn form**, *see* grants (application for)
- quantum meruit**, *see* contracts
- real estate commissions**, 570
- receivers, appointment of**, 44, 119, 627, *see also* accountings
- removal**, *see also* appointment; discharge; renunciation of office
- accounts, failure to pass, 39
  - co-executors, 39
  - conflict of interest, 43, 47
  - costs of motion for, 50
  - endangering trust property, 40
  - general, 37, 39, 84
  - good faith, presumption of, 38
  - incompetence, 39
  - indebtedness to estate, 40
  - judicial trustee, appointment of, 49
  - jurisdiction re, 56
  - receiver, appointment of, 44
  - “special circumstances”, 39, 46
  - timing of, 42
  - wasting of assets, 39, 44
- remuneration**, *see* compensation
- renunciation of office**, *see also* appointment; discharge; removal
- effect of, 16, 19, 100, 109
  - executor suing estate, 20
  - general, 22, 88
  - joint executor, by, 12
  - necessity for, 17, 20, 102, 104
  - retraction of renunciation, 22
  - substitute executor, by, 21
- “representatives”**, 1
- res judicata**, 425, *see also* estoppel
- resealing/ancillary grants**, *see also* foreign executors/administrators; grants
- Alberta, 116, 147, 155
  - alteration of original grant, 150
  - attorney seeking, 150
  - British Columbia, 145, 148, 158
  - change of executor/administrator on, 150
  - discretion of court, 146, 147
  - effect of, 150, 156
  - general, 28, 143
  - grant with will annexed, 147, 148
  - inquiry into original appointment/grant, 145, 152
  - jurisdictions amenable to, 144

## INDEX

---

- multiple executors seeking, 153
  - original grant not made where deceased domiciled, 146
  - Saskatchewan, 151, 154, 157, 158, 191, 648
  - trust company seeking, 149
- sale of land**, *see* powers (sale of land)
- search for will**, 73, 136
- security bonds**, 71, 389, 642, 644
- set-off**, *see* actions (debts, on)
- solicitor's fees**, *see also* compensation; costs
- debt collection, re, 569
  - deduction from executor's compensation, 564
  - double payment barred, 565
  - executor's personal liability for, 293
  - general, 558, 590, 613, 630
  - quantum of, 590–593, 595
  - resealed letters, re, 614
  - taxation of, 590, 631, 634
- “special circumstances”**, 39, 46
- stays of proceedings**, *see* actions (practice)
- substitute executors**, *see* death of executor/administrator
- succession duties**, 210, 216
- survivorship**, 63, 107, 282
- taxation**, *see* income tax; succession duties
- title of executor/administrator**, *see* grants (effect of); grants (necessity for)
- transmission of executorship (doctrine of)**, 93
- trespass**, 23
- trust companies**, 232, 233
- trusts/trustees**, *see also* breach of trust; duties; powers
- actions to recovery trust moneys, 534
  - appointment, 3, 49
  - conflict of interest, 43, 47
  - discretion of, 4, 231, 235–239
  - endangering trust property, 40
  - foreign executor, acting for, 33
  - infants/minors, protection of, 204
  - insolvency of, effect, 48
  - intermingling of funds, 202
  - judicial trustees, 49, 122
  - resulting trusts, claims re, 551
  - secret trusts, 207
  - unanimous acting of, 234
  - variation of, 363, 429
- value of estate**, *see* compensation
- waste**, *see* breach of trust; devastavit
- wills (revocation of)**, 193, 194, *see also* actions (general); grants (revocation of)

## Index to Expropriation

(All references are to paragraph numbers.)

- adverse effect**, *see* compensation (injurious affection)
- “advantage”**, 665
- appeals**, *see* compensation (appeals)
- appraisals**, *see* compensation; costs
- “assets” (Saskatchewan)**, 103
- “authority” (Manitoba)**, 35, 278
- authority to expropriate**, *see also* compensation (right to); legislation (general); surface rights compensation; validity of expropriation.
- Alberta, 27–29, 64, 111–115
  - British Columbia, 30–34, 64, 90, 116, 117
  - cessation of, 22
  - curative provisions, 71
  - effect of expropriation, 16, 17
  - express power, 14, 21, 62–65
  - federal, 25, 26, 62, 106–110
  - general, 14–17
  - historically, 12, 13
  - implied power, 15, 21, 66, 67
  - Manitoba, 35–38, 64, 118–121
  - municipalities, 23, 65
  - Ontario, 39–44, 64, 107, 122, 123
  - railways, 13, 42, 110
  - Saskatchewan, 45–51, 64, 124–127
  - scope of generally, 14, 15, 18, 24, 61
  - strict compliance with statute, 18–24, 69–71, 228, 442, 443
  - trespass, 24
  - unauthorized purpose, 18, 24, 63, 440, 441
- bad faith**, *see* costs; validity of expropriation
- betterment**, *see* compensation (disturbance damages); compensation (injurious affection)
- “board” (Alberta)**, 505
- “board” (Ontario)**, 823
- business loss**, *see* compensation (disturbance damages); compensation (injurious affection); leases
- Charter of Rights**, 202
- “company” (federal)**, 86
- compensation**, *see also* authority to expropriate; costs; interest; leases; legislation (general); secured property; surface rights compensation.
- compensation (Alberta)**, *see also* procedure (Alberta)
- abandonment, after, 217
  - agreement to expropriation, after, 224, 225
  - amendment of approval, effect of, 213, 218
  - appeals, 506
  - court proceedings, 239–241, 505
  - interest, 226, 235, 237
  - jurisdiction re, 505–507
  - Land Compensation Board, 239, 244, 245, 505, 506
  - payment of, 232, 233
  - proposed payment, notice of, 230–241
  - right to claim, 59
  - surveys, 220, 221

## EXPROPRIATION

---

- valuation, 211, 225, 237, 238, 505–507
- compensation (appeals)**
  - Alberta, 506
  - British Columbia, 508, 669
  - federal, 504
  - interlocutory orders, 674
  - Manitoba, 509
  - Ontario, 368, 510, 668
  - onus on, 673
  - quantum, re, 437, 671–673
  - right to, 667
  - role of court, 437, 670, 672
  - Saskatchewan, 511–513
- compensation (British Columbia),** *see also* procedure (British Columbia)
  - abandonment of expropriation, upon, 261
  - advance payment, 267–270, 275, 508
  - agreement for expropriation, after, 263, 508
  - appeals, 508
  - general, 275, 508
  - jurisdiction re, 508
  - mitigation of damage, 593
  - survey, damage caused during, 262
- compensation (disturbance damages)**
  - betterment, 627, 655, 680
  - business loss, 629–632
  - conditions precedent to claim (federal), 626, 627
  - difficulty in calculating (federal), 621
  - double recovery barred, 616, 622–625
  - elements constituting, 626
  - general, 615–621
  - “home-for-a-home” provisions, 628, 657–661
  - leases, 689, 692, 700–711
  - moving not prerequisite to claim, 618, 630
  - persons entitled to, 628, 633, 634, 662
  - “reinstatement principle”, 628, 635, 636–656
  - remoteness, 616, 619
  - secured property, re, 717, 720, 726, 746
  - set-offs against, 627, 655, 680
  - tenants/occupiers, 628, 633, 634, 662
  - time when damage occurring, relevance of, 620
- compensation (economic advantage lost),** 664–666
- compensation (federal),** *see also* procedure (federal)
  - abandonment, after, 136, 155–157, 160
  - appeals, 504
  - appraisal/valuation, 152, 162–166, 170, 173, 177, 515–518
  - court proceedings for, 167, 170–172, 186, 504
  - entry for appraisal, 162
  - entry for inspection, 162
  - jurisdiction re, 504
  - negotiations for, 180–185
  - notice to negotiate settlement, 167, 504
  - obstructing inspection/appraisal, 162
  - payment of, 163, 168, 171
  - set-off, 170
  - statutory offer, 163–169, 173, 178, 504

## INDEX

---

- compensation (injurious affection)**, *see also* compensation (market value)
- acts aside from expropriation causing injurious affection, 560, 563, 572, 585
  - Alberta, 562, 586, 587
  - basis for, generally, 567, 569, 570, 583
  - betterment, 572, 579, 599, 609, 681–684
  - British Columbia, 561, 588–592, 593, 594
  - common law, at, 562–564, 576
  - federal, 562, 578–585
  - future use of land taken causing injurious affection, 565, 566, 572, 573, 579
  - general, 560–576
  - global award vs. heads of damage, 574
  - interference with access, 612, 613
  - Manitoba, 561, 595–99
  - nuisance, 564
  - Ontario, 561, 600–609
  - partial taking causing injurious affection, 560, 573
  - prejudice to owner, 567, 569, 570
  - remoteness of damage, 575
  - Saskatchewan, 610, 611
  - set-offs against, 572, 579, 599, 609, 681–684
  - severance of land causing, 560, 571, 573
  - types of acts giving rise to, 560
  - valuation date (Alberta), 519
  - where land not taken (general), 560–562, 572, 585
- compensation (Manitoba)**, *see also* procedure (Manitoba)
- agreements re, 311, 328, 331
  - appeals, 509
  - appraisal/valuation, 305, 313
  - interest on, 307
  - jurisdiction re, 509
  - Land Value Appraisal Commission, 322–328, 508, 509
  - payment (general), 331
  - payment into court, 329, 330
  - persons displaced other than owner, 311
  - statutory offer, 305, 314–317
  - survey, damage caused during, 305
  - taxes/rates/levies, liability for, 321
- compensation (market value)**, *see also* compensation (injurious affection)
- Alberta, 528
  - appeals re, 437
  - “before-and-after” method, 550
  - British Columbia, 521, 529
  - co-operative developments, 549
  - development of other land, relevance of, 546
  - excluded factors, 540–548
  - federal, 527
  - highest and best use, 534–539
  - illegal use, effect of, 544, 545
  - improvements after expropriation, 548
  - land use by-laws, relevance of, 547
  - leases, 689–699, 707–710
  - Manitoba, 530
  - Ontario, 531
  - sale agreements after expropriation, relevance of, 541
  - Saskatchewan, 532, 533
  - value fluctuation due to anticipated expropriation, 542, 543

## EXPROPRIATION

---

- value to taker, relevance of, 540–543
  - duty generally, 568, 614, 675–677
  - reasonableness of expenses, 678, 679
- compensation (Ontario), *see also* procedure (Ontario)**
- abandonment of expropriation, after, 352
  - agreements under \$1,000, 354
  - appeals, 510
  - appraisal/valuation, 356–359
  - board of negotiation procedure, 362–366, 510
  - consequential damage, 352
  - interest on, 359
  - jurisdiction re, 510
  - Land Compensation Board proceedings, 359, 365, 366
  - municipal board proceedings, 367–372, 510, 823–825
  - pipelines, 478, 479
  - power lines, 480, 481
  - statutory offer, 357–360, 510
  - telecommunications, 481
- compensation (right to)**
- damage actions, barring of, 55
  - federal legislation re, 57
  - effect/purpose of, 17, 19, 21
  - general, 17, 19, 21, 52–56, 59, 72, 569
  - goodwill, loss of, 74
  - licensee’s, 79
  - mortgagee’s/encumbrancer’s, 98
  - planning changes, effect of, 5
  - presumption in favour of, 54, 56, 73, 75, 76
  - provincial legislation re, 58, 59, 60
  - Railway Act (Ontario), under, 42, 43
  - refusal of, grounds for, 53, 54
  - right of first refusal holder’s, 78
  - tenant’s rights, 83, 88, 102
- compensation (Saskatchewan), *see also* procedure**
- appeals, 511–513
  - Expropriation Act, 406, 408–418, 512
  - Expropriation Procedure Act, 375–378, 387, 390–404, 511
  - jurisdiction re, 511–514
  - Municipal Expropriation Act, 423, 424, 430–435, 513
- compensation (valuation date)**
- Alberta, 211, 225, 505–507
  - British Columbia, 521
  - business loss, 631
  - disturbance damages, 649–652
  - federal, 152, 170, 515–518
  - highest and best use, 535
  - Manitoba, 522, 596
  - Ontario, 523–525
  - Saskatchewan, 526
- compensation (valuation methods)**
- “before-and-after approach”, 550, 605
  - “cost approach”, 558, 559
  - direct sales comparisons, 552–555
  - general, 551, 684
  - income approach, 556–559
  - “land development (subdivision) approach”, 555
  - “land residual approach”, 557
  - special purpose buildings, 559, 635–656
- co-operative developments (Ontario), 549**

## INDEX

---

**costs**, *see also* compensation;  
procedure

**costs (Alberta)**

- appeals, of, 802
- appraisals, 796, 797
- bad faith, effect of, 444
- denial/reduction of, 797
- failure to provide information, effect of, 237, 803
- general, 788, 797
- Goods and Services Tax, 799
- inquiry after objection, 200, 794, 795
- legal advice re proposed payment, 797
- “other costs”, 798
- settlement, effect of, 801
- surface rights matters, 804–806
- taxation, 800

**costs (British Columbia)**

- advance payment of, 813
- appeals, 807, 812
- bad faith, effect of, 444
- discretion of board re, 808
- failure to provide information, effect of, 269
- general, 788, 807, 810
- injurious affection claims, 809
- orders for costs, enforcement of, 812
- Petroleum and Natural Gas Act, 814
- time spent by claimant, 811

**costs (federal)**

- bad faith, effect of, 444
- general, 141, 788
- litigation, of, 791, 792
- maximum amount, 789
- National Energy Board Act, 793
- negotiations, of, 185, 759, 790

- objection, after, 141, 789

**costs (Manitoba)**

- appraisals, 817
- bad faith, effect of, 444
- determination by commission, 818
- dispute re legal costs, 817
- general, 788, 816, 817
- inquiry officer’s, 795
- legal costs, 816, 817
- objection to expropriation, on, 285, 816
- surface rights matters, 819, 820

**costs (Ontario)**

- arbitration proceedings, 823–827
- bad faith, effect of, 444
- general, 788, 821
- interest payments, 785, 826
- public inquiry, of, 338, 821, 822
- referral to assessment officer, 828

**costs (Saskatchewan)**

- bad faith, effect of, 444
- Expropriation Act, 831
- Expropriation Procedure Act, 375, 396, 829, 830
- general, 788
- Municipal Expropriation Act, 832, 833
- surface rights matters, 834

**damages**, *see* compensation;  
surface rights compensation

**de facto expropriation**, 4

**definitions**, *see* specific entries,  
e.g., “expropriation”

**disturbance**, *see* compensation  
(disturbance damages)

**easements**, *see* pipelines; rights of  
entry



## EXPROPRIATION

---

- effect of expropriation**, 16, 17,  
*see also* authority to expropriate;  
compensation (right to)
- electricity**, *see* power lines
- estoppel**, 445
- “expropriate” (British Columbia)**, 8, 89
- “expropriate” (Ontario)**, 10
- “expropriate” (Saskatchewan)**, 11
- “expropriated” (federal)**, 6
- “expropriating authority” (Alberta)**, 7, 27, 187
- “expropriating authority” (British Columbia)**, 8, 30, 89, 250
- “expropriating authority” (Ontario)**, 10, 39
- “expropriating authority” (Saskatchewan)**, 11, 45
- “expropriation” (Alberta)**, 7
- “expropriation” (general)**, 3–5
- “expropriation” (Manitoba)**, 9
- “flow line” (Manitoba)**, 468
- “flow line” (Saskatchewan)**, 51
- goodwill**, *see* compensation (disturbance damages); compensation (right to); leases
- highways (British Columbia)**, 264, 265, 272
- highways (Manitoba)**, 278, 279, 294, 299–301
- highways (Saskatchewan)**, 428
- hydrocarbons**, *see* pipelines
- improper purpose**, *see* authority to expropriate; validity of expropriation
- injurious affection**, *see* compensation (injurious affection)
- insurance proceeds (Manitoba)**, 296
- interest**, *see also* compensation
- interest (Alberta)**
- abandonment of expropriation, 787
  - additional interest, 766
  - compensation agreements, on, 226
  - date accruing from, 763, 764
  - delay in proposed payment notice, 235, 765
  - disturbance damages, on, 763
  - failure to provide information, effect of, 237, 767
  - possession, giving up as prerequisite, 764
  - rate of, 763
  - surface rights compensation, 768
- interest (British Columbia)**
- abandonment of expropriation, 787
  - additional interest, 771
  - delay, effect of, 772
  - failure to provide information, effect of, 269
  - general, 769
  - rate of, 770
- interest (common law)**, 751, 787
- interest (federal)**
- abandonment of expropriation, 787
  - acceptance of offer, effect of, 752, 755, 757, 758
  - “compensation”, 753
  - date when interest starting, 754, 755
  - disallowance of, 760
  - general, 172, 752, 758
  - late offers, effect of, 756

## INDEX

---

- National Energy Board Act, 761, 762
- “offer”, 752
- penalties, 752, 756, 757, 759
- rate of interest, 752, 753
- rejection of offer, effect of, 172, 760
- interest (Manitoba)**
  - abandonment of expropriation, 787
  - date accruing from, 774
  - delays, effect of, 307, 776
  - general, 773
  - payment into court, effect of, 775
  - surface rights compensation, 777
- interest (Ontario)**
  - abandonment of expropriation, 787
  - costs, on, 785, 826
  - date accruing from, 778, 779
  - delay, effect of, 781, 782
  - disturbance damages, on, 784
  - deposit with court accountant, effect of, 783
  - rate of, 779
  - refund of, 783
  - rejection of offer, effect of, 780
- interest (Saskatchewan), 786, 787**
- “interest in land” (Alberta), 87**
- “interest in land” (federal), 82**
- “interest in land” (Saskatchewan), 98**
- interpretation/construction, *see also* authority to expropriate; compensation (right to); legislation (general); procedure.**
  - ambiguity, 63
  - compensation, re right to, 21, 54, 72–76
  - general, 1, 21, 61, 66, 67
  - scope of expropriating power, 14, 15, 18, 24, 62–67
  - strict construction, 21, 63, 66, 436, 443
  - surface rights compensation, 448
  - unauthorized purpose, 18, 24, 63
- “land” (federal), 6, 82**
- “land” (Manitoba), 92, 95**
- “land” (Ontario), 10, 96**
- “land” (Saskatchewan), 97–102**
- “lands” (federal), 86**
- leases/licences**
  - disturbance damages, 689, 692, 700–711
  - expropriation of, 91, 688
  - expropriation of reversion, 687
  - frustration of, 712, 713
  - market value, 689–699, 707–710
  - “owner”, 685, 708
  - rent, abatement of, 713
  - rights of owner/tenant, 686, 697, 699, 707, 708, 710
  - “tenant”, 685
  - water, 113
- legislation (general), *see also* authority to expropriate; compensation (right to); interpretation/construction; procedure**
  - Alberta, 111–115
  - British Columbia, 116, 117
  - federal, 106–110
  - history of, 1
  - Manitoba, 118–121
  - Ontario, 122, 123
  - purpose of, 19
  - reform, 1
  - Saskatchewan, 2, 124–128

## EXPROPRIATION

---

- strict compliance with, 18–24, 69–71, 228, 442, 443
- market value**, *see* compensation (market value)
- “**mineral**”, 446
- mines/minerals (British Columbia)**, 91
- mines/minerals (Saskatchewan)**, 104, 125, 403, 404, *see also* potash; property subject to expropriation; rights of entry; surface rights compensation.
- mitigation**, *see* compensation (British Columbia)
- mortgages**, *see* secured property
- moving costs**, *see* compensation (disturbance damages)
- notice**, *see* procedure
- nuclear energy**, 106
- nuisance**, *see* compensation (injurious affection)
- “**offer**” (**federal**), 752
- oil and gas**, *see* pipelines; rights of entry; surface rights compensation
- “**operator**”, 446
- “**owner**” (**Alberta**), 88, 659, 662, 685, 708
- “**owner**” (**British Columbia**), 89, 685
- “**owner**” (**federal**), 82, 457, 685
- “**owner**” (**Manitoba**), 93, 662, 685
- “**owner**” (**Ontario**), 96, 662, 685
- “**owner**” (**Saskatchewan**), 97, 102, 685
- pipelines**, *see also* authority to expropriate; property subject to expropriation; rights of entry; surface rights compensation; surveys.
  - Alberta, 463, 464, 507
  - British Columbia, 465–467
  - compensation for taking, 496–503
  - easements, as, 456
  - federal, 457–462
  - general, 486
  - Manitoba, 120, 299, 468–470
  - Ontario, 41, 471, 472–479
  - Saskatchewan, 48, 100, 101, 105, 124, 127, 381, 482
- potash**, 47, 103, *see also* mines/minerals (Saskatchewan); rights of entry; surface rights compensation
- power lines (Ontario)**, 473, 480, 481
- power lines (Saskatchewan)**, 105
- procedure**, *see also* authority to expropriate; compensation; legislation (general); Saskatchewan (Expropriation Act); Saskatchewan (Expropriation Procedure Act); Saskatchewan (Municipal Expropriation Act); validity of expropriation
  - **procedure (Alberta)**, *see also* compensation (Alberta)
    - abandonment of intention, 216–219
    - agreements for expropriation, 219, 222–226
    - approval of expropriation, 192, 193, 203, 205–215, 230
    - certificate of approval, 208–216, 230
    - Charter of Rights, 202
    - divesting upon non-use/discontinuance, 246–249
    - notice of expropriation, 227, 228

## INDEX

---

- notice of intention, 187–189
- objection to expropriation, 190, 194, 195, 214
- possession, 213, 230, 242, 244
- public inquiry, 190, 194–205, 214
- state of title, clarification of, 229, 230, 241
- survey, entry for, 220, 221
- third parties, rights of, 206
- procedure (British Columbia)**, *see also* compensation (British Columbia)
  - abandonment of expropriation, 261
  - agreements for expropriation, 263–266
  - approval/rejection, 257–260
  - divesting upon non-use, 276, 277
  - injunction restraining harmful activity, 274
  - inquiries, 253–259
  - notice of expropriation, 250–252, 256, 258, 260
  - survey, entry for, 262
  - vesting/possession, 270–273
- procedure (federal)**, *see also* compensation (federal)
  - abandonment of intention, 136, 153–160, 169
  - confirmation of intention, 136, 143, 146–154, 790
  - hearings, 132, 138–148, 176
  - notice of intention, 131–136, 146–148, 174
  - objection to expropriation, 132, 136–138
  - possession, 167, 177–179
  - state of title, clarification of, 174, 175
  - survey, entry for, 161
- procedure (general)**
  - errors in, proof of, 23
  - post-expropriation, 130
  - pre-expropriation, 129
  - strict compliance, 18–24
- procedure (Manitoba)**, *see also* compensation (Manitoba)
  - abandonment of expropriation, 302–304
  - agreement to expropriation, 311
  - confirmation of declaration, 285, 291, 292, 308
  - confirming authority, 282, 291
  - declaration of expropriation, 278–281, 284, 291, 298
  - inquiry after objection, 285–290, 308, 309
  - notice of expropriation, 311, 312
  - notice of intention, 280–282, 309
  - notice of objection, 283
  - possession, 306, 312, 318–320
  - registration of declaration/confirmation, 293–301
  - survey, entry for, 305
  - time, extension of, 306–310
  - vesting of property, 294, 300, 303, 318, 321, 522
- procedure (Ontario)**, *see also* compensation (Ontario)
  - abandonment of expropriation, 350–352
  - application for approval, 332–334
  - certificate of approval, 341–343
  - general, 332, 333
  - notice of expropriation, 355
  - notice requesting hearing, 335
  - objection to expropriation, 334
  - possession, 339, 361

## EXPROPRIATION

---

- public inquiry, 335–341
  - registration of plan (post-approval), 344–349
  - right of re-purchase, owner's, 353
  - setting aside/quashing proceedings, 373
  - vesting/re-vesting of property, 349, 351
- procedure (Saskatchewan)**, *see* Saskatchewan (Expropriation Act); Saskatchewan (Expropriation Procedure Act); Saskatchewan Municipal Expropriation Act
- property subject to expropriation**
- Alberta, 87, 88
  - British Columbia, 89, 90
  - federal legislation, 80–86, 132
  - general, 77–79
  - holder of right of first refusal, 78
  - licensee's, 79
  - Manitoba, 92–95
  - Ontario, 96
  - public body, 15, 77
  - Saskatchewan, 97–105
  - tenant's, 83, 88, 102
- railways**
- federal, 110
  - historical movers for expropriation, 13
  - Ontario, 42
- “register” (federal)**, 133
- “registrar” (federal)**, 133
- “reinstatement”**, 643, 644, *see also* compensation (disturbance damages)
- relocation**, *see* compensation (disturbance damages)
- remoteness**, *see* compensation (injurious affection)
- rent**, *see* leases
- re-vesting**, *see* procedure
- rights of entry**, *see also* authority to expropriate; pipelines; surface rights compensation; surveys
- Alberta, 449
  - British Columbia, 32–34, 449
  - common law, at, 446
  - federal, 86, 462
  - general, 446
  - Manitoba, 38, 449
  - “mineral”, 446
  - Ontario, 447, 481
  - “operator”, 446
  - Saskatchewan, 51, 449
- rights-of-way**, *see* pipelines; power lines
- Saskatchewan (Expropriation Act)**, *see also* compensation (Saskatchewan); procedure (general)
- abandonment of expropriation, 408
  - absent/unknown owners, 407
  - general, 374
  - notice of expropriation, 405–409
  - possession, warrant for, 419–421
  - surveyor's certificate, 406
  - undertaking by authority, 411
  - vesting of property/transfers, 415–417
- Saskatchewan (Expropriation Procedure Act)**, *see also* compensation (Saskatchewan); procedure (general)
- abandonment of expropriation, 386, 387
  - attempt to purchase required, 375
  - declaration of expropriation, 379–383

## INDEX

---

- general, 374, 379
  - inquiry by board, 377
  - notice of compulsory acquisition, 381, 385
  - notice of intention, 376
  - notice of possession dedication, 381, 384, 388, 389
  - restriction on expropriation, 375
  - vesting/re-vesting of property, 381
- Saskatchewan (Municipal Expropriation Act)**, *see also* compensation (Saskatchewan); procedure (general)
- abandonment of expropriation, 435
  - approvals, 427, 429
  - expropriation by-law, 422
  - general, 374, 427
  - highways, 428
  - notice of intention, 423, 424
  - plan of land, deposit of, 423
  - possession, taking, 425, 434
  - surveys, 426–428
  - vesting of title, 429
- secured property (Alberta)**
- bonus, payment of, 742
  - compensation of security-holder, 741, 742
  - deficiencies, 743
  - general, 714, 715
  - partial expropriation, 744
  - valuation of interests, 740
- secured property (British Columbia)**
- compensation of security-holder, 746
  - deficiencies, 747
  - general, 714, 715
  - partial expropriation, 748
  - valuation, 745
- secured property (federal)**
- compensation of mortgagee, 717–719
  - compensation of mortgagor, 720, 721
  - discharge of mortgage, 718, 722
  - general, 714–716
  - partial repayment, 719
  - priorities, 719
  - refinancing costs, 721
  - “security interest”, 716
- secured property (Manitoba)**
- discharge of debt, 725
  - disturbance damages, 726
  - effect of expropriation, 728, 729
  - general, 714, 715, 723
  - priorities, 724, 727
- secured property (Ontario)**
- “bonus”, payment of, 733, 737, 738
  - compensation of mortgagor, 739
  - compensation of security-holder, 730–738
  - deficiencies, 735
  - general, 714, 715, 731
  - market value of interests, 731, 732
  - priorities, 734, 736
  - separate valuations, 730
- secured property (Saskatchewan)**, 714, 715, 749, 750
- “service line” (Saskatchewan)**, 51
- set-off**, *see* compensation (disturbance damages); compensation (injurious affection)
- “special adaptability”**, 538, 665
- “special economic advantage”**, 665
- “special value”**, 665

## EXPROPRIATION

---

- “statutory authority” (Ontario)**, 39, 601
- strict compliance**, *see* authority to expropriate; legislation (general); validity of expropriation
- surface rights compensation**, *see also* authority to expropriate; compensation; costs; interest; mines/minerals (Saskatchewan); pipelines; rights of entry.
- adverse effect/injurious affection, 491
  - Alberta (general), 29, 112, 450, 451, 455, 507
  - appeals, 48, 507
  - area agreements, 495
  - “Blackstock formula”, 486
  - British Columbia (general), 452, 455
  - general, 484, 485
  - general disturbance, 490
  - global awards, 487, 492
  - heads of damages, 487
  - individual settlements, relevance of, 493
  - interpretation of legislation, 448
  - land value, determination of, 488
  - loss of use, 455, 489
  - Manitoba (general), 119, 453, 455
  - Ontario, 447
  - pattern of settlements/dealings, 494
  - relocation of residence (Alberta), 451
  - Saskatchewan (general), 454, 455
  - uniformity in, 489
  - valuation approaches, 484–487
  - valuation date (Alberta), 520
  - value to owner vs. taker, 448
- surveys (Alberta)**, 220, 221
- surveys (British Columbia)**, 262
- surveys (federal)**, 161
- surveys (Manitoba)**, 305
- surveys (Saskatchewan)**, 426–428
- “taking”**, 4
- telecommunications**, 481
- tenants**, *see* compensation (disturbance damages); leases
- trespass**, 24, 69–71
- validity of expropriation**, *see also* authority to expropriate; legislation (general); procedure
- bad faith, 444
  - estoppel barring challenge, 445
  - failure to negotiate for sale, 438, 439
  - general, 436, 437
  - improper/unauthorized purpose, 18, 24, 63, 440, 441
  - proof of error, 23
  - strict compliance with statute, 18–24, 69–71, 228, 442, 443
- valuation**, *see* compensation
- water rights (Alberta)**, 113

## Index to Family Law — Divorce

(All references are to paragraph numbers.)

- barriers to religious remarriage,**
  - 32
- bars and defences**
  - collusion, 105
  - condonation, 109–135
  - discretion to grant divorce in public interest, 124–130
    - burden of proof, 125
    - factors, 126–130
    - health of spouse and children, 126
    - pre-condonation conduct, 130
    - public interest, meaning, 125
  - doctrine of revival, 122–124
    - evidence of past history, 122, 123
    - public interest, 124
  - elements, 111–113
    - attempts at reconciliation, 113
    - mutual undertaking, 112
  - evidence, 114–121
    - burden of proof, 114
    - continuation of cohabitation, 118–121
    - sexual intercourse, 115–117
  - general, 109, 110
  - pleadings, 134, 135
  - desk divorces, 135
  - resumption of cohabitation for less than 90 days, 131–133
  - connivance, 136–139
  - essence, 136
  - passive connivance, 138
  - presumption of law, 137
  - public interest, 139
  - duty of legal advisor, 147–151
  - alternative dispute resolution techniques, 149–151
  - negotiations, 149, 151
  - non-lawyer, 147
  - reconciliation, 147, 148
  - reasonable arrangements for child support, 142–146
    - adjournment, 143
    - duty of court, 142, 145
    - failure to comply with child support order, 144
    - financial circumstances, 146
  - reconciliation, 140, 141
  - possibility of reconciliation, 140
  - stay of judgment of divorce, 141
  - subversion of administration of justice, 106–108
    - collusive marriage, 108
    - full disclosure, 106
    - intention, 107
- custody**
  - access, 592–649
    - denial of access, 638–642
      - conduct of parent, 639, 640, 642
      - harm to child, 638
      - meaningful access not possible, 638
      - remarriage of custodial parent, 641
    - exercise of access, 634–637
      - expenses incurred, 634, 635



- custody (*cont'd*)
  - extra-provincial effect, 636, 637
  - factors, 606–618
    - danger to child, 606, 607
    - effect of access visits upon child, 608–610
      - disruption of routine, 608
      - psychological effects, 608
      - undermining relationship between custodial parent and child, 609
    - effect of parental conflict, 617, 618
    - previous contact with child, 614–616
    - wishes of child, 611–613
      - age of child, 612
      - alienation, 611
      - best interests of child, 611
      - temporary, 613
  - interference with access, 643–649
    - duty to encourage access, 643
    - sanctions, 644–649
      - child support, 645
      - common law right of action, 649
      - contempt, 647
      - imprisonment, 648
  - jurisdiction, 592–594
    - adoption order, 594
    - applicant other than spouse, 592
  - principles, 595–605
    - best interests of child, 595, 601
    - child of marriage, 603
    - contact with each parent, 596, 598
    - general rule, 599
    - grandparents, 605
    - meaningful access, 600
    - order as to access, 602
    - religion, 597
    - rights of access, 604
    - terms of access, 619–633
      - conditions, 630–633
      - general, 619–622
        - child living in another country, 622
        - reasonable access, 619
        - restriction or extension of rights, 621
        - specified terms, 620
      - restricted access, 625–627
      - specified access, 620, 623, 624
      - supervised access, 628, 629
        - best interests of child, 520–527
        - component elements, 527
        - general, 520–526
          - abuse of process, 525
        - child support obligations, 526
        - only relevant consideration, 520
      - *prima facie* right to custody, 523
      - rights of custody, 521
        - conditional custody, 569, 570
        - evidence, 581–591
          - child, 528–535, 590, 591
          - child’s wishes, 528–535
          - interview by trained third party, 591
        - expert, 588, 589
        - general, 581–587
        - affidavit evidence, 587

## INDEX

---

- custody (*cont'd*)
  - child abuse, 582
  - disclosure, 581
  - disregarding material evidence, 584
  - hearsay evidence, 582, 585
  - spouses ordinarily residence in different provinces, 586
  - variation application, 583
  - wrong principle, 584
  - factors, 528–570
  - child's wishes, 528–535
    - age and maturity of child, 528, 529
    - discretion, 535
    - independent preference, 534
    - interview by judge, 531, 532
    - needs of child, 528, 533
  - conduct of parents, 536–546
    - adulterous relationship, 544–546
      - general, 536–543
        - alienation, 543
        - moral standards, 540
        - relevance, 536, 537, 541, 542
    - continuity of lifestyle, 547, 548
    - death of custodial parent, 567, 568
    - financial resources of parents, 564–566
    - mobility, 550–552
      - access difficulties, 550
      - factors, 552
      - material change in circumstances, 551
    - religious/cultural upbringing, 555–563
  - cults, 562
  - freedom of religion, 557
  - joint custody, 560
  - parental religions, 556, 558, 559
  - religion with cultural and ethnic overtones, 561
  - removal of children to another jurisdiction, 549
  - separation of siblings, 553, 554
  - interim custody, 650–665
  - interim interim orders, 665
  - jurisdiction, 650–654
    - after divorce final, 651
    - appeals, 653
    - interested persons, 654
    - out-of-province, 650
    - variation application, 652
  - principles, 655–661
    - fixing residence, 660
    - parties living under same roof, 657
    - separation agreement, 659
    - status quo, 655, 656, 658
    - stay pending appeal, 661
  - surreptitious removal by non-custodial parent, 662–664
    - establishing status quo, 662
  - joint custody, 571–580
    - alienation, 574
    - child's relationship with parents, 580
    - discretion, 578
    - high level of conflict, 574, 575
    - historical approach, 573, 574
    - onus, 576, 577
    - shared parental responsibility, 572
  - jurisdiction, 484–519

- custody (*cont'd*)
  - constitutional, 484–495
    - ancillary to divorce, 484
    - Charter of Rights and Freedoms, 495
    - conflicting custody proceedings, 491–494
      - emergency situations, 491
      - stay of proceedings, 492
    - relation to provincial custody power, 485–490
      - abuse of process, 488
      - child welfare legislation, 490
      - overlapping and overriding jurisdiction, 486, 487
      - paramountcy, 489
    - statutory, 496–503
      - children of the marriage, 500–502
      - inability to withdraw from parental control, 503
      - territorial, 496–499
        - residence in another country, 499
        - substantial connection, 496, 497
    - territorial, 504–519
      - child’s ordinary residence, 504–513
        - forum conveniens, 512
        - substantial connection, 506, 511
        - variation proceedings, 510
      - parental kidnapping, 514–519
    - variation, 666–675
      - access orders, 673–675
      - applicant, 666
        - change in condition, means, needs or other circumstances, 667
        - change in health of custodial parent, 671
        - contact with each parent, 668
        - final custody order, 672
        - material change in circumstances, 669
        - move to another jurisdiction, 670
- divorce judgment**
  - altering effective date, 158–162
    - earlier effective date, 158, 160, 161
    - special circumstances, 159, 162
  - statutory effective date, 159
  - certificate of divorce, 172, 173
    - legal effect, 173
  - effect of appeal on effective date, 171
    - general, 152–157
      - appeal, 155, 156
      - consequences, 153
      - effective date, 153
      - marriage breakdown, 152
      - period preceding judgment, 154, 157
      - stay of judgment, 157
    - special circumstances, 163–170
      - absence from jurisdiction, 169
      - disappearance of spouse, 170
      - extended period of litigation, 167
      - extended separation, 169
      - ill health or emotional strain, 166
    - immigration, 168
    - remarriage, 163, 165

## INDEX

---

- divorce judgment (*cont'd*)
  - statutory underpinning, 164
  - welfare of children, 165
- grounds**
  - general, 33–35
  - breakdown of marriage, 33
  - commencement of proceedings, 35
  - joint petitions, 34
  - matrimonial offences, 65–104
    - adultery, 66–68
      - definition, 66
      - elements of offence, 67, 68
    - cruelty, 69–104
      - definition, 69–73
      - mental cruelty, 71
      - nature of cruel conduct, 77–104
        - both cruel and intolerable, 77–81
        - course of conduct, 103, 104
        - danger to life, limb, health, 82, 83
        - grave and weighty, 84–87
        - intentional acts, 100–102
        - more than incompatibility, 93, 94
        - no particular animus, 95–99
        - subjective test, 88–92
      - relevant time, 74, 75
        - after marriage breakdown, 75
        - prior to marriage, 74
      - separate ground, 76
    - general, 65
    - separate and apart, 36–64
    - computation of period of separation, 40, 41
      - factum and animus of separation, 42–44
        - intent to destroy marital consortium, 42–44
        - physical separation, 42, 43
      - general, 36–39
        - intention, 36–38
        - resumption of cohabitation, 39
      - interruption of separation, 61–64
        - resumption of cohabitation, 39, 61–63
        - sexual relations during separation, 64
      - long-term hospitalization, 45–47
      - refusal/cessation of sexual intercourse, 53, 59, 60
      - under same roof, 48–59
        - cessation of sexual relations, 53, 59
        - economic necessity, 49
        - evidence, 52, 55–59
        - representation to outside world, 51, 56
        - separate lives, 50, 54
        - withdrawal from state of things, 48
  - jurisdiction**
    - adjournment, 9
    - child support, 5
    - commencement of proceedings, 8
    - concurrent petitions, 17–22
    - commencement date, 17
    - convenience of forum, 21
    - counter-petition, 19
    - discontinuance, 17, 19
    - earlier petition by same petitioner, 18

FAMILY LAW — DIVORCE

---

- jurisdiction (*cont'd*)
  - • Federal Court jurisdiction, 20, 22
  - corollary relief proceedings, 23–28
  - • acceptance of jurisdiction, 23, 25
  - • commencement of proceedings in different courts, 23
  - • foreign divorce judgment, 28
  - • ordinary residence, 23, 25
  - • severance, 24
  - • variation proceedings, 25–28
  - discontinuance, 4, 17, 19
  - former *Divorce Act*, 2, 3
  - general, 1, 6
  - ordinary residence, 7, 10–15
    - • arrival in new place, 15
    - • jurisdiction, 7
    - • moving with spouse, 14
    - • point in time, 13
    - • proof, 10
    - • special purpose, 12
    - • state of mind, 11, 15
  - relevant time, 16
  - transfer of divorce proceedings when custody issue, 29–31
- nullity**
  - decree of nullity, 730–732
  - • effect of divorce judgment, 732
  - • nature/form, 730, 731
  - distinguished from divorce, 690
  - grounds for declaration, 695–729
    - • absence of capacity to marry, 701–711
    - • • absence of biological constitution, 701
    - • • • prior subsisting marriage, 702–710
    - • • • death/disappearance of spouse, 706, 707
    - • • • general, 702, 703
    - • • • • polygamous marriages, 703
    - • • • proof of prior marriage/divorce, 708–710
    - • • • remarriage before divorce effective, 704
    - • • • unrecognized foreign divorce, 705
    - • • prohibited degrees of consanguinity, 711
    - • absence of required formalities, 695–700
      - • • non-compliance with statutory formalities, 697, 698
      - • • parental consent for minors, 699, 700
      - • • solemnization of marriage, 695, 696
    - • absence of freedom of consent, 712–719
      - • • duress, 716, 717
      - • • fraud/mistake, 718
      - • • general, 712, 713
      - • • insanity/intoxication, 714, 715
      - • • limited purpose marriages, 719
      - • • impotence, 720–729
        - • • • bars to decree, 725–729
        - • • • • delay/approbation, 725, 726
        - • • • • insincerity, 727
        - • • • • miscellaneous, 728, 729
    - • definition/elements, 720
    - • onus of proof, 723

## INDEX

---

- nullity (*cont'd*)
  - plaintiff pleading own impotence, 724
  - refusal to consummate, 721
  - refusal to undergo medical examination/treatment, 722
  - jurisdiction and procedure, 692–694
  - void and voidable marriages distinguished, 691
- recognition of foreign divorce**
  - conclusiveness, 683
  - doctrine of preclusion, 687–689
  - effect in Canada, 685, 686
  - effect on local support order, 686
  - general, 685
  - general, 676–679
    - common law rules, 679
    - real and substantial connection, 678
  - grounds of attack, 680–682
    - natural justice, 681
    - public policy, 682
  - non-judicial divorce, 684
- support**
  - appeals, 479–483
    - bias, 483
    - confirmation orders, 480
    - extension of time for appealing, 479
    - limitation period, 479
    - powers of court, 481
    - procedure, 482
    - provisional orders, 480
  - arrears, 474–476
    - assignment of support order, 476
    - reduction or cancellation, 474
    - separation agreement, 475
  - competing obligations of payor, 291
  - conduct, 298
  - entitlement, 184–219
    - factors, 184, 190–194
      - compensatory support, 191
      - functions performed, 193
      - length of relationship, 192
      - order, agreement or relationship, 194
      - statutory factors, 190
    - general, 184–189
      - compensatory considerations, 187
      - conceptual grounds, 185
      - consensual considerations, 186
      - factors, 184
      - fundamental marital obligation, 189
      - non-compensatory factors, 188
      - objectives, 184
    - objectives, 184, 195–219
      - care of child, 208, 209
      - economic advantages or disadvantages, 197–207
        - decisions made in family interest, 198
        - emotional upset from marriage breakdown, 204
        - expert evidence, 207
        - furthering career of spouse, 199
        - income disparity, 200
        - interrupted employment, 202
        - long-term traditional marriage, 203
        - loss of economy of scale, 206

- support (*cont'd*)
  - refusal to overcome disadvantage, 205
  - withdrawal from work force, 199, 201
  - general, 195, 196
  - overriding importance, 195
  - presumption of economic disadvantage, 196
  - promoting economic self-sufficiency, 213–219
    - age of spouse, 217
    - misconduct, 219
    - objective, not positive duty, 214
    - reasonable period of time, 213
    - retraining, 216
    - standard of living of parties, 218
    - “top up” support, 215
  - relieving economic hardship, 210–212
    - physical problems predating marriage, 211
    - sickness or disability, 212
  - general, 174–182
    - binding on estate, 180
    - application, 174, 177, 178
    - timing of application, 177, 178
    - child support guidelines, 182
    - joining of third party, 181
    - jurisdiction, 179
    - priority for child support, 175
  - inheritance, 295, 296
  - interim support, 312–348
    - adjournments, 337, 339
    - appeal, 346–348
    - consent interim order, 347
    - evidence of error, 346
    - jurisdiction, 348
    - assessment of quantum, 323–332
      - expenses, 329
      - lump sum, 332
      - means and needs test, 324, 330
      - reasonable amount, 323
      - separation or other final agreement, 326–328
      - standard of living, 325
      - tax position of parties, 331
    - commencement and duration of order, 334–336
      - discretion of court, 336
      - time limit, 335
    - delay, 333
    - entitlement, 312–322
      - condition, means, needs and other circumstances, 314, 317, 318, 320
      - conduct, 313
      - defence to main application, 315
      - duration of marriage, 319
      - earning potential, 319
      - medical condition, 321
      - objectives, 313
      - *prima facie* case, 316
      - public assistance, 320
      - retroactive support, 322
    - interim disbursements, 340, 341
    - interim interim support order, 338
    - interim order pending appeal, 342–344
      - considerations, 343
      - jurisdiction, 342, 344

## INDEX

---

- support (*cont'd*)
  - • variation, 345
  - means of purported payor, 220–231
    - • ability to pay, 222
    - • attributing income to payor, 224
    - • debts, 228
    - • fixing means, 230
    - • general, 220
    - • post-separation increase in income, 228
    - • retirement, 225, 231
    - • shift away from means and needs test, 221
    - • social assistance, 227
    - • standard of living, 223, 226
    - • tax-free disability payments, 229
  - orders, 301–311
    - • constitutional jurisdiction, 304, 305
    - • general, 301–303
    - • nature of award, 307–311
      - • • automatic annual increase in support, 310
      - • • interim support, 307–309
      - • • order to make mortgage payments, 311
    - • procedural jurisdiction, 306
  - parties on public support, 227, 288, 297, 320
  - pensions and double dipping, 299, 300
  - permanent support, 349–408
    - • effect of settlement/separation agreements, 399–407
      - • • agreement not final, 406
      - • • consistency with agreement terms, 403
      - • • contextual assessment, 401
    - • • election of remedy, 405
    - • • termination of support under agreement, 407
    - • • threshold test, historical, 400
    - • • two-stage approach, 402, 471
    - • • unenforceable agreement provisions, 404
  - periodic support, 349–371
    - • • general, 349–353
      - • • • future increases in payor’s income, 351
      - • • • means and needs of parties, 350
      - • • • sponsorship agreement, 352
      - • • • tax consequences, 353
      - • • • traditional support order, 349
    - • • limited term support, 357–371
      - • • • disabled spouse, 368
      - • • • duration of marriage, 362, 363
      - • • • economic disadvantages, 360, 369
      - • • • need temporarily limited, 359
      - • • • occurrence of contingency, 367
      - • • • practical and policy considerations, 358
      - • • • promoting self-sufficiency, 364
      - • • • review orders, 370
      - • • • “step-down” order, 371
      - • • • termination of support, 366
      - • • • unusual circumstances, 361
      - • • • variation, 365



- support (*cont'd*)
  - lump sum support, 372–391
    - accommodation and relocation, 387
    - additional lump sum orders, 385
    - capital assets, 386, 389
    - clean break between parties, 375, 389
    - conduct of payor, 377, 378, 388
    - division of property, 378
    - duration of marriage, 379
    - economic disadvantages, 374, 380
    - failure to pay support obligation, 377
    - future security, 381
    - interest award, 383
    - need for lump sum support, 372
    - onus, 373
    - order for periodic support inadequate, 372, 382
    - payor lacking capacity to pay meaningful periodic support, 376
    - payor nearing retirement, 376
    - rescission, 385
    - refusal, 390, 391
    - retroactive compensation, 374, 384
    - variation, 385
    - nominal orders/protective orders, 354–356
    - review, 408
    - retroactive awards, 396–398
    - agreement between parties, 396
    - consent interim orders, 398
    - considerations, 397
    - existing support order, 396
    - status quo not involving child support, 396
    - secured orders, 392–395
      - debt relationship, 392, 393, 395
      - evidence, 394
        - priority, 477, 478
      - quantum and duration, 277–290
        - condition, means, needs and other circumstances, 279, 280
        - education, 290
        - equalizing incomes, 283
        - factors, 277, 278, 289
        - future security, 284
        - no legislated support formula, 286
        - public assistance or charity, 288
        - purpose of order, 287
        - standard of living, 281, 285
        - training funds, 288
        - work incentives, 282
    - second families, 292–294
      - children, 292
      - unit incomes, 293
    - termination of support, 294
    - spousal support advisory guidelines, 232–273
      - entitlement, 240, 241
      - exceptions, 269–273
        - disabled spouse, 271
        - enumerated exceptions, 270

## INDEX

---

- support (*cont'd*)
  - non-primary parent fulfilling parenting role, 273
  - objectives and factors, 269
  - reapportionment order in British Columbia, 272
  - formulas, 249–265
    - circumstances of dependant spouse, 261
    - income levels, ceilings and floors, 264, 265
    - income sharing, 250
    - indefinite order, 262, 263
    - imputing income, 252
    - medical costs, 258
    - payor's income, low estimate, 258
    - property division and debts, 260
    - self-employment and non-employment income, 251
    - time for determining income, 253
    - with child formula, 249, 255–260
    - without child formula, 249, 254
    - work incentives, 258, 260
  - general, 232–239
    - core concept, 233
    - distillation of case law, 236
    - final support agreements, 239, 247, 248
    - final version date, 232
    - not legally binding, 234
    - not for use as software tool, 235
    - promoting consistency, 237
    - provincial/territorial support legislation, 238
    - range of amount and duration, 236
    - interim order, 242
    - post-formula application, 266–268
    - restructuring award, 267, 268
    - review and variation, 243–248
      - application to review applications, 245, 246
      - application to variation applications, 244
      - final support agreements, 247, 248
      - initial determinations of support, 243
    - timing of application, 274–276
    - variation, 409–473
      - conduct of parties, 457–460
        - conduct irrelevant, 457
        - economic effect of conduct, 458
        - economic effect of conduct, 459
        - subsequent relationship, 460
      - general, 409–427
        - agreement to waive support, 417
        - applicant, 413
        - change in conditions, means, needs or other factors, 410
        - combined spousal/child support order, 411
        - death of payor spouse, 415
        - election of remedy, 417
        - enforcement, 416
        - future variation applications, 414
        - jurisdiction, 412, 416–423

- support (*cont'd*)
  - objectives and factors, 409, 425
  - provisional orders, 421, 422
  - separation agreement, 424, 427
  - limited term awards, 461–463
    - conversion of indefinite award to definite term, 462
    - resumption of support, 461
    - “step-down” order, 463
  - lump sum awards, 464–466
    - availability, 464, 466
    - jurisdiction, 465
  - practice, 428–440
    - affidavits, 432
    - change in forum, 429
    - characterization, 428
    - fresh evidence, 433
    - interim order, 435
    - material change of circumstances, 439, 440
    - onus, 430
    - reconsideration of matter, 434
    - res judicata, 431
    - separation agreement, 436, 437
    - tax credits, 438
  - principles, 441–449
    - acquisition of assets, 445
    - arrears, 442
    - change in occupation, 447
    - continuity in change in circumstances, 441
    - divestment of assets, 444
    - increase in means of payor, 448
    - promissory estoppel, 443
    - retirement of payor, 446
    - supplementation of payee’s income by third parties, 449
    - windfall, 449
  - remarriage/second families, 450–456
    - balance of rights, 455
    - effect on means or needs, 450, 453, 456
    - income of new spouse, 454
    - remarriage in contemplation of parties, 452
    - termination of support, 451
  - secured awards, 467–469
    - adjustment, 468
    - charge on lands, 467
    - nominal orders, 469
  - variation of judgment incorporating agreement, 470–473
    - agreement not final, 473
    - jurisdiction, 470
    - public assistance, 472
    - two-stage approach, 471
  - who can bring application, 183

## Index to Family Law — General

*(All references are to paragraph numbers.)*

- annulment (general)**
  - marriage dissolved in divorce action, 34
  - marriage void ab initio, 32
  - Matrimonial Causes Act, 1857, 33
- annulment (grounds)**
  - absence of party's consent, 54–65
    - • duress, 62–65
    - • • definition, 62
    - • • external source, 64
    - • • factors considered, 64, 65
    - • • requirements, 63
  - fraud, 55, 56
  - general, 54
  - immigration motive, 57
  - mental capacity, 58–60
    - • • determined at time of ceremony, 60
    - • • effect of intoxication or drugs, 59
    - • • form of mental illness at time of ceremony, 59
    - • • insanity, 58
  - mistake, 61
  - consanguinity and affinity, 80
  - inability to consummate, 66–79
    - • adultery of petitioner, 79
    - • advanced age, 67
    - • delay, 76
    - • dum casta clauses, 67
    - • estoppel by conduct, 77
    - • impotent spouse pleading own impotence, 73
  - inability to achieve penetration/withhold emission, 68
    - • incurable physical impotence, 74
    - • insincerity as bar, 78
    - • lapse of time, 75
    - • mere refusal, 69
    - • onus, 79
    - • order for physical/mental examination, 72
    - • permanent incapacity, 71
    - • persistent refusal of intercourse, 70
    - • sexual intercourse, 68
    - • sterility or incapacity for child bearing, 68
    - • voidable only, 66
    - • withdrawal, 68
  - lack of parental consent, 51–53
    - • age of consent to marriage, 51
    - • court application where consent denied, 53
    - • matter of formalities of marriage, 52
  - monogamy, 81–87
    - • challenging validity of foreign decree, 84
    - • declaration spouse presumed dead, 86
    - • intervening period re grant of divorce and effective date, 85
    - • person already married, 82
    - • proof first marriage void/ended, 83
    - • proof that person presumed dead not dead, 87
  - same-sex marriage, 81
- annulment (judgment)**
  - effect, 96, 97
  - form, 94, 95

**annulment (jurisdiction)**

- domicile, 36–41
- general, 35

**annulment (proof of marriage, presumption of marriage)**

- ceremony taking place, 91
- certificate of marriage, 89
- exceptions to rule against hearsay, 88
- marriage certificate issued in foreign country, 93
- reputation of marriage, 90–92

**annulment (validity of marriage)**

- formal validity, 45–50
  - • determined by law where marriage took place, 48
  - • failure to wait re expiration of time for license, 46
  - • good faith, 45
  - • presumption marriage duly contracted according to law, 50
  - • requirement for religious ceremony, 49
  - • underage, 47
- general, 42
- jurisdiction and authority to solemnize, 43, 44

**contract to marry**

- breach of promise to marry, 1–8
  - • action repealed, 1
  - • contingent on condition, 8
  - • corroboration, 4
  - • immoral relationship, 7
  - • limitations defence, 3
  - • promisor married, 6
  - • Statute of Frauds, 5
  - • writing requirement, 2
- damages, 13–22
  - • carrying on relationship with another person, 20

- • cause of failure or abandonment, 16
- • cohabitation and discovery of incompatibility, 21
- • enabling party to obtain citizenship, 18
- • engagement ring/gifts, 15
- • feelings of family and friends, 14
- • living together under form of marriage, 19
- • plaintiff who has married another, 13
- • principles, 17
- • statutory bar (Manitoba), 22
  - general, 9–12
  - • bodily unchastity defence, 12
  - • competent and compellable witnesses, 9
  - • profane language, 12
  - • release from promise, 10
  - • repudiation, 11

**domestic contracts (effect of contract)**

- bar to claims under Act, 212–215
  - • contract governs where Act does not expressly provide to contrary, 212
  - • jurisdiction to cancel arrears under separation agreement, 214
  - • ousting family property/matrimonial home provisions of Act, 213
  - • release of claims to maintenance, 215
- enforcement and variation, 216–231
  - • arrears accruing prior to Act coming into force, 219
  - • Bankruptcy and Insolvency Act, 231

## INDEX

---

- • consent order varying child support, 225
- • contracts made before Act came into force, 218
- • enforcement of arrears by divorce court, 220
- • equivalent of court order, 216
- • filing agreement so as to vary, 223
- • liability of estate to comply, 230
- • mode of varying support provision, 224
- • pension benefits, 226
- • right to file and enforce as court order, 217
- • setting aside settlement where full disclosure not made, 229
- • settlement by informal agreements, 227
- • stringent rules of fairness, 228
- • whether settlement final/conclusive, 222
- domestic contracts (general)**
  - • Alberta, 114, 115
  - • British Columbia, 116, 117
  - • Manitoba, 118
  - • Ontario, 119–182
  - • application to existing contracts, 173–182
    - • • general, 173–182
      - • • • extends continued effect, 175
      - • • • not subject to equalization provisions, 174
      - • • • same effect as domestic contract under Act, 173
      - • • • waiver of rights not existing/contemplated, 176, 177
    - • • transfer of property, 179–182
      - • • • effective if made pursuant to domestic contract, 179
      - • • • form of true agreement or understanding, 180
      - • • • formalities, 182
      - • • • living separate and apart, 181
  - • bars to remarriage, 168, 169
  - • cohabitation agreements, 132–135
    - • • custody/access, 132
    - • • deemed marriage contract, 134
    - • • filing with court, 133
    - • • severance of terms provision re matrimonial home, 134
  - • conflict of laws, 170–172
    - • • effect of contract, 172
    - • • exceptions to proper law of contract, 170
    - • • statutory provisions altering common law rules, 171
  - • general, 119–122
    - • • concept created by legislation, 119
    - • • contracts prior to Act coming into force, 120
    - • • liberal attitude under prior legislation, 121
    - • • support agreements simpliciter, 122
  - • marriage contracts, 123–131
    - • • conversion of cohabitation to marriage agreement, 124
    - • • items enumerated in Act not exhaustive list, 128
    - • • matrimonial home — Family Law Act, 131
    - • • matrimonial home — predecessor legislation, 129

- pre-existing contract ousting equalization, 130
  - provision for future separation/termination of marriage, 125
  - reconciliation agreements, 126
  - standard form Quebec marriage contract, 127
  - subject matter that may be included, 123
  - subject matter that may not be included, 123
  - paternity agreements, 157–160
    - child support, 160
    - contents, 157
    - court approval for minor, 158
    - incorporating agreement into court order, 159
  - restrictions on freedom to contract, 161–167
    - child support, 164
    - Child Support Guidelines, 165
    - custody/access — best interests of child, 163
    - custody/access in cohabitation/marriage contracts, 161
    - matrimonial home, 162
    - property settlement, 166
    - right dependent on remaining celibate, 167
  - separation agreements, 136–156
    - child support, 150–152
    - child support termination, 154
    - debt extinguished by spouse’s bankruptcy, 141
    - disclosure obligations, 145
    - implication of termination date for support, 149
    - living separate and apart, 137
    - matrimonial property, 143
    - minutes of settlement, 139
    - obligation to ensure terms objectively fair, 145
    - overriding support provisions, 146, 148
    - persons who cohabited, 137
    - prevailing over matters under Family Law Act, 144
    - reconciliation and executed transactions, 142
    - reconciliation and executor transactions, 142
    - right to claim dependants relief, 156
    - settlement negotiations between solicitors, 140
    - spousal support under guise of child support, 155
    - substance and not labels, 138
    - unconscionability, 147
  - Saskatchewan, 183, 184
- domestic contracts (law of contract)**
- damages for breach, 186
  - liquidated damages for default in paying support, 187
  - not equated with commercial agreements, 188
  - rules specifically altered by legislation, 185
  - subject to general law of contract, 185
  - validity challenged on common law grounds, 186

## INDEX

---

- domestic contracts (termination of agreement)**
  - cohabitation and reconciliation, 233
  - divorce judgment omitting provisions to be incorporated, 234
  - marriage nullity/void, 232
- domestic contracts (validity of contract)**
  - authority of counsel to bind client, 206–209
    - party refusing to accept settlement, 207, 208
    - settlement agreements negotiated between solicitors, 206, 209
  - capacity of minors and incompetent persons, 210, 211
  - common law rules, 189–195
    - disclosure of change in financial circumstances, 195
    - full disclosure, party declining to ask for, 193
    - independent legal advice, 191
    - parties held committed to separation agreement, 189
    - set aside for common law defect, 191
    - set aside where void or voidable, 190
    - unconscionability, 192, 194
  - formal requirements, 199–205
    - determination of validity, 204
    - disclosure, 202
    - in writing/signed/bound/witnessed, 199
    - informal contract, 200
    - provision re support payable until spouse becomes self-sufficient, 205
    - releases, 201
    - variation where agreement unfair, 203
  - statutory provisions, 196–198
    - non-disclosure, 197
    - override power, 198
    - setting aside, 196
- enforcement of orders (execution and sale of lands), 473**
- enforcement of orders (Federal)**
  - application for release of information, 468
  - Family Orders and Assignments Assistance Act, 467
  - garnishment, 469
  - maintenance judgment not debt provable in bankruptcy, 472
  - pensions, 470, 471
- enforcement of orders (interjurisdictional support and reciprocal enforcement of maintenance orders), 474–477**
  - divorce support order, 476, 477
- enforcement of support orders (Alberta)**
  - arrears, 365, 366
  - general, 362–364
- enforcement of support orders (British Columbia)**
  - arrears, 371, 372
  - general, 367–370
- enforcement of support orders (Manitoba)**
  - arrears, 376–379
  - general, 373–375
- enforcement of support orders (Ontario)**
  - allocation of funds, 445, 446
  - appointment of receiver, 441
  - arrest of absconding debtors, 430, 431
  - default hearing, 421–427



- • filing of financial statement/appearance, 421
- • heard together/separately with motion to change, 423
- • inability to pay, 427
- • material change in circumstances, 426
- • order for security, 425
- • payment of arrears, 424
- • presumption of correctness of statement of arrears, 422
- domestic contracts, 447–451
  - • contracting out, 448
  - • existence of right to vary, 447
  - • Family Court of Superior Court/Court of Justice power to vary support provisions, 449
  - • filed and enforced as court orders, 447
  - • inherent power of divorce court to override, 450
  - • right to incorporate where dispute re validity, 451
- garnishment, 432–440
  - • continuation of notice, 435
  - • effectiveness against provincial Crown, 440
  - • filing of dispute, 433
  - • joint debts, 436
  - • notice of garnishment, 432
  - • payments by garnishee to director, 434
  - • priority with other support orders/over other debts, 439
  - • social assistance benefits, 440
  - • statutory declaration of indexed support, 437
- general, 380–395
  - • accrued arrears, 386–388
  - • cessation of enforcement, 383
  - • credit for money paid, 394
  - • Director of Family Responsibility Office, 380
  - • director’s refusal to enforce support order, 382
  - • employee of federally incorporated company, 393
  - • enforcement remedies, 389
  - • estate of payor after notification of death, 385
  - • garnishment against Crown, 392
  - • priority re other support orders/other judgment debts, 391
  - • proceedings by director for benefit of recipients, 381
  - • proceedings to determine termination of support, 384
  - • punishment for willful contempt/resistance to process, 390
  - • reporting defaulters to consumer reporting agencies, 395
  - • imprisonment for non-payment, 429
  - • information, 413, 414
  - • initiating or discontinuing automatic enforcement, 415–419
    - • assignment of powers/duties/functions of director, 416
    - • courts not legal advisors to director, 417
    - • mandatory order for enforcement, 415
    - • refusal to enforce filed order, 418
  - • liability for necessities of minor, 453
  - • matrimonial home, 442–444
  - • order for exclusive possession, 444

## INDEX

---

- • registration as matrimonial home, 442
  - • support orders registered on title, 443
  - right to pledge credit, 452
  - security, 428
  - striking out pleadings, 420
  - support deduction order, 396–412
    - • agreement to change enforcement, 406
    - • alternative payment order, 406
    - • applications by director/income source re disputes, 409
    - • commencement of payments, 402
    - • disputes re amount deducted, 408
    - • duration of enforcement, 399
    - • duty to provide information re interruption in payments, 410
    - • filed with director, 398
    - • income source, defined, 400
    - • income source, obligations, 401
    - • mandatory, 397
    - • net amount, defined, 405
    - • notice of filing, 398
    - • payor to pay until income source begins deductions, 404
    - • personal corporation of payor, 403
    - • precedence over other process for enforcement of judgment debt, 411
    - • service of notice to each income source, 400
    - • total amount deducted, 405
    - • unconscionability, 407
    - • withdrawal, 412
  - suspension of driver's licence, 454–460
    - • motion for order to refrain, 455
    - • order to refrain, 456
    - • reinstatement, 458, 459
    - • service of final notice, 457
    - • service of notice re default, 454
- enforcement of support orders (Saskatchewan)**
- arrears, 465, 466
  - general, 461–464
- judicial separation**, 98–100
- marriage settlements**, 23–31
- capacity of infant, 28
  - construed according to husband's law of domicile, 30
  - contract to conceive child unenforceable, 31
  - full disclosure, 26
  - impeaching conveyance made in contemplation of marriage, 24
  - releasing or contracting out (Manitoba), 27
  - revocation after marriage, 23
  - treated as marriage contract (Ontario), 25
  - will contrary to agreement, 29
- mediation and arbitration**
- arbitration, 112, 113
    - • British Columbia Commercial Arbitration Act, 113
    - • legislation in Alberta, Manitoba, Saskatchewan, 113
    - • Ontario Arbitration Act, 112
  - mediation, 101–111
    - • general, 101–104
      - • • closed mediation, 103
      - • • distinguished from arbitration, 101
      - • • open mediation, 102
      - • • role of mediator, 104

- • statutory authorization — Divorce Act, 105, 106
- • statutory authorization — provincial legislation, 107–111
  - • • Alberta, 107
  - • • British Columbia, 108
  - • • Manitoba, 109
  - • • Ontario, 110
  - • • Saskatchewan, 111
- orders (effect of death)**, 336
- orders (financial disclosure)**, 360, 361
- orders (indexing)**
  - discretion on originating application, 339
  - mandatory on later application, 338
  - matter of course where requested (Ontario), 337
- orders (insurance designation)**, 334
- orders (interim orders)**
  - appeal, 349
  - delay, 347
  - disparity in incomes/decline in standard of living, 342
  - duration, 349
  - interim variation orders, 343
  - jurisdiction to vary, 340
  - merits of case, 345
  - necessity, 344
  - non-essential/seasonal expenses, 349
  - prima facie case re success on final application, 341
  - reconciliation, 350
  - validity of marriage/relationship in dispute, 346
- orders (limited term)**
  - tax deductible, 329
- temporary inability to achieve self-sufficiency, 326
- termination upon retirement of payor, 328
- traditional marriage and few marketable skills, 327
- orders (lump sum)**
  - history of failing to comply with support obligations, 321
  - not tax deductible, 325
  - payee having finite economic disadvantage re marital role, 322
  - payor having substantial assets/poor employment prospects, 320
  - payor’s capital assets would be exhausted, 323
  - permitted and not infrequent, 319
- orders (non-harassment)**, 353
- orders (pension or benefit plan designation)**, 335
- orders (possession)**, 331
- orders (provisional)**, 351, 352
- orders (retroactive payments)**, 332, 333
- orders (review and variation)**
  - change in circumstances, 354
  - fresh evidence, 355
  - leave requirement (Ontario), 354
  - rate of inflation, 357
  - review hearing, 356, 359
  - significant change in income position, 358
- orders (transfer and charging of property)**, 330
- spousal support obligations (conduct)**, 317, 318

## INDEX

---

- spousal support obligations (definition of spouse)**
  - all provinces, 242
  - cohabitation, continuity of, 249
  - cohabitation, date of commencement, 248
  - cohabitation, end of, 246, 247
  - extended obligations of support (Ontario), 243
  - extended obligations of support (western provinces), 244
  - factors considered to determine relationship, 245
- spousal support obligations (entitlement)**
  - application by party designated by provincial legislation, 258
  - broader spectrum of considerations, 259
  - inability to achieve self-sufficiency, 260
  - loss of job/income subsequent to marriage breakdown, 263
  - marital role interfering with entering/maintaining work, 262
  - marriage having no effect on ability to support self, 261
  - needs and means test, 259
  - obligation to achieve self-sufficiency, 257
  - Spousal Support Advisory Guidelines, 259
- spousal support obligations (factors in amount and duration)**
  - age and physical and mental health of parties, 302, 303
  - availability of means of achieving self-sufficiency, 305–310
    - employment, 310
    - factors considered, 306
    - job placement likely, 309
    - length of time/cost involved, 305
    - limited term order, 308
    - retraining, 307
  - capacity of dependant to contribute to own support, 292–296
    - all reasonable steps to achieve self-sufficiency, 292
    - employment and upgrading, 296
    - events likely in foreseeable future, 294
    - imputing income, 295
  - circumstances of parties, 278, 279
  - contribution to realization of party's career potential, 313–315
    - compensation for unreasonably impoverished lifestyle, 313
  - equalization instead of support, 314
  - jobs/career not property subject to division, 315
  - current assets and means of parties, 280–288
    - adverse inference from incomplete evidence, 285
    - consideration of assets/earning capacity, 281
    - deliberate reduction in income, 284
  - dependant's new relationship, 288
    - no more than necessary, 280
    - no more than payor can reasonably be expected to provide, 280
    - pensions, 282, 283
    - other order for or source of support, 287
    - retirement of payor, 286

- desirability of parent remaining at home to care for child, 312
- future assets and means of parties, 289–291
  - • compensatory support, 290
  - • joint family decisions adversely affecting career, 291
  - • probable future financial situation, 289
- length of cohabitation, 316
- needs of dependant, 304
- respondent’s capacity to provide support, 297–301
  - • assumption of responsibility for family debts, 298
  - • early retirement, 299
  - • habitual overtime, 300
  - • returning to university, 301
  - • unreasonably reducing income, 297
- Spousal Support Advisory Guidelines, 275–277
  - • designed for use under Divorce Act, 276
  - • determination of amount/duration, 275
  - • diverging from range, 275
  - • entitlement issues, 275
  - • formulas, 277
  - • not legally binding, 275
- support obligations of subject party to other persons, 311
- **spousal support obligations (impact of separation agreement)**
  - Alberta, 250
  - British Columbia, 251
  - court may award greater amount, change temporal provisions, 255
  - Manitoba, 252
  - Ontario, 253
  - Saskatchewan, 254
- **spousal support obligations (objectives of support)**
  - generally, 265
  - prioritize child support, 267
  - promote self-sufficiency, 268–273
    - • imputing income, 272
    - • indefinite duration, 270
  - limited term orders/retraining support, 269
  - • meet all reasonable expenses, 273
  - • obligation to achieve, 268
  - • top-up support, 271
  - recognize contribution of each spouse to relationship, 266
  - relieve financial hardship, 274
- **spousal support obligations (overview)**
  - general, 235, 236
    - • alimony, 236
    - • duty to support spouse and children, 235
  - jurisdiction and when support may be claimed, 237–241
    - • continuation of order under provincial legislation
    - • following divorce, 241
    - • provincial jurisdiction overlap with Divorce Act, 239
    - • resumption of cohabitation, 240
    - • superior courts and provincial courts, 237
    - • time limits on making claim, 238

## Index to Family Law — Property

(All references are to paragraph numbers.)

### **conflict of laws — Alberta**

- last habitual residence of spouses, 15
- petition under Divorce Act issued in province, 15
- unequal distribution to avoid enforcement outside province, 16

### **conflict of laws — British Columbia**

- agreements, 29
- choice of law rules, 26
- conditions for order, 27
- declining jurisdiction, 28
- extraprovincial property, 30
- habitual residence, 29
- real and substantial connection, 27

### **conflict of laws — Manitoba**

- habitual residence, 39

### **conflict of laws — Ontario**

- foreign immovable, 64
- habitual residence, 62
- real and substantial connection, 63

### **conflict of laws — Saskatchewan**

- domestic contract, 75
- habitual residence, 76
- property situated outside province, 74

### **debts and liabilities — British Columbia**

- family debt, 131, 132
- adjustment of division, 132

### **debts and liabilities — Manitoba**

- deduction of debts and liabilities, 143

- depreciation in value of assets acquired before marriage, 144
- joint debts, 143
- negative value, 143
- variation of equal sharing of commercial assets, 143

### **debts and liabilities — Ontario**

- contingent liabilities, 169, 450
- debts brought into marriage, 170
- debts, definition, 169
- deduction as of valuation date, 169
- deduction for notional tax and disposition costs, 169, 173, 174
- inter-family debts, 172
- liabilities, definition, 169
- negative deduction in calculating pre-marital property, 175
- not constituting “property”, 162
- valuation of debts, 170, 171

### **debts and liabilities — Saskatchewan**

- apportioning debts, 212
- debts brought into spousal relationship, 213

### **distributable property — Alberta**

- gifts between spouses, 106
- just and equitable distribution, 103
- increase in value of exempt property, 104
- property acquired after divorce, 107
- property exchanged for exempt property, 105

**distribution, principles governing — Alberta**

- corporation as defendant, 334
- discretion of court, 336
- equal unless not just and equitable, 328
- factors considered in making distribution, 331
- increase in value of assets owned at marriage, acquired as gift or inheritance, 329
- interest, 333
- just and equitable, 332
- matrimonial home, 335, 337, 339
  - • occupation rent, 339
  - • order excluding spouse from matrimonial home, 335
  - • postponement of sale, 337
- speculative ventures, 338
- standard of review on appeal, 336
- transfer of property within one year of commencing action, 330

**distribution, principles governing — British Columbia**

- agreements, 372–375
  - • agreement significantly unfair, 375
  - • autonomy to depart from legislation, 373
  - • setting aside or replacing agreement, 374
  - • subject matter of agreements, 373
  - • written agreement, 372
- equal division unless significantly unfair, 372

**distribution, principles governing — Manitoba**

- assets acquired before marriage, appreciation and depreciation, 404
- conduct amounting to dissipation, 402
- deduction of debts and liabilities, 403
- equalization of commercial assets inequitable, 402
- equalization of family assets grossly unfair or unconscionable, 402
- inventories, ascertaining, 405
- onus of proving legislation not applying to asset, 407
- spouses and common law partners, 401
- statement of assets and liabilities, 406

**distribution, principles governing — Ontario**

- award of unequal division, 454, 457–460
  - • careless or reckless investments, 458
  - • change in value of property after separation, 458
  - • claim specifically pleaded, 460
  - • *mala fides*, 459
  - • property brought into marriage, 457
  - • rearranging assets, 454
  - • wrongful depletion of assets, 458
- change in value of property after separation, 458
- claim for exclusion, 451
- conduct after separation, 458
- debts and liabilities, 450

## INDEX

---

- distribution, principles governing — Ontario (*cont'd*)
- equal division unconscionable, 453, 455
  - equalizing net family property, 444, 455, 456
  - greater contribution to acquisition of asset, 456
  - joint ownership of matrimonial home, 456
  - no discretion to rearrange asset ownership, 445
  - “ownership”, 446, 456
  - pre-marital property, 452, 457
  - presumption of equal interests in joint accounts, 447
  - property not included in value of net family property, 450
  - resulting and constructive trusts, 448, 449
- distribution, principles governing — Saskatchewan**
- equal distribution unfair and inequitable, 506
  - judicial discretion, 504
  - judicial sale of family home/household goods, 505
- divisible property — Alberta**
- debts, 89
  - gifts, 88
  - pensions, 85, 86
    - disability pensions, 86
    - old age pensions, 86
    - pension right constituting property, 85
  - severance payments, 87
- equalization entitlement, implementation of — Alberta**
- broad powers, 665
- equalization entitlement, implementation of — British Columbia**
- compensation order, 669
  - declaration of ownership/right of possession, 668
  - evaluating assets to be apportioned, 669
  - excluded property, 675
  - family debt, 673
  - partition and sale, 670
  - power to charge property, 672
  - powers, 666, 667, 672
  - powers of sale under Rules, 667
  - registrar’s recommendations, 678
  - security for performance under obligation, 672
  - suspending enforcement pending appeal, 679, 680
  - transfer of property, 668, 671, 674
    - in trust or vested for life or term, 668
    - transfer to child, 671
    - transfer to spouse, 674
  - varying division of property granted upon divorce, 677
- equalization entitlement, implementation of — Manitoba**
- debt owed by one spouse to other, 681
  - interest, 682
  - payment by lump sum or instalments, 681
  - transfer of assets in lieu of payment, 681
- equalization entitlement, implementation of — Ontario**
- partition and sale of property, 684



- equalization entitlement, implementation of —
- Ontario (*cont'd*)
  - payment by instalments, 683, 688, 689
  - pension benefits, 685
  - postponement of payment, 683
  - security, 683
  - transfer of property, 684, 686, 687
- equalization entitlement, implementation of — Saskatchewan**
  - any order considered fit to effect distribution, 690
  - costs, 692
  - vesting of property, 691
- equitable trust principles**
  - general, 693
  - presumption of advancement, 694, 695, 697–700
    - abolitionment, 695
    - application, 694
    - British Columbia, 697
    - gift to future spouse, 700
    - gratuitous transfers, 695
    - rebutting presumption, 695, 698, 699
  - presumption of resulting trust, 694–696, 699
    - application, 694, 696
    - common intention of parties, 696
    - common law partners, 696
    - gratuitous transfers, 695, 696
    - rebutting presumption, 699
  - unjust enrichment, 696, 701–704
    - compared with resulting trusts, 696
    - constructive trusts, 701, 704
    - application, 701
    - proprietary remedy, 704
- establishing unjust enrichment, 702
- monetary compensation, 703
- estate of deceased spouse — Alberta**
  - action continued by estate, 368
  - considerations in making order in favour of surviving spouse, 370
  - dependants relief legislation, 371
  - limitation period, 367
  - order suspending administration of estate, 369
  - prohibition on distribution without living spouse's consent, 370
  - rights surviving death for benefit of estate, 368
- estate of deceased spouse — British Columbia**
  - actions continued after death of spouse, 400
- estate of deceased spouse — Manitoba**
  - altering equalization, 433
  - assets subject to accounting and equalization, 428, 429
  - closing and valuation dates, 431
  - deductions, 432
  - effect on estate administration, 437
  - effect on other rights, 436
  - exempt assets, 430
  - homestead legislation, 439
  - intestate succession legislation, 438
  - legislative scheme, 422
  - limitation period, 424

## INDEX

---

- estate of deceased spouse —  
Manitoba (*cont'd*)
- prior division of assets, 423
  - priority and payment, 434, 435
  - statement of assets and liabilities, 427
  - who may apply, 425, 426
- estate of deceased spouse — Ontario**
- application by surviving spouse, 485–487
    - applicant, 485
    - continuing action by or against estate, 486
    - right by surviving spouse alone, 487
  - election, 490–503
    - benefits from equalization payment or succession law, 490
    - deemed election, 495
    - disclaimer of entitlement under succession legislation, 494
    - distribution, 497, 498
    - election by incapacitated spouse, 502
    - gifts under will, 491, 493
    - insurance and pension payments credited, 492
    - limitation period, 495
    - priorities re equalization entitlement, 496
    - recipients of property, 499
    - revocation, 493, 503
    - suspending administration of estate, 500
    - valuation date, 501
  - time for application, 488, 489
    - limitation period, 488
    - living separate and apart, 489
- estate of deceased spouse — Saskatchewan**
- application by surviving spouse, 537
  - continuation of application, 536
  - distribution of estate, 537
  - money or property received by surviving spouse under court order, 539
  - settlement of application, 538
- excluded property — British Columbia**
- discretionary trust property, 129
  - division, 386
  - excluded trust property, 128
  - general, 123
  - gifts or inheritances, 125
  - money paid under insurance policy, 127
  - property acquired pre-relationship, 124
  - property derived from excluded property, 130
  - settlement or award of damages for injury or loss, 126
- excluded property — Manitoba**
- acquired while married but living separate and apart, 145
  - acquired while married to former spouse, 145
  - acquired while unmarried, 145
  - assets already shared equally, 150
  - damage awards for personal injury, 149
  - gifts/trust benefits/inheritances from third parties, 147, 148, 151
  - onus of proving asset not shareable, 146
  - proceeds of sale of asset, 151

**excluded property — Ontario**

- damages for personal injuries, 183
- domestic contracts, 188
- gifts or inheritances, 181, 182
- life insurance proceeds, 184
- matrimonial home, 185
- pensionable earnings, 189
- property exclusions, 180
- tracing, 180, 185–187

**exempt property — Alberta**

- general, 90–92
  - exempt assets dissipated or converted, 91
  - exemption for market value of assets, 91
  - increments in exempt property, 90
  - property brought into marriage, 92
  - property replacing original property brought into marriage, 92
- gifts received from third parties, 93, 94
  - gift from other spouse before marriage, 93
  - intentions regarding ownership of gift, 94
- inheritance, 95–97
  - beneficial interest, 95
  - contingent interest in estate, 97
  - property purchased mainly using exempt funds, 96
- insurance policies, 102
- property brought into marriage, 92, 98–100
  - increase in property’s value during marriage, 100
  - market value exempt, 98
  - onus on claimant, 99

- tort awards, 101

**exempt property — Saskatchewan**

- award/settlement of damages in tort, 227
- fair and equitable order, 229
- family home and household goods, 228, 231
- gifts and inheritances, 222
- insurance proceeds, 227
- inter-spousal contracts, 231–234
  - family home and household goods, 231
  - pensionable earnings, 234
  - property rights, 232
  - requirements, 233
  - unconscionable or grossly unfair, 231
- prejudgment interest, 230
- proceeds of sale of exempt property, 222
- property acquired after divorce, 227
- property brought into spousal relationship, 222, 224–226
  - change in value, 226
  - exchange of property, 225
  - onus of proof, 224
- testator’s intention to exclude spouse from will, 223

**family property — British Columbia**

- entitlement under annuity, pension, RSP or income plan, 116–119
  - “local plan”, 119
  - non-property related insurance proceeds, 117
- settlement or award of damages, 117
- unequal division, 118

## INDEX

---

- family property — British Columbia (*cont'd*)
  - increase in value of excluded property, 121
  - interest in business, 113
  - monies in financial institution account, 115
  - property conditionally disposed of by spouse, 120
  - refund or return, 114
  - share or interest in corporation, 112
  - trust property, 122
- family versus commercial assets — Manitoba**
  - “commercial asset”, 140
  - determination, 138
  - “family asset”, 139
  - farm, 141
  - lump sum award from workers’ compensation, 142
- general property subject to legislation — Alberta**
  - contingent interest in deceased’s estate, 84
  - dissipation of assets, 82
  - equal distribution, 81
  - exempted value of property, 78
  - exemptions, 77, 78, 80
  - gifts or transfers, 83
  - just and equitable distribution, 79
  - no distinction between family and non-family assets, 77
  - unequal distribution, 81–83
- general property subject to legislation — British Columbia**
  - adjustment of division, 111, 132
  - burden of proof, 110
  - “family property”, 108
  - matrimonial home on First Nations land, 109
  - tenants in common, 108
- general property subject to legislation — Manitoba**
  - appreciation or depreciation in value of asset, 133
  - “asset”, 134
  - assets situated outside province, 137
  - future or contingent rights, 135
  - power to revoke disposition of asset, 136
- general property subject to legislation — Ontario**
  - Canada pension plan benefits, 154
  - children’s property, 168
  - debts, 162
  - disability payments, 161
  - financial statement, 157
  - interest as purchaser under agreement, 164
  - interest in practice or business, 163
  - legal and beneficial interests, 158, 163
  - onus of proving deduction or exclusion, 155
  - presumption that all property forming part of net family property, 156
  - production of information to value asset, 157
  - professional qualifications or degrees, 163
  - “property”, 152, 158, 159
  - severance payments, 165, 166
  - survivor benefits, 153, 167
  - trusts, resulting or constructive, 156

- general property subject to legislation — Ontario (*cont'd*)
  - vested or contingent interest, 158
  - workers' compensation benefits, 160
- general property subject to legislation — Saskatchewan**
  - apportioning debt, 212
  - benefits accruing due to labours before marriage, 215
  - certificate of possession under Indian Act, 220
  - crops, 221
  - debt brought into spousal relationship, 213
  - disclosure requirements, 214
  - “family property”, 210
  - no distinction between family and commercial assets, 210
  - pension entitlements, 217, 218
  - property held by corporation, 216
  - severance pay, 219
  - university degree, 211
- homestead legislation**
  - general, 705–707
    - • acquisition of another homestead, 718
    - • dispensing with consent of non-owning spouse, 706
    - • execution creditors, 707
    - • life interest in surviving spouse, 705, 706, 727
    - • occupational rights, 705, 706
    - • right to stop disposition, 705
    - • “homestead”, 712–716
      - • interpretation, 713
      - • primary function, 716
      - • occupancy requirement, 717
  - persons covered by homestead legislation, 708, 709
    - • common law relationships, 708
    - • married persons, 708
    - • minors, 709
  - rights under legislation, 720–728
    - • consent to disposition, 722, 726
      - • • applicable dispositions, 722
      - • • dispensing with consent, 726
    - • declaration no homestead rights existing, 728
    - • dispositions, types of, 722, 725
    - • fraud, 724
    - • life interest in surviving spouse, 705, 706, 727
    - • registration of rights, 720, 721
      - • • Alberta, 721
      - • • British Columbia, 720
      - • • Manitoba, 721
      - • • Saskatchewan, 721
    - • remedies, 723, 724
  - termination of homestead rights, 710, 711, 719
    - • consent to disposition by non-owning spouse, 710
    - • divorce, 711
    - • judgment for wrongful disposition, 719
    - • separation, 711
- interim orders — British Columbia**
  - preserving property, 550
  - restraining disposal of property, 550

## INDEX

---

### **interim orders — Manitoba**

- interim equalization, 554
- possession or use of family asset, 554
- preservation of assets, 555

### **interim orders — Ontario**

- advance against equalization, 605
- possession, delivery up, safekeeping, preservation, 604
- restraining depletion of property, 604

### **interim orders — Saskatchewan**

- disposition two years prior to application, 614
- possession, delivery up, safekeeping, preservation, 612
- receiving order, 612
- remedies for dissipation, transfer or gift, 613, 614
- restraining action to defeat claim, 612

### **legislation — Alberta**

- agreement opting out of legislation, 3
- limitation period, 6
- settlement, 14

### **legislation — British Columbia**

- agreement, 24
- applicable legislation, 17
- limitation periods, 22
- orders, 24
- principles, 18
- rights of creditors, guarantors or assignees, 25
- triggering event, 21
- valuation of family property, 23

### **legislation — Manitoba**

- application of legislation, 32

- commencing proceedings by petition or application, 36
- equalization payment constituting debt, 38
- extinguishing claim, 38
- limitation periods, 37

### **legislation — Ontario**

- agreement opting out of legislation, 40, 42, 43
- application of legislation, 40, 42
- assignment in bankruptcy, 61
- date of separation, 48
- estoppel regarding intentions towards marriage, 53
- improvident depletion, 60
- interim disbursements, 58
- limitation periods, 54–57
  - extending limitation periods, 55, 56
  - foreign divorces, 57
- ownership rules not retroactive, 44
- presumption of joint ownership in property, 41
- reasonable prospect of reconciliation, 48–52
- triggering events, 47

### **legislation — Saskatchewan**

- application of legislation, 71
- interim distribution, 67
- vesting rights, 73

### **matrimonial home — Alberta**

- certificate of *lis pendens*, 542
- occupation rent, 339
- order excluding spouse from matrimonial home, 335
- possession, 540–542
  - exclusive possession, 540
  - “matrimonial home”, 541
  - occupation rent, 540

- matrimonial home —
  - Alberta (*cont'd*)
    - • restraining order, 540
    - postponement of sale, 337
- matrimonial home — British Columbia**
  - possession, 543–549
    - • exclusive occupation, 544
    - • family member not to enter premises, 547
    - • “family residence”, 544
    - • interim distribution, 543
    - • payment of expenses related to residence, 549
    - • possession of personal property, 544
    - • postponement of right to dispose of or encumber property, 546
    - • postponement of right to partition and sale, 546
    - • prohibiting termination of utilities, 549
    - • registration at land registry office, 548
    - • removal of personal belongings, 549
    - • rights pursuant to temporary orders, 545
    - • timing of application, 543
- matrimonial home — Manitoba**
  - possession, 551–553
    - • exclusive possession, 551
    - • “family home”, 552, 553
    - • postponing right to apply for partition and sale, 551
- matrimonial home — Ontario**
  - applications, 596–603
  - application of legislation, 602
    - • determination as to whether property matrimonial home, 596
    - • dispensing with consent of spouse, 596, 597
    - • extraterritorial effect, 601
    - • former legislation, 603
    - • reversioning interest, 598–600
    - • setting aside transaction disposing of or encumbering interest, 598, 599
  - apportionment of building, 200
  - designation, 207, 208
    - • cancellation of, 208
  - equal right to possession, 204
  - farm, 200
  - housing unit owned by corporation, 199
  - Indian reserve land, 205
  - joint names, 206
  - matrimonial home, definition, 199
  - possession, 556–603
    - • effect of death, 582, 583
    - • general, 556–573
      - • • children, best interests, 565, 575
      - • • delivery up, safekeeping and preservation, 568
      - • • disposition order, 569
      - • • equal right to possession, 556
      - • • equalization payment and ownership or possessory rights, 559
      - • • former spouse, 562
      - • • home maintenance and repair, 567
      - • • household contents, 566, 570
      - • • limitation period to recover possession of land, 571

## INDEX

---

- matrimonial home —
- Ontario (*cont'd*)
  - mortgage payments and routine upkeep, 568
  - occupation rent, 572, 573
  - only one spouse having interest, 556, 558, 561
  - orders, 564
    - no other proceedings pending, 564
    - temporary, interim or permanent, 564
  - ownership of post-separation property, 560
  - removal of spouse from home, 563
  - spouses continuing to reside together, 562
  - unmarried couples, 557
  - restrictions on alienation, 584–589
    - *bona fide* purchaser for value, 587
    - consequences of contravention, 584
    - conveyance by one joint tenant to self, 586
    - interest arising by operation of law, 589
    - “notice to the contrary”, 584, 588
    - statutory restrictions, 584
    - writ of seizure or sale, 585
  - right of forfeiture, 590–595
    - determining whether property matrimonial home, 594, 596
    - dispensing with notice, 594
    - joinder of non-titled spouse as defendant, 595
    - non-titled spouse’s right to redemption, 591
    - non-titled spouse’s right to relief against forfeiture, 591
    - notice of proceedings to non-owning spouse, 590
    - retroactivity, 592
    - rights of non-responding spouse, 593
  - statutory factors, 574–580
    - children, best interests, 565, 575
    - existing property or support orders, 576
    - failure to consider, 574
    - financial position of each spouse, 577
    - other factors, 574
    - suitable alternative accommodation, 579
    - violence against spouse or children, 580
    - written agreements, 578
  - variation of possessory order, 581
  - rental property, 203
  - rules preventing disposition, encumbrance or loss, 204
  - sequential matrimonial homes, 201
  - time of determination, 202
  - unmarried couples, 209
- matrimonial home —  
Saskatchewan**
  - possession of family home, 606–611
    - consent to disposal or encumbrance, 611
    - determination of which property family home, 607
    - equal right to possession, 608
    - exclusive possession, 609, 610



- matrimonial home —  
 Saskatchewan (*cont'd*)
- • “family home”, 606
  - • “household goods”, 606
  - • repair obligations, 609
- partition and sale of property**
- Alberta, 622, 623, 627
    - • applicable legislation, 622
    - • precedence of legislation, 623
    - • separation agreement, 627
  - British Columbia, 624, 625
    - • conflict of legislation, 624
    - • postponement of application, 625
  - general, 615–621, 627–633
    - • applicable legislation, 615
    - • bankruptcy of spouse, 621
    - • children, 620
    - • deduction of expenses, 629
    - • discretion of court, 616, 618
    - • grounds for refusal, 617, 618
    - • occupation rent, 628
    - • *prima facie* right of joint tenant, 616
    - • separation agreement, 627
    - • spouse not having financial ability to maintain property, 619
  - • support arrears, 632, 633
  - • unmarried couples, 630
  - • unwanted assets, 631
  - Manitoba, 440–443
    - • application of legislation, 440, 441
    - • originating notice of motion, 442
    - • refusal of application, 443
  - Ontario, 647–664
    - • adverse possession, 658
    - • application prior to trial, 659
    - • directing sale of property, 657
    - • disposition pending appeal, 655
    - • equitable right in transferee, 656
    - • fluctuation in property value, 654
    - • order for security, 650
    - • presumptions, 653
    - • price fixed by court, 663
    - • proceedings under Family Law Act, 647
    - • prohibiting contact, 651
    - • question of ownership or possession, 648, 649
    - • right of first refusal, 664
    - • rules pursuant to separate property system, 652
    - • sale of corporation, 661
    - • sale prior to disposition of matrimonial property rights, 660, 662
  - Saskatchewan, 626
    - • homestead, 626
- pensions, division of — Alberta**
- *Canada Pension Plan*, 366
  - federal public service pensions, 365
  - legislative scheme, 364
- pensions, division of — British Columbia**
- agreement to vary proportionate shares, 395
  - benefits held in trust by third party, 394
  - compensation payments, 396
  - compliance orders, 392
  - division through trust mechanism, 393
  - federal public service pensions, 393

## INDEX

---

- pensions, division of — British Columbia (*cont'd*)
  - legislative scheme, 387
  - limited membership in local plan, 388, 389
  - no further entitlement after division, 399
  - not yet commenced plans, 390
  - reapportionment of member's benefits, 391
  - retirement savings plan, 397
  - tenants in common, 387
  - unequal division, 398
- pensions, division of — Manitoba**
  - *Canada Pension Plan*, 421
  - federal public service pensions, 420
  - legislative scheme, 418
  - opting out of legislative division, 418
  - private sector employees in federally regulated businesses, 419
- pensions, division of — Ontario**
  - age at which person likely to retire, 196
  - *Canada Pension Plan*, 479
  - entitlement to bankrupt spouse's pension, 198
  - equalization of pension credits, 477
  - federal public service pensions, 478
  - “if and when” division, 194
  - imputed value of pension assets, 190, 191
  - legislative scheme, 480
  - payment, 482
    - lump sum, 482
    - single life pension, 484
  - pre-retirement death benefit, 195
  - spouse of retired member, 193, 483
  - statement of imputed value, 191, 481
  - transfer of lump sum from plan, 192
  - waiver of entitlement to joint and survivor pension, 484
  - withdrawing capital value of pension from equalization formula, 197
- pensions, division of — Saskatchewan**
  - calculating proportionate share, 532
  - *Canada Pension Plan*, 535
  - deferred benefit approach, 531
  - federal public service pensions, 534
  - lump sum payment, 531
  - pension entitlements, 217, 218
  - percentage basis payment, 533
- personal property**
  - joint and several promissory notes as security, 637
  - law of matrimonial domicile, 634
  - seizure by execution creditor, 635, 636
- pre-marital property — Ontario**
  - calculation as of date of marriage, 176
  - incremental increase in value, 176
  - inflation, 176
  - matrimonial home, 178, 179
  - property or proceeds not extant, 177

**title to property and married women's property legislation**

- distribution of property on marriage breakdown, 639
- interest in matrimonial home, 643
- Manitoba, 440, 441, 640, 641
  - applicable legislation, 440, 441
  - originating notice of motion, 641
  - summary proceedings procedural only, 640
- property issues during course of marriage, 638
- treatment of married person's property, 646
  - by or on behalf of spouse, 344
  - failure by joint tenant to meet obligations, 345
  - financial or other form, 344
  - dissipation of property, 360
  - financial resources, 346–349
    - appraisal of farm exceeding its value as viable operation, 347
    - business debts, 349
    - greater share to ensure well-being of both spouses, 346
  - income tax arrears seized, 348

**unequal distribution — Alberta**

- agreements, oral or written, 352, 353
  - contracting out of legislation, 352
  - unenforceable agreements, 353
- any other factor, 361–363
  - accounting of rent revenues, 363
  - conduct, 361
  - inflationary increases in value, 362
  - occupation rent, 363
- contribution to business, farm or enterprise, 341–343
  - attempt to destroy business of other spouse, 342
  - financial or other form, 341
  - no contribution to farming operation, 343
- contribution to marriage and family, 340
- contribution to property, 344, 345

- fraudulent preferences, 354–356
  - disclaimer of interest in estate of third party, 355
  - establishing, 354
  - farm sold to child for less than fair market value, 356
  - length of marriage, 350
  - post-separation acquisitions, 351
  - previous distributions, 357
  - prior orders, 358
  - tax consequences of transfer, 359

**unequal distribution — British Columbia**

- ability to pay debt, 380
- duration of relationship, 376
- family debt incurred in normal course of relationship, 379
- financial means and earning capacity of spouse, 385
- other factors, 384
- spouse causing change in value of property or debt after separation, 381
- spouse reducing value in property or defeating or

## INDEX

---

- unequal distribution — British Columbia (*cont'd*)
  - adversely affecting interest in property, 382
  - spouse's contribution to career, 378
  - tax liability, 383
  - terms of agreement between spouses, 377
- unequal distribution — Manitoba**
  - dissipation of assets, 415–417
    - • “dissipation”, 415
    - • inclusion in accounts of assets dissipated, 417
    - • onus of proof, 415
    - • order for preservation of assets, 416
    - • receiving order, 416
  - general, 408–412
    - • discretion to vary equal distribution, 408
    - • fluctuations in value after separation, 412
    - • interest award, 411
    - • savings in anticipation of separation, 409
    - • unreasonable impoverishment, 410
  - spousal contracts, 413, 414
    - • application of legislation, 413
    - • validity of legislation, 414
- unequal distribution — Ontario**
  - co-habitation for less than five years, 466
  - debts incurred recklessly or in bad faith, 462
  - disproportionate incurrence of debts, 467
  - failure to disclose debts, 461
  - intentional or reckless depletion of assets, 464, 465
    - • business investments, 464, 465
    - • encumbering property, 464
    - • physical destruction or transfer, 464
  - inter-spousal gifts, 463
  - other circumstances, 469–476
    - • abdication of responsibility by spouse, 470
    - • appeals, 475
    - • conduct, 471
    - • disclosure of assets, 473
    - • discretion, 476
    - • facts arising before or after separation, 469
    - • greater capital contribution, 472
    - • post-separation changes in value of assets, 474
  - written agreement that is not domestic contract, 468
- unequal distribution — Saskatchewan**
  - conduct, 518, 530
  - exempt property, 526
  - family home, 521–525
    - • duty to provide child support, 522
    - • extraordinary circumstances, 523–525
    - • judicial discretion, 521
  - spousal contract, 527–529
    - • consideration of non-qualifying agreement, 528
    - • former legislation, 529
    - • legislative requirements for exemption from distribution, 527
    - • unconscionable or grossly unfair contracts, 527

- unequal distribution —
- Saskatchewan (*cont'd*)
  - where equal distribution unfair, 507–520
  - • capital base theory, 514
  - • conduct, 518
  - • contribution of third party on behalf of spouse, 510
  - • date property acquired, 511
  - • death of spouse, 519
  - • duration of period of separation, 509
  - • farm brought into marriage, 513
  - • interest, 515
  - • length of cohabitation, 508, 513
  - • marriage breakdown approaching retirement, 520
  - • retaining income from employment, 517
  - • spouse under care of state, 516
  - • statutory factors, 507, 512
- valuation of pensions — Alberta**
  - factors favouring deduction at source, 239
  - federal public services pensions, 240
- valuation of pensions — British Columbia**
  - alternative method of division, 242
  - federal public services pensions, 242
  - legislative scheme, 242
- valuation of pensions — Manitoba**
  - cash surrender value, 251
  - factors affecting valuation, 250
- federal public services pensions, 249
- legislative scheme, 249
- opting out of legislative scheme, 249
- valuation of pensions — Ontario**
  - federal public services pensions, 319
  - former legislative scheme, 302–318
    - • actuarial evidence, 315
    - • contingent interest in unvested pension, 307
    - • date of retirement, 302, 304
    - • defined benefit pension plans, 303, 310
    - • defined contribution pension plans, 305
    - • discount, 302
    - • “if and when” payment scheme, 306, 313
    - • indexing, 314
    - • loss of income award, 318
    - • lump sum approach, 302
    - • money purchase pension, 309
    - • rearrangement of assets, 316
    - • retirement benefits, 308
    - • tax consequences, 312
    - • unvested final average earnings pension, 311
    - • valuation of RRSP, 317
  - legislative scheme, 293
  - statement of imputed value, 294–301
    - • applicant, 294
    - • imputed value, 295, 300, 301
    - • preliminary value, 295–299
- valuation of pensions — Saskatchewan**
  - discount rates, 326
  - factors, 325

## INDEX

---

- valuation of pensions —
  - Saskatchewan (*cont'd*)
    - federal public services pensions, 327
    - value court considers reasonable, 325
  - valuation principles — Alberta**
    - assets not existing at trial date, 238
    - cost of selling property, 237
    - court fixing value, 236
    - date of valuation, 235
    - onus of proof, 236
  - valuation principles — British Columbia**
    - date of valuation, 241
  - valuation principles — Manitoba**
    - accounting, 244
    - date of valuation, 243
    - dissipation or transfer of assets, 243
    - fair market value, 243
    - fiduciary duty to preserve share of other spouse, 245
    - independent evaluator, fees, 248
    - objective quantification, 244
    - professional practice, 247
    - remedial constructive trust, 243
    - tax consequences, 246
  - valuation principles — Ontario**
    - application of principles, 286–292
      - alternative valuation approaches, 286
      - clean-up costs, 287
      - market for property, 286
      - matrimonial home, 288
      - professional practice or small business, 289–292
    - book value, 282
    - business valuation, 272, 273, 278
    - court fixing value, 257
    - date of valuation, 252, 253, 256, 258, 263, 267, 268
      - altering date, 263
      - dates inflexible, 268
      - post valuation date events, 256
      - pre-marital property, 268
      - realizing against property interest, 258, 267
      - valuation as of given date, 253
      - “valuation date”, 252
    - determination of equalization payment, 259
    - fair market value, 260, 261, 264–275
      - future expectations, 270
      - generally accepted definition of value, 260, 265, 266
      - “fair value”, 261, 264
      - hindsight evidence, 269
      - influence of special purchasers, 274
      - notional sales costs and taxes, 275
      - objective quantification, 271
      - past events, 270
      - valuation date, 267, 268
    - fair value, 261
    - going concern value, 280
    - interim disbursements, 262
    - intrinsic value, 285
    - liquidation value, 281
    - market value/market price, 283, 284
    - minority interest in business, 278
    - nature of market, 276

valuation principles —

Ontario (*cont'd*)

- onus of proof, 257
- ownership not altered in determining equalization entitlement, 254
- post valuation date events, 256
- rateable value, 279
- realization order, 254
- special purchasers, 274, 277
- valuator's report, 255

**valuation principles — Saskatchewan**

- date of valuation, 320–323
- decrease in value of asset as result of deliberate act, 323
- fair market value, 320
- increase in value of corporation, 321
- tax consequences, 324

**who may apply — Alberta**

- agreement releasing claims before Act in force, 12
- assignment in bankruptcy of interest in home, 10
- common law spouses, 1
- corporation owned by party, 11
- continuation of action by estate, 8
- limitation period, 2
- marriage dissolved before Act in force, 5
- no possibility of reconciliation, 4
- surviving spouse, 7
- trustee in bankruptcy, 9
- vesting property retroactively, 13
- void marriage, 1

**who may apply — British Columbia**

- former spouses, 19
- married spouses, 19
- unmarried spouses, 19, 20

**who may apply — Manitoba**

- applicable court, 35
- common law partners, 31
- married persons, 31
- “separate and apart”, 32
- trustee in bankruptcy, 34
- void and voidable marriages, 33

**who may apply — Ontario**

- common law partners, 45
- continuation by/against deceased spouse's estate, 59
- former spouse, 45
- personal representative of deceased spouse, 45, 46
- spouse, 45
- void or voidable marriages, 45

**who may apply — Saskatchewan**

- cohabiting parties, 69
- former spouses, 70
- party with interest in property, 72
- spouse, 66, 69
- surviving spouse, 68
- void marriage, 66

## Index to Federal and Provincial Taxation

*(All references are to paragraph numbers.)*

### **air transportation**

- certified air carriers  
responsibility for collection, 62
- imposition and application, 60
- specific and percentage forms,  
61

### **direct and indirect taxation**

- application to durable and  
consumable goods, 29
- definition, 28
- establishment of categories of  
taxes, 30
- express statutory declaration, 31
- Goods and Services Tax, 32,  
66–79
- licensing fee imposed by trade  
association, 34
- Ontario Retail Sales Tax Act, 33
- overlap of federal and provincial  
powers, 80

### **environmental taxes**

- British Columbia Carbon Tax  
Act, 141
- British Columbia Treaty First  
Nations Taxation Act, 142
- levied in some provinces, 140

### **excise tax**

- general, 55

### **federal oil export charges, 57**

### **federal payroll tax, 56**

### **federal petroleum and gas taxes, 58**

### **federal powers of taxation**

- audit functions and criminal  
investigation, 13
- Charter and seizures of  
databases in computerized  
accounting systems, 15

- Charter rights and production  
requirements, 12
- colourability doctrine, 5
- direct taxation of income, 3
- employment insurance, 9
- equality rights and, 11
- federal provincial co-operative  
regime, 7, 81
- freedom of conscience and  
religion and use of, 10
- Indian Act exemptions and  
provincial tax legislation, 4
- indirect and direct taxation, 2
- license fees paid by businesses  
operated within national parks, 8
- tax on legal services to  
impoverished persons, 14
- termination of personal tax  
credit for dependent child, 16
- unified system of tax collection,  
6

### **federal sales tax**

- general, 55

### **federal taxation**

- anti-dumping, 52–54
- customs duties, 49, 50
- excise duties, 51, 52
- income tax, 48

### **foreign penal or revenue laws, 46, 47**

### **goods and services tax**

- Crown not bound by erroneous  
advice given by officials, 71
- direct taxation, 67
- indemnification by purchaser to  
vendor, 74
- inspection, audit and  
examination of documents, 79



- liability of business not operated regularly or continuously, 77
  - liability of corporate directors for remittance, 68
  - onus of proof for appeal, 73
  - penalties and due diligence, 76
  - priority to taxpayer's bank account, 84
  - rebate as public college, 75
  - registered members of Indian band, 78
  - shell company to avoid remission, 72
  - statute-barred rebate claims
  - taxable supplies, 66
- health insurance premiums, 133**
- hotel and motel rooms, 115**
- insurance premiums, 59**
- interjurisdictional vehicles, 116**
- interpretation of taxing statutes**
- absurdity, 37
  - canons of construction as applied to other legislation, 35
  - consistent with smooth operation of taxing system, 37
  - construction most favourable to taxpayer, 36
  - determination of authority to impose assessment, 40
  - mandatory and directory, 39
  - persons claiming exemptions or deductions, 38
  - power to assess and reassess at any time, 41
  - retroactive statutes, 42
- limitations on powers**
- governmental exemption from land or property taxes, 27
  - prohibition of custom duties between provinces, 26
- logging tax in British Columbia**
- definition of logging operations, 127
  - income derived from logging operations, 128
  - license fees and royalty rates levied, 131
  - lien and priority in favour of Crown, 130
  - net income derived from logging operations, 129
  - rate, 126
  - stumpage fees, 132
  - tax credit under federal and provincial Income Tax Acts, 126
- lottery and gaming statutes, 143**
- mines and minerals**
- Alberta, 117
  - British Columbia, 118
  - Manitoba, 119
  - Saskatchewan, 120
  - Ontario, 121
- oil and gas**
- Alberta, 122
  - British Columbia, 123
  - Manitoba, 124
  - Saskatchewan, 125
- property taxes**
- British Columbia Ports Property Tax Act, 139
  - business tax, 134
  - general property tax, 134
  - municipal and school purposes, 134
  - Ontario Commercial Concentration Tax Act, 135
  - Ontario Development Charges Act, 135
  - Ontario Estate Administration Tax Act, 136

## INDEX

---

- Ontario Provincial Land Tax Act, 135
- Ontario Tax Incentives Zones Act (Pilot Projects), 137
- transfer of real property, 136
- provincial corporate income tax**
  - administration of by Canada Revenue Agency for Ontario, 86
  - adventure or concern in nature of trade, 88
  - collection, 85
  - permanent establishment in province, 85
  - reduced corporate rate for small businesses, 85
  - Saskatchewan Film Employment Tax Credit Act, 87
- provincial corporation taxes**
  - additional annual tax on paid up capital, 89
  - aggregate paid up capital in British Columbia, 91
  - definition of taxable capital, 90
  - exemptions to corporation capital tax acts, 93
  - insurance companies, 95–97
  - lien, charge and priority in favour of Crown, 94
  - paid-up capital calculation in Ontario, 92
- provincial income tax**
  - collection agreements with federal government, 81
  - corporate income tax, 85–88
  - formula for calculation, 84
  - liability for, 84
  - Manitoba Balanced Budget Fiscal Management and Taxpayer Accountability Act, 82
  - Manitoba Centennial Projects Tax Status Act, 83
  - overlap between federal and provincial powers, 80
- provincial motive and other fuels taxes**
  - Alberta, British Columbia, Manitoba, 110
  - Ontario Gasoline Tax Act, 111
  - remission by recipient in Saskatchewan, 112
  - Saskatchewan, 109
- provincial powers of taxation**
  - Crown's prerogative priority in collecting taxes and Charter, 25
  - direct taxation within provinces, 17
  - licensing, 21
  - limitation on federal powers over regulation of trade and commerce, 19
  - paramountcy principle, 22
  - statutory liens, 23, 24
  - taxation in respect of electrical facilities, 20
  - taxation in respect of forestry resources, 20
  - taxation in respect of non-renewable resources, 20
  - taxation of any person found within province, 18
- provincial retail sales taxes**
  - aircraft operations of federally regulated inter-provincial airlines, 99
  - conditional exemptions, 106
  - definition of sale, 103
  - definition of tangible personal property, 101
  - definition of taxable services, 101
  - intangible personal property, 102

## FEDERAL AND PROVINCIAL TAXATION

---

- materials/equipment re contract to construct or repair real property, 102
  - promotional distribution of any tangible property or service, 109
  - property within province, 99
  - real property, 102
  - refundable tax paid in error, 107
  - role of licensed retailers as collecting agent, 98, 108
  - sales for delivery outside province, 106
  - sales involving transfers of title or possession, 104
  - sales of goods for resale, 106
  - sales tax base, 105
  - tangible personal property for own consumption or use, 112
  - when imposed, 105
  - unconditional exemptions, 106
- provincial tobacco and liquor taxes**
- liquor and alcoholic beverages, 114
  - tobacco, 113
- recovery of taxes paid**
- collection under compulsion and pursuant to ultra vires statute, 43
  - illegal tax paid under protest and to avoid sanctions, 43
  - limitation period, 45
  - overpayment where wrong information given by Crown employee, 44
  - voluntary payment under mistake of law or fact, 44
- telecommunication programming services, 63, 64**
- telecommunication services, 65**

## Index to Firearms, Weapons and Explosives

(All references are to paragraph numbers.)

- ammunition**, *see also* “firearm”; “weapon”
- definition, 136
  - “prohibited ammunition”, 137
  - transfer of, 63
- antique firearms**, 48, 110, 113
- assault**, 265
- authorizations**, 1, 2, *see also* licences
- brass knuckles**, 131
- “business”**, 20
- carriers**, 21, 54, 230
- Charter of Rights**, *see* constitutional issues
- “chief firearms officer”**, 3
- civil liability**, *see* assault; negligence; trespass to land
- constitutional issues**, 1, 93, 152, 158, 183, 191, 193, 207, 211
- crossbows**, 12, 16, 135
- Crown**, issues re, 7
- dangerous goods**, *see* explosives; legislation
- definitions generally**, 2
- device**, *see* prohibited device
- disposal of property**, *see* search and seizure
- explosives**, *see also* legislation; negligence (explosives); offences
- accidents, inquiries into, 297, 298
  - “authorized explosive”, 288
  - definition of, 287
  - “explosive substance”, 289
  - Explosives Act, 302
  - general, 285, 286
  - inspections, 293–296
  - licences/permits, 290–292
  - regulations re, 305, 306
  - Transportation of Dangerous Goods Act, 286
- exporting**, *see* importing/exporting
- “firearm”**, *see also* ammunition; “prohibited device”; specific types, e.g., replica firearms; “weapon”
- adaptable for use as, 100, 103–106
  - ammunition, effect of non-possession, 108
  - antique firearms, 113
  - automatic firearm, 115, 116
  - exempted weapons, 110, 111
  - frame or receiver, 104
  - general, 2, 100
  - handgun, 117
  - imitation firearm, 112
  - inoperable firearms generally, 103
  - muzzle length, 109
  - nature of offence charged, relevance of, 105, 106
  - prohibited firearm, 119
  - proof object is a “firearm”, 101, 102
  - replica firearm, 112, 114
  - restricted firearm, 118
  - unloaded firearms, 107
- “firearms officer”**, 3
- fires**, *see* legislation
- forfeiture of property**, *see* search and seizure
- general**, 1

- handguns**, *see* “firearms”; transfer of firearms; transport/possession
- highways**, *see* legislation
- importing/exporting**
- authorization/approval, 65, 77, 78
  - business, by, 76–78
  - licensed individual, by, 72, 74
  - non-resident, by, 70, 71
  - prohibited weapons, 75, 76
  - regulations re, 97, 98
  - replica firearms, 73
- inspections**
- authority for generally, 81
  - dwelling-houses, 82–84
  - powers while conducting, 82
  - search warrants, 83, 84
- insurance**, *see* legislation
- knives**, 123–128
- legislation (Alberta)**
- dangerous goods transportation, 307–309
  - insurance, 312
  - occupational health and safety, 310
  - parks, protection of, 313
  - safety codes, 311
  - wildlife protection, 314
- legislation (British Columbia)**
- dangerous goods transportation, 315–317
  - fire services, 318
  - municipal regulations, 319
- legislation (federal)**, 1, 99
- legislation (Manitoba)**
- dangerous goods transportation, 320–322
  - fire prevention, 324
  - highway traffic, 323
  - insurance, 325
  - municipal regulations, 322
- legislation (Ontario)**
- dangerous goods transportation, 326, 327
  - fire prevention, 329
  - highway traffic, 328
  - insurance, 331
  - municipal regulations, 332
  - parks, protection of, 330
  - wildlife protection, 330
- legislation (Saskatchewan)**
- dangerous goods transportation, 333, 334
- lending of firearms**, *see also* transfer of firearms
- Crown/police, to, 69
  - general, 58, 68
- liability**, *see* assault; negligence; offences; trespass to land
- licences (eligibility of business)**
- authorized activities, 5
  - “business”, 20
  - carriers, 21
  - general, 19
  - museums, 23
  - prohibited weapons, 22
- licences (eligibility of individuals)**
- Crown, 7
  - multiple owners of firearm, 8
  - persons under 18 years, 15, 16
  - police, 7
  - prohibited firearms, 17, 18
  - safety concerns re applicant, 12, 13
  - safety courses, 14
- licences (general)**, *see also* explosives; transport/possession
- business, licence issued to, 5

## INDEX

---

- carry permits, 9, 10
  - conditions on licence, 5
  - constitutional issues, 1
  - definitions, 2, 3
  - description of weapon, 6
  - fees, 4
  - form/contents of, 5
  - intraprovincial carriers, 10
  - issuing, legislation governing, 4
  - legislation generally, 1, 97, 98, 99
  - multiple owners of firearm, 8
  - museums, 23
  - renewals, 11
  - serial numbers, 6
  - transfer of prohibited, 10
  - transport permits, 9
  - validity of, territorial, 10
- licences (refusal/revocation)**
- discretionary refusal, 25
  - mandatory refusal, 26
  - notice of decision, 27
  - reasons for decision, 27
  - reference to court, 28–33
  - seizure of, 258
- licences (term of)**
- authorization to carry, 39
  - authorization to transport, 37, 38
  - authorizations generally, 37
  - businesses, 36
  - museums, 36
  - persons over 18 years, 34
  - persons under 18 years, 35
  - registration certificates, 40
- mace**, 131
- museums**, 23, 36, 230
- negligence (explosives)**
- children, standard of care re, 342
  - contributory negligence, 338
  - duty of care (common law), 337, 338
  - duty of care (Criminal Code), 299, 335
  - duty of care (statutory), 336
  - examples, miscellaneous, 339–341
  - landowner’s liability, 346
  - loss of explosives, 344
  - manufacturer’s liability, 345
  - misuse of explosives, 343
  - noise, 346
  - unexpected explosions, 340
  - vibrations, 346
- negligence (firearms/weapons)**, *see also* offences (Criminal Code)
- ammunition, re, 279, 280
  - contributory negligence, 275
  - manufacturer’s liability, 282
  - minor’s liability, 278
  - parental liability, 276, 277
  - police, liability of, 281
  - sale to minor, 283
  - store owner’s liability, 284
  - teacher’s liability, 277
  - use/storage of firearm, 269–274
- nunchaku sticks**, 131
- occupational health and safety**, *see* legislation
- offences (Criminal Code)**
- acquisition of weapon without certificate, 203
  - assault with weapon, 221
  - automatic weapons, re, 208
  - bodily harm, with intent, 220
  - breaking and entering, 223, 224
  - careless use/storage, 151, 152, 154–158
  - carrying concealed weapon, 178–183

## FIREARMS, WEAPONS AND EXPLOSIVES

---

- carrying weapon at public meeting, 177
  - causing bodily harm with intent, 219
  - conviction, subsequent, 148
  - delivery of firearm to unauthorized person, 201–203
  - disarming peace officer, 225
  - disturbing peace by discharging firearm, 218
  - exempt person, 226–230
  - explosives, re, 300, 301, 302, 335
  - importing/exporting, re, 209–211
  - loss/theft/destruction, breach of duties re, 212, 213
  - peace officer, disarming of, 225
  - pointing firearm, 153, 159–162
  - possession obtained by commission of offence, 199, 200
  - possession of weapon for dangerous purpose, 163–176
  - possession on aircraft, 217
  - possession with ammunition, 197, 198
  - prohibition order, breach of, 214, 229, 250
  - robbery, 223, 224
  - sexual assault with weapon, 222
  - trafficking/unauthorized transfers, 204–207
  - training in use of arms, 216
  - unauthorized possession (general), 184–191, 247
  - unauthorized possession (in motor vehicle), 192–195
  - use during offence, 138–150, 262
- offences (explosives)**
- Canada Post Corporation Act, 304
  - Criminal Code, 300, 301, 335
  - Explosives Act, 302
  - Transportation of Dangerous Goods Act, 303
- offences (Firearms Act)**
- ammunition, re possession of, 86, 87
  - conditions of licence, etc., breaching, 88
  - constitutional issues, 93
  - delivery up of revoked licence, etc., 94
  - exemptions for public officers, 96
  - false statements/non-disclosure, 85, 87
  - inspector, failing to assist, 88
  - miscellaneous offences, 89, 95
  - producing firearm on request, failure re, 94
  - registering weapon, failure re, 90–94
  - shooting club/range, re operation of, 87
  - tampering with documents, 86, 87
- parks, see** legislation
- pepper spray, 131**
- possession, see** licences:  
transport/possession
- “prohibited device”, 133, 134**
- prohibited firearms, see** “firearm”; see also specific matters, e.g., licences
- prohibited weapons, see also** “firearm”; “weapon”
- brass knuckles, 131
  - definition of, 123
  - knives, 123–128
  - mace, 131
  - nunchaku sticks, 131
  - pepper spray, 131

## INDEX

---

- regulations prescribing, 129–131
- stun guns, 131
- prohibition orders**
  - breach of, 214, 229, 250
  - discretionary orders, 235, 236, 242
  - duration of prohibition, 241–244
  - lifting of orders, 245
  - mandatory orders, 231–234, 241
  - preventive orders, 237–240, 243
  - return of property, 249
  - surrender of prohibited items, 246–249
- registration certificates**, 1, 2, 24, *see also* licences
- registration system**, 79, 80
- regulations (Criminal Code)**, 215
- regulations (Firearms Act)**, 97, 98
- replica firearms**, 47, 61, 73, 112, 114
- restricted firearms**, *see* “firearm”; specific matters, e.g., transfer of firearms
- “restricted weapon”**, 132, *see also* “firearm”; “weapon”
- sale**, *see* transfer of firearms
- search and seizure**
  - forfeiture/disposal, 260–264
  - seizure, 254–256, 258–260
  - with warrant, 257–259, 264
  - without warrant, 251–253
- serial numbers**, 6
- shooting clubs/ranges**, 87, 97
- storage**, *see* transport/possession
- stun guns**, 131
- transfer of firearms**, *see also* lending of firearms
  - ammunition, non-prohibited, 63
  - authorization/approval, 59, 62, 65
  - business, to, 62
  - Crown/police, to, 60, 64
  - general, 58, 59, 97, 98
  - handguns, 66
  - knowledge of transferor, 58
  - licence, 59, 62, 65
  - mail, by, 67
  - prohibited weapons, devices or ammunition, 62, 64
  - replica firearms, 61
  - restricted weapons, 66
  - “transfer”, 58
- transitional provisions**, 99
- transport/possession (businesses)**, *see also* explosives
  - ammunition, 54
  - carriers, 54
  - general, 53, 97, 98
  - prohibited firearms/weapons, 54
  - non-restricted firearms, 57
  - shipping of firearms, 55
  - storage/display, 56, 57
- transport/possession (individuals)**, *see also* explosives
  - antique firearms, 48
  - armed forces members, 51
  - exemptions, 51
  - general, 41, 42, 97, 98
  - handguns, 43, 44, 48
  - loading/handling, 52
  - police officers, 51
  - prohibited firearms, 44
  - reason, good and sufficient, 42
  - regulations generally, 45, 46
  - replica firearms, 47
  - restricted firearms, 42–44



## FIREARMS, WEAPONS AND EXPLOSIVES

---

- shipping of firearms, 49
- storage/display, 50

**trespass to land**, 266–268

**“use”**, 141, 262

**“weapon”**, 120–122, *see also* ammunition; “firearm”; “prohibited device”; “prohibited weapons”

**wildlife protection**, *see* legislation

## Index to Fires

(All references are to paragraph numbers.)

- Criminal Code, offences under,** 101
- Emergency Management Act (Alberta)**
- emergency plans, 53
  - liability under, 55
  - minister's powers, 54
  - offences under, 55
  - state of emergency, 54
- fire departments,** 21–23
- Fire Prevention Act, 1992 (Saskatchewan)**
- by-laws, 100
  - fire commissioner, 92, 93
  - insurance companies, 99
  - investigations, 94
  - limitations, 98
  - orders, 95, 96
  - right of entry, 93
- fire prevention and suppression generally**
- misfeasance, 49
  - municipalities generally, 21, 22, 49–51
  - provincial duties re, 23
- Fire Services Act (British Columbia)**
- fire commissioners, 69, 72
  - insurance companies, 71
  - investigations, 70
  - regulations, 73
- Fires Prevention and Emergency Response Act (Manitoba), see also Wildfires Act (Manitoba)**
- fire commissioners, 87, 88
  - inquiries, 87
  - insurance companies, 89
  - Manitoba Fire Code, 88
  - municipalities, duties, 91
  - offences, 90
  - officers, 87–89
- Fires Prevention (Metropolis) Act, 28**
- accidents, 28, 29, 32
  - applicability to provinces, 30
  - duty under, 31
  - landlord and tenant, 29
- Forest and Prairie Protection Act (Alberta)**
- application, 61
  - compensation, 65
  - offences, 66, 67
  - powers, 62, 63
- Forest and Range Practices Act (British Columbia)**
- application, 74
  - effective date, 75
  - fire fighters, fitness standards, 77
  - standard of care, 76
- Local Government Act by-laws (British Columbia), 80**
- Municipal Act (Manitoba), 91**
- Municipal Government Act (Alberta), 68**
- negligence**
- act of God, 5
  - acts of others, 7–11
  - causation, 4
  - fire departments, 21, 22
  - garagemen, 12, 13
  - general, 4–6

negligence (*cont'd*)

- landlords, 19, 20
- occupier, 1, 2
- proof of negligence, 24–27
- Rylands v. Fletcher, 3
- standard of care, 6
- tenants, 15–18
- vicarious liability, 10
- warehousemen, 14

**Prairie and Forest Fires Act, 1982 (Saskatchewan)**

- administration, 101
- application, 101
- compensation, 103
- duties and powers, 104
- investigations, 107
- offences, 105
- railways, 106

**railways**

- adjoining owners, 46
- clearing right-of-way, 45
- common law, 36
- federal and provincial laws, 38, 85
- federal powers, 108
- insurance, 40, 41
- negligence, 36–39
- proof of cause, 42
- responsibility for damages, 44
- rights-of-way, 43, 45, 46

**res ipsa loquitur**, 25, 26

**Rylands v. Fletcher**, 3, 48

**Safety Codes Act (Alberta)**

- application, 56
- offences under, 60
- regulations under, 59
- Safety Codes Council, 57
- safety codes officers, powers of, 58

**statutory authority for use**, *see also* **railways**

- agriculture, 47, 48
- negligence, 34, 35
- protection under, 33

**Wildfire Act (British Columbia)**

- application, 78
- duty of care, 79

**Wildfires Act (Manitoba)**, *see also* **Fires Prevention and Emergency Response Act (Manitoba)**

- applicability of, 81
- burning permit areas, 84
- closure of areas, 84
- duties under, 81, 82
- equipment, use of, 85
- fire control plans, 85
- offences, 82, 86
- officers, powers of, 83
- prohibitions, 81
- railways, obligations of, 84
- work permits, 84

## Index to Fish and Game

(All references are to paragraph numbers.)

- administration**, *see* licences; offences; wildlife officers
- antlers**, 110
- arrests**, *see* wildlife officers
- conservation**, *see* legislation; wildlife officers
- endangered/protected species**
- British Columbia, 4
  - Manitoba, 5
- enforcement**, *see* offences; wildlife officers
- exotic animals**
- Alberta, 1, 13
  - Saskatchewan, 9
- fisheries (federal)**
- boundaries/territorial limits, 93, 94
  - deleterious substances, dumping, 74, 86
  - explosives, use of, 78
  - fishery leases, 77, 78
  - fishways, 78
  - fishing licences, 81
  - foreign vessels, 91, 92, 95
  - general, 60, 61, 71
  - gravel, removal of, 76
  - habitat, alteration of, 78
  - legislation generally, 77, 84
  - lobsters, 78
  - native persons' rights, 85, 87, 88
  - nets, 78
  - objectives of Crown, 73
  - offences/penalties, 74, 78–82, 86, 95
  - officers, powers of, 78
  - pollution, 78
  - proprietary rights, 72
  - protests, 79
  - regulations, 83
  - seizure of goods/vessels, 90
  - spawning grounds, protecting, 75
  - waterflow, limiting, 75
- fisheries (provincial)**
- beds, ownership of, 63, 66
  - common law fishing rights, 63–65, 67
  - conservation/protection, 70
  - general, 60, 61, 71
  - marketing, 69
  - offences, 69
  - regulation generally, 69
  - tidal vs. non-tidal waters, 62
- furs**, 3, 5, 9
- game farms (Alberta)**, *see also* game preserves
- domestic cervid, 96, 103
  - enclosures/pens, 102
  - escapes/trespass, 102, 103
  - “game-production animal”, 96
  - general, 96
  - liability, re, 103
  - licensing of, 97–100
  - offences, 97
  - operation of, 101
- game farms (British Columbia)**, *see also* game preserves
- antlers, removal of, 110
  - escapes, 108, 109
  - general, 104
  - licensing of, 104–107
- game farms (Manitoba)**
- general, 111
  - licensing of, 112, 113

- operation of, 114
- game preserves**, *see also* game farms
  - Alberta, 1, 38, 96, 97
  - British Columbia, 3, 38, 39
  - creation of, 38
  - Manitoba, 5, 38, 40, 114
  - Saskatchewan, 8, 9, 38, 41
- gravel, removal of**, 76
- guides**, 49
- habitat development**
  - Alberta, 1
  - British Columbia, 3
- hunting**, *see also* native persons; offences
  - Alberta, 1
  - British Columbia, 3
  - guides, 49
  - Manitoba, 5
  - offences, 34–37
  - private/occupied/posted lands, 32, 33
  - Saskatchewan, 8, 9
- legislation (Alberta)**
  - exotic animals, 1
  - general, 1
  - hunting, 1
  - licences/permits, 1
  - regulations, 1
  - trafficking in animals, 1
  - trust fund, fish/wildlife, 1
  - “wildlife”, 2, 10
  - wildlife officers 11
- legislation (British Columbia)**
  - endangered species, 4
  - general, 7
  - habitat conservation fund, 3
  - hunting, 3
  - ownership of wildlife, 3
- “wildlife”, 4
- legislation (federal)**
  - constitutional issues, 48
  - national parks, 49
  - native persons, 49–58
  - provincial application 51
- legislation (Manitoba)**
  - classes of animals, 6
  - conservation/management, 5
  - fur, 5
  - general, 5
  - hunting, 5
  - offences under, 5
  - protected species, 5
  - trapping, 5
- legislation (Saskatchewan)**
  - conservation/management, 8
  - general, 8
  - hunting, 8, 9
  - offences under, 8
  - ownership of wildlife, 8
  - regulations under, 9
  - “wildlife”, 9
- licences**, 29, 31, 49, 81, 89
- national parks**, 49
- native persons**
  - bank councils, by-laws by, 50
  - fishing rights, 85, 87
  - food/sustenance, obtaining of, 55
  - game preserves, hunting on, 56
  - general, 50, 51, 57
  - hunting rights generally, 49, 53, 54, 57, 59, 89
  - national parks, hunting in, 49
  - religious rights, 58
- offences**, *see also* fisheries; native persons; wildlife officers
  - British Columbia, 43

## INDEX

---

- constitutionality, 47, 48
- firearms, re, 34, 46
- general, 5, 8, 35, 48
- hunting, general, 34, 35
- hunting on posted land, 37
- informations, 44
- investigations, 2.2
- intent, 45
- licences, re, 42, 49
- native persons, 49–58
- obstruction of officer, 47
- regulations, breach of, 42
- ownership of wildlife**
  - British Columbia, 3
  - Saskatchewan, 8
- property**, *see* ownership of wildlife
- protected species**, *see* endangered/protected species
- search/seizure**, *see* fisheries (federal); wildlife officers
- trafficking in animals**, 1
- trapping**, 3, 5, 8, 35
- “wildlife”**
  - Alberta, 2
  - British Columbia, 4
  - Manitoba, 7
  - Saskatchewan, 8, 9
- wildlife officers (Alberta)**, *see also* offences
  - appointment, 10, 11
  - powers of, 13–15
  - wildlife guardians, 12, 14, 15
- wildlife officers (British Columbia)**, *see also* offences
  - conservation officers, 16
  - general, 16
  - peace officers, as, 17
  - powers of, 18, 19
- wildlife officers (Manitoba)**, *see also* offences
  - appointment of, 21
  - minister responsible, 20
  - powers of, 22
- wildlife officers (Saskatchewan)**, *see also* offences
  - advisory committees, 24
  - appointment of, 25, 26
  - deputy officers, 27
  - general, 23
  - powers of, 27, 28
- wildlife sanctuaries/management areas**, *see* game preserves

## Index to Fraudulent Conveyances and Preferences

*(All references are to paragraph numbers.)*

- actions, *see also costs; judgments; pleadings; practice***
  - class actions, 274, 276, 277
  - commencement, 9, 18, 264, 268, 271–277
  - commencement by wrong method, 270
  - continuation, 316
  - damages claimants, by, 36, 170
  - exhaustion of remedies not required, 41
  - future creditors, by, 7, 18–28, 72, 170
  - joinder of claims, 291, 292
  - limitation of, 290, 309, 310
  - non-residents, by, 11
  - parties, 279–284
  - proceeds of transfer, recovery, 265
  - receivers, by, 173
  - remedies, 9, 244, 267, 317, 321, 323
  - secured creditors, by, 8, 29–35
  - settlement, 315
  - simple creditors, by, 9
  - spouses, by, 13, 171
  - summary judgment, 266
  - trial of, 313, 314
  - trustee in bankruptcy, 12, 173
- agent, conveyances by, 53, 54**
- bankruptcy, 1, 12, 173**
- bills of sale, 1**
- bona fide transactions (conveyances)**
  - consideration, adequacy, 81, 82
  - general, 75, 76
  - knowledge of transferee, 96–100
  - meaning of, 78–80
  - preferences, 93–95
- bona fide transactions (preferences)**
  - burden of proof, 225
  - consideration, 226, 232
  - evidence, 226–228
  - examples, 229, 231, 233, 234
  - general, 224
  - intention overriding consideration, 226, 228
  - money purchases, 230
- certificate of lis pendens, 303**
- charitable donations, 54, 57**
- chattel mortgages, 1, 43, 233, 252, 298, 311**
- choses in action, 138**
- collusion, 69, 222**
- conditional sales, 1**
- confessions of judgment, 222**
- conflict of laws, 311, 312**
- consideration, *see conveyances (intent of parties); preferences (transactions excepted)***
- constitutional law, 5, 164–168**
- contracts, 135, 171**
- “conveyance”, 37**
- conveyances (examples)**
  - agency transfers, 53, 54
  - changes in form or property, 48
  - charitable donations, 54, 57
  - discharges, 43–45, 138, 144
  - disclaimers, 46, 47
  - general, 37–41

## FRAUDULENT CONVEYANCES AND PREFERENCES

---

- improvement on settled property, 49
- marriage contracts, 58
- purchaser paying debtor's creditor, 56
- subsequent transfers, 55, 62
- sureties, transfer by, 53
- tax sales, 60
- trusts, 50–52
- conveyances (general)**, 1, 4
  - death of party, 155, 156
  - preferences distinguished, 2
  - validity inter partes, 17, 154, 157–161
- conveyances (insolvency of debtor)**
  - “insolvent circumstances”, 64, 182
  - pre-existing circumstances, 62
  - proof of insolvency, 61, 65
  - relevance to action, 61
  - single unpaid debt, 63
  - valuation of property, 64, 184
- conveyances (intent of parties)**
  - conveyances for consideration, 66, 67, 75–101
  - general, 66–69
  - proof of intent, 70–72, 102–131
  - time for determining intent, 27
  - voluntary conveyances, 66, 67, 70–74, 104, 107
- conveyances (persons protected)**
  - beneficiaries under guarantee, 14
  - collaborating parties, 15, 16
  - creditors and others, 6, 8–11, 13, 14
  - damages claimants, 36
  - debtor, 12, 154, 157–161
  - donees, 18
  - execution creditors, 9
  - future creditors, 7, 19–28
  - general, 6, 10
  - non-residents, 11
  - purchasers of judgments, 17
  - secured creditors, 8, 29–35
  - spouses, 13, 42
- conveyances (property subject to statutes)**
  - changes in form of property, 48
  - choses in action, 138
  - contracts, assignment of, 135
  - divorce decree requiring equalization payment, 42, 59
  - exempt property, 132–134
    - general, 132–134
  - jointly held property, 141, 156
  - mortgagee's interest, 144
  - proceeds from property, 134, 146–153
  - property in which debtor has no interest, 139–143
  - prospective or contingent interests, 135, 145
  - quotas and licenses, statutory, 136, 137
  - trust property, 140
- corporations**
  - debtor controlling, 54, 57, 130
  - foreign, 11
- costs**, 313–316
- “creditor”**, 6, 172, 174
- “creditors and others”**, 6
- crops**, 147, 150, 234
- discharges**, 43–45, 138, 144
- disclaimers**, 46, 47
- discovery**, *see practice*
- equitable execution, availability**, 175, 302



## INDEX

---

- evidence, *see* conveyances (intent of parties); practice**
- exempt property, 132–134**
- family law**
- child support claims, 86, 171
  - divorce decree and equalization payment, 42, 59
  - homesteads and dower, 134, 261
  - maintenance claims, 13, 171
  - marriage contracts, validity, 58, 82, 91
  - trust arrangements, validity, 52
- foreign corporations, 11**
- foreign property, 311, 312**
- gifts, 18**
- guarantees**
- conveyances by surety, 53
  - surety as creditor, 172
- injunctions**
- certificate of lis pendens, 303
  - duration of, 304
  - general, 296, 298, 301, 302
  - interlocutory, 297
  - Mareva, 300
  - quia timet, 299
  - variation of, 306
- “insolvent circumstances”, 64, 182**
- insurance proceeds, 152**
- interpleader, 305**
- judgments**
- effect of, 321
  - form of, 321
  - lien created, 320
  - relief granted, 317–319
  - scope of, 322
  - secondary relief, 324
  - trust, declaration of, 318, 323
- laches and delay, 307, 308**
- legislation**
- constitutional issues, 5, 164–166
  - divorce decree and equalization payment, 42, 59
  - general, 4
  - interpretation, 3, 37, 47, 146, 263
  - liquidated and unliquidated claims, 176
  - provincial, 4, 5
  - purpose of, 2, 4, 6, 47
  - retrospectivity, 263
  - Statute of Elizabeth, 4, 5
- licenses, 136, 137**
- limitation periods**
- actions, 290, 309, 310
  - deemed preferences provisions, 212–214
- mistake, 253**
- mortgages**
- discharge, fraudulent, 43, 144
  - foreclosure, fraudulent, 45
  - preferences, as, 237, 251
  - spouses, between, 143
- parties, *see* actions**
- personal property security, 1**
- pleadings**
- amendment, 288, 289
  - general, 285–287
  - service, 290
- practice, *see also* actions; costs; injunctions; judgments; limitation periods; pleadings**
- conflict of laws, 311, 312
  - discovery, 293, 294
  - evidence on applications, 267
  - interpleader, 29
  - laches and delay, 307, 308

- trials, 313, 314
- preferences (general)**
  - confessions of judgment as, 222
  - conveyances distinguished, 2
  - provincial legislation generally, 164–168, 263
  - Statute of Elizabeth, under, 93
  - trusts as, 221, 256–260
- preferences (insolvency of debtor)**
  - creditor’s knowledge of, 196–203
  - general, 181, 189, 220
  - meaning of, 64, 182–184
  - prerequisite to action, 181, 220
  - pressure, effect of, 204, 208
  - proof of, 185–188
- preferences (intent of parties)**
  - outside statutory time limits, 167, 174, 189–203, 205–210
  - within statutory time limits, 167, 189, 211, 214–219
- preferences (persons protected)**
  - cestui que trust, 172, 174
  - creditors only, 167, 174, 175
  - family law claims, 171
  - future creditors, 170
  - receivers, 173
  - secured creditors, 177–180
  - trustees in bankruptcy, 173
- preferences (transactions excepted)**
  - assignments for creditors’ benefit, 257, 259, 260
  - bona fide transactions, 222–234
  - contingent or prospective interests, 247
  - executors, transfers by, 250
  - exempt property, transfers, 246, 247
  - general, 223
  - judgments, 248, 249
  - miscellaneous, 261, 262
  - mistake, debtor paying by, 253
  - money payments to creditor, 237–241
  - property not owned by debtor, 254, 255
  - property of no value, 251
  - sale of security, surplus proceeds, 252
  - security for pre-existing debt, 235, 236
  - substitution of securities, 242–245
- pressure, doctrine of, *see* preferences (intent of parties)**
- proceeds of property, *see* tracing of proceeds**
- quotas, 136, 137**
- receivers, 173**
- recovery of property by transferor, 17, 157–161**
- residence, 11**
- scope of title, 1**
- secured creditors, *see* actions; conveyances (persons protected); preferences (persons protected)**
- service, *see* pleadings**
- sureties, *see* guarantees**
- survivorship, 156**
- tax sales, 60**
- tracing of proceeds, 146–153, 265**
- trusts**
  - bare trusts, 161
  - cestui as creditor, 172
  - disposition of property as, 140
  - equitable trust for creditors, 153

## INDEX

---

- implied, 312
  - preferences, as, 221, 256–260
  - validity, 50–52
- valuation of property, *see*  
conveyances (insolvency of  
debtor)**

## Index to Gaming

(All references are to paragraph numbers.)

- betting**, *see also* gaming;  
gambling; horse racing; wagers
- cheating, 19
  - criminal offence, as, 16
  - defined, 7
  - legislative jurisdiction, 15
  - recording bets, 17
- book making**, 17
- casinos (Ontario)**, 81, 82, 83
- casinos (Saskatchewan)**, 85, 86
- cheating**, 19
- commodities**, 7, 27–29, 43
- common gaming or betting house**, 16
- common law**, 48
- consideration, illegal**, 3, 31, 32–35, 36
- constitutional competence**, *see* jurisdiction
- contracts re, void on policy grounds**, 32–35
- criminal offences**, *see* betting; gambling in differences; horse racing; lotteries; wagers
- cruise ships**, 25, 63–66
- elections, wagers on**, 47
- gambling**, *see also* betting; gaming; horse racing; wagers
- debt, agreement to pay, 40
  - defined, 5
  - gambling in differences, 27–29, 43
- gaming**, *see also* betting; gambling; horse racing; wagers
- agreement to divide winnings, 44
  - cheques to obtain money for, enforceability of, 37–39
  - consideration, illegal, 31, 36
  - contract, enforceability of, 3, 4, 31, 40
  - Criminal Code, 5
  - definition, 5
  - Gaming Acts, 3, 31, 36, 40
  - loans for, 36, 37
  - money paid on gaming transaction, recoverability of, 41–46
- “gaming premises”**, 81
- holding money for unlawful purpose**, 18
- horse racing**
- damage, responsibility for, 58
  - drug testing, 52
  - legislative jurisdiction, 15, 48
  - pari mutuel system, operation of, 50
  - prohibited activity, 49
  - provincial commissions, 51, 54, 55, 56
  - regulation of, federal, 50, 52
  - regulation of, general, 48, 57
  - regulation of, municipal, 53
  - regulation of, provincial, 51, 53
  - taxation of, 51
- illegal consideration**, 3, 31, 32–35, 36
- jurisdiction**
- federal, 10, 15
  - municipal, 13, 14, 82
  - provincial, 11–15
- lotteries**
- alteration to ticket, 78

## GAMING

---

- contract resulting from, 74, 77
- cross-border prohibition, 23
- cruise ships, 25, 63–66
- defined, 8, 24, 59
- lawful, 61
- licensing of, 22, 67
- offences, 20–22, 59
- profits from, 22, 59, 69–73
- provincial lottery, authorities, 69–73, 75, 79
- regulation of, 22, 67–73
- taxation of, 26, 60
- transfer of property, 62
- video lottery terminals, 9, 12, 69
- pari mutuel**, *see* horse racing
- pool seeing**, 17
- private bet**, *see* wagers
- public policy**, 1
- recording bets**, 17
- wagers**, *see also* betting; gambling; gaming; horse racing
  - Criminal Code, 2
  - defined, 6
  - election, on outcome of, 47
  - private bet, 2, 16, 49
  - wagering contracts, 3

## Index to Gifts

(All references are to paragraph numbers.)

- absolute gifts**, 1
- acceptance**
  - general, 5
  - presumption of, 46
- bank client card**, 86
- bills of exchange**, 90
- capacity**, 1, *see also* **mental capacity**
- cheques**
  - death of maker, 88
  - unpaid cheques, 87
- children, gifts by**, 62
- choses in action**
  - equitable assignment, 81
  - delivery, 82
- conditional gifts**, 1, 13–15
- debts**
  - forgiving of debts, 104, 116
  - intention of donor, 105, 106, 116
  - mortgages, 107
  - obligation under seal, 104
  - part payment, 104
  - payment of debt owed third party, 106
- delivery**, *see also* **inter vivos gifts; mortis causa**
  - actual delivery, 8, 34
  - bills of exchange, 90
  - change of possession, 35, 37-38, 40
  - constructive delivery, 35
  - control over property, 36
  - deposit-note, 85
  - form of, 35, 39, 42
  - insurance policies, 96
  - joint gift, 45
  - land, 97, 99
  - manual delivery, 1, 8, 37
  - passbook, 85
  - promissory notes, 90
  - requirement for, 1, 4, 16, 34, 82
  - return of property, 41
  - reversionary interest, 41
  - sufficiency, 35–45
  - third person, 44
  - words of present gift, 8, 37–39
- deposit-note**, 85
- donatio mortis causa**, *see* **mortis causa**
- evidence**, *see also* **presumptions; revocation; undue influence**
  - corroboration, requirement for, 64, 75–80, 137
  - intention of donor, 6, 7, 10, 72
  - inter vivos gift, 73
  - mortgage or conveyance without consideration, 74
  - mortis causa, 24–31
  - onus of proof, 73, 76, 89, 118, 132, 134, 137–141, 144
- fraud**, 124, 152, 153, *see also* **undue influence**
- incomplete gifts**, *see also* **land**
  - assignments, effect of, 111
  - declaration of trust, 111, 112
  - donee as executor, 115
  - equity, 110, 114
  - intention of donor, 11, 111
  - intercepted transfer, 113
  - marriage contracts, 117
  - perfection, 116, 117
- insurance policies**, 96

## GIFTS

---

**intention of donee, inter vivos gifts**, 2, 3, 44, 46, 72

**intention of donor**

- inter vivos gifts, 2, 3, 6, 7, 10, 11, 54, 58, 90, 97, 98, 100, 105, 106, 121
- incomplete gifts, 111
- mortis causa, 17, 30
- testamentary gifts, 32, 102

**inter vivos gifts, see also delivery; evidence; intention of donee; intention of donor**

- cheques, 88
- conditional gifts, 13–15
- declaration of trust, 4
- debts, 105
- delivery, requirement for, 4
- definition, 2
- evidence of intention, 6, 7
- incomplete gifts, 11
- insurance policies, 96
- intention of donee, 2, 3, 46, 97
- intention of donor, 2, 3, 6, 11, 97
- land, 97
- payment of third party's debts, 10
- rejection of, 12
- revocation, 118
- transfer by deed, 4, 9

**joint accounts**

- agent, 94
- general, 55, 92, 95, 108
- intention, 87

**land, see also delivery; inter vivos gifts; mortis causa; presumptions**

- delivery, 97, 99
- execution of transfer, 101
- incomplete gift, 114

- intention of donor, 97, 98, 100, 102
- intention of donee, 97
- oral gift, 97
- parent and child, 68
- possession, 103

**marriage, gifts in contemplation of**

- death before marriage, 151
- general, 146, 149, 150
- fault, 147
- other gifts, 148

**mental incapacity**, 124–126

**mortis causa, see also delivery; evidence; intention of donor; revocation; testamentary gifts**

- cheques, 87, 88
- claim against estate, 22
- contemplation of death, 17, 18, 27
- deeds, 23
- definition, 16
- delivery, 16, 23, 42, 44, 58, 82
- deposit-note, 85
- evidence, 24–31, 78, 79
- insurance policies, 96
- intention of donor, 17, 29, 30
- land, 23, 28
- money gifts, charges against, 20
- passbooks, 85
- revocation, 120
- special purpose, 21
- subject matter of gift, 19
- trust, 21

**passbooks**, 85

**perfection of gifts, see incomplete gifts**

**presumptions**

- acceptance by donee, 46

## INDEX

---

- advancement (common law relationships), 53, 54
- advancement (husband and wife), 47, 49–59, 92, 108, 109
- advancement (parent and child), 47, 60–64, 65, 66–68, 69, 70, 109
- bank accounts, 55, 56
- gifts to strangers, 6, 71
- joint tenancy, 50, 52, 53, 55, 108
- onus, 48, 57
- parent and child, 46, 60, 62
- purchase of land for another person, 47, 61, 68
- rebuttal, 48, 49, 56, 66
- promissory notes**, 90
- revocation**, *see also* **mental incapacity**; **undue influence**
  - express power of revocation, 119
  - illegal consideration or purpose, 122, 123
  - intention to avoid taxation, 121
  - mental incapacity, 124–126
  - mortis causa, 120
  - onus, 118
- repudiation**, 5
- resulting trust**, 28, 47, 57, 92, 100, 108, 123
- setting aside**, *see* **revocation**;  
**undue influence**
- shares**, 83, 84
- subject matter of gift**, 1, 19
- undue influence**, *see also* **fraud**
  - conduct of donor, 135
  - general, 127, 131
  - husband and wife, 142
  - independent advice, 143–145
  - mental capacity, 124
  - presumption of, 128–130, 132–134, 136–142, 144
- testamentary gifts**, 32, 33, 93, 102, 119, *see also* **mortis causa**



## Index to Guarantee, Indemnity and Standby Letters of Credit

(All references are to paragraph numbers.)

- accord and satisfaction**, 201–203, 329, 330
- action on guarantee**, *see also* **defences; enforcement of guarantee; validity/enforceability**
- action against primary debtor, 177, 215
  - judgment, effect of, 189
  - mitigation, 177
  - notice of default, 177, 179
  - order of exercising remedies, 178, 215
- advances**, *see* **surety's liability**
- agency**
- del credere agents, 349
  - Guarantees Acknowledgment Act (Alberta), 137
  - indemnity rights, 366
  - liability of, 124
  - signature of, 110, 123, 124, 128
  - undertakings of, 110
- all accounts guarantees**, 148, 150
- alterations**, *see* **material alteration of guarantee; material variation of principal contract**
- assignments**, *see* **co-sureties' rights inter se; defences; indemnities; surety's rights against creditor**
- back-to-back guarantees**, 130, 252
- bankruptcy**
- assignment of creditor's security, 227
  - indemnity of trustee, 370
  - principal debtor, of, 158, 159, 183, 243–245, 335–337, 373
  - proof of claims, 115, 245
  - proposals, guarantee of, 210, 211
  - surety, of, 208, 209
  - trustee enforcing guarantee, 309
  - valuing claim, 245, 317
- bid bonds**, *see* **surety bonds**
- bills of exchange**, 377
- breach of principal contract**, 204–207, 279, 303, *see also* **defences**
- cancellation of guarantee**, *see also* **discharge of principal debtor; discharge of surety**
- discharge distinguished, 186
  - form of, 188
  - general, 186
  - notice of, 188
  - prejudice by creditor, 187
- capacity of parties**
- corporations, 19, 134
  - general, 18
  - knowledge of creditor re, 7
  - principal lacking capacity, 7
- certainty of terms**, *see* **interpretation**
- champerty/maintenance**, 348
- classes of guarantee/suretyship**, 6
- collateral contracts**, 146, 287
- compromises, effect of**, 196, 238–240

**conditions precedent/subsequent,**  
*see also surety's liability*

- advances to principal, 167
- co-surety, obtaining of, 173
- creditor's duty to perform, 175
- demand by creditor, 165, 166
- evidence of, 171
- examples of, 172, 173
- general, 165
- implied, 171
- interpretation of, 170
- nature of, 168
- obtaining/perfecting security, 171, 174
- reasonable efforts to fulfil, 169
- sufficiency of performance, 167
- terms, as, 170
- waiver of, 176

**consideration**

- contracts under seal, 43
- "credit", extension of, 104
- creditor, by, 46, 51–53
- evidence of, 44, 48
- flowing of, 45
- forbearance as, 51–53
- form of, 54
- general, 42, 50, 350
- indemnity, for, 350
- legality of, 49
- new consideration, necessity for, 44, 47, 53, 54
- past indebtedness, 47, 53, 54
- primary liability as, 44
- Statute of Frauds and, 48
- sufficiency of, 44, 46, 51–53

**construction, see interpretation**

**construction bonds, see surety bonds**

**continuing guarantees**

- cancellation of, 186–189
- general, 148, 149, 180
- interpretation of, 180
- limitation by time, 186–189
- limitation of amount, 181–184

**contracts, see elements of guarantees; specific aspects of contracts, e.g., consideration**

**contribution between co-sureties, see also co-sureties' rights inter se**

- actions re, 247, 264
- arising of rights, 255, 258–261
- assignment of creditor's judgment, 247
- back-to-back guarantees, 252
- bars to, 252–254, 261, 262
- basis of, 246, 247, 250
- calculation of amounts, 256
- costs, 262
- creditor prejudicing, 324
- different amounts guaranteed, 251
- different debts guaranteed, 251
- disputes re, 264
- general, 246, 247
- insolvency, effect of, 247
- interest, 262
- legal obligation to pay, 261
- legislation re, 249
- mistake, payments by, 261
- modification of, 249
- principles governing, 248
- rateable vs. equal, 256
- recovery of, 258–264
- security, sharing of, 263
- settlements, effect of, 261
- voluntary/mistaken payments, 261

## INDEX

---

- waiver of, 253
- corporate guarantees**, 17, 19, 123, 134
- co-sureties' rights inter se**, *see also contribution between co-sureties; joint/several liability; surety's liability; surety's rights against creditor*
  - back-to-back guarantees, 252
  - duty of disclosure, 254
  - extension of time to principal, effect of, 257
  - fraud/misrepresentation, 254
  - general, 246
  - insolvency, effect of, 255, 256
  - insolvency of surety, effect of, 247
- counterclaim**, *see set-off/counterclaim*
- creation of guarantees**, *see elements of guarantees; nature of guarantees; specific aspects, e.g., offer and acceptance*
- damages**, *see indemnities*
- default**, *see surety's liability*
- defences**, *see also conditions precedent/subsequent; co-sureties' rights inter se; Farm Security Act (Saskatchewan); Guarantees Acknowledgement Act (Alberta); Statute of Frauds; surety's liability; surety's rights against creditors; surety's rights against principal; validity/enforceability*
  - accord and satisfaction, 201–203, 329, 330
  - assignments, enforceability by assignee, 308–310
  - breach of principal contract, 204–207, 279, 303
  - discharge by operation of law, 333–336
  - discharge of principal debtor, 325–338
  - estoppel as bar to, 265
  - form, errors in, 7
  - fraud, 34, 85, 87, 88, 142, 143, 332, 429–431
  - fraudulent preference as, 88
  - general, 215, 217, 265–267
  - incapacity of principal debtor, 7, 18, 19
  - laches, 298, 304–307
  - material alteration of guarantee, 269–272
  - material variation of principal contract, 273–302
  - misconduct by creditor (general), 268, 347
  - misrepresentation, 79–85, 88, 109, 143
  - non est factum, 32–35, 151
  - parties, change in position/nature of, 311–315
  - security, prejudice to, 223–231, 316–324
  - “seize or sue” legislation effecting, 339
  - set-off/counterclaim, 200, 213, 217, 218
  - subrogation rights, prejudice of, 222
  - unauthorized change of primary obligation, 10
  - waiver of, 265, 340
- definitions**, *see also letters of credit; Statute of Frauds.*
  - “guarantee”, 3–5, 13, 14, 136
  - “indemnity”, 13, 14, 341
  - “letter of comfort”, 7, 395
  - “letter of credit”, 384, 396–398
  - “security”, 226

- “surety bond”, 388–394
- delay**, *see laches*
- demand by creditor**, *see surety’s liability*
- discharge of principal debtor**, *see also defences*
  - accord and satisfaction as, 329, 330
  - bars to surety’s release, 338
  - creditor conniving in default, 332
  - express vs. implied, 327, 328, 331
  - general, 325, 326, 338
  - novation effecting, 328
  - operation of law, by, 333–336
  - surety’s right to discharge, 338
- discharge of surety**, *see also cancellation of guarantee; defences; subrogation*
  - acts equivalent to payment, 198
  - compromises, effect of, 196
  - effect of, 186
  - general, 195, 196, 204, 206
  - laches, for, 307
  - operation of law, by, 333–336
  - payment of debt, 195–199
  - subrogation rights, 198, 199
- disclosure by creditor**, *see validity/enforceability*
- drunkenness**, 18
- duress**, *see also unconscionable transactions; undue influence*
  - conduct constituting, 58–60
  - economic duress, 60, 61
  - general, 55, 56
  - independent advice, 63
  - third party, by, 57
  - void/voidable, 57
- duty of creditor**, *see defences; specific situations, e.g., undue influence; surety’s rights against creditor; validity/enforceability*
- elements of guarantees**, *see also Farm Security Act (Saskatchewan); Guarantees Acknowledgment Act (Alberta); nature of guarantees; Statute of Frauds*
  - acceptance, 28–30, 37–40, 115, 129
  - capacity of parties, 7, 18
  - certainty of terms, 20, 21
  - consideration, 43–54
  - corporate guarantees, 17, 19
  - general, 15
  - guarantees to oneself, 16, 17
  - illegality/public policy, 22–27, 49
  - offer, 28–36
  - privity of contract, 41
  - separate legal personalities, 16, 17
  - trilateral agreement, 16, 17
- employment**, *see fidelity guarantees; indemnities*
- enforceability**, *see defences; specific issues, e.g., non est factum; validity/enforceability*
- enforcement of guarantee**, *see also action on guarantee; defences; validity/enforceability*
  - action against primary debtor, 177, 215
  - judgment, effect of, 189
  - mitigation, 177
  - notice of default, 177, 179
  - order of exercising remedies, 178, 215

## INDEX

---

- estoppel**
- barring defence, 265
  - evidencing consent, as, 292
- evidence, *see* consideration; indemnities; parol evidence rule; Statute of Frauds; surety's liability**
- executors, 368, 369**
- extension of time, *see* material variation of principal contract**
- Farm Security Act (Saskatchewan), 14-70, 139, *see also* Statute of Frauds**
- fidelity guarantees.**
- change in party's position/nature, 312-315
  - default, 154, 162
  - disclosure of past misconduct, 83, 91
  - false impression, creating, 92
  - general, 390
  - innocent concealment, 91
  - negligence of employer, 306
  - scope of employer's knowledge, 92
  - set-off, 200
  - standard of disclosure, 90
- firms, *see* partnerships**
- formation/formal requirements, *see* elements of guarantees; Farm Security Act (Saskatchewan); Guarantees Acknowledgment Act (Alberta); nature of guarantees; specific issues, e.g., offer and acceptance; Statute of Frauds**
- fraud**
- concealment as, 85
  - conniving in debtor's default, 332
  - letters of credit, re, 429-431
  - non est factum distinguished, 34
  - parol evidence and, 142, 143
  - secret arrangement as, 87, 88
- fraudulent preferences, 88**
- frustration of principal contract, 153**
- general matters, 1, 2**
- Guarantees Acknowledgment Act (Alberta), *see also* Statute of Frauds**
- acknowledgment before notary, 135, 137
  - agent giving, 137
  - applicability, 137
  - effect of, 135, 137
  - general, 112, 138
  - "guarantee", 136
  - minor errors, 137
  - non-compliance, effect of, 135
  - notarial certificate, 137
  - pleading of, 137
  - time for complying, 135, 137
  - wording, 135
- husband and wife, 66, 67, 69-71**
- illegality/public policy, *see also* validity/enforceability**
- consideration and, 49
  - ex turpi causa, 24
  - general, 22, 23
  - "illegality", 24, 25
  - indemnity and, 378, 379
  - knowledge of illegality, 23
  - pleading of, 23
  - recovery of money paid, 26
  - severance of illegal provision, 27
- indemnification, *see* indemnities; surety's rights against principal**

## GUARANTEE, INDEMNITY AND STANDBY LETTERS OF CREDIT

### **indemnities**

- agent's rights, 366
- assignment of right, 382, 383
- assignor/assignee, between, 367
- consideration for, 350
- contractual distinguished from others, 342–349
- costs/damages/expenses, for, 355–357
- creation of right (general), 341, 350
- damages distinguished from, 343
- definition, 13, 14, 341, 342
- del credere agency, 349
- directors'/officers' rights, 374
- employee's rights, 366
- evidence of right to, 344, 350
- executor's rights, 368, 369
- form of, 350
- general, 341, 342
- good faith requirement, 342
- guarantees distinguished from, 13, 14, 341, 342, 344–346
- illegal conduct, re, 378, 379
- implied term of contract, as, 351, 352
- insurance contracts distinguished from, 342
- interpretation, 350, 353, 354, 358, 380, 381
- lease obligations under, 347, 373
- maintenance of action, distinguished from, 348
- money paid under compulsion of law, 364, 365
- nature of, 2, 341
- necessities, provision of, 375
- negligence, against own, 380, 381
- negotiable instruments, in, 377
- partner's rights, 367

- primary obligations, as, 342
- quasi-indemnities, 375
- receiver's rights, 369–372
- restitution and, 359–367
- sale of goods, 376
- scope of, 350, 353, 354, 358
- Statute of Frauds, applicability of, 111, 344–346
- statutory right to, 358
- trustee's rights, 368–372
- vendor/purchaser, between, 367

**independent legal advice, see duress; unconscionable transactions; undue influence**

**insurance, see indemnities**

**interest, see surety's liability; surety's rights against principal**

### **interpretation**

- ambiguity, 94, 102–104
- certainty of terms generally, 20, 21
- conditions precedent/subsequent, 170
- contextual approach, 96, 97
- contra proferentem, 94, 102–104
- extension of "credit", 104
- general, 93–97
- grammatical and ordinary sense, 98
- implied terms, 96
- indemnities, of, 350, 353, 354, 358, 380, 381
- intent of guarantor, 31, 95
- joint/several liability, 106
- letters of credit, 426
- limit/extent of guarantee, 160
- literal meaning, 93
- objective intent, 95, 96
- ordinary usage, 103

## INDEX

---

- parties to contract, 93
- primary liability, assumption of, 9
- protection of guarantor, 94
- recitals, role of, 99–101
- scope of guarantee, 105
- special meanings, 103
- intoxication**, 18
- introduction**, 1, 2
- joint/several liability**, 11, 29, 30, 106–108, *see also* **co-sureties' rights inter se**
- judgment, effect of**, 189
- kinds of guarantee**, 148
- labour/material bonds**, *see* **surety bonds**
- laches**, 298, 304–307, *see also* **defences**
- legislation**, *see* **specific Acts, e.g., Statute of Frauds**
- letters of comfort**, 7, 395
- letters of credit**
  - acceptance credits, 399
  - adverse judgment, protection from, 420
  - advising bank, 407, 409
  - amendment of, 404, 409
  - anatomy of, 423–425
  - anticipatory credits, 385
  - autonomous liability, 423, 426–429, 432
  - back-to-back credits, 399
  - banker's credit, 398
  - classes of, 399–422
  - clean credits, 398, 399, 413
  - commercial invoice, 413
  - commercial letters of credit, 398, 400–411
  - confirmed vs. unconfirmed, 399, 408–411
  - conformity with terms, necessity for, 413
  - currency credits, 399
  - deferred credits, 399
  - definitions, 7, 384, 387–398
  - documentary credits, 398, 399, 413
  - documentary nature of liability, 412–422
  - fraud, effect of, 429–432
  - general, 384, 396–398, 421, 423, 424
  - green-clause credits, 399
  - guarantees distinguished from, 423–429
  - import-export transactions, 405–411, 421
  - international standardization of, 385, 386
  - interpretation of, 426
  - irrevocable vs. revocable, 384, 399–404
  - issuer of documents, description of, 415
  - issuer's/debtor's obligations, 418
  - issuer's liability, 426–428
  - letters of comfort, 7, 395
  - nature of, 384, 396–398, 421, 423, 424
  - negotiation credits, 399
  - notice of refusal to honour or negotiate, 409
  - open credits, 406
  - performance guarantees, 387
  - preliminary notification, 409
  - presentation of documents, 412–419
  - red-clause credits, 399
  - reimbursable credits, 399
  - revolving letters, 399

## GUARANTEE, INDEMNITY AND STANDBY LETTERS OF CREDIT

- special letters of credit, 406, 408
  - standby letters of credit, 2, 136, 401, 413, 420–422
  - straight credits, 399
  - surety bonds, 388–394
  - technical operation of, 405–411
  - transferable credits, 399
  - travellers' letters, 399
  - Uniform Customs and Practice for Documentary Credits, 385, 386
- liability, *see* letters of credit; surety's liability**
- maintenance bonds, *see* surety bonds**
- maintenance/champerty, 348**
- marshalling, 213, 223, 224**
- material alteration of guarantee**
- affixing seal, 269
  - change of parties to, 270
  - consent to, 272
  - effect of, 270
  - general, 269
  - “materiality”, 271, 272
  - stranger, by, 270, 271
  - surety, by, 271
- material variation of principal contract**
- acceptable alterations, 284–288
  - acts contemplated by agreements, 275, 280
  - authorized/contemplated changes, 284, 285
  - breach of principal contract as, 279
  - collateral agreements as, 287
  - consent to, 290–292, 297
  - distinct duties affected, 288
  - extending time to principal debtor, 294–302
  - extent of discharge for, 276, 278, 279
  - “materiality”, 276, 279–283
  - methods of, 277, 301
  - parol evidence rule and, 277
  - prejudice, requirement for, 274, 276, 282, 283, 296
  - ratification/acceptance of, 286, 293, 297
  - risk, alteration of, 276, 279, 282, 296
  - variation not acted upon, 274
  - waiver/non-exercise of creditor's right, 281, 287
- mental incapacity, 18**
- merger, doctrine of, 10, 189**
- minors, 18**
- misrepresentation, *see also* non est factum**
- answering questions, 79, 80, 82
  - concealment of information, 82–85
  - duty to disclose, 78, 79, 83
  - elements of, 81
  - general, 79–81, 85, 88
  - guarantor's duty to inquire, 80, 82
  - mistake and, 109
  - obligation to read guarantee, 80
  - parol evidence, 143
  - partial/inaccurate advice, 80
  - silence, effect of, 84
- mistake, 109, 261**
- mitigation, 163, 177**
- money paid under compulsion of law, 364, 365**
- nature of guarantees, *see also* elements of guarantees; Farm Security Act (Saskatchewan); Guarantees Acknowledgment**



- Act (Alberta); Statute of Frauds**
- classes of suretyship/guarantee, 6
  - collateral obligation, as, 7
  - contingent character of, 2, 8
  - creation of, 11, 12, 29, 30
  - definition, 3–5
  - equity, 5
  - general, 1, 2
  - indemnities distinguished from, 13, 14, 341, 342, 344–346
  - letters of comfort distinguished from, 7
  - letters of credit distinguished from, 423–428
  - merger, effect of, 10
  - novation distinguished, 8
  - primary obligation, principal's, 3, 4, 7, 9, 159
  - principal debtors creating, 11, 29, 30, 213
  - secondary obligation, as, 3, 4, 8, 10, 56
  - substance vs. form of, 12–14
  - trilateral agreements, as, 16, 17
  - unilateral contract, as, 28, 39
- negligence, indemnity against own**, 380, 381
- negotiable instruments**, 377
- non est factum**, *see also* **misrepresentation**
- blind persons, 34
  - elements of, 33, 35
  - general, 32, 33
  - illiterate persons, 34, 35
  - innocent creditor, 34
  - misrepresentation, 35
  - negligence/carelessness of guarantor, 35
  - reasonable effort by defendant, 34
- notice of default**, *see* **enforcement of guarantee; surety bonds**
- novation of contract**
- discharging surety, 328
  - distinguished from guarantee, 8
- offer and acceptance**
- effect of acceptance, 39
  - form of acceptance, 38–40, 115
  - general, 28–30
  - intent of guarantor, 31
  - non est factum, 32–35
  - notice of acceptance, 38–40
  - offer to give distinguished from, 36
  - reasonable time, within, 306
  - rules of acceptance, 37
  - signature as, 129
  - withdrawal of, 36
- office-holders**, 311, 313, 315
- parol evidence rule**, *see also* **Statute of Frauds**
- collateral contracts and, 146
  - conditions precedent and, 171
  - effect of, 140
  - exceptions to, 143
  - fraud and, 142
  - general, 140–143
  - limits of liability and, 151, 171
  - material variation and, 277
  - rationale for, 142
  - rectification and, 141, 145
  - Statute of Frauds and, 116
- part performance**, 133
- partnerships**, 124, 233, 311, 312, 367
- performance guarantees**, *see* **letters of credit; surety bonds**
- privity of contract**, 41

- public policy**, *see* **illegality/public policy**
- receivers**, *see* **indemnities**
- rectification**, 144, 145
- releases**, *see* **discharge of principal debtor**
- restitution, right of**
- bars to, 362
  - categories of cases, 363
  - general, 359
  - implied contract, 360
  - miscellaneous relationships, 366, 367
  - money paid under compulsion of law, 364, 365
  - negligence, effect of, 362, 363
  - principles of, 361–363
  - request giving rise to, 360
- scope of title**, 1, 2
- seals**, *see* **defences; Statute of Frauds**
- secret agreements**
- duty of creditor, 88, 89
  - fraud, as, 87, 88
  - fraudulent preference, 87
  - general rule against, 86
  - nature of, 87
- security, prejudice to**
- abandonment of execution as, 319
  - assignments as, 321
  - breach of condition, 318
  - contribution rights, affecting, 324
  - discharge, extent of, 318, 320, 321
  - duty of care, 229–231, 317
  - foreclosure as, 320
  - general, 223–228, 316, 320
  - reasonable dealing, 320
  - substitution of collateral, 322
  - variation of risk, 318
  - waiver of, 323
- set-off/counterclaim**, 200, 213, 217, 218, 240, 244
- signatures**, *see* **offer and acceptance; Statute of Frauds**
- solicitors' undertakings**, 132
- specific/discrete guarantees**, 148
- spouses**, 66, 67, 69–71
- standby letters of credit**, *see* **letters of credit**
- Statute of Frauds**, *see also* **elements of guarantees; Farm Security Act (Saskatchewan); Guarantees Acknowledgment Act (Alberta); nature of guarantees**
- acceptance of offer and, 115, 129
  - agent giving undertaking, 110
  - applicability/inapplicability of, 111, 117–119, 130–134
  - back-to-back guarantees, 130
  - contracts caught by, 111, 117–119
  - contracts not caught by, 130–134
  - contracts under seal, 134
  - “debt”, 120
  - deceitful credit representations (s. 8), 122–129
  - “default”, 120
  - dispensing with, 113
  - effect of non-compliance, 113, 115
  - general, 110–112
  - indemnities and, 111, 344–346
  - liens, effect of, 131
  - “miscarriage”, 120

## INDEX

---

- modifying agreements, 116
  - note or memorandum, 110, 114, 123–129
  - parol evidence rule and, 116, 140–146
  - part performance, effect of, 133
  - pleading of required, 113
  - repeal of, 112
  - signature, 110, 123, 124, 128, 129
  - solicitors’ undertakings, 132
  - “special promise”, 118, 119
- subrogation**
- assignments distinguished from, 221
  - entitlement to, 198, 199
  - general, 215, 220, 223
  - indemnity rights distinguished from, 235
  - prejudice of by creditor, 222
  - securities of creditor, 223–228
- surety bonds, see also letters of credit**
- bid/tender bonds, 391
  - collateral liability under, 389
  - court security, 394
  - definition, 388
  - form/content of, 389, 390
  - labour/material payment bond, 393
  - maintenance bonds, 392
  - nature of, 388, 390
  - notice of default, 389
  - options on default, 389
  - performance bonds, 392
  - repayment bonds, 394
  - tax/revenue bonds, 394
- surety’s liability, see also co-sureties’ rights inter se; defences; surety’s rights; validity/enforceability**
- accord and satisfaction, 201–203
  - advance to principal, necessity for, 167
  - all accounts guarantees, 148, 150
  - amounts of, 155, 185
  - approximation of payments, 190–195
  - arising of, 155, 179
  - bankruptcy of principal, 158, 159, 183
  - bankruptcy of surety, 208, 209
  - bankruptcy proposals, guarantee of, 210, 211
  - breach of principal contract, effect of, 204–207
  - cancellation of guarantee, 186–189
  - conditions precedent/subsequent, 165–176
  - contingent nature of, 2, 8, 152–156
  - continuing guarantees, 148, 149, 180–189
  - co-sureties, 182
  - creditor’s conduct, default related to, 154
  - default by principal, 152–156
  - deficiency judgments, 198
  - demand by creditor, 165, 166, 179, 192
  - discharge of, 186, 195–199, 204, 206
  - equity vs. law, 153
  - evidentiary issues, 157, 164, 171
  - fidelity guarantees, 154, 162
  - frustration of principal contract, 153
  - general, 147–151
  - implied terms re, 171
  - interest, for, 161

## GUARANTEE, INDEMNITY AND STANDBY LETTERS OF CREDIT

- judgment, effect of, 189
  - liability of principal, necessity for, 157
  - limit/extent of, 147, 154, 158–164, 180–189
  - mitigation, 163, 177
  - notice of default, 177, 179
  - obligations of creditor, 177–179
  - obtaining/perfecting security, creditor, 171
  - parol evidence rule, 151, 171
  - rectification of default, 163
  - set-off, 200
  - specific/discrete guarantees, 148
  - subrogation rights, 198, 199
  - termination of, 155
  - time of performance, 158
- surety's rights against creditor,**  
*see also co-sureties' rights inter se; surety's liability; surety's rights against principal*
- after demand for payment, 213, 217, 218
  - assignment of creditor's judgment/security, 213, 220–228, 234
  - assignment of security to creditor, 216
  - before payment, 215, 216
  - collateral security from principal, 216
  - general, 212, 213, 219
  - marshalling, 213, 223, 224
  - nature of, 213
  - origin of, 213, 214
  - preservation of security by creditor, 229–231
  - recovery of money improperly paid, 213, 219
  - set-off/counterclaim, 213, 217, 218
  - subrogation, 198, 199, 215, 220–228
  - waiver of, 232
- surety's rights against principal,**  
*see also contribution between co-sureties; co-sureties' rights inter se; surety's liability; surety's rights against creditor*
- bankruptcy of principal, 243–245
  - compromise of claim, 238–240
  - enforcement, procedure for, 241, 242
  - general, 233
  - indemnification, 234–238, 241, 242
  - interest, recovery of, 236, 240
  - order compelling payment, 239
  - partnership debts, re, 233
  - set-off by principal, 240
  - time for exercising, 233, 241, 242
- tender bonds,** *see* **surety bonds**
- terms,** *see* **elements of guarantees; interpretation**
- trustees,** *see* **bankruptcy; indemnities**
- types of guarantee,** 148
- unconscionable transactions,** *see also duress; undue influence.*
- elements of, 77
  - examples, 75
  - general, 74, 76
  - independent advice, 72
  - inequality of bargaining power, 75, 77
- undue influence,** *see also duress; unconscionable transactions*
- bargaining position, inequities in, 63
  - burden of proof, 65–71
  - duty of creditor, 62, 68, 70

## INDEX

---

- general, 55, 56, 62–64
- independent advice, 62, 63, 68, 70, 72, 73
- knowledge of creditor, 62, 67, 70, 72, 73, 88
- material disadvantage, 71
- parol evidence, 143
- persons exerting, 62, 64
- rebuttal of, 68
- relationships involving, 66
- spouses, 66, 67, 69–71
- validity/enforceability**, *see also conditions*
  - precedent/subsequent; co-sureties' rights inter se; defences; Farm Security Act (Saskatchewan); Guarantees Acknowledgement Act (Alberta); Statute of Frauds; surety's liability; surety's rights against creditors; surety's rights against principal**
  - consideration, lack of, 44
  - determination of principal obligation, 10
  - duress, 55–60, 63, 143
  - fidelity guarantees, 83, 90–92, 154, 162, 200, 306, 312–315, 390
  - form, errors in, 7
  - illegality/public policy, 22–27, 49
  - incapacity of principal debtor, 7, 18, 19
  - incompleteness of document, 20
  - mistake, 109
  - non-disclosure by creditor, 7, 78–92
  - primary obligation void/unenforceable, 7, 10, 19
  - secret agreements, 86–89
  - unconscionable transactions, 72–77
  - undue influence, 55, 56, 62–73, 88, 143
  - vague instruments, 20, 21
- variation**, *see material alteration of guarantee; material variation of principal contract*
- vendor/purchaser**, 367
- waiver**, *see co-sureties' rights inter se; defences; surety's rights against creditor*
- writing requirement**, *see Statute of Frauds*

## Index to Highways and Streets

(All references are to paragraph numbers.)

- abutting owners' rights/liabilities**
- access to highway, 154, 160, 171, 391–398
  - encroachments, 406–408
  - general, 75
  - ice/snow, 361, 405
  - protection of public, duty re, 401–405
  - support of highway, 399
  - trees, maintenance of, 248, 400
- accidents, see liability**
- actions, see liability**
- adverse possession, 51, 121**
- altering/diverting, see also closing; construction/opening; dedication; improving; widening**
- by-laws re, 125–127, 129–137, 172
  - general, 163, 170
  - loss of access caused by, 171
- bridges, 2, 5, 218, 224, 255–267**
- closing, see also altering/diverting; construction/opening; dedication; improving; widening**
- Alberta, 138–140
  - British Columbia, 141, 142
  - by-laws re, 125–127, 129–137, 139, 141, 144, 146, 149, 150, 153, 156–159, 165
  - compensation for, 150, 160–162
  - conditions precedent to, 150
  - extinguishment of public rights, 148
  - gifting of closed portion, 152
  - good faith/public interest, 129–134, 153, 156, 158
  - injunctions against, 162, 393
  - leasing of closed portion, 151
  - loss of access, 154, 160, 171, 391–398
  - Manitoba, 143, 144
  - notice to public, 135–137, 141, 144, 155
  - roads extending beyond jurisdiction, 154
  - Saskatchewan, 145–148
- construction/opening, see also altering/diverting; closing; dedication; improving; widening**
- actions involving, 72, 73, 88, 98
  - Alberta, 76–80
  - boundary highways, 83
  - boundary lines, 99–101
  - British Columbia, 81–83
  - by-laws re, 90–98
  - contracts re, 90
  - costs of, 77
  - description of route/type of construction, 92–94, 98
  - expropriation, 79, 81, 86, 94, 102
  - general, 71–75, 163
  - licence of occupation, 82
  - Manitoba, 84, 85
  - methods of establishing, 71
  - municipal powers over, 78, 81, 83, 87, 111, 112, 115
  - “necessary”, 89
  - notice requirements, 91
  - property owners' rights, 75
  - Saskatchewan, 86, 87
  - title to highway, 82
  - trespass by municipality, 74, 75, 97
- creation, see dedication**

**Criminal Code**, 5, 366

**cul-de-sacs**, 2, 46

**culverts**, 254, 340

**damages/remedies**, *see also liability*

- Charter issues, 381, 382
- criminal offences, 366
- declarations, 363
- injunctions, 162, 365, 393
- loss of access, for, 398
- notice of claim (requirement for), 368–371, 380, 381
- notice of claim (sufficiency of), 372–379
- removal of obstructions, 364
- limitations (re special damage), 362, 365
- limitations (time), 380
- trees, removal of, 400

**dedication**, *see also altering/diverting; closing; construction/opening; improving; widening*

**dedication (Crown, by)**

- acceptance by public, 50
- acquiescence by Crown, 51, 52
- general, 50
- intention of Crown, 50
- presumptions, 52, 55
- squatters' acts, 51, 121
- statutes re, 57
- subsequent owner's rights, 56
- tenant's/lessee's acts, 51–54
- use by public, 55

**dedication (general)**

- acceptance by public/municipality, 21, 22, 32–37, 45
- actions, by municipality, 35
- actions of owner, 24

- balance of probabilities, 19
- by-law not required, 24
- change of use, effect of, 31
- dedication vs. use, 44
- estoppel, 49
- fences, effect of, 26
- footpaths, 27
- intention of owner (general), 21–26, 39, 43, 166
- limited dedications, 27
- methods of, 18
- mortgagor in possession, by, 48
- presumption of, 20, 38–49
- proof, elements of, 18–31
- question of fact, as, 20
- reversion to owner, 31, 49
- tenant/lessee, by, 28, 48
- tolerance of use vs. intention, 22
- taxation of disputed area, effect of, 30
- transfer by owner/prior owner, 23, 25, 32
- use by public, effect of, 29, 31–49

**dedication (plan, by)**

- Alberta requirements, 65
- federal property, 67
- general, 58, 59, 159
- identification/appropriation of roads, 63
- Manitoba requirements, 66
- municipal requirements, reasonableness of, 64
- owner approving plan, 60, 62
- registration of plan, effect, 61, 159
- signature of owner, requirements re, 62

**dedication (statutory)**, 68–70, 79, 81

## INDEX

---

- definitions**, *see* **specific terms**, e.g., “road”
- “departmental road”, 84
- ditches**, 174, 345
- easements**, 82
- encroachments**, 406–408, *see also* **obstruction/interference with**
- establishment of highways**, *see* **dedication**
- expropriation**, *see* **construction/opening; dedication (statutory)**
- fences**, 26
- ferries**, 2
- flooding**, 266, 289
- footpaths**, 27
- good faith/public interest**, 129–134, 153, 156, 158
- gratings**, 17
- guard-rails**, 281–284, 325, 332
- “highway”, 1–5
- “highway authority”, 86
- ice**, *see* **liability (ice/snow)**
- improving**, *see also* **altering/diverting; closing; construction/opening; dedication; improving; widening**
- Alberta, 173
  - by-laws re, 125–127, 129–137
  - Manitoba, 174
  - Saskatchewan, 175
- injuries**, *see* **liability**
- “lane”, 15
- liability (defences)**
- contributory negligence, 229, 360, 361, 384–386
  - statutory authority, 233, 243, 328, 390
  - unlawful use of highway, 387–389
  - volenti non fit injuria, 383
- liability(general)**, *see also* **damages/remedies; maintenance/repair; obstruction/interference with**
- abutting landowners, 401–405
  - agents, 341
  - construction companies/contractors, 342, 343
  - contributory negligence, 229
  - ditches, 345
  - electric utilities, 339
  - franchisees, 337
  - motor vehicle operators, 336
  - obstructing highway, 335, 336
  - onus of proof, 342
  - railways, 340
  - warnings/signs, 344, 345
- liability(ice/snow)**
- abutting landowners’ liability, 361, 405
  - by-laws re removal, effect of, 361, 405
  - contributory negligence, 360, 361
  - general, 232
  - gross negligence required, 331, 354–358
  - independent contractors, 349
  - non-repair, 359
- liability (municipal)**
- acts of nature, 322
  - causation, 290, 291
  - control vs. ownership of road, 286, 288
  - country roads, 305
  - flooding, 289
  - general, 285–293
  - house moving, 292



## HIGHWAYS AND STREETS

---

- indemnity rights, 350, 351
  - independent contractors, 287, 338, 348, 349
  - inspections, 328
  - joint liability, 346, 347, 352, 353
  - limitation of liability (Saskatchewan), 367
  - limitations (statutory), 324–334
  - malicious/deliberate acts, 322
  - misfeasance vs. non-feasance, 301–304, 314
  - negligence (common law), 310–315
  - notice/knowledge of non-repair, 316–323
  - nuisances, 291, 300–309, 323, 337
  - onus of proof /presumptions, 298, 313, 316
  - policy decisions, 233, 243, 328, 390
  - standard of care, 306, 315, 349
  - statutory duty to repair, 294–299
  - warnings/signs, 293, 329
- licence of occupation**, 82
- maintenance/repair**, *see also damages/remedies; liability*
- bridges, 255–267
  - culverts, 254, 340
  - definitions, 228
  - duty of individuals, 234
  - duty of minister, 230–233
  - duty of municipality, 226–229
  - duty under statute, 294–299
  - guard-rails, 281–284, 325, 332
  - inspections, 233, 241, 243, 246, 247
  - “non-repair”, 271–281
  - operational vs. policy decisions, 233, 243, 328, 329
  - persons owed duty, 268–270
  - presumptions, 250, 251
  - roads subject to duty, 252–254
  - scope of duty, 233, 235–251
  - traffic lights, 239
  - trees bordering highway, 248, 400
- marketplaces**, 31
- mines/minerals**, *see title to highways*
- motor vehicles**, *see use of highways (vehicles)*
- “necessary”**, 89
- negligence**, *see liability*
- nuisance**, *see obstruction/interference with*
- “non-repair”**, 271–281
- obstruction/interference with**, *see also damages/remedies; liability; maintenance/repair; use of highways*
- Alberta, 173
  - country roads, 305
  - defences to actions, 213
  - definitions, 212
  - duty/liability of municipality re, 214–216, 220, 297
  - encroachments, 406–408
  - excavations, 305
  - house moving, 292
  - injunctions, 225
  - Manitoba, 174
  - general, 211
  - nuisance, 209, 214, 216, 222, 223, 225, 291, 300–309, 323, 337
  - poles, 217
  - removal of obstructions, 219–225
  - statutory offences, 210
- offences**, *see damages/remedies*

## INDEX

---

- opening**, *see* **altering/diverting; closing; construction/opening; dedication; improving; widening**
- ownership**, *see* **title to highways**
- parking**, 184, 323
- pedestrians**, *see* **use of highways**
- “public highway”**, 114
- public interest**, *see* **good faith/public interest**
- public utilities**, *see* **liability; use of highways (public utilities)**
- railways**, 205–207, 217, 340
- “reasonable”**, 125
- remedies**, *see* **damages/remedies**
- repair**, *see* **maintenance/repair**
- rights of way (private)**, 4
- rivers**, 2, 218
- “road”**, 11, 80
- “road”(Saskatchewan)**, 12
- “road allowances”**, 6–9, 88, 89
- “roadway”**, 10
- “sidewalk”**, 14, 16, 17
- signs/warnings**, 293, 329, 344, 345
- snow**, *see* **liability (ice/snow)**
- stop lights**, 3
- “street”**, 13, 14, 88, 89
- telecommunications companies**, 208, 222
- tenancies, effect of**, 28
- title to highways**
- Alberta, 103–107
  - British Columbia, 82, 108–110
  - common law, at, 116–122
  - Manitoba, 111–113
  - Saskatchewan, 114, 115
- traffic lights**, 3, 239, 329
- Trans-Canada Highway**, 123, 124
- trees**, 248, 400
- trespass**, 74, 75, 97
- tunnels**, 5
- use of highways (general)**, *see also* **obstruction/interference with**
- abandoned property, 185
  - absolute right of public, 176, 177, 181, 182
  - interprovincial traffic, 180
  - parking, 184, 323
  - pedestrians, 178
  - rules of road (statutory), 183
- use of highways (public utilities)**
- Alberta, 196–198
  - British Columbia, 199
  - general, 339
  - Manitoba, 200
  - Saskatchewan, 201–204
- use of highways (railways)**, 205–207, 217
- use of highways (telecommunications)**, 208, 223
- use of highways (vehicles)**
- abandoned vehicles, 185
  - Alberta, 187–190
  - British Columbia, 191, 192
  - interprovincial traffic, 180
  - Manitoba, 193
  - rules of road (statutory), 183
  - parking, 184
  - Saskatchewan, 194, 195
  - tractors, 186
- “vest”**, 116
- waterways**, 2, 218, 224
- widening**, *see also* **altering/diverting; closing;**

## HIGHWAYS AND STREETS

---

- construction/opening; dedication;  
improving**
- general, 163, 167, 169
  - Manitoba, 165
  - objection to, 168
  - British Columbia, 164
  - by-laws re, 124–126, 128–136,  
165

## Index to Hotels

(All references are to paragraph numbers.)

### **accommodation obtained by fraud, 36**

#### **definitions**

- guest, 6–8
- hotel, inn, 1–3
- innkeeper, hotel keeper, 4, 5

#### **fire safety**

- by-laws, 39
- statutory requirements, 39

#### **guests**

- acceptance, 6
- lodger, distinguished, 7, 8
- loss or injury to property, 8, 22–25
- personal injuries to, 30–35
- registration, 37, 38
- safekeeping of goods, 25, 26, 28, 29
- status as, 6

#### **hotel**

- common law definition, 2, 3
- statutory definition, 1, 4

#### **hotel keeper, *see* innkeeper**

#### **inn, 1, 2**

#### **innkeeper**

- accommodation, 9
- definition, 4
- dining, 5
- insurer, as, 8
- obligation to deal with disturbances, 10–12
- right to eject undesirables, 13
- right to payment, 14, 15

#### **innkeeper's lien**

- general, 16–18
- proceeds of sale, 21
- right to detain goods, 19
- right to sell, 20

#### **licensing and regulation**

- fire safety, 39
- guest registration, 37, 38
- taxation, 40

#### **loss or injury to guest's property**

- goods generally, 22–25
- liability as bailee, 29
- posting requirements, 28
- property left in guest's room, 26
- vehicles, 26

## Index to Human Rights

(All references are to paragraph numbers.)

- constitutional aspects of anti-discrimination enactments**
  - application of Canadian Human Rights Act, 132
  - application of Canadian Human Rights Act to territories, 136
  - complaints against individuals/organizations in public and private sectors, 139
  - federal criminal law power, 137
  - Indian bands and First Nations, 133–135
  - provincial Crown and its agents, 140
  - public political speech, 138
- constitutional enactments**
  - Bill of Rights, 4
  - Charter, 4, 5
- defences and exemptions to allegations of discrimination**
  - Alberta Human Rights Act, 285–314
    - discriminatory practices, 288–307
      - concept of discrimination, 288–291
      - employment applications and advertisements, 305
      - employment practices, 303, 304
      - equal pay, 302
      - goods and services, 298, 299
      - membership in trade unions, 306
      - publications and notices, 292–297
      - retaliation, 307
      - tenancy, 300, 301
    - exemptions and/or defences, 308–314
      - BFOR/Q and reasonable and justifiable contravention defences, 308–310
      - defences applying to discriminatory publications, 311–313
      - exemptions/defences applying to public services and tenancy, 314
  - British Columbia Human Rights Code, 242–287
    - defences and/or exemptions, 272–287
      - BFOR/Q defence/exemption, 272–274
      - defences/exemptions relating to tenancy, 281–285
      - exemption for special programs, 286
      - exemptions for seniority, pension plans or insurance plans, 277, 278
      - exemptions relating to public services and facilities, 279, 280
      - general exemption for special interest organizations, 275, 276
      - miscellaneous exemption, 287
    - discriminatory practices, 242–271
      - concept of discrimination, 242–247
      - employment, 266–269

## HUMAN RIGHTS

---

- defences and exemptions to allegations of discrimination (*cont'd*)
  - employment
    - advertisements, 263
  - notices and publications, 248–252
  - public services, goods and facilities, 253–259
    - definition of public services, 254–256
    - scope of public services, 257–259
  - purchase of property, 260, 261
  - rental of property, 262
  - retaliation, 271
  - unions and associations, 270
  - wage differential, 264, 265
- Canadian Human Rights Act, 148–186
  - defences and exemptions, 174–186
    - BFOR/Q doctrine, 174–178
    - BFOR/Q-like defence open to service providers, 179
    - specific exemptions, 180–186
      - age limitation/exemption, 180
      - miscellaneous, 184–186
      - pension plans, 181–183
  - discriminatory practices, 148–173
    - commercial premises or residential accommodations, 153
    - employment, 154–171
      - adverse differentiation against employee, 158
      - discriminatory agreement, 162, 163
- employee organizations, 170
- employment advertisement or hiring in interview, 160
- employment application, 159
- employment policy, 161
- general, 154, 155
- harassment (non-sexual), 168
- harassment (sexual), 169
- refusal to continue to employ complainant in status quo ante, 157
- refusal to employ, 156
- retaliation, 171
- wage differential, 164–167
- general, 148
- goods, services, facilities or accommodations customarily available to general public, 149–152
- notices or telecommunications, 172, 173
- Manitoba Human Rights Code, 357–387
  - defences and exemptions, 376–387
    - affirmative action, 383
    - BFOR/Q and reasonable accommodation doctrines, 376–379
    - BFOR/Q-like exemptions: bona fide and reasonable cause, 380–382
    - exemptions in respect of residential accommodations, 385
    - miscellaneous statutory exemptions, 386, 387

## INDEX

---

- defences and exemptions to allegations of discrimination (*cont'd*)
  - personal services, 384
  - discriminatory practices, 357–375
    - concept of discrimination, 357–360
    - contracts, 369
    - employment, 364–366
    - employment-related activities, 367, 368
    - harassment, 373, 374
    - provision of public services and facilities, 361–363
    - rental or purchase of property, 370, 371
    - retaliation/reprisals, 375
    - signs and statements, 372
  - Ontario Human Rights Code, 187–241
    - defences and exemptions, 220–241
      - BFOR/Q, 220–223
      - BFOR/Q-like exemptions, 224, 225
      - exemptions for certain types of contracts, 234–237
      - exemptions for special programs, 229, 230
      - exemptions relating to accommodations, 238–240
      - general statutory exemptions related to employment, 226–228
      - public service related statutory exemptions, 231–233
      - where conduct is declared non-discriminatory, 241
    - discriminatory practices, 187–219
      - concept of discrimination, 187–193
      - contracts, 206–208
      - discrimination by employment agencies, 218
      - discrimination by vocational associations, 219
      - employment, 209–212
        - general, 209
        - refusal to continue to employ, 211, 212
        - refusal to employ complainant, 210
      - employment advertisements, application forms or pre-employment inquiries, 214, 215
      - harassment in employment and accommodation, 213
      - housing accommodations, 200–205
      - miscellaneous prohibitions affecting employers’ activities, 217
      - public services, goods and facilities, 195–199
      - retaliation, 216
      - signs, symbols, publications, 194
    - Saskatchewan Human Rights Code, 315–356
      - defences and exemptions, 337–356
        - concept of BFOR/Q, 337–339
        - employment, 347–354
        - exemption in respect of contracts, 346
        - exemption in respect of education, 344
        - exemption in respect of publications, 345

## HUMAN RIGHTS

---

- defences and exemptions to allegations of discrimination (*cont'd*)
  - exemptions in relation to public services and facilities, 342, 343
  - exemptions in respect of purchasing/occupancy of property, 340, 341
  - special programs and measures, 355, 356
  - discriminatory practices, 315–336
    - concept of discrimination; positive rights, 315–320
    - contracts, 328, 329
    - employment, 330, 331
    - employment agencies, 332
    - employment applications, 335
    - occupancy of property, 322
    - public services and facilities, 323, 324
    - publications, 325–327
    - purchase of property or property interest, 321
    - retaliation, 336
    - trade unions, 333, 334
- federal and provincial anti-discrimination legislation**
  - investigative administrative agency and adjudicative body, 7
  - provincial legislation, 6
- foundational doctrines**
  - definitions of a bona fide occupational requirement or qualification (BFOR/Q), 111–113
  - definitions of discrimination in anti-discrimination enactments, 102–110
    - definitions of discrimination in anti-discrimination jurisprudence, 105–110
    - statutory definitions of discrimination, 102–104
    - duty of reasonable accommodation short of undue hardship, 114–116
- human rights and civil liberties**
  - distinction between, 2
  - historical political documents, 3
- human rights adjudicative bodies**
  - Alberta Human Rights Tribunal, 513–521
    - composition, 513, 514
    - jurisdiction, 515–521
  - British Columbia Human Rights Tribunal
    - composition, 496
    - jurisdiction, 497–512
  - Canadian Human Rights Tribunal, 462–476
    - composition, 462, 463
    - jurisdiction, 464–476
  - Human Rights Tribunal of Ontario, 477–495
    - composition, 477–479
    - jurisdiction, 480–495
  - Manitoba Adjudication Panel, 529–539
    - composition, 529
    - jurisdiction, 530–539
  - Saskatchewan Court of Queen’s Bench, 522–528
- Human Rights Commissions**
  - Alberta Human Rights Commission, 427–437
    - composition, 427, 428
    - jurisdiction, 429–437



## INDEX

---

- Human Rights Commissions (*cont'd*)
- Canadian Human Rights Commission, 389–416
    - composition, 389, 390
    - jurisdiction, 391–416
  - Manitoba Human Rights Commission, 449–461
    - composition, 449, 450
    - jurisdiction, 451–461
  - Ontario Human Rights Commission, 417–426
    - composition, 417, 418
    - jurisdiction, 419–426
  - Saskatchewan Human Rights Commission, 438–448
    - composition, 438, 439
    - jurisdiction, 440–448
- offences under anti-discrimination enactments**
- Alberta Human Rights Act, 543
  - British Columbia Human Rights Code, 542
  - Canadian Human Rights Act, 540
  - Manitoba Human Rights Code, 546–548
  - Ontario Human Rights Code, 541
  - Saskatchewan Human Rights Code, 544, 545
- principles of interpretation of anti-discrimination enactments**
- Charter jurisprudence, 130
  - exceptions narrowly construed, 119
  - international covenants, 131
  - preambles, 126–129
  - Alberta Human Rights Act, 128
    - Manitoba Human Rights Code, 129
    - Ontario Human Rights Code, 127
  - precedence and priority over other general statutes and regulations, 118
  - purpose or object sections, 121–125
    - British Columbia Human Rights Code, 124
    - Canadian Human Rights Act, 122
    - Ontario Human Rights Code, 123
    - Saskatchewan Human Rights Code, 125
  - quasi-constitutional, 117
  - remedial legislation, 120
  - repeal, 117
  - waiver, 117
- prohibited grounds of discrimination**
- age, 46–53
    - definition of age, 53
    - prohibitions of discrimination based on age, 46–52
      - Alberta Human Rights Act, 50
      - British Columbia Human Rights Code, 49
      - Canadian Human Rights Act, 47
      - Manitoba Human Rights Code, 52
      - Ontario Human Rights Code, 48
      - Saskatchewan Human Rights Code, 51
  - core prohibited grounds, 8
  - criminal conviction, 89–92

## HUMAN RIGHTS

---

- prohibited grounds of discrimination (*cont'd*)
  - British Columbia Human Rights Code, 92
  - Canadian Human Rights Act, 90
  - Ontario Human Rights Code, 91
  - disability, 81–88
  - definition of disability, 88
  - prohibition of discrimination based on disability, 81–87
    - Alberta Human Rights Act, 85
    - British Columbia Human Rights Code, 84
    - Canadian Human Rights Act, 82
    - Manitoba Human Rights Code, 87
    - Ontario Human Rights Code, 83
    - Saskatchewan Human Rights Code, 86
  - gender equality and gender expression, 71, 72
  - marital and/or family status, 73–80
    - definition of marital status/family status, 80
    - prohibition of discrimination based on marital or family status, 73–79
      - Alberta Human Rights Act, 77
      - British Columbia Human Rights Code, 76
      - Canadian Human Rights Act, 74
      - Manitoba Human Rights Code, 79
      - Ontario Human Rights Code, 75
  - Saskatchewan Human Rights Code, 78
  - para-racial grounds of discrimination, 19–31
    - definitions of para-racial grounds of discrimination, 27–31
      - ancestry, 30
      - citizenship, 31
      - ethnic (group or origin), 28
      - nationality, 29
    - prohibitions of discrimination on para-racial grounds, 19–26
      - Alberta Human Rights Act, 24
      - British Columbia Human Rights Code, 23
      - Canadian Human Rights Act, 20
      - citizenship, 22
      - Manitoba Human Rights Code, 26
      - Ontario Human Rights Code, 21
      - Saskatchewan Human Rights Code, 25
  - political association or activity, 99
  - race, 9–18
    - definitions of race, 17, 18
    - prohibitions of discrimination on basis of race, 9–16
      - Alberta Human Rights Act, 13
      - British Columbia Human Rights Code, 12
      - Canadian Human Rights Act, 10
      - Manitoba Human Rights Code, 15, 16
      - Ontario Human Rights Code, 11

## INDEX

---

- prohibited grounds of discrimination (*cont'd*)
  - Saskatchewan Human Rights Code, 14
  - receipt of social assistance/source of income, 93–98
    - Alberta Human Rights Act, 96
    - British Columbia Human Rights Code, 95
    - Canadian Human Rights Act, 33
    - Manitoba Human Rights Code, 39
    - Ontario Human Rights Code, 94
    - Saskatchewan Human Rights Code, 97
  - religion and creed, 32–45
    - definitions of religion and/or creed, 40–45
      - creed, 45
      - general, 40–42
      - religion, 43, 44
    - prohibitions of discrimination on grounds of religion, religious belief and/or creed, 32–39
      - Alberta Human Rights Act, 36
      - British Columbia Human Rights Code, 35
      - Canadian Human Rights Act, 33
      - Manitoba Human Rights Code, 39
      - Ontario Human Rights Code, 34
      - Saskatchewan Human Rights Code, 37
  - sex, 54–62
    - prohibitions of discrimination based on sex, 54–60
      - Alberta Human Rights Act, 58
      - British Columbia Human Rights Code, 57
      - Canadian Human Rights Act, 55
      - Manitoba Human Rights Code, 60
      - Ontario Human Rights Code, 56
      - Saskatchewan Human Rights Code, 59
    - sexual orientation, 63–70
      - definition of sexual orientation, 70
      - prohibitions of discrimination based on sexual orientation, 63–69
        - Alberta Human Rights Act, 67
        - British Columbia Human Rights Code, 66
        - Canadian Human Rights Act, 64
        - Manitoba Human Rights Code, 69
        - Ontario Human Rights Code, 65
        - Saskatchewan Human Rights Code, 68
  - social disadvantage, 100, 101
- proof of discrimination under anti-discrimination enactments**
  - doctrine of BFOR/Q, 146
  - employment discrimination, 142
  - intention to discriminate, 144
  - no requirement that discrimination sole/primary factor, 143

## HUMAN RIGHTS

---

proof of discrimination under anti-discrimination enactments (*cont'd*)

- prima facie case of discrimination, 141
- respondent showing reasonable, non-pretextual explanation, 145

## Index to Immigration and Refugees

(All references are to paragraph numbers.)

- appeals to Immigration Appeal Division**
  - court of record, 384
  - full hearing on merits, 387
  - generally, 76
  - jurisdiction, 75, 388–391
    - constitutional questions, 390
    - generally, 388
    - grounds for allowing appeal, 389
    - powers and rights of superior court of record, 77
    - remedies, 391
    - procedures, 412–417
      - application in writing re procedural issues, 414
      - changing/excusing requirements of rule, 417
      - changing location/date/time of hearing, 413, 415
      - notice of constitutional questions, 416
      - request for summons, 413
      - rules, 412
    - regulations, 78
    - removal order appeals, 407–411
      - grounds, 409
      - humanitarian and compassionate grounds, 410
      - remedies, 411
      - right of appeal, 407, 408
    - residency obligation appeals, 403–406
      - decision made outside of Canada, 404
      - decision re breach, 403
      - humanitarian and compassionate grounds, 405, 406
      - insufficient qualifying days, 405
      - requirements, 403
      - travel document to attend appeal hearing, 404
    - right to call witnesses, 385
    - rules, 386
    - rules of evidence, 77
    - sponsorship appeals, 392–402
      - grounds for refusal of application, 392
      - humanitarian and compassionate factors, 395
      - issues, 396–399
        - bad faith relationships, 396, 397
        - financial responsibility, 398, 399
      - legal and equitable grounds, 394
      - medical refusals, 400–402
        - humanitarian and compassionate reasons, 400, 401
        - medical condition at time of officer's assessment, 402
        - reasonableness of conclusion from diagnosis, 401
    - right of appeal of sponsor, 393
- detention and release**
  - detention, 99–105
    - danger to the public, 103
    - examination upon entry to Canada, 101
    - foreign national, 100
    - notice to Immigration Division, 105
    - permanent resident, 99

## IMMIGRATION AND REFUGEES

---

- right to counsel, 104
- unlikely to appear, 102
- release, 106–112
  - by officer before first detention review hearing, 106
  - continued detention, 109
  - danger to the public, 112
  - fresh determination at each review, 111
  - prescribe factors for denying release, 108
  - release on conditions, 110
  - timing of detention reviews, 107
- Immigration and Refugee Board**
  - appointment of chairperson/members, 67
  - divisions, 67
  - Immigration Appeal Division, 75–78
  - Immigration Division, 73, 74
    - detention and release, 73
    - regulations, 74
    - removal orders, 73
  - jurisdiction, 69
  - reasons for decision, 68
  - Refugee Protection Division, 70–72
    - guidelines, 71
    - jurisprudential guides, 71
    - refugee protection, 70
    - standard order of questioning guidelines, 72
  - right to representation, 68
  - rules respecting practice and procedure, 68
  - website, 67
- inadmissible persons (criminal inadmissibility)**
  - general, 37
  - organized criminality, 45–47
  - defined, 45
  - former members, 46
  - organization defined, 47
  - standard of proof, 45
  - pardons and rehabilitation, 42–44
    - deemed rehabilitation, 43
    - factors considered, 44
    - recognition of foreign pardon, 42
  - serious criminality and criminality, 38–41
    - equivalency assessment, 41
    - foreign national, 39
    - permanent resident or foreign national, 38
    - standard of proof, 40
- inadmissible persons (health grounds)**
  - ability to pay for services, 50
  - contagious disease, 49
  - defined, 48
  - excessive demand, 51
  - exemptions concerning excessive demand, 52
  - individualized assessment, 50
  - medical examination, 53
  - notice of/opportunity to respond to negative assessment, 54
- inadmissible persons (misrepresentation)**
  - grounds, 55
  - indirect misrepresentation, 57
  - limitation period, 58
  - past misrepresentations, 56
- inadmissible persons (other grounds), 59**
- inadmissible persons (Section 77 security certificates)**
  - arrest warrant, 65

## INDEX

---

- determination re reasonableness, 62
- ex parte hearing to hear information/other evidence, 64
- filing of summary of information/evidence, 61
- grounds, 60
- referring of certificate to Federal Court, 60
- release from detention to permit departure from Canada, 66
- review of conditions, 65
- review of detention, 65
- right of appeal, 65
- selection of own representative, 63
- special advocate for person concerned, 63
- inadmissible persons (security grounds and human rights violations)**
- human or international rights violations, 35
- minor's knowledge or mental incapacity, 34
- organization believed to engage in terrorism, membership, 32
- standard of proof, 36
- subversion by force of government, 33
- terrorism defined, 34
- where not excluded, 36
- judicial review by Federal Court**
- affidavits, 431
- appeals to Federal Court of Appeal, 448–451
  - • appeal not limited to certified question alone, 451
  - • certification re serious question of general importance, 449, 450
  - • no judicial review, 448
- applications for leave and judicial review, 423–428
  - • costs orders, 425
  - • Federal Court Immigration and Refugee Protection Rules, 424
  - • filing fees, 425
  - • grounds on which leave granted, 426
  - • notice of appearance, 427
  - • request by Court Registry for reasons, 428
  - • timing of application, 423
- applications for stays of removal orders, 442–447
  - • application to Federal Court, 442
  - • contents of notice of motion, 443
  - • tripartite test, 444–447
    - • • balance of convenience, 447
    - • • irreparable harm, 446
    - • • serious harm, 445
  - generally, 422
- limitation periods and extensions, 429, 430
- perfecting application for leave, 432–436
  - • record, filing, 433
  - • reply memorandum, 435
  - • requirements, 432
  - • responding record, 434
  - • summary disposal without personal appearance, 436
- standards of judicial review, 437–441
  - • correctness, 440
  - • determination of standard of review, 441
  - • level of deference, 437
  - • reasonableness, 439

## IMMIGRATION AND REFUGEES

---

- • reasonableness and correctness, 438
- legislative powers**
  - federal paramountcy, 1
  - federal provincial agreements, 2
  - policies, 6–8
    - • manuals and operations memoranda, 8
    - • objectives of Canadian immigration policy, 6
    - • regulations and administration of regulations, 7
  - Quebec agreement, 3
  - regulations, 5
  - statutes, 4
- offences under Immigration and Refugee Protection Act**
  - misrepresentation, 421
  - offences, 418
  - persons employing foreign national not authorized to work, 420
  - possession of document purporting to establish identity, 419
- other persons who may be authorized to enter or remain in Canada**
  - persons without status in Canada, 31
  - protected persons, 30
  - temporary resident, 17–25
  - temporary resident permit holder, 26–29
- permanent residence (acquiring)**
  - equality under Charter, 114
  - humanitarian and compassionate considerations, 118
  - loss of permanent resident status, 113
  - permanent resident visa, 115, 119–130
    - • document requirements, 123
    - • examination of permanent residents, 126
    - • form and content of application, 119
    - • medical examination requirement, 126
    - • passport or other travel document, 124, 125
    - • place of application, 120
    - • requirements of examination, 128–130
      - • • answering questions/production of evidence, 130
      - • • compliance with provincial selection criteria, 128
      - • • right to counsel, 129
    - • return of application, 122
    - provincial selection, 117
    - selection of permanent residents, 116
- permanent residence (business immigrants)**
  - entrepreneurs, 151–157
    - • business experience, 151
    - • conditions to be met, 154–157
    - • defined, 151
    - • points system, 152
    - • qualifying business, 151
    - • substituted evaluation, 152
  - general, 146
  - investors, 147–150
    - • assessment under points system, 150
    - • business experience, 147
    - • defined, 147
    - • investment in approved fund, 150
    - • net worth, 148
    - • qualifying business, 149
    - • substituted evaluation, 150



## INDEX

---

- self-employed persons, 158–161
  - defined, 158
  - points system, 160
  - relevant experience, 159
  - substituted evaluation, 161
- permanent residence (Canadian experience class), 145**
- permanent residence (family class)**
  - common law partner/adopted child test, 170
  - defined, 165
  - dependent child, 171
  - exclusions, 166
  - minimum necessary income, 168
  - sponsor, requirements of, 167
  - student, qualitative aspect, 172
  - undertaking to reimburse government benefits, 169
- permanent residence (federal skilled workers)**
  - federal skilled worker class, 131
  - minimum criteria for federal skilled worker class, 132–135
    - assessment under specific occupation, 135
    - criteria for qualification, 133
    - extraneous criteria, 134
    - ministerial instruction (2008), 132
  - minimum funds required for federal skilled worker, 140
  - Quebec skilled worker class, 141
  - selection criteria, 136–139
    - general, 136
    - not less than minimum points, 137
    - onus on applicant, 139
    - opportunity to respond to extrinsic evidence, 139
    - reasons for dismissing documentation, 139
    - substituted evaluation, 138
- permanent residence (humanitarian and compassionate grounds)**
  - allegations of risk, 179
  - best interests of children, 186–189
    - alert, alive and sensitive to these interests, 187, 188
    - balanced against other factors, 189
    - but one of factors to be considered, 187
    - must be considered, 186
  - disproportionate hardship, 178
  - exemption from outside Canada requirement, 176
  - general rule that application made outside Canada, 175
  - onus on applicant, 178
  - powers and duties of Minister, 176
  - procedural fairness, 182–185
    - considerations, 183
    - full and fair review, 182
    - interview or oral hearing, 184
    - opportunity to respond to officer's concerns, 185
    - reliance by officer on personal information, 185
    - standard of review, 183
    - written explanation, 183
  - procedure, 180, 181
  - undeserved hardship, 178
- permanent residence (live-in caregiver class)**
  - application for permanent residence, 164
  - criteria, 162
  - defined, 162

- related prior experience, 163
- permanent residence (loss of status)**
  - grounds, 89
  - residency obligations, 90
- persons who may enter Canada as a right**
  - Canadian citizens, 9
  - permanent residents, 10–15
    - application within Canada, 13
    - definition, 10
    - foreign national, 11
    - permanent resident card, 15
    - permanent resident visa, 12
    - residency obligation, 14
  - status Indians, 16
- provincial nominees**
  - exclusions under provincial nominee class, 144
  - provincial nominee class, 142
  - substituted evaluations, 143
- refugee protection (cessation and vacation)**
  - appalling and atrocious persecution, 324
  - at first instance or after positive determination, 321
  - change in country conditions, 322
  - determination and status reversed, 320
  - misrepresentation or omission, 325
  - nullification, 327
  - other evidence justifying positive determination, 326
- refugee protection (conferral of)**
  - categories, 191
  - concept re-defined, 190
  - danger to public in Canada exception, 194, 195
  - exclusions, 192
  - inadmissibility determination in pre-removal risk assessment process, 196
  - non-refoulement, 197
  - rights of protected persons, 193
  - serious criminality, 195
- refugee protection (Convention Refugees)**
  - academic texts, practical guides, 201
  - actual harm, 218
  - change in country conditions, 213
  - claim against each country of nationality, 244–246
    - habitual residence, 246
    - indicia of nationality, 245
    - more than one country of nationality, 244
  - constituent elements of definition, 203
  - enumerated grounds, 227–241
    - membership in particular social group, 234–239
      - conscientious objectors, 236
      - failing to respond to draft order, 237
      - family, 239
      - family unity, 239
      - women subject to domestic violence, 238
      - victims of criminal activity/corruption/extortion, 235
    - political opinion, 240, 241
    - nationality, 233, 245
    - race, 227–230
    - religion, 231, 232
  - forward looking definition, 206
  - indirect persecution, 216

## INDEX

---

- internal flight alternative, 258–263
    - • must be raised expressly by tribunal, 263
    - • no family members in alternate locale, 261
    - • relevant considerations, 260
    - • specific geographical alternate areas, 263
    - • test, 258, 259
  - national security, peace and order measures, 217
  - objective fear, evidence required, 211
  - originating documents, 200
  - persecution, consequences of avoiding military service, 225
  - persecution defined, 214
  - persecution, distinction between prosecution, 222–224
  - persecution, examples of, 219
  - persecution, nexus with enumerated grounds, 226
  - persecution, specific targeting of group, 215
  - position papers and guidelines of IRB, 201
  - reasonable fear, 209, 210
  - reasons re preference of documentary evidence to that of credible claimant, 212
  - specific systematic infliction of human rights abuses, 202
  - stateless persons, 243
  - state protection, 247–257
    - • broad pattern of state refusal/inability, 256
    - • evidentiary and legal burden, 250, 251, 257
    - • persecution by non-state actor, 255
    - • presumption of state protection, 249
    - • seeking protection of agencies other than police/military, 252
    - • state as agent of persecution, 221, 248
    - • unwilling or unable to seek protection, 220, 247, 254
  - statutory definition, 199
  - subjective and objective analysis of well-foundedness, 205
  - subjective element, importance of proving, 207
  - subjective fear where no issue re credibility, 208
  - sur place claim, 242
  - well-foundedness, 204
- refugee protection (exclusion)**
- correctness standard on judicial review, 319
  - ministerial intervention, 314
  - person granted protection in another country, 315
    - • criteria re basic rights of nationality, 316
  - persons responsible for persecution, 318
  - proportionality test re whether crime political, 313
  - serious grounds to believe claimant excluded, 313
  - serious reasons for considering, 314
  - U.N. Convention Relating to Status of Refugees, 312
  - war criminals, 317
- refugee protection (persons in need of protection)**
- consolidated grounds, 265
  - constituent elements, 270, 271
  - cruel and unusual treatment, 280–283
  - defined, 264

- differences with law re Convention refugees, 268
  - generalized risk, 275
  - internal flight alternative, 290–293
  - papers published by IRB, 272
  - personal risk, 273, 274
  - pre-removal risk assessment, 294–311
    - • all persons in Canada and subject to removal order, 294
    - • application at port-of-entry, 305
    - • conferring refugee protection, 310
    - • exception to conferring refugee protection, 311
    - • exclusions, 296, 297
    - • failed refugee claimants, 299, 301
    - • hearing, 307–309
    - • manual, 300
    - • obligation to receive evidence to date of decision, 302
    - • policy basis for assessing risk, 298
    - • process and timing of application, 303, 306
    - • subsequent applications, 304
    - • test, 295
  - risk cannot be inherent/incidental to lawful sanctions, 284
  - risk cannot be related to medical care, 285
  - risk to life, 280
  - separate analysis of consolidated grounds, 266
  - standard of proof, 269
  - stateless persons, 287
  - state protection, 289
  - torture, 267, 277–279, 288
  - torture and state protection, 286
- refugee protection determination procedure**
- claims outside of Canada, 328
  - consideration of all relevant legal grounds, 342
  - determination of eligibility, 329, 330
  - errors in findings of fact, 345
  - expedited interview, 338
  - findings of implausibility, 344
  - hearings, 339
  - in-Canada claim, 328
  - ineligibility and serious criminality, 331
  - judicial notice, 348
  - judicial review, 343
  - leave to apply for judicial review, 349
  - microscopic examination of evidence, 348
  - opportunity to explain contradictions, 347
  - personal information form, 337
  - presumption that evidence true, 346
  - reasons for finding lack of credibility, 343
  - right to counsel, 340
  - right to counsel at port-of-entry examinations, 333
  - right to disclosure, 336
  - right to reasons for decision, 342
  - safe third country rule, 332
- removal order procedures**
- conditional order against refugee protection claimant, 93
  - effective date of enforcement, 92, 94
  - removal costs, 94
  - service, 94
  - voluntary compliance, 94

## INDEX

---

- removal orders**, 82, 83
- removal orders made at admissibility hearing**
  - claim for refugee protection, 87
  - departure order, 86
  - deportation order, 84, 88
  - exclusion order, 85
- removal orders, stay of**
  - circumstances, 95
  - discretion to defer, 98
  - void, 97
  - where not stayed, 96
- report on inadmissibility**
  - discretion re removal order/referral to admissibility hearing, 81
  - materials forming part of record, 79
  - powers of Minister, 79
  - section 44(1) inquiry interview, 80
- spouse or common law partner in Canada class**
  - defined, 173
  - exclusions, 174
- temporary residents**
  - admission for specified time and extension, 20
  - application at port-of-entry or within Canada, 24
  - demonstration re not inadmissible and temporary purpose, 18
  - entering Canada, 350–354
    - application prior to entering Canada, 23, 352
    - dual intent, 353
    - foreign national, 350
    - medical examinations, 354
    - temporary resident visa, 351
  - implied status, 22
  - loss of status, 91
  - permission to study/work without permit, 25
  - requirement for status, 17
  - restoration of status, 21
  - students, 360–369
    - application after entry into Canada, 364
    - application requirements, 365
    - port-of-entry application, 363
    - renewals, extensions and change of conditions, 367
    - study permit, 360
    - test, 366
    - timing of application, 362, 363
    - where study permits not required, 361
    - work permits issued to students, 368, 369
  - temporary foreign workers, 370–379
    - exclusions, 372
    - exemptions from work permits, 375
    - grounds for refusing to issue work permit, 374
    - procedure, 376–378
      - assessment, 378
      - Service Canada Labour Market opinion, 376, 377
    - renewals/extensions/change of conditions, 379
    - requirements, 373
    - timing of application, 370
    - work permit, 371
  - temporary resident permits, 19, 380–383
    - application for work permit/permanent residence, 383
    - cancellation, 381

## IMMIGRATION AND REFUGEES

---

- • cessation of validity, 382
- • general, 19, 380
- visitors
- • extensions of visitor status, 359
- • general, 22, 355
- • visitor visas, 356–358
  - • • duration of stay, 358
  - • • examination by officer at port-of-entry, 347
  - • • visa exempt countries, 356

## Index to Income Tax

(All references are to paragraph numbers.)

- ATM, *see* Alternative Minimum Tax**
- accounting principles, *see* Generally Accepted Accounting Principles (GAAP)**
- accrual method, *see* Generally Accepted Accounting Principles (GAAP)**
- “accurate picture of profit” requirement, *see* profit**
- active business income**
- defined, 1431, 1432
  - investment income compared, 1433
  - small business deduction, *see* **small business deduction**
- adjusted cost base**
- defined, 907–910
  - partnership, 1451–1454
  - stock options, 424, 425
- administration of income tax, *see* specific topics**
- administrative publications**
- advance rulings, 35–37
  - general, 33
  - information circulars, 33
  - interpretation bulletins, 34
- advance tax rulings, 35–37, 1669, 1670**
- adventure in the nature of trade, *see also* capital gain, investment income, trade**
- defined, 992, 993
  - intention
  - • change of intention, 1003–1006
  - • corporate intention, 1007
  - • differing intentions, 1002
  - • on acquisition, 994–998
  - • secondary intention, 999–1001
  - isolated transaction, 992, 993
- alimony and maintenance, 1110–1118**
- allowance, 1110–1113
  - deduction-inclusion system, 1114, 1115
  - definitions, 1110–1113
  - periodic payments, 1110–1113
  - policy objectives, 1115–1118
  - support amount, 1110
  - *Thibaudeau* decision, 1115–1118
  - third party payments, 1110
- allowable business investment loss, *see* losses**
- allowable capital loss, *see* losses**
- allowances, *see* employment income**
- Alternative Minimum Tax (ATM), 61, 1135–1137**
- computation of, 1338–1340
  - rationale, 1335–1337
- amortization, *see* Generally Accepted Accounting Principles (GAAP)**
- annuity, 1034–1036**
- anti-avoidance, *see* avoidance, General Anti-Avoidance Rule (GAAR)**
- appeal, *see* assessment, compliance**

**arm's length**

- defined, 1181, 1182

**assessment**

- appeal, 1193
- burden of proof, 1201
- examination by CRA, 1158–1160
- notice of assessment, 1157
- reassessment, 1176, 1177
- self-assessment, 58
- settlement, 1573–1576

**assets, see Generally Accepted Accounting Principles (GAAP)**

**attribution rules**

- anti-avoidance, 1150–1156
- capital gains, 1219–1222
- corporations, 1228–1230
- exemptions
  - family corporation, 1228–1230
  - lifetime capital gains, 1198–1200
  - loan, 1217, 1218
  - small business corporation, 1228–1230
- family corporation, 1228–1230
- family trust, 1223–1227
- farming property, 1201, 1219–1222
- general, 1204–1210
- gift, 1183–1185, 1211–1213
- income assignment, 1233–1237
- income diversion, 1231
- indirect payments (income diversion), 1231
- indirect transfer, 1215, 1216
- interest-free loan, 1211–1213, 1238
- kiddie tax, 1241
- loan, 1238

- loans to minors and spouses, 1211–1213, 1238
- loans to non-arm's length persons, 1211–1213, 1238
- low interest loan, 1238
- minors, 1215, 1216, 1219–1222
- purpose, 1204–1207
- sale, 1186–1188
- separation and divorce, *see* **exemptions**
- settlor of trust, 1223–1227
- split income or kiddie tax, 1241
- spousal RRSPs, *see* **Registered Retirement Savings Plans (RRSPs)**
- spouses, 1178, 1204, 1219, 1223, 1228–1230
- substituted property, 1208–1210
- trusts, 1223–1227

**audit, see tax returns**

**automobiles**

- commuting expenses, *see* **expenses**
- employer-provided, *see* **employment income**

**average rates, see tax rates**

**averaging, 52, 284**

**avoidance**

- abusive avoidance, *see* **General Anti-Avoidance Rule (GAAR)**
- anti-avoidance karate, 1820, 1821
- anti-avoidance rules, 1859
- arbitrage, 1816, 1817
- attribution rules, *see* **attribution rules**
- bad avoidance distinguished, 1811
- business purpose, 1838
- defined, 1800



## INDEX

---

- avoidance (*cont'd*)
  - ethics, *see* **ethics**
  - economic substance, 1839–1843
  - evasion
    - criminal prosecution, 1585
    - distinguished from avoidance, 1800
  - form over substance, 1835–1837
  - sham, 1844–1852
  - General Anti-Avoidance Rule, *see* **General Anti-Avoidance Rule (GAAR)**
  - goals of, 1802–1805
    - deferral, 1802–1805
    - re-characterization of transactions, 1802–1805
    - shifting income, 1802–1805
  - interpretation of statutes, *see* **statutory interpretation**
  - judicial approach
    - attitude towards, 1832
    - *Duke of Westminster* case, 90, 1826–1831, 1833, 1838
    - form and substance, *see* **form and substance**
    - role of the court, 1826–1831
    - statutory interpretation, *see* **statutory interpretation**
  - lawyer's role, *see* **lawyer**
  - legality, 1800, 1801
  - minimization, 90, 1800, 1801
  - misuse and abuse, *see* **General Anti-Avoidance Rule (GAAR)**
  - moral and tax policy implications, 1822
  - non-tax purpose, *see* **General Anti-Avoidance Rule (GAAR)**
  - policy reasons to prevent, 1822
  - reportable transaction system, 122–129
  - sham, 1853–1858
  - Specific Anti-Avoidance Rules (SAARS), 1859
    - co-existence with GAAR, 1867, 1868
    - effectiveness, 1865, 1866
    - general, 1859–1862
    - targeted transactions, 1863, 1864
  - statutory interpretation, 1833
  - tax efficient structures, 1814, 1815
  - tax planning, 1800
  - tax relief, 1811–1813
  - tax shelters, 1818, 1819
  - taxpayer's right to minimize tax, 90, 1800, 1801
- Balance sheet, *see* Generally Accepted Accounting Principles (GAAP)**
- basic personal credit, *see* credits**
- beneficiary of trust, *see also* trusts**
  - capital beneficiary, 1520–1527
  - definition, 1460
  - income beneficiary, 1520–1527
  - income taxed to beneficiary
    - ancillary conduit provisions, 1508, 1509
    - capital gains, 1506–1509
    - dividends, 1508, 1509
    - flow-through character of, 1508, 1509
    - foreign source income, 1508, 1509
    - income paid or payable in year, 1500, 1503
    - preferred beneficiary election, 1504, 1505
  - rollovers, *see* **rollovers**
  - spouse trust, *see* **trusts**

## INCOME TAX

---

- beneficiary of trust (*cont'd*)
- tax free payments to, 1510, 1511
- benefits**, *see* **employment income**
- business**, *see* **business income**
- business entities**, 73
- business expenses**, *see* **business income, expenses**
- business income**, *see also* **deductions, expenses, profit**
- accounting methods, *see* **Generally Accepted Accounting Principles (GAAP)**
  - accrual method, 505–509, 526
  - active, *see* **active business income**
  - advance payments, 534, 535
  - adventure in the nature of trade, *see* **adventure in the nature of trade**
  - amounts received in cash, 536
  - automobile expenses, *see* **commuting expenses**
  - capital expenditures, *see* **capital expenditures**
  - capital gains distinguished, 469, 470, 519–521
  - capital receipt, 519–521
  - cash method, 504, 536
  - child care expenses, 602–606, 1039, 1040, 1132
  - commuting expenses, 614–617
  - damages, *see* **damage**
  - Deferred Profit Sharing Plans, *see* **Deferred Profit Sharing Plans**
  - definition
    - • common law, 448–454
    - • importance of characterization, 444, 445, 519
    - • statutory, 446, 447
  - dividend, *see* **dividends**
  - employment compared, 349, 360, 361, 468
  - entertainment expenses, 612, 613
  - financing costs, 735
  - fines, 628–635
  - food and beverages, 612
  - form and substance, 552, 553
  - gambling, 465–467
  - Generally Accepted Accounting Principles, *see* **Generally Accepted Accounting Principles (GAAP)**
  - hobbies, 463
  - hobby farmer, 463
  - holdbacks, 530–533
  - home office expenses, 622–625
  - housekeeping expenses, 620, 621
  - illegal business, 638–640
  - inclusion rules, 518
  - interest expense, *see* **interest**
  - interest income, 552, *see also* **interest**
  - inventory, *see* **inventory**
  - minors, *see* **minors**
  - partnerships, *see* **partnerships**
  - penalties, 628–635
  - personal endeavours distinguished, 461
  - prepaid expenses, 670–675
  - professional services, 543–545
  - profit, *see* **profit**
  - property income compared
    - • differential tax treatments, 475
    - • level of activity, 471–474
    - • realization principle, 524, 525

## INDEX

---

- business income (*cont'd*)
  - Reasonable Expectation of Profit, 455–460, 464
  - reasonable expenses, 641
  - receivable, 526
  - Registered Pension Plans, *see* **Registered Pension Plans (RPPs)**
  - rental properties, 548, 549
  - repairs, *see* **capital expenditures**
  - reserves, *see* **reserves**
  - running expenses, 666–669
  - sale of property, 537–539
  - services, 540
  - • modified accrual method, 542
  - • receivable, 540, 541
  - small business deduction, *see* **small business deduction**
  - work in progress, 543–545
- business investment loss**, *see* **losses**
- CCA**, *see* **capital cost allowance**
- CCPC**, *see* **canadian-controlled private corporations**
- CLB**, *see* **Canada Learning Bond**
- CPP**, *see* **Canada Pension Plan**
- CRA**, *see* **Canada Revenue Agency**
- Canada Learning Bond (CLB)**, 1088–1094
- Canada Pension Plan (CPP)**, 1041–1043, 1326–1330
- Canada Revenue Agency (CRA)**, 57, 1414–1416, 1543–1545, 1788–1791, 1875, 1876
- canadian-controlled private corporations (CCPCs)**
  - active business income, *see* **active business income**
  - capital gains, *see* **capital gains**
  - control, 1345–1347
  - defined, 1345–1347, 1418
  - integration, *see* **integration**
  - investment income, *see* **investment income**
  - refundable dividend tax on hand, 1421–1423, 1424, 1427, 1428
  - small business deduction, *see* **small business deduction**
- capital cost allowance (cca)**, *see* **also depreciable property**
  - accelerated cost recovery, 806
  - capital cost
    - • apportionment, 821
    - • defined, 814–820
    - • timing, 822
  - classes, 804, 805
  - computation of, 832–839
  - depreciable property defined, 802, 803
  - depreciation compared, 802
  - half-year rule, 829–831
  - limitations on
    - • leasing property, 857–860
    - • rental properties, 853–856
    - • tax shelter losses, 852
  - overview, 798–801
  - rates, 804, 805
  - stop-loss rules, *see* **stop-loss rules**
  - Undepreciated Capital Cost (UCC), 807
    - • class concept, 811–813
    - • cumulative account, 810
    - • defined, 807–809

**capital expenditures, *see also*  
expenses, depreciable property**

- accounting decline in value, determination of
- declining-balance method, 795–797
- general, 789–791
- straight-line method, 792
- acquisition cost of assets, 765–767
- capital cost allowance, *see* capital cost allowance
- classification, 765–767
- common law tests, 754
- corporate takeovers, 780, 781
- current expenses compared, 650–652, 747–750
- deduction of, 578–580
- defined, 754
- depreciable properties, 765–767
- domain names, 778, 779
- eligible capital expenditures, *see* **eligible capital expenditures**
- enduring benefit test, 754–756
- financing costs, 735
- goodwill, 782–785
- intangible assets, *see* **eligible capital expenditures**
- interest, 706–708
- land, 765–767, 802, 803
- new business expenses, 786, 787
- nothings, 765–767, 861
- reasonable allocation of purchase price, 814–820
- recovery of, 788
  - accounting methods, 789–791
  - statutory guesswork, 788
- recurring expenditures, 757–761
- repair of tangible assets, 768–771

- residual test in favour of taxpayer, 762, 763
- shares, bonds, 765–767
- start-up costs, 786, 787
- timing, 747
  - capital vs current, 747–750
  - tax deferral, 751–753
- websites, 778, 779

**capital gains**

- adjusted cost base, 907–910
- adventure in the nature of trade, *see* **adventure in the nature of trade**
- attribution of, 1219–1222
- beneficiaries, paid to, 1506, 1507
- business income distinguished, 469, 471
- canadian-controlled private corporations, 1427, 1428
- capital gains exemption, *see* **capital gains exemption**
- capital property, 894–896
- Carter Commission, 252–254, 868, 869
- certainty, 873, 874
- change of use, 931–934, 972
  - deemed disposition, 972, 973
  - election, 974–976
  - partial change, 977–979
- commodities, 1020
- computation of
  - proceeds due in future year, 913–918
  - proceeds due within year, 911, 912
  - reserve for future proceeds, 913–918
- deductibility, 1279–1281
- deemed disposition

## INDEX

---

- capital gains (*cont'd*)
  - • becoming a non-resident, *see* **departure tax**
  - • change of use, *see* **change of use**
  - • death, 920–926
  - • gifts, 920–922, 927
  - • purpose, 920–922
  - • trusts, *see* **trusts**
  - defined, 866–891
  - departure tax, *see* **departure tax**
  - depreciable property, 897, 898, 907–910
  - derivatives, 1030–1033
  - disposition
    - • deemed, *see* **deemed disposition**
    - • death, 899–901
    - • defined, 899
    - • involuntary, 899–901
    - • proceeds of, 899–906
    - • timing, 902–905, 923–926
    - • voluntary, 899, 923–926
  - equity, 870
  - exemptions from, 881–883
  - foreign exchange, 1021, 1022
  - gift, 293
  - hedging, 1023–1029
  - history, 868, 869
  - income compared, 980
  - inflationary gains, 875
  - *inter vivos* gift, 899–901
  - investment disincentives, 876–880
  - inventory, 990, 991
  - legislation, 886–888
  - lifetime exemption, 881–883
  - listed personal property, 950, 951
  - loss, *see* losses
  - neutrality, 871, 872
  - partnerships, 1451–1458
  - personal use property, 950, 951
  - preferential treatment, 871, 872
  - principal residence exemption, *see* **principal residence exemption**
  - proceeds of disposition, 899–906
  - property income compared, 469, 470
  - real estate, 1008–1012
  - realization basis, 892, 893
  - reserve for future proceeds, 913–918
  - rollovers, *see* **rollovers**
  - securities, 1013
    - • canadian securities election, 1014–1017
    - • common law principles, 1013
    - • taxable capital gain, 868, 866–888
  - trade, *see* **trade**
  - trusts earning, *see* **trusts**
- capital gains exemption**
  - lifetime exemption, 881–883
  - principal residence exemption, *see* **principal residence**
  - qualified farm property, 881–883
  - qualified small business corporation shares, 881–883
- capital losses**, *see* losses
- capital property**, *see* **capital gains**
- Carter Commission and tax reform, 1971**, 101
  - ability to pay, 131–135
  - capital expenditures, distinction of, 578–580

- Carter Commission and tax reform, 1971 (*cont'd*)
  - capital gains, 104–107, 252–255, 868, 869
  - comprehensive tax base, 249–251
  - dividends, 104–107
  - equity, 131
  - gifts and inheritances, 284
  - haig-simons, 242–248, 868
  - indexing, *see* **indexing**
  - integration, 104–107, 1358, 1374, 1384
  - neutrality, 97
  - report, 101
  - sheltering income in corporation, 1374
  - tax base, 104–107, 249–251
  - tax rates, 104–107
  - windfalls, 294
- case law**, *see* **tax cases**
- characterization**, 77–80
- charitable donations**
  - charitable donations credit, 1326–1330
  - corporations, 1399
- child**, *see also* **minor**
  - alimony and maintenance, *see* **alimony and maintenance**
  - attribution of income, *see* **attribution rules**
  - Canada child tax benefit, *see* **credits**
  - support, *see* **alimony and maintenance**
  - universal child care benefit (UCCB), 1124, 1125
- child care expenses**, 602–606, 1034–1036, 1039, 1040, 1132
  - deduction, 1132, 1133
  - policy objectives, 1134–1136
- civil penalties**, *see* **compliance**
- collection procedure**, *see* **compliance**
- commodities**, 1020
- common-law partner**, *see* **spouse**
- commuting expenses**, *see* **expenses**
- compliance**
  - appeal, 1564–1567
  - assessment, *see* **assessment**
  - audit, 1557, 1558
  - avoidance, *see* **avoidance**
  - burden of proof, 1577–1580
  - confidentiality, 1581, 1582
  - criminal prosecutions, 1585
    - investigatory powers, 1586
    - prosecution, 1587
    - tax evasion, 1585
  - e-file, 1543–1545
  - examination, 1556
  - instalments, 1547, 1548
  - litigation and advocacy, 1671, 1672
  - netfile, 1543–1545
  - objection, 1562, 1563
  - penalties, civil, 1568–1572, 1583, 1584, 1650–1652
  - reassessment, *see* **assessment**
  - rectification, 1588–1592
  - remission order, 1577–1580
  - returns, *see* **tax returns**
  - ruling, *see* **advanced tax ruling**
  - self-assessment system, 58
  - settlement, 1573–1576
  - tax disputes, 59, 60, 1562
  - tax treaties, *see* **tax treaties**
  - telefile, 1453
  - voluntary compliance, 58

## INDEX

---

- compliance (*cont'd*)
  - withholding of tax at source, *see* **withholding tax**
- concessions**, *see* **tax expenditures**
- confidentiality**, *see* **compliance**
- consumer price index**, *see* **indexing**
- contract of service vs. contract for services**, 349–353
  - relevant tests, 354–358
  - tax consequences of distinction, 349–353
- control**
  - acquisition of control, *see* **losses**
  - canadian-controlled private corporations, *see* **canadian-controlled private corporations**
  - residence of corporations, relevance to, *see* **residence**
- corporate distributions**, *see* **corporations, dividends**
- corporations**
  - abatement, *see* **provincial abatement**
  - acquisition of control, *see* **losses**
  - associated, *see* **active business income**
  - attribution rules, 1202, 1203, 1228–1230
  - canadian-controlled private corporations, *see* **canadian-controlled private corporation (CCPCs)**
  - charitable donations, 1403
  - deductions, *see* **business income**
  - distributions, 1348–1352
  - dividends, *see* **dividends**
  - family, 1228–1230
  - fiscal period, 50
  - general, 1439
  - income, computation of, 1399
  - incorporation, 1342
  - integration, *see* **integration**
  - intercorporate dividends, *see* **dividends**
  - large corporations tax, 1409–1411
  - legal person, 1342
  - limited liability, 1342
  - manufacturing and processing credit, 1437, 1438
  - private, 1343, 1344
  - provincial abatement, 1412, 1413
  - provincial taxes, 1417
  - public, 1343, 1344
  - refundable tax on investment income, *see* **investment income**
  - residence
    - common law residence, 213–220
    - statutory definition, 221
    - sheltering income in
      - Carter Commission, 1374
      - reforms, 1374
    - surtax, 1408
    - tax rates
      - federal tax, 1366–1371, 1404, 1405
      - general rate reduction, 1374, 1406, 1407
      - historical changes, 1374
      - large corporations tax, 1409–1411
      - standard corporate rate, 1417
      - summary, 1439
      - surtax, 1408
    - tax returns, filing of, 1543–1545
    - taxable income, 1418
    - taxation year, 1418

## INCOME TAX

---

- corporations (*cont'd*)
- transfers of property (rollovers), 1202, 1203
- credits**, 55, 56, 1324
- adoption expenses, 1326–1330
  - age credit reduction, 122–129, 1122, 1123, 1326–1330
  - basic credit, 1326–1330
  - Canada Pension Plan contributions, 1326–1330
  - care-giver credit, 1326–1330
  - charitable donations credit, 1326–1330
  - child tax benefit, 1124, 1125, 1331–1334
  - child tax credit, 1326–1330
  - defined, 1324, 1325
  - dependant, 1326–1330
  - dependants over 17, 1326–1330
  - disability, 1326–1330
  - dividend tax credit, 1385–1392
  - education credit, 1326–1330
  - employment, 1326–1330
  - employment insurance premiums, 1326–1330
  - equivalent-to-spouse credit, 1326–1330
  - fitness, 1326–1330
  - GST tax credit, 1122, 1123, 1331–1334
  - interest on student loan credit, 1326–1330
  - manufacturing and processing credit, 1366–1371, 1437, 1438
  - medical expenses, 1326–1334
  - non-refundable credits, 1326–1330
  - pension income, 1326–1330
  - personal credits, 1326–1330
  - public transit, 1326–1330
  - Quebec Pension Plan, 1326–1330
  - refundable credits, 1331–1334
  - refundable medical expense credit, 1331–1334
  - small business deduction, *see* **small business deduction**
  - spouse/common-law partner credit, 1326–1330
  - student loan, 1326–1330
  - textbook, 1326–1330
  - table, 1326–1330
  - transfer of, 1326–1330
  - tuition, 1326–1330
  - working income tax benefit (WITB), 1331–1334
- current expenses**, *see* **business income, capital expenditures**
- damages and settlements**
- deductibility, 636, 637
  - personal injury, 1326–1330
  - punitive damages, 306, 307
  - *surrogatum* principle, 229–302
- death**
- death benefits, 1034–1036
  - deemed dispositions, 920–926
  - RRIFs, 1081–1083
  - RRSPs, 1081–1083
  - spousal trusts, deemed disposition on spouse's death, 1470–1472
  - transfers to spouse, 1196, 1197
  - transfers to trust, 1489
- deductions**
- alimony and maintenance, *see* **alimony and maintenance**
  - business, *see* **business income**
  - capital expenditures, *see* **capital expenditures**



## INDEX

---

- deductions (*cont'd*)
  - child care, *see* **child care expenses**
  - commuting expense, 614–617
  - credits compared, *see* **credits**
  - deductibility, 576, 577
  - dual-purpose expenses, *see* **expenses**
  - employment, *see* **employment income**
  - employment versus business, *see* **employment income**
  - fines, penalties and illegal payments, 628–635
  - general principals, 584
  - • accurate picture of profit, 588–590
  - • certainty, 591
  - • controlling abuse, 592
  - • logic, 584–587
  - home office, *see* **home office**
  - income-earning expenses, *see* **expenses**
  - interest, *see* **interest**
  - lifetime capital gains, 1285, 1286
  - loans, 1285, 1286
  - losses, *see* **losses**
  - mismatch and tax arbitrage, 743–746
  - moving expenses, *see* **moving expenses**
  - objection or appeal of expenses, *see* **compliance**
  - personal expenses, *see* **expenses**
  - property, *see* **property income**
  - public policy, 584
  - reasonable requirement, 641, *see also* **expenses, reasonable**
  - Registered Retirement Savings Plan contributions, *see*
- Registered Retirement Savings Plans (RRSPs)**
  - reserves, *see* **reserves**
  - small business, 591
  - social assistance payments, 1285, 1286
  - “staging” deductions, 1249–1253
  - timing of, 578–580, 584–587
- deferral, *see also* Generally Accepted Accounting Principles (GAAP) and postponement of tax**
  - concept, 87–89
- deferral of tax, *see* postponement of tax**
- deferred income plans**
  - Deferred Profit Sharing Plans, *see* **Deferred Profit Sharing Plans (DPSPs)**
  - pension income, *see* **Registered Pension Plans (RPPs)**
  - Registered Educational Savings Plans, *see* **Registered Educational Savings Plans (RESPs)**
  - Registered Pension Plans, *see* **Registered Pension Plans (RPPs)**
  - Registered Retirement Income Funds, *see* **Registered Retirement Income Funds (RRIFs)**
  - Registered Retirement Savings Plans, *see* **Registered Retirement Savings Plans (RRSPs)**
- Deferred Profit Sharing Plans (DPSPs), 1044, 1064, 1065**
  - direct transfers, 1084–1087
  - employer contributions deductible, 1064, 1065

- Deferred Profit Sharing Plans (DPSPs) (*cont'd*)
- employer contributions not taxable benefit, 337–390, 1064, 1065
  - tax deferred investment income, 1064, 1065
- department of finance**, 17–23
- department of justice**, 59, 60, 1587
- departure tax**, 234–236, 935
- depreciable property**
- adjusted cost base, 907–910
  - capital cost
    - apportionment, 821
    - defined, 814–820, 907–910
    - timing, 822
  - capital cost allowance, *see* **capital cost allowance**
  - capital gains, *see* **capital gains**
  - defined, 802, 803, 897, 898
  - depreciation
    - compared to capital cost allowance, 798–801
    - declining-balance method, 795–797
    - straight-line method, 793, 794
  - half-year rule, 829, 831
  - intangibles excluded, 802, 803
  - inventory, 802, 803
  - land excluded, 802, 803
  - no more guesswork, 840, 844
  - proceeds of disposition
    - defined, 823–825
    - timing, 826–828
  - recapture, 845–847
  - retirement of, 840
  - review example, 851
  - terminal loss, 848–850
- Undepreciated Capital Cost (UCC), 807
    - class concept, 811–813
    - cumulative account, 810
    - defined, 807–809
- derivatives**, 1030–1033
- disability credit**, *see* **credits**
- discounts**
- creditor, position of, 570–575
  - defined, 567–569
  - vs. premiums, 570–575
- disposition**, *see* **capital gains**
- disputes**, *see* **tax disputes**
- dividends**
- canadian-controlled private corporations, 1424–1426
  - cash basis, 546
  - defined, 546
  - dividend tax credit, *see* **gross-up and credit**
  - eligible dividends, 1385–1392
  - gross-up and credit, 1385–1398
  - income from property, 546, 547
  - ineligible dividends, 1385–1392
  - integration, *see* **integration**
  - intercorporate, 1400–1402
  - part iv tax, 1400–1402, 1424
  - refundable dividend tax on hand, 1421–1428
- dual residence**, *see* **residence**
- education credit**, *see* **credits**
- e-file**, 1543
- eligible capital expenditures**
- amortization of intangibles, 861–863
  - amount of deduction, 865–867
  - defined, 864
  - goodwill, 782–785, 861–863

## INDEX

---

- eligible capital
- expenditures (*cont'd*)
  - protection of intangible assets, 772–777
- employment expenses**, *see*  
**employment income, expenses**
- employment income**
  - allowances
    - defined, 392, 393
    - inclusion, 390, 391
    - reimbursements compared, 394, 395
  - benefits
    - allowances, 390
    - automobiles, 396–399
    - board and lodging, 370, 371
    - business trip expenses, 394, 395
    - convertible to money, 376
    - Deferred Profit Sharing Plan contributions, *see* **Deferred Profit Sharing Plans**
    - definition
      - convertible into money, 376
      - economic advantage, 372–375
      - material acquisition, 372–375
    - economic advantage, 372–375
    - exclusions, non-taxable amounts, 435
    - housing costs, 403, *see also* **moving expenses**
    - inclusions, 370, 371
      - “benefit” defined, 372
      - reasons for, 372–375
    - loans, 372
    - private health insurance services plan, 279–283
  - Registered Pension Plan, *see* **Registered Pension Plans (RPPs)**
  - reimbursements, 394, 395
  - relationship to employment, 394, 395
  - relocation costs, *see* **moving expenses**
  - stock options, *see* **stock options, employee**
  - subsidized meals, 381
  - travel expenses, 437–440
  - tuition, 372–375
  - uniforms, 372–375
  - valuation of
    - apportionment, 385–387
    - cost to employer, 381
    - fair market value, 382–384
  - business income compared to, 348
  - contract of services, 349
  - control test, 354–357
  - deductions, *see also* **deductions, expenses**
    - assistants, 437–440
    - automobile expenses, 396–399, 437–440
    - commissioned employees, 437–440
    - general, 436
    - home office expenses, 437–440
    - legal expenses to collect wages, 437–440
    - meal expenses, 437–440
    - professional membership dues, 437–440
  - Registered Pension Plan contributions, *see* **Registered Pension Plans (RPPs)**
  - Registered Retirement Savings Plan contributions,

- employment income (*cont'd*)  
*see* **Registered Retirement Savings Plans (RRSPs)**
- rent, 437–440
  - supplies, 437–440
  - travel expenses, 437–440
  - union dues, 437–440
  - defined, 344
  - employee stock options, *see* **stock options**
  - incorporated employees, 360, 361
  - legislative scheme, 324
  - loss of employment, compensation for, 412–414, *see also* **retiring allowance**
  - moving expenses, *see* **moving expenses**
  - office
    - business compared, 349
    - defined, 344
    - employment compared, 348
  - reimbursement of expenses, 394, 395
  - relocation costs, *see* **moving expenses**
  - salary and wages, 368
  - tests to determine
    - contract “of” or “for” services, 349–353
    - control, 354–357
    - economic reality, 358
    - form of contract, 359
  - timing, 362
- employment insurance**, 1121, 1326–1330
- enforcement**, *see* **compliance**
- entertainment expenses**, *see* **business income**
- equity**
- ability to pay principle, 131–135
  - capital gains taxation, 870
  - Carter Commission, *see* **Carter Commission**
  - employment income, 331, 332
  - families, 1161
  - horizontal, 136, 137
  - neutrality compared to equity, 141, 142
  - vertical, 143, 144
- estate**, *see* **death, trusts**
- estate freeze**, 1537–1542
- estate planning**, *see* **estate freeze**
- ethics**, 1593
- evasion**, *see* **avoidance, compliance**
- expenditures**
- capital, *see* **capital expenditures**
  - eligible capital, *see* **eligible capital expenditures**
  - expenses, *see* **expenses**
  - tax, *see* **tax expenditures**
- expenses**, *see also* **business income, capital expenditures, deductions**
- capital expenditures, *see* **capital expenditures**
  - child care expenses, 602–606, 1034–1036, 1039, 1040, 1132
  - commuting expenses, 614–617
  - contested liabilities, 657–663
  - contingent liabilities, 654–656
  - current expenditures, 653
    - capital expenditures compared, 650–652
  - damages, *see* **damages**
  - defined, 653

## INDEX

---

- expenses (*cont'd*)
  - dual purpose expenses, 601
  - entertainment expenses, 612, 613
  - fines, penalties, 628–635
  - food and beverages, 607–611
  - foreign exchange losses, 696–698
  - home office, 437–440, 620, 621
  - housekeeping expenses, 620, 621
  - illegal business expenses, 638–640
  - illegal payments, 626, 627
  - income-earning expenses
    - personal expense and, 596–660
    - purpose, 596–600, 601, 740–742
    - statutory rules, 596–600
  - interest expense, *see* **interest**
  - living expenses, *see* **personal expenses**
  - measurement, 156
  - mixed expenses, 601
  - moving expenses, *see* **moving expenses**
  - payable defined, 654–657
  - personal expenses
    - common law tests, 602–606
    - defined, 601
    - income-earning expenses and, 596–600
  - prepaid expenses, 670–675
  - reasonable
    - non-arm's length payments, 646–649
    - rationale, 641–643
    - section 67, 641–643
  - unreasonable amounts attributable to personal elements, 644, 645
  - reserves, *see* **reserves**
  - running expenses, 666–669
  - timing, 650
  - travel, 614–617
  - unincurred liabilities, 657–663
- fair market value**
  - defined, 1178–1180
- fairness**, *see* **equity**
- fairness package**, *see* **compliance**
- family, taxation of**
  - equity between families, 1161, 1162
  - equity between families and unattached individuals, 1170–1172
  - household labour and employment, 1163–1169
  - recognition of, 1173
  - taxation unit, as, 1161
- farm**
  - losses, *see* **losses**
  - rollover, *see* **rollover**
- federal-provincial agreements**, 31
- financial instruments**, *see* **derivatives**
- financial statements**, *see* **Generally Accepted Accounting Principles (GAAP)**
- flat taxes**, *see* **tax rates**
- foreign affiliates**, *see* **non-residents**
- foreign exchange**, 740–742, 1021, 1022
- GAAP**, *see* **Generally Accepted Accounting Principles**

**GAAR, see General Anti-Avoidance Rule (GAAR)**

**GST, see Goods and Services Tax**

**gambling winnings, 294, 465–467**

**General Anti-Avoidance Rule (GAAR)**

- abusive tax avoidance, 1919–1924
- misuse and abuse test, 1919–1924
- us legitimate tax minimization, 1925, 1926
- application of, 1894
- avoidance transaction, 1903
- non-tax purpose test, 1905–1907
- series of transactions, 1903
- tax benefit, 1903
- avoidance transaction defined, 1869
- series of transactions defined, 1903
- tax benefit, 1903
- case law
- *Canada Trustco*, 1878
- *Lipson*, 1883–1888
- *Mathew*, 1879–1882
- general, 109–114, 1869
- interpretation guidelines, 1877
- introduction of, 109–114, 1869
- measure of last resort, 1870
- minister’s discretion and role of courts, 1875, 1876
- misuse or abuse, 1919–1924
- no down-side risk for taxpayers, 1873, 1874
- primary purpose
- constraint of duke of westminster principle, 1871
- last resort measure, 1872

- prevent abusive tax avoidance, 1870
- section 245, 1869

**Generally Accepted Accounting Principles (GAAP), see also profit**

- accrual method, 505–509, 526
- amortization, 510–513
- capital assets, 510–513
- cash method, 504
- deferral, 505–509
- defined, 477–488
- depreciation, 510–513
- interpretative aids only, 477–488, 503
- inventory, 514–516, 691
- matching principle, 505–513
- reasons for departure from, 477–488
- use of, 477–488
- well-accepted business principles and, 477–488

**gifts and inheritances**

- Carter Commission recommendations, 824
- commercial gifts, 291, 292
- deemed disposition, 927
- non-arm’s length transfers, 1183–1185
- personal gifts, 284
- property, 293
- reasons for exclusion, 285–288

**Goods and Services Tax (GST)**

- harmonized sales tax, 122–129
- introduction, 109–114
- refundable tax credit, *see credits*

**graduated tax rate, see tax rates**

**HST, see Goods and Services Tax (GST)**

## INDEX

---

- haig-simons**, *see* **tax base**
- hedging**, 1023–1029
- history**, 91
- *Carter Report*, 101
  - confederation, 93–95
  - federal income taxes, 97
  - federal-provincial agreements, 98–100
  - indexing, introduction of, 108
  - post-1988 changes, 115–121
  - post-2005 changes, 122–129
  - provincial income taxes, 96
  - tax reform, 1971, *see* **Carter Commission**
  - tax reform, 1988, 109–114
- hobbies**, *see* **business income**
- home buyer's plan**, *see* **Registered Retirement Savings Plans (RRSPs)**
- home office expense**, 437–440, 620, 621
- horizontal equity**, *see* **equity**
- household labour**, 1163–1169
- imputed income, *see* **imputed income**
- housekeeping expenses**, *see* **expenses**
- imputation**, *see* **integration**
- imputed income**
- definition, 308, 309
  - imputed rent, 310, 311
  - non-taxation, 308, 309
  - owner-occupied home, 310, 311
  - unpaid housework, 312–314
- income**
- aggregation from sources, 317, 318, 1262
  - alimony and maintenance, *see* **alimony and maintenance**
  - assignment of, 52
  - business, *see* **business income**
  - capital gain, *see* **capital gain**
  - Carter Commission tax base, *see* **Carter Commission**
  - computation of, 315
  - concept of, 46, 240–242, 1034–1036, 1262
  - corporations, *see* **corporations**
  - damages, *see* **damages and settlements**
  - death benefits, *see* **death**
  - Deferred Profit Sharing Plans, *see* **Deferred Profit Sharing Plans**
  - definition, 240–244
  - diversion of, 1231
  - dividends, *see* **dividends**
  - employment, *see* **employment income**
  - employment insurance, 1121
  - exclusions, 279–283
  - fluctuation of, 52
  - gambling winnings, 294
  - gifts, *see* **gifts and inheritances**
  - haig-simons theory, 242–244
  - illegal income, 272–274
  - imputed income, *see* **imputed income**
  - inclusions
    - capital gains, 275, 276
    - other income, 277, 278
  - inheritances, *see* **gifts and inheritances**
  - judicial interpretation, 279–283
    - ordinary meaning, 249–251
    - capital receipt distinguished, 252–255
  - lottery prize, *see* **windfalls**
  - measurement of, 47, 48

- income (*cont'd*)
  - net concept, 315, 316, 1037, 1038
  - net income, *see* **net income**
  - office or employment, *see* **employment income**
  - other
    - deductions, net, 1037, 1038
    - policy objectives, 1039, 1040
    - sources, 1034–1036
  - pension income, *see* **Registered Pension Plans (RPPs)**
  - pension plans, 1044
  - property, *see* **property income**
  - public pensions, *see* **Old Age Security, Canada Pension Plan**
  - Registered Education Savings Plans, *see* **Registered Education Savings Plans (RESPs)**
  - Registered Pension Plans, *see* **Registered Pension Plans (RPPs)**
  - Registered Retirement Income Funds (RRIFs), *see* **Registered Retirement Income Plans (RRIFs)**
  - Registered Retirement Savings Plans, *see* **Registered Retirement Savings Plans (RRSPs)**
  - retiring allowances, *see* **retiring allowance**
  - scholarships, bursaries, awards, 1119, 1120
  - section 3 of ita, 240, 241, 1262
  - settlements, *see* **damages and settlements**
  - social assistance, *see* **social assistance**
  - social policy and, 1039, 1040
  - source by source, 317, 318
    - source theories, 262, 1034–1036
    - splitting, *see* **income splitting**
    - spousal support, *see* **alimony and maintenance**
    - statutory inclusions and exemptions, 275
    - trusts, *see* **beneficiary of trusts, trusts**
    - workers' compensation, *see* **workers' compensation**
- income splitting**, *see also* **attribution rules**
  - fairness, 1158–1160
  - family tax treatment, 1161, 1176, 1177
  - general, 1137–1141
  - legislative scheme, 1140, 1141
  - policy, 1157
  - prevention of, 1150–1156
  - tax savings
    - characterization, 1143
    - general, 1140
    - rates and credits, 1142, 1143
    - tax unit, 1140, 1141
  - trusts, 1536
- income statement**, *see* **Generally Accepted Accounting Principles (GAAP)**
- income tax**
  - purpose, 2
- Income Tax Act**
  - citing, 9–16
  - history, 6–8
  - interpretation of, 41
    - tips, 44
  - primary source of tax law, 6
  - statutory language, 43
  - statutory interpretation, *see* **statutory interpretation**
  - structure of act, 9–16, 45



## INDEX

---

- Income Tax Application Rules Act***, 24
- income tax law sources**, 6
- Income Tax Regulations***, 25, 26
- income vs. capital**, 519–521
- independent contractor**, *see* **business income**
- indexing**
- effect of inflation, 1317–1319
  - indexation rules, 1320–1323
  - introduction of, 108
- individuals**
- calendar year, 50, 51
  - fluctuating income, 53
  - residence
    - common law residence, 195–204
    - giving up residence, 195–204
    - ordinarily resident, 205–207
    - provincial residence, 230–233
    - sojourning for 183 days, 208–210
  - tax policy
    - ability to pay, 1254
    - economic efficiency, 1255, 1256
    - stimulation of private activities, 1257–1259
  - tax rates, *see* **tax rates**
  - tax return, filing of, 1543–1545
  - taxation year, 50, 51
- inflation**, *see* **indexing**
- information circulars**, 33
- inheritances**, *see* **gifts and inheritances**
- instalment payments**, 1547, 1548
- intangible assets**, *see* **eligible capital expenditures**
- integration**, 1384, *see also* **dividends**
- Carter Commission, 104–107, 1348–1362
  - corporate and personal tax, 1348–1352, 1358
  - current rules, 1366–1371
  - double taxation, 1348–1357
  - reforms of 1971, 101, 1358–1362
  - subsequent reforms, 1358
- interest, income and expense**
- blended payments, 561–565
  - defined, 706–708
  - deductibility of
    - general, 705
    - purpose test, 711, 737, 739
      - “any” not “the” purpose, 711–713
      - “gross” not “net” income, 714
      - “reasonable” expectation of gross income, 715–718
  - tracing use of borrowed money
    - current use, 724–727
    - direct use, 728–732
    - money fungible, 721–723
  - deferred payments, 566
  - defined, 552–560
  - discounts, *see* **discounts**
  - imputed, 561–566
  - income, 522
  - mismatch of, and capital gain, 743–746
  - special timing rules, 556–560, 733, 734
- interpretation bulletins**, 34
- interpretative aids**
- advanced tax rulings, *see* **advanced tax rulings**

- interpretative aids (*cont'd*)
  - case law, *see* **tax cases**
  - information circulars, *see* **information circulars**
  - interpretation bulletins, *see* **interpretation bulletins**
  - regulations, *see* **Income Tax Act Regulations**
  - statutory interpretation, *see* **statutory interpretation**
  - treaties, *see* **tax treaties**
- inventory**
  - accrual method, 692–695
  - cash method, 692–695
  - cost of goods sold, 696–698
  - inventory accounting, 692–695
  - defined, 691
  - general, 990, 991
  - specific identification, 696–698
  - timing, 537–539, 692–695
  - tracing, 703, 704
  - valuation methods, 699–702
- investment income**, *see also* **capital gain, property income**
  - adventure in the nature of trade, *see* **adventure in the nature of trade**
  - capital gains, *see* **capital gains**
  - discounts, *see* **discounts**
  - dividends, *see* **dividends**
  - part iv tax, 1424–1426
  - policy for CCPCs, 1419, 1420
  - refundable dividend tax on hand, 1421–1428
  - tax shelters, 448–460
- judges, role of**, 58
- jurisdiction to tax**, 177
- “kiddie tax”**, 115–121, 1150–1156, 1241, 1859
- land**, *see* **capital expenditures**
- lawyers**
  - advocacy and litigation, 1671, 1672
  - duties to other parties
    - Canada Revenue Agency (CRA), 1616, 1617
    - public, 1614, 1615
    - tax system, 1620
    - tribunal, 1618, 1619
  - fiduciary duties to clients, 1600, 1621
    - competence, 1603, 1604
    - confidentiality, 1607–1609
    - conflict of interest, 1627–1631
    - honesty and candour, 1605, 1606, 1648, 1649
    - loyalty, 1613, 1626
      - conflict of interest, 1627–1630
      - *Strother* case, 1632
  - fiduciary relationship, 1621–1623
    - public interest, 1624, 1625
  - gatekeepers of tax system, 1673
  - legal opinions, 1667, 1668
  - professional ethics, 1593–1596
    - regulation of profession, 1597–1599
    - rules of professional conduct, 1597–1599
  - roles of, 41, 42, 59, 60, 1643–1645
    - compliance, 1646
  - solicitor-client privilege, 1610–1612
  - tax planning and advice, 1653
    - advance tax rulings, 1669, 1670
    - aggressive tax planning, 1660
    - “audit lottery” issue, 1655, 1656

## INDEX

---

- lawyers (*cont'd*)
- • conflict of interest, 1657–1659
  - third party civil penalties, 1650–1652
  - • planner penalty, 1650–1652
  - • preparer penalty, 1650–1652
- legislative process**, 17–23
- liability for tax**
- compliance, *see* **compliance**
  - computation of, 59, 60
  - income fluctuations, 55, 56
  - non-residents, *see* **non-residents**
  - part-time residents, *see* **residence**
  - person, *see* **person**
  - residence, *see* **residence**
  - tax unit, *see* **taxation unit**
- lifelong learning plan**, *see* **Registered Retirement Savings Plans (RRSPs)**
- listed personal property**, 950, 951, 1263–1265
- loans**
- attribution rules, *see* **attribution rules**
  - employee, *see* **employment income**
  - interest, *see* **interest**
  - weak currency loan, *see* **capital gains**
- losses**
- allowable business investment losses (abils), 1282, 1283, 1295
  - • deductibility, 1282, 1283
  - • defined, 1282, 1283
  - attribution rules, *see* **attribution rules**
  - capital losses
  - • allowable, 1279–1281
  - • carryover rules, 919
  - • deductibility, 1249–1253, 1266–1268, 1279–1281
  - • defined, 1263–1265
  - • no reserve, 919
  - • quarantined, 936–940, 1270
  - • restrictions, 1279–1281
  - • stop-loss rules, 936
  - • superficial losses, 941–944
  - carry-overs, 52, 1266, 1267, 1287
  - change of corporate control, 1298–1303
  - deductibility of, 1268–1285
  - defined, 1263–1265
  - disposition for future proceeds, 919
  - farm losses, 1271–1275
  - • carryovers, 1296, 1297
  - • defined, 1263–1265, 1296, 1297
  - • hobby farmers, 1271–1275
  - • part-time farmers, 1271–1275
  - • restricted farm losses, 1271–1277
  - listed personal property, 950, 951, 1263–1265
  - net capital losses
  - • carryovers, 1291–1294
  - • change of corporate control, 1298–1303
  - • deductibility, 1291–1294
  - • defined, 1291–1294
  - • restricted farm losses, 1296, 1297
  - non-capital losses
  - • allowable business investment losses, 1295
  - • carryovers, 1287–1290
  - • change of corporate control, 1298–1303

- losses (*cont'd*)
  - defined, 1263–1265
  - restricted farm losses, 1296, 1297
  - partnerships, 1451
  - personal losses, 1268, 1269
  - personal use property, 941–944, 1263–1265, 1276, 1277
  - Reasonable Expectation of Profit, *see* **business income**
  - stop-loss rules, 936, 1276, 1277
  - superficial loss, 941–944, 1276, 1277
  - tax shelter losses, 852, 857–860, 1338–1340
- lottery winnings**, *see* **windfalls**
- maintenance payments**, *see* **alimony and maintenance**
- manufacturing and processing credit**, 1366–1371
- marginal rates of tax**, *see* **tax rates**
- married couple**
  - alimony and maintenance, *see* **alimony and maintenance**
  - family, *see* **family, taxation of**
  - spouse, *see* **spouse**
  - tax unit, *see* **taxation unit**
- minors**
  - attribution rules, *see* **attribution rules**
  - “kiddie tax”, *see* **“kiddie tax”**
  - rollovers, 1211–1213
  - tax on, 1217, 1218
  - transfers of capital property, 1215, 1216
- moving expenses**, 1037, 1038, 1129
  - deduction for non-reimbursed expenses, 1129, 1130
  - policy objectives, 1131
- netfile**, 1543–1545
- net capital loss**, *see* **losses**
- net income**, *see also* **income, taxable income**
  - foundation of tax base, 1260, 1261
  - defined, 1260, 1261
  - losses, *see* **losses**
  - utility of, 1260, 1261
- neutrality**
  - capital gains taxation, 871, 872
  - equity compared to neutrality, 141, 142
- non-arm’s length transfers**
  - arm’s length, 1181, 1182
  - asymmetrical treatment, 1186–1188
  - fair market value, 1178–1180
  - general, 1178
  - gifts, 1178
  - inadequate or excessive consideration, 1178
  - related persons, 1178–1180
  - rollovers, 1189, 1190, 1193
- non-capital losses**, *see* **losses**
- non-depreciable property**, *see* **depreciable property**
- non-residents**
  - deemed non-resident, 239
  - defined, 49
  - departure tax, *see* **departure tax**
  - liability for tax, 49
  - residence, *see* **residence**
  - tax treaties, *see* **tax treaties**
- nothings**, *see* **capital expenditures**
- objections**, *see* **compliance**

## INDEX

---

- objectives, *see* policy objectives**
- office or employment income, *see* employment income**
- office income, *see* employment income**
- offshore corporations**
  - information returns, *see* **tax returns**
  - residence, *see* **residence**
  - taxation of, *see* **non-residents**
  - tax treaties, *see* **tax treaties**
- Old Age Security, 1041–1043**
- ordinary commercial principles, *see* well-accepted business principles**
- ordinary residence, *see* residence**
- part iv tax, *see* dividends, investment income**
- part-time residence, *see* residence**
- partner, *see* partnerships**
- partnerships**
  - allocation of income, 1447–1450
  - defined, 1441–1446
  - dissolution, 1455–1458
  - double taxation, 1451–1454
  - fiscal period, 1447–1450
  - general, 1440
  - information return, 1447–1450
  - liability of partners, 1441–1446
  - Limited Liability Partnerships (LLPs), 1441–1446
  - limited partnership, 1441–1446
  - partnership income, calculation of, 1447–1450
  - partnership interest, 1451–1454
  - • gain or loss on disposal, 1451–1454
  - property, 1455–1458
  - rollovers, *see* **rollovers**
  - source-characterization of partnership income, 1447–1450
  - taxation of, 1447–1450
  - taxation year, 1447–1450
  - uses, 1441–1446
- payment of tax, *see* compliance, liability for tax**
- penalties, *see* compliance**
- pension and retirement savings**
  - Canada Pension Plan, *see* **Canada Pension Plan**
  - Deferred Profit Sharing Plans, *see* **Deferred Profit Sharing Plans**
  - Old Age Security, *see* **Old Age Security**
  - pension income, *see* **Registered Pension Plans (RPPs)**
  - Registered Educational Savings Plans, *see* **Registered Educational Savings Plans (RESPs)**
  - Registered Pension Plans, *see* **Registered Pension Plans (RPPs)**
  - Registered Retirement Income Funds, *see* **Registered Retirement Income Funds (RRIFs)**
  - Registered Retirement Savings Plans, *see* **Registered Retirement Savings Plans (RRSPs)**
  - tax deferral advantage, *see* **postponement of tax**
  - tax reform 1971, *see* **tax reform, 1971**
- person, 46**

- personal exemptions, *see* credits**
- personal use property, *see* capital gains**
- personal services, consumption of, *see* imputed income**
- personal tax credits, *see* credits**
- policy objectives**
  - economic efficiency, 1255, 1256
  - equity
    - ability to pay principle, 131–135, 584, 1255, 1256
    - horizontal, 136, 137
    - vertical, 138, 139
  - general, 1254, 1740, 1741
  - international competitiveness, 148, 149
  - neutrality, 1255, 1256
    - defined, 140
    - deliberate policies, 143, 144
    - distinguished from equity, 141, 142
    - simplicity and administrative efficiency, 146, 147
    - unintended effects, 145
  - stimulation of economic activities, 1257–1259
- postponement of tax**
  - benefits of, 87–89
  - tax deferral, 87–89, 751–753, 1802–1805
  - time value of money, 84–86
  - timing, 81–83
- preferences, *see* tax expenditures**
- prepaid expenses, *see* expenses**
- principal residence exemption**
  - change of use rules
    - partial change of use, 977, 978
    - defined, 956
    - designation, 960, 961
    - ordinarily inhabited, 957
    - ownership, 956
    - surrounding land, 958, 959
  - exemption
    - mechanism of, 964–971
    - tax expenditure, 952–955
  - residence requirement, 963
- proceeds of disposition, *see also* capital gain**
  - defined, 823–825
  - timing, 826–828
- profit, *see also* business income, Generally Accepted Accounting Principles (GAAP)**
  - “accurate picture of profit” requirement
    - goal, the, 492–496
    - measuring, 497, 498
    - onus of proof, 499
  - *Canderel*, 491
  - computation of
    - choice of accounting methods, 500–502
    - financial versus tax accounting, 477–488
  - net concept, 476
  - question of law, 489, 490
  - concept of, 476
  - financial accounting versus tax, 477–488, 503
  - income vs. capital, 519–521
  - judicial interpretation, 491
  - methods of computation, *see* Generally Accepted Accounting Principles (GAAP)
  - pursuit of
    - intention to profit, 448–454

## INDEX

---

- profit (*cont'd*)
  - personal endeavour, 461
  - *Stewart and Walls*, 448–460
  - tax shelters, 448–454
  - realization principle, 524, 525
  - Reasonable Expectation of Profit (REOP), 455–460
  - timing, 526
- property**
  - capital, *see* **capital gains**
  - defined, 446
  - depreciable, *see* **depreciable property**
  - eligible capital, *see* **eligible capital property**
  - income from, *see* **property income**
  - transfers of, *see* **attribution rules, capital gain**
- property income**, *see also* **investment income**
  - attribution rules, *see* **attribution rules**
  - adventure in the nature of trade, *see* **adventure in the nature of trade**
  - business income compared
    - differential tax treatments, 475
    - level of activity, 471–474
  - capital gain compared, 469, 470
  - cash method, 536
  - discounts, *see* **discounts**
  - dividends, *see* **dividends**
  - hobby farmer, 463
  - interest, *see* **interest**
  - real estate, *see* **real estate**
  - Reasonable Expectation of Profit (REOP), 455–460
    - hobbies, 463
    - rental property, 464
  - rents, 548
  - royalties, 548
  - sale of, 537–539
- prosecutions**, *see* **compliance, department of justice**
- provincial taxes**
  - abatements, 1412, 1413
  - rates, 1305–1307, 1414–1416
  - residence, 230–233
  - statutes, 31
  - tax collection agreements, *see* **federal-provincial agreements**
- publications**, *see* **administrative publications**
- RDSP**, *see* **Registered Disability Savings Plans**
- REOP**, *see* **Reasonable Expectation of Profit**
- RESP**, *see* **Registered Education Savings Plans**
- RPP**, *see* **Registered Pension Plans**
- RRIF**, *see* **Registered Retirement Income Funds**
- RRSP**, *see* **Registered Retirement Savings Plans**
- rates**, *see* **tax rates**
- reasonable**
  - allocation of purchase price, *see* **capital expenditures**
  - expectation of profit, *see* **business income, profit, property income**
  - expenses, *see* **business income**
- real estate**
  - capital cost allowance, *see* **capital cost allowance**
  - capital expenditures, *see* **capital expenditures**

- real estate (*cont'd*)
- capital gain, *see* **capital gains**
  - capital gains or income, 1008–1012
  - principal residence, *see* **principal residence**
  - rental properties, 464
- realization concept**, 70
- of income, 259–261
- reasonable**
- allocation of purchase price, *see* **capital expenditures**
  - expenses, *see* **expenses**
- Reasonable Expectation of Profit (REOP)**, *see* **business income, profit, property income**
- reassessment**, *see* **assessment**
- recognition concept**, 70
- recurring expenses**, *see* **capital expenditures, expenses**
- rectification**, 1588–1592
- Registered Disability Savings Plans (RDSPs)**, 1100
- Registered Education Savings Plans (RESPs)**, 1095–1099
- Registered Pension Plans (RPPs)**, 1044, 1060–1063
- defined benefits plans, 1060–1063
  - defined contribution plans, 1060–1063
  - direct transfers, 1084–1087
  - tax assistance, 1045
    - • benefit of tax deferral, 1045, 1046
    - • design objectives, 1050, 1051
    - • policy implications, 1047–1049
- Registered Retirement Income Funds (RRIFs)**, 1044, 1080
- death of annuitant, 1081–1083
  - direct transfers, 1084–1087
  - flexibility, 1080
  - RRSP compared, 1080
  - tax deferral, 1080
- Registered Retirement Savings Plans (RRSPs)**
- annuities, 1078, 1079
  - contributions based on earned income, 1069–1073
  - contributions deductible, 1045
  - death of annuitant, 1081–1083
  - Deferred Profit Sharing Plan, *see* **Deferred Profit Sharing Plans**
  - defined, 1066–1068
  - direct transfers, 1084–1087
  - group RRSPs, 1084–1087
  - home buyer's plan, 1074–1077
  - lifelong learning plan, 1074–1077
  - Registered Pension Plan compared, 1066–1068, *see also* **Registered Pension Plan**
  - Registered Retirement Income Funds, *see* **Registered Retirement Income Funds (RRIFs)**
  - tax assistance, 1045
    - • benefit of tax deferral, 1045, 1046
    - • design objectives, 1050, 1051
    - • policy implications, 1047, 1049
  - withdrawals, 1066–1068, 1074–1077
- reimbursements**, *see* **employment income**
- relocation expenses**, *see* **moving expenses**



## INDEX

---

- rent**, *see* **real estate**
- rental property**, *see* **real estate**
- replacement property**, *see* **capital gains**
- research and development**, *see* **business income**
- reserves**
  - bad debt writeoffs, 678–681
  - deferred payments, 682–686
  - defined, 676, 677
  - doubtful debts, 678, 681
  - rules, 676, 677
  - special deductions, 676
  - unearned amounts, 687–690
- residence**
  - change in residence
    - • deemed disposition, 234–236
    - • deemed non-resident, 239
    - • departure tax, 234–236
    - • dual residence, 237, 238
    - • general, 234–236
    - • part-year residence, 211, 212, 234–236,
  - corporations
    - • common law residence, 213–220
    - • incorporation in Canada, 221
    - • provincial residence, 230–233
    - • statutory definition, 221
  - dual residency, 237, 238
  - individuals
    - • common law residence, 195–204
    - • giving up residence, 195–204
    - • ordinarily resident, 205–207
    - • part-year resident, 211, 212
    - • provincial residence, 230–233
    - • sojourning for 183 days, 208–210
  - jurisdiction to tax, 177
    - • citizenship, 177
    - • domicile, 177
    - • policy justifications, 181, 182
    - • residence, 177
    - • source of income, 178–180
  - non-residents, *see* **non-residents**
  - provincial residence, 230–233
  - tax liability, 49
  - trusts, 222–229
  - worldwide taxation, 188
    - • double taxation, 191, 192
    - • foreign corporations, 193, 194
    - • offshore trusts, 193, 194
- residents**
  - defined, 49
  - liability for tax, 49
  - taxation of, 177, 188
- retirement savings**, *see* **pensions and retirement savings**
- retiring allowance**, 1101
  - deduction for contributions to RRSP, 1078, 1079, 1107–1109
  - defined, 412–414, 1101–1106
  - employment income compared, 412–414
  - tax-free damages compared, 412–414, 1101–1106
  - tax treatment, 1107–1109
- returns**, *see* **tax returns**
- rights or things return**, *see* **tax returns**
- rollovers**
  - alter ego trusts, 1473–1475, 1490–1193
  - child, transfers to, 1201
  - common-law partners, transfers to, 1193

- rollovers (*cont'd*)
  - corporations, transfers to, 1202, 1203
  - death, transfers on, 1196, 1197
  - defined, 1189, 1190
  - election, 1198–1200
  - farming or fishing property, 1201
  - *inter vivos* transfers, 1194, 1195
  - joint spousal trusts, 1473–1475, 1490–1492
  - non-arm's length transfer rules, 1178
  - partnerships
    - • transfer on dissolution, 1455–1458
    - • transfer to, 1455–1458
  - spousal transfers, 1193
  - spousal trust, 1470–1472, 1490–1492
- RRSP, see Registered Retirement Savings Plans (RRSP)**
- running expenses, see expenses**
- scholarship trust plans, see Registered Education Savings Plans (RESPs)**
- securities, 1013**
  - canadian securities election, 1014–1017
  - common law principles, 1013
- settlements, see damages and settlements**
- settlor of trust, see trusts**
- severance payments, see employment income, retiring allowance**
- sham, see avoidance**
- shareholder**
  - corporation, *see corporations*
  - dividend income, *see dividends*
- shares**
  - capital gain, *see capital gains*
  - corporations, *see corporations*
  - dividend income, *see dividends*
  - preferred, use in estate freezes, *see estate freeze*
- small business corporation**
  - defined, 1018, 1019
- small business deduction**
  - active business income, 1366–1371, 1431, 1432
  - definition, 1366–1371, 1429, 1430
  - limits on, 1434–1436
- social assistance, 1034–1036, 1122, 1123**
- sojourning, see residence**
- source theory of income, 262, 263, 868, 869**
- spouse**
  - alimony and maintenance, *see alimony and maintenance*
  - attribution rules, 1178–1230
  - common-law partner defined, 1193
  - defined, 1193
  - principle residence designation, *see principal residence*
  - rollovers, 1193, 1287–1290
- statutory interpretation**
  - characterization of facts, 1687
  - common law interpretation traditions, 1782–1787
  - contextual and purposive interpretation, 1724
  - • legislative purpose and intent, 1768
  - • • inferences from text of statute, 1774–1777

## INDEX

---

- statutory interpretation (*cont'd*)
  - presumptions, 1779, 1780
  - purpose or intent, 1770–1773
  - relevance of extrinsic materials, 1788
  - *Placer Dome* case, 1728–1733
  - relevance of economic substance of transactions, 1727
  - legislative supremacy doctrine, 1796–1799
  - meaning of words, 1686
  - modern rule
  - purposive interpretation, 1706–1709
  - *Stuart* case, 1712
  - true commercial and practical nature of transactions, 1710, 1711
  - plain meaning
  - clear and unambiguous meaning, 1713
  - recognition of bona fide legal relationships, 1718–1720
  - *Singleton* case, 1721–1723
  - role of judges, 1688–1690, 1793–1795
  - special characteristics of tax statutes, 1781
  - statutory context, 1744
  - *Imperial Oil* case, 1749
  - legislative scheme, 1746–1748
  - statutory text, 1734
  - ambiguous meaning, 1740, 1741
  - ordinary, technical, or legal meaning, 1736–1739
  - statutory definitions, 1734, 1735
  - strict interpretation, 1694, 1833, 1834
  - *Duke of Westminster* case, 1697–1702, 1833
  - form over substance, 1696, 1835–1837
  - literal meaning, 1694, 1695
- stock options, employee**
  - adjusted cost base of shares, 424, 425
  - capital gains-like taxation, 426
  - deferral of recognition, 427
  - defined, 415
  - policy justifications, 428–431
  - preferential treatment, 426
  - section 7, application of, 416–418
  - special deduction, 421–423, 1285, 1286
  - taxable benefit, 419
  - timing of inclusion, 420
- stop-loss rules, 936, see also losses, capital losses**
  - cca on rental properties, 853–856
  - leasing properties, 853–856
- superficial loss, see losses**
- support payments, see alimony and maintenance**
- surrogatum principle, 299–302**
- tax**
  - avoidance, *see avoidance*
  - base, *see tax base*
  - credits, *see credits*
  - direct versus indirect, *see direct tax*
  - evasion, *see compliance*
  - expenditures, *see tax expenditures*
  - payment, *see compliance*

- tax (*cont'd*)
- rates, *see* **tax rates**
  - return, *see* **tax returns**
  - unit, *see* **taxation unit**
- tax base**, *see also* **income**
- accounting, 47, 48
  - broadening, 101
  - Carter Commission, *see* **Carter Commission**
  - comprehensive tax base, 245–248, 868, 869
  - defined, 46, 1260, 1261
  - haig-simons theory, 242–244, 868, 869
  - imputed income, *see* **imputed income**
  - source theory, *see* **source theory of income**
  - windfalls, *see* **windfalls**
- tax cases**, 30
- tax credits**, *see* **credits**
- tax deferral**, *see* **postponement of tax**
- tax disputes**, 59, 60, 1562, *see also* **compliance**
- tax evasion**, *see* **avoidance, compliance**
- tax expenditures**
- concept, 150
  - difficulties of accounting, 156–158
  - estimates, 159
  - measurement of, 156
  - policy evaluation, 163
  - public scrutiny, 151–155
- Tax-Free Savings Accounts (TFSA)**, 122–129, 1088–1094
- tax liability**, *see* **liability for tax**
- tax planning**, *see* **attribution rules, avoidance, estate freeze, lawyer, postponement of tax, trusts**
- tax practitioners**, 1593, 1600, *see also* **lawyers**
- duties to client, 1600
  - ethics, 1593–1596
  - regulation of profession, 1597–1599
- tax rates**, 54
- 1971 reforms, 30
  - 1988 reforms, 32
  - average, 1308–1311
  - brackets, 1305–1307
  - Carter Commission, *see* **Carter Commission**
  - corporate, *see* **corporations**
  - federal, 54, 1304
  - flat
    - arguments for, 167, 1312–1316
    - defined, 1312–1316
  - history, 101–129
  - indexation, 1312–1316
  - inflation effects, 1317–1319
  - marginal, 1308–1311
  - progressive
    - defined, 1312–1316
    - justification for, 167, 1312–1316
  - proportionate
    - defined, 1312–1316
  - provincial, 1305–1307
    - surtaxes, 1305–1307
  - regressive taxes
    - defined, 1312–1316
  - trusts, *see* **trusts**
- tax reform, 1971**, *see* **Carter Commission**

## INDEX

---

- tax reform, 1988**, 109–114
- tax refunds**, *see* **compliance**
- tax returns**
  - audit, 1557, 1558
  - corporations, 1543–1545
  - deadlines
    - corporations, 1543–1545
    - individuals, 1543–1545
  - examination of, 1566
  - filing of, 1543–1545
    - efile, 1543–1545
    - mailing, 1543–1545
    - netfile, 1543–1545
    - telefile, 1543–1545
  - individuals, 1543–1545
  - payment of unpaid tax, 1846
  - prescribed form, 1543–1545
- tax shelters**, 448–460, 852, 1338–1340, 1818, 1819
- tax system**
  - Canada Revenue Agency (CRA), *see* **Canada Revenue Agency (CRA)**
  - Carter Commission, *see* **Carter Commission**
  - compliance, *see* **compliance**
  - department of finance, *see* **department of finance**
  - federal/provincial, *see* **provincial taxes**
  - gate keepers of, 1673
  - self-assessment system, 58
  - voluntary compliance, 58
- tax treaties**, 27–29
- taxable benefits**, *see* **employment income**
- taxable income**, 1285
  - capital gains deduction, *see* **capital gains exemption**
    - defined, 1285
    - employee stock option deduction, *see* **stock options**
    - home relocation loan deduction, *see* **employment income**
    - intercorporate dividends, *see* **corporations, dividends**
    - loss carryovers, *see* **losses**
- taxation unit**
  - family, 1161
  - individual as, 47, 48, 1140, 1141
- taxation year**
  - calendar year, 50, 51
  - defined, 50, 51
  - fiscal period, 50, 51
- telefile**, 1543–1545
- terminal return**, *see* **death**
- termination payment**, *see* **employment income, retiring allowance**
- time value of money**, 84–86
- timing for tax purposes**, 81–83
- trade**, *see also* **adventure in the nature of trade, capital gains**
  - frequency of transactions, 987, 988
  - inventory, 990, 991
  - investing compared, 984–986
  - relationship to other work, 989
- transfer of property**, *see* **attribution rules, capital gain, rollovers**
- transfers of capital property**
  - attribution rules, *see* **attribution rules**
  - children, 1215, 1216
  - common-law partner, 1193
  - corporations, 1202, 1203

## INCOME TAX

---

- transfers of capital property (*cont'd*)
  - death, 1196, 1197
  - non-arm's length, 1178
  - spouse, to, 1193
- treaties, see tax treaties**
- trusts**
  - alter ego trusts, 1473–1475, 1490–1492, 1496–1499, 1520–1527, 1530–1535
  - attribution rules, 1223–1227
  - beneficiary, *see* **beneficiary of trust**
  - capital gains, 1493–1499
  - commercial trusts, 1466–1468
  - conduit treatment of, 1484
  - creation of, 1485
  - deemed disposition every 21 years, 928–930, 1496–1499
  - exemptions, 1470–1472, 1489, 1496–1499, 1530–1535
  - definition, 1460, 1461
  - discretionary trusts, 1469
  - estate
    - administrator, *see* **legal representative**
    - distinguished from trust, 1462–1465
    - executor, *see* **legal representative**
    - legal representative, 1462–1465
    - personal representative, *see* **legal representative**
  - family trust, 1223–1277
  - estate freeze, 1537–1542
  - general, 1459
  - income of
    - computation and designation of, 1493–1495
    - deductions, 1493–1495
    - paid/payable to beneficiary, 1493–1495, 1500–1503
    - income splitting, 1477–1480, 1536
    - individual, deemed to be, 1477–1480
    - integration, 1335–1337
    - *inter vivos* trusts, 1462–1465, 1485, 1536
    - joint spousal trusts, 1473–1475, 1490–1492, 1520–1527, 1530–1535
    - legislative scheme, 1476
    - non-discretionary trusts, 1469
    - personal trusts, 1466–1468
    - residence, 222–229
    - rollovers, 1490–1492
    - roll-out on distribution *in specie*, 1520–1527
    - settlor, 1486
    - income taxed to
      - anti-avoidance concerns, 1512
      - trusts for spouses or related minors, 1513–1516
      - trusts with reserved power of revocation or control, 1517–1519
    - specified investment flow-through trusts (sifts), 1466–1468
  - spousal trusts, 1470–1472, 1530–1535
  - deemed disposition on spouse's death, 1470–1472
  - defined, 1470–1472
  - joint, 1473–1475
  - roll-out on distribution *in specie*, 1520–1527
  - tainted, 1470–1472
  - tax planning
  - estate freeze, 1537–1542

## INDEX

---

### trusts (*cont'd*)

- income splitting, 1536
- planning a trust, 1530–1535
- reasons for creating trusts, 1528, 1529
- tax rates, 1481–1483
- termination of, 1520–1527
- testamentary trusts, 1462–1465, 1481–1483, 1530–1535
- transfer of property to, 1486
- on death, 1489
- trustee, 1460, 1461

### UCCB, *see* **Universal Child Care Benefit**

### Undepreciated Capital Cost, *see* **depreciable property**

### unemployment insurance, *see* **employment insurance**

### United Kingdom

- business purpose test, 1839–1843

### United States

- business purpose test, 1839–1843

### Universal Child Care Benefit (UCCB), 1124, 1125

### wages, *see* **salary and wages**

### windfalls, 294

### withholding tax

- employment income, 1546
- failure to withhold, 1546

### workers' compensation, 1034–1036, 1122, 1123

### worldwide taxation, 188

## Index to Injunctions

(All references are to paragraph numbers.)

- acquiescence**, 40, 67
- actions, injunctions barring**, *see also stays of proceedings*
- affidavit evidence, 28
  - “alternative forum” cases, 542
  - choice of forum, limiting, 535–543
  - forum non conveniens, 539–543
  - general, 7, 8, 283, 532–534, 537
  - hearing of, 28, 538
  - “natural forum”, 535
  - permanent nature of, 28, 538
  - personal effect of, 7
  - privilege, protection of, 545
  - “single forum” cases, 543
- affidavits (Alberta)**, *see also proceedings (general)*
- cross-examination on, 327, 328, 332–335
  - filing/service, 299, 330
  - production of documents, 333
  - title of, 329
- affidavits (British Columbia)**, *see also proceedings (general)*
- cross-examination on, 327, 329, 339
  - filing/service, 301
- affidavits (Federal Court)**, *see also proceedings (general)*
- contents, 368
  - cross-examination on, 327, 328, 370–376
  - general, 368
  - information and belief, 369
  - motion record, 377–380
  - production of documents, 374, 375
- affidavits (general)**, *see also proceedings (general)*
- continuation of injunction, application for, 204, 205
  - correspondence with statement of claim, 295
  - cross-examination on, 328, 329
  - ex parte applications, 205, 323
  - fair question to be tried, establishing, 322
  - information and belief, 205, 222, 325
  - irreparable harm, allegations re, 123
  - Mareva injunctions, 222–225
  - swearing of, timing, 326
- affidavits (Manitoba)**, *see also proceedings (general)*
- brief, contents of, 342
  - cross-examination on, 327, 328, 343, 344
  - filing/service, 314, 341
- affidavits (Ontario)**, *see also proceedings (general)*
- cross-examination, 327, 328, 354–363
  - filing/service, 319, 352, 353
  - motion record, 364–367
  - production of documents, 358, 359
- affidavits (Saskatchewan)**, *see also proceedings (general)*
- cross-examination on, 327, 328, 351
  - defects in, effect of, 349
  - filing/service, 346–348, 351



## INJUNCTIONS

---

- affidavits (Saskatchewan) (*cont'd*)
- general, 347
  - responding to affidavits, 350
  - title of, 347, 349
- agency contracts**, 563, 590
- anti-suit injunctions**, *see* **actions, injunctions barring**
- anticipatory injunctions**, *see* **quia timet injunctions**
- Anton Piller orders**
- affidavit of documents, failure to provide, 251
  - conditions/limitations on, 262
  - confidential information, 263
  - copyright cases, 256, 623
  - disclosure by applicant, 261
  - evidence, concealment/destruction, 264, 265
  - evidence, preservation of, 258–260
  - ex parte application, 251
  - form of, 262
  - general, 249–252
  - nature/purpose of, 249
  - passing off cases, 715
  - prerequisites to grant, 255–258
  - review/continuation/setting aside, 266–271
  - “rolling orders”, 253
  - rules of court re, 249
  - service of, 262, 395
  - time for obtaining, 250, 287
  - trade-marks, 256, 702
  - “very serious harm”, 257
  - “very strong prima facie case”, 256
- appeals**, *see also* **contempt proceedings; judicial review;**
- judgments/orders; stay of injunction**
- breach of injunction, after, 482
  - continuing injunction, order for, 423
  - deference to lower court, 201, 412
  - general, 425, 427, 428
  - grant to unsuccessful plaintiff pending appeal, 463
  - inquiry into damages, order for, 422
  - leave applications, 417
  - mandatory injunctions, 426
  - Mareva injunction aiding criminal process, 416
  - new/evidence facts on, 293, 421
  - rehearing on merits, when proper, 414
  - Supreme Court of Canada, to, 415
  - vacated injunction not reinstated by, 464
- arbitration clauses**, 23, 27, 63
- arbitration proceedings, injunction barring**, 545
- arrest**, *see* **contempt proceedings**
- balance of convenience**, *see also* **damages (undertaking re); interim interlocutory injunctions; specific cases, e.g., passing off**
- adequacy of damages, 133
  - burden of proof, 129
  - Charter cases, 138
  - constitutional cases, 136
  - damages (undertaking re), 157
  - degree of harm, relevance, 132
  - delay, effect of, 134
  - Federal Court, 130

## INDEX

---

- balance of convenience (*cont'd*)
  - general, 75, 82–84, 99, 129, 142
  - harm to applicant/respondent, 107, 137
  - negative covenant, breach of, 132, 149, 574, 577, 582–586
  - professional discipline cases, 139
  - public interest, 107, 137–139
  - purpose of assessing, 128
  - third party rights, protecting, 135
  - trade-mark cases, 140
  - when not relevant, 140
- bars to grant**, *see also* **jurisdiction to grant**
  - acquiescence, 48, 70
  - arbitration clauses, 23, 27, 63
  - availability of other relief, 37, 58–63
  - clean hands doctrine, 52
  - contractual provisions, 64, 560–563, 572
  - criminal cases, 63
  - damages available/adequate, 27, 36, 58–62, 66–75, 548, 560
  - delay, 50, 51, 127, 134, 246, 548, 680
  - general, 27, 547
  - hardship, 59, 70
  - impossibility of enforcement, 12, 13, 19, 25
  - legislative authority, preserving, 56
  - Mareva injunctions, 244–248
  - mutuality of remedy, lack of, 561
  - person not before court, affecting rights of, 55
  - pre-empting jurisdiction of another body, 13
  - public interest, 53, 54
  - statutory remedy available, 27, 63
  - supervision by court, where required, 12, 25, 515
  - third party rights, 247
  - undertaking given by defendant, 63
- breach of confidence**, *see* **confidential information, protection of; fiduciary duties**
- breach of injunction**, 465–467, *see also* **contempt proceedings; enforcement; judgments/orders**
- Charter of Rights**, 81, 95, 111, 138, 635
- confidential information, protection of**, *see also* **contractual rights; fiduciary duties; privileged documents (injunction protecting)**
  - balance of convenience, 554, 555
  - bars to, 548
  - confidentiality agreements, 552
  - damages, 547
  - disclosure for litigation purposes, 558
  - former employees, 550, 553, 555, 571, 646
  - general, 547
  - grounds for injunction, 554
  - in camera hearing/sealing of files, 556
  - jurisdiction of court, 547
  - parties enjoined, 550–553
  - third parties, 551
  - vicarious liability, 549
- conflict of laws**, *see* **actions, injunctions barring**

## INJUNCTIONS

---

- considerations affecting grant**,  
*see* **balance of convenience**;  
**bars to grant**; **irreparable harm**; **prima facie case**;  
**serious question to be tried**;  
**specific injunctions/acts**, e.g.,  
**interim/interlocutory injunctions**; **passing off**
- constitutional/legislative challenges**, 54, 101, 111, 136, 457
- contempt proceedings (Alberta)**,  
*see also* **enforcement (general)**
- appeal from sanction, 489
  - bail, 489
  - general/historical, 486, 490
  - order to appear, 486
  - penalties, 487, 488
  - purging of contempt, 488
- contempt proceedings (British Columbia)**, *see also*  
**enforcement (general)**
- arrest/apprehension, 493, 496
  - corporations, against, 492, 493
  - general, 492
  - knowledge of contemnor, relevance, 497
  - mandatory injunctions, carrying out, 491
  - motion/warrant for, 494
  - penalties, 492, 498, 499
  - review of committal, 499
  - warrant for apprehension, 493, 496
- contempt proceedings (criminal)**,  
*see also* **enforcement (general)**
- appeals, 528
  - arrest, authority to, 527
  - findings of court re, 530
  - general, 527–529
  - indictable offences, 527
  - procedure for prosecuting, 531
- contempt proceedings (Federal Court)**, *see also* **enforcement (general)**
- corporations, against, 521
  - general, 521, 524
  - mandatory orders, carrying out, 522
  - motion for, 523
  - penalties, 521, 525
  - proof of contempt, 524
  - sequestration, 521
- contempt proceedings (general)**,  
*see also* **enforcement (general)**
- appeal of injunction, effect on, 482
  - civil contempt, 468
  - costs of, 485
  - criminal contempt, 467–471
  - defences, 475–478
  - director's/officer's liability, 480
  - knowledge of order, relevance, 454, 455, 475
  - persons subject to, 292, 430, 431, 452, 454, 455
  - procedure, strict adherence to, 472
  - service on contemnor, 473–476
  - standard of proof, 469
- contempt proceedings (Manitoba)**, *see also*  
**enforcement (general)**
- affidavits, 501
  - general, 500
  - mandatory orders, carrying out, 506
  - motion for, 510
  - penalties, 503–505, 507
  - variation of order, 505
  - warrant for arrest, 502
  - warrant of committal, 504

## INDEX

---

- contempt proceedings (Ontario)**, *see also* **enforcement (general)**
- affidavits, 514
  - corporations, against, 517
  - general, 513, 516
  - mandatory orders, carrying out, 518
  - motion for, 514
  - penalties, 517, 520
  - variation of order, 519
  - warrant for arrest, 515
  - warrant of committal, 517
- contempt proceedings (Saskatchewan)**, *see also* **enforcement (general)**
- committal, 511, 512
  - corporations, against, 510
  - general, 508
  - mandatory injunctions, carrying out, 509
  - sequestration, 511
- contractual rights**, *see also* **confidential information, protection of; fiduciary duties; negative/affirmative covenants; restrictive covenants (land)**
- agency, contracts of, 563
  - ambiguous contracts, 562
  - arbitration clauses, 23, 27, 63
  - bars to injunction, 64, 560–563, 572
  - confidentiality agreements, 552
  - damages as adequate compensation, 560
  - duration of injunction enforcing, 149, 596
  - employees, interference with, 609
  - general, 23, 64
  - hardship, relevance of, 559
  - illegal contracts, 560
  - interference with, enjoining, 609
  - liquidated damages agreement, effect of, 62
  - mandatory injunctions (general), 23
  - personal services contracts, 569–571
  - prima facie case, requirement to show, 97
  - specific performance, availability, 559, 564–567, 570
  - supervision of performance, 12, 25, 572
- copyright**, *see also* **industrial designs; intellectual property; passing off; patents; trademarks; trade names**
- Anton Piller orders, 256, 635
  - balance of convenience, 140, 622
  - buildings, in, 613
  - certificate of registration, 617
  - costs, 611
  - evidence, 617–553
  - general, 546
  - irreparable harm, 100, 554, 555
  - knowledge of defendant, relevance of, 547
  - Mareva injunctions, 557
  - moral rights, 546
  - permanent injunction, 558
  - presumptions, 551–619
  - serious question/prima facie case, 615
  - test for granting, 614
- costs**, *see also* **proceedings (general)**
- attachment, motion for writ of, 411
  - contempt proceedings, of, 485

## INJUNCTIONS

---

- costs (*cont'd*)
- discontinuance/failure to proceed, effect of, 407
  - general, 408
  - injunction to preserve rights pending appeal, 410
  - interlocutory motions, 408, 409
  - misconduct, effect of, 402
  - non-disclosure/misleading acts, effect of, 404, 405
  - scale of, 407
  - security for, 401, 408
  - unnecessary/unmeritorious motions, 402, 406
- covenants**, *see* **contractual rights; negative/affirmative covenants; restrictive covenants (land)**
- criminal/quasi-criminal cases**, *see also* **contempt; moral obligations**
- appeals, 416
  - Attorney General's right to injunction, 628
  - contempt sub judice, preventing, 39
  - general, 5, 63, 626, 627, 628
  - Mareva injunctions, 216, 416, 629
  - parties, 290
  - police, injunction against, 631
  - publication, enjoining of, 630
  - quia timet injunctions, 39
- Crown**, 160, 632
- damages (in addition/substitution)**
- adequacy of, assessing, 60, 61, 111
  - contractual provisions, effect of, 62
  - discretion of court, 70, 73
  - future injury, compensation for, 68
  - general, 27, 36, 58, 66, 67, 69
  - inadequacy of damages not complete bar, 59
  - jurisdiction of court, 66, 67
  - onus of proving sufficiency, 58
  - "oppression" test, 71
  - possession of land, 61
- damages (undertaking re)**, *see also* **interim/interlocutory injunctions; permanent/perpetual injunctions**
- bond/security, requiring of, 156, 167
  - continuance of, 170
  - costs as damages, 167
  - discontinuance of action, effect of, 179
  - enforcement, 172–184
  - extinguishment of, 171
  - form of, 155, 163
  - general, 154–158
  - measure of damages, 184, 185
  - nature/effect of, 155–157, 167
  - parties giving/liable on, 162–166, 169
  - purpose of, 154, 158
  - requirement for, 158–162
  - scope of, 163
  - success/failure at trial, 168
- defamation**
- businesses, protection of, 101, 637
  - Manitoba, 634
  - prior restraint of, 101, 635
- default judgment**, *see* **proceedings (general)**
- defences**, *see* **bars to grant**

## INDEX

---

- duration of injunction**, *see also* **judgments/orders**
- contract giving right to injunction, 149, 596
  - general, 438
  - interim/interlocutory injunctions, 15, 28, 74, 75, 148–151, 196, 278, 296
  - Mareva injunctions, 208–211
  - negative/affirmative covenants, 596
- effective date**, *see* **judgments/orders**
- employment**, *see* **confidential information, protection of; contractual rights; fiduciary duties; labour disputes; negative/affirmative covenants; restraint of trade**
- enforcement (general)**, *see also* **contempt proceedings**
- arrest authorization clauses, 439–441, 527
  - breach of injunction, 465–467
  - discretion of police, 438
  - enforcement orders, 440, 441, 527
  - parties susceptible to, 292, 430, 431, 452, 454, 455
  - sequestration, 481
  - status quo, restoration of, 483
- ex parte grants**, *see also* **proceedings (general)**
- affidavits, 205
  - Alberta, 317
  - Anton Piller Orders, 251
  - British Columbia, 300, 304, 336–338, 389
  - continuance/dissolution of, 198–200, 213, 225, 281, 404, 405
  - damages, undertaking re, 158
  - disclosure of facts, 191, 225
  - Federal Court, 151, 380, 390
  - form of order, 435, 527
  - general, 1, 213, 281, 389
  - Mareva injunctions, 213, 220
  - motion for judgment, 382
  - Ontario, 318
  - Saskatchewan, 316, 317, 345
  - service of, 396, 397
- fiduciary duties**, *see also* **confidential information, protection of**
- directors/officers, 644, 645
  - former employees, 646
  - senior officials, 643
  - test for injunction, 647
- foreign injunctions, enforcement of**, 7, *see also* **actions, injunctions barring**
- franchise agreements**, 589
- “freezing order”**, 207, *see also* **Mareva injunctions**
- frivolous/vexatious**, *see* **serious question to be tried**
- grounds for grant**, *see* **balance of convenience; bars to grant; irreparable harm; prima facie case; serious question to be tried; specific injunctions/acts**, e.g., **interim/interlocutory injunctions; passing off**
- illegality**, *see* **contractual rights; criminal/quasi-criminal acts**
- immorality**, *see* **criminal/quasi-criminal cases; moral obligations**
- industrial designs**, 718–720, *see also* **copyright; intellectual property; passing off; patents; trade-marks; trade names**

## INJUNCTIONS

---

- intellectual property**, 604, *see also* **copyright; industrial designs; passing off; patents; trade-marks; trade names**
- interim/interlocutory injunctions**, *see also* **bars to grant; types of injunction**
- ancillary nature of, 79
  - balance of convenience, 75, 82–84, 99, 107, 114, 128–140, 142, 157
  - bars to, 85, 90, 91
  - conditions/terms of grant, 141, 144
  - continuance/dissolution of, 149, 187–206, 423
  - damages (undertaking re), 154–185
  - discretion of court, 77, 84
  - duration of, 15, 28, 74, 75, 148–151, 196, 278, 296
  - evidence, 78, 123–127
  - ex parte orders, 1, 75
  - Federal Court, 130
  - general, 1, 389
  - imminence of injury, relevance, 75, 78
  - irreparable harm, 82, 88, 90, 91, 103–127, 137, 138
  - jurisdiction to grant, 79, 80
  - “just or convenient”, 1, 2, 16, 84
  - likelihood of obtaining permanent injunction, relevance, 78
  - mandatory injunctions, 21, 76, 98
  - merits of case, 89–102
  - preservation of status quo, 129, 144–146
  - prima facie case, 82–100
  - principles governing grant, 81–146
  - serious question to be tried, 82–89, 99–102
  - stays of proceedings, 81
  - time limited, merits of, 152, 153
- Internet domain names**, 711, 712
- irreparable harm**, *see also* **interim/interlocutory injunctions; specific acts**, e.g., **passing off**
- burdensome costs, 120
  - constitutional cases, 111
  - copyright/trade-mark infringement, 123
  - criminal acts, where, 119
  - customers, loss of, 116
  - damages, difficulty quantifying/collecting, 105, 111
  - definition of, 103, 104
  - delay in alleging, 127
  - evidence/proof of, 123–127
  - forced disclosure, where, 121
  - general, 82, 88, 103
  - harm to applicant, 107, 137
  - interference with livelihood/business, 113, 114
  - irrelevance of, 90
  - key personnel, loss of, 117
  - monetary losses, 108, 112
  - negative/affirmative covenants, 132, 574, 576, 582, 587
  - perishable goods, loss of, 118
  - prejudice to other court proceedings, 113
  - public interest, 107, 110, 138
  - third parties, protection of, 107
  - tortious actions, where, 119
  - when not required, 103

## INDEX

---

- judgments/orders**, *see also*  
**appeals; proceedings**  
**(general); stay of injunction**
- discretion re enforcement, 438
  - duty to obey, 430, 431, 451–457
  - effective date of, 393, 438, 443–448
  - ex parte orders, 435
  - form of, 429–442
  - interpretation of, 432, 449, 450, 465
  - “John Doe, Jane Doe and Persons Unknown”, 431
  - judicial review, 398
  - mandatory injunctions, 433
  - “servants and agents”, enjoining of, 430
  - service of, 393–397
  - time for performing required act, 436
- judicial review**, 398, *see also*  
**appeals**
- jurisdiction to grant**, *see also*  
**bars to grant; nature of**  
**remedy**
- anticipatory injunctions, 5
  - appeal courts, 427
  - criminal/quasi-criminal acts, 6
  - damage not a prerequisite, 5
  - damages in lieu/addition, 66, 67
  - ex parte orders, 1
  - general, 1, 3, 5, 272, 427
  - judicial review proceedings, during, 398
  - “just or convenient”, 1, 2
  - moral obligations, 6
  - non-resident offenders, 9
  - pending appeal, 427
  - rights/property, protection of, 3, 4, 6
  - territorial limits, 7–10
  - “world at large”, 10
- “just or convenient”**, 1, 2, 16, 84, 272
- kinds of injunction**, *see types of*  
**injunction**
- labour disputes**, *see also*  
**employment**
- courthouses, picketing, 650
  - “hot” declarations, 654
  - Ontario, 657–663
  - picketing generally, 651, 656
  - Saskatchewan, 664, 665
  - union disputes, internal, 655
- legislation, challenging**, 54
- legislative authority, preserving**, 54, 110
- mandatory injunctions**, *see also*  
**bars to grant; contempt**  
**proceedings; type of**  
**injunction**
- bars to, 19, 23–27, 72
  - contractual rights, enforcing, 23
  - ex parte orders, 1
  - form of order/judgment, 433
  - general, 1, 16, 15
  - grounds for (general), 20
  - interlocutory grants, 21, 76, 98
  - “just or convenient”, 1, 2, 16
  - prima facie right to, 19
  - standard of proof, 16, 21, 22
  - supervision by court, 12, 25, 572
- Mareva injunctions**, *see also*  
**preservation orders; types of**  
**injunction**
- affidavit supporting application, 222–226
  - after judgment, 210



## INJUNCTIONS

---

- Mareva injunctions (*cont'd*)
- ancillary/supporting orders, 241–243
  - appeals, 416
  - assets, ex juris, 234
  - assets, fraudulent removal/dissipation, 230–233
  - assets, general, 226, 227
  - assets, preservation of, 229
  - bars to, 244–248
  - before judgment, 210
  - causes of action supporting, 212
  - copyright disputes, 623
  - criminal cases, 216, 416, 629
  - damages, undertaking re, 235, 236
  - disclosure requirements, 215, 220–225
  - dissolution of, 213
  - duration of, 208–210
  - ex parte grants, 213, 220, 221
  - “freezing order”, 207
  - general, 207–213
  - limitations/conditions on, 237–240
  - mid-trial applications, 213
  - nature/purpose of, 207, 208
  - prerequisites to grant, 215
  - “strong prima facie case” needed, 217
  - time for seeking, 209, 210, 287
- moral obligations**, 6, *see also* **criminal/quasi-criminal cases**
- motion record**, *see* **notice of motion (Federal Court); notice of motion (Ontario)**
- nature of remedy**, *see also* **jurisdiction to grant**
- discretion of court, 12
  - futile/ineffective orders, 12, 13
  - general, 11
  - in personam vs. in rem operation, 453
  - pre-empting jurisdiction of other body, 13
  - supervision by court, 12
  - trivial/temporary injuries, 12
- ne exeat regno, writ**, 242
- negative/affirmative covenants**, *see also* **contractual rights; fiduciary duties; restrictive covenants (land)**
- affirmative covenants, 597
  - agency contracts, 590
  - balance of convenience, 132, 140, 574, 577, 582–586
  - clear breaches, 576, 582
  - damages, adequacy of, 577
  - delay, effect of, 576
  - duration of injunction, 596
  - employees/former employees, 579, 580, 590
  - enforceability generally, 573–575
  - franchise agreements, 589
  - interlocutory/interim injunctions, 576–578
  - irreparable harm, 132, 574, 576, 583, 583, 585, 587
  - permanent injunction, 587
  - restraint of trade, 591–595
  - sale of business/non-competition, 588
  - specific performance, 564, 570
  - strong prima facie case, requirement for, 579, 582, 593
  - unenforceable covenants, 578
- non-competition**, *see* **contractual rights; fiduciary duties; negative/affirmative covenants; restraint of trade**

## INDEX

---

- notice of motion (Alberta)**, *see also* **proceedings (general)**
- affidavit supporting, 299
  - general, 297
  - service, of, 298, 321, 322
- notice of motion (British Columbia)**, *see also* **proceedings (general)**
- affidavits supporting, 301, 336, 340
  - contents of, 301
  - directions, seeking, 305
  - general, 300
  - notice of hearing, 302–308, 336–338
  - response, 301
  - service of, 302, 321, 322
- notice of motion (Federal Court)**, 320–322, *see also* **proceedings (general)**
- notice of motion (Manitoba)**, *see also* **proceedings (general)**
- affidavits supporting, 314
  - general, 309, 310
  - hearing, date of, 312, 313
  - service of, 310, 311, 321, 322
  - urgent cases, 311, 312
- notice of motion (Ontario)**, *see also* **proceedings (general)**
- affidavits supporting, 319
  - ex parte proceedings, 318
  - general, 318, 354
  - motion record, 364–367
  - service of, 318, 321, 322, 364
- notice of motion (Saskatchewan)**, *see also* **proceedings (general)**
- contents of, 316
  - ex parte proceedings, 316, 317
  - general, 315
  - service of, 316, 321, 322
- nuisance**, 288
- orders**, *see* **judgments/orders**
- parties**, *see also* **proceedings (general)**
- agents/servants, 430
  - Attorney General, 290
  - contempt proceedings, 292
  - criminal cases, 290
  - general, 288
  - intervenors, 293
  - John/Jane Doe, 292, 431
  - nuisance cases, 288
  - professional discipline/regulation, 290
  - property cases, 288
  - public interest standing, 289, 290
  - third parties, protecting, 291
- passing off**, *see also* **copyright; industrial designs; intellectual property; patents; trade-marks; trade names**
- Anton Piller orders, 714
  - balance of convenience, 713
  - conduct founding injunction, 710
  - “confusion”, 716
  - constitutional issues, 707
  - general, 706
  - Internet domain names, 711, 712
  - irreparable harm, 713, 714
  - proof of, 715–717
  - “public”, 716, 717
  - quia timet injunctions, 710
  - serious issue to be tried, 713
  - test for injunction, 713
- patents**, *see also* **copyright; industrial designs; intellectual**

## INJUNCTIONS

---

patents (*cont'd*)

**property; passing off; trade-marks; trade names**

- appeals, 667
- assignments, 671
- balance of convenience, 679
- damages as adequate remedy, 678
- defences, 670
- delay/laches, 680
- general, 667
- irreparable harm, 677, 678
- lapse, 668
- limitation of actions, 672
- new products, 673
- serious issue to be tried, 676
- test for injunction, 674
- validity of patent, 668, 669, 676

**permanent/perpetual injunctions, see also bars to grant; types of injunction**

- entitlement to, 30
- general, 28
- hardship to respondent, 29
- special circumstances, 30–32
- undertaking re damages, 29

**picketing, see labour disputes**

**pleadings, see also proceedings (general)**

- British Columbia, 294
- general, 295
- striking out, effect, 149, 197, 197, 296

**preservation of status quo, 129, 144–147, see also interim/interlocutory injunctions**

**preservation orders, see also Mareva injunctions**

- fraud on court, prevention of, 683
- general, 211, 681
- jurisdiction to grant, 682
- quia timet injunctions, 682
- receiver, appointment of, 683
- waste, prevention of, 273, 280, 282, 284, 684–686

**prima facie case, see also interim/interlocutory injunctions; specific cases, e.g., copyright**

- breach of contract/fiduciary duty, 97
- evidence of, 94
- facts not in dispute, where, 95
- general, 82–84, 87–89, 92, 100
- mandatory injunctions, 98
- meaning of, 93
- “strong” prima facie case required, 96, 579–582, 593
- where injunction disposing of matter, 96, 100

**principles governing grant, see balance of convenience; bars to grant; irreparable harm; jurisdiction to grant; nature of remedy; prima facie case; serious question to be tried; specific injunctions/acts, e.g., interim/interlocutory injunctions, passing off**

**privacy, see confidential information, protection of**

**privileged documents (injunction protecting), 545, 546**

**proceedings (general), see also affidavits; appeals; costs; ex parte grants; judgments/orders; notice of motion; parties; pleadings;**

## INDEX

---

- proceedings (general) (*cont'd*)  
**stay of injunction; time for obtaining**
- ancillary relief, injunction as, 275
  - commencement (British Columbia), 274
  - constitutional challenges, 400
  - default judgment, 381
  - expedited trials, 391, 392
  - judicial review proceedings, injunction during, 398
  - jurisdiction to grant, 1, 272, 398, 399
  - motion for judgment, 382–388
  - notice requirement (general), 291
  - *res judicata*, 276
- professional discipline cases**, 139, 290
- public interest**, 107, 108, 136–139, 289, 290
- quia timet injunctions**, *see also* **bars to grant; preservation orders; types of injunction**
- criminal cases, 39
  - damages barring where adequate, 37, 38
  - general, 5, 33
  - grounds for, 34
  - hardship to respondent, 36
  - intention of respondent, relevance, 35
  - probability of future injury, 34, 36
  - severity of injury, 34, 36
- receivers**, *see* **preservation orders**
- restraint of trade**, 591–595
- restrictive covenants (land)**, *see also* **contractual rights; negative/affirmative covenants**
- bars to injunction, 601, 602, 603
  - building schemes, 602
  - damage not required, 605
  - damages in addition/substitution, 606
  - general, 599, 600
  - irreparable harm, 605
  - notice of covenant, 599, 600
  - prima facie right to injunction, 604
- secrecy**, *see* **confidential information, protection of**
- sequestration**, *see* **contempt proceedings; enforcement (general)**
- serious question to be tried**, *see also* **interim/interlocutory injunctions; specific cases, e.g., passing off**
- *American Cyanamid*, 99–101
  - constitutional cases, 101
  - general, 82–84, 87–89, 99
  - pure questions of law, 102
- specific performance**, *see* **contractual rights**
- status quo**, *see* **preservation of status quo**
- statutory injunctions**, 40, *see also* **bars to grant; types of injunction**
- stay of injunction**, *see also* **appeals; judgments/orders; proceedings (general)**
- general, 458, 464
  - pending appeal, 459–462

## INJUNCTIONS

---

- stays of proceedings**, 81, 535,  
*see also* **actions, injunctions**  
**barring**
- time for obtaining**, *see also*  
**proceedings (general)**
- after judgment, 285–287
  - after proceedings commenced, 279, 280
  - at judgment, 283, 284
  - at trial, 281, 282
  - before proceedings commenced, 277, 278
- trade names**, *see also* **copyright;**  
**industrial designs; intellectual**  
**property; passing off; patents;**  
**trade-marks**
- bars to injunction, 705
  - “confusion”, 690–692
  - definition of, 703
  - distinctiveness, loss of, 704
  - imported goods, detaining, 694–696
  - irreparable harm, 704
  - loss of goodwill, 704
  - remedies for infringement, 693–696
- trade secrets**, *see* **confidential**  
**information, protection of**
- trade unions**, *see* **labour disputes**
- trade-marks**, *see also* **copyright;**  
**industrial designs; intellectual**  
**property; passing off; patents;**  
**trade names**
- Anton Piller orders, 256, 702
  - balance of convenience, 140, 697, 701
  - “confusion”, 690–692
  - deemed infringement, 688
  - imported goods, detaining, 694–696
  - irreparable harm, 123, 697, 698–700
  - permitted uses, 688
  - registration, effect of, 687, 688
  - remedies for infringement, 693–696
  - serious issue to be tried, 697
  - strong prima facie case, 697
  - test for injunction, 697
  - use depreciating goodwill of mark, 689
- trespass, preventing**, 273, 280, 282, 284
- types of injunction**, *see also*  
**specific entries, e.g.,**  
**interim/interlocutory**  
**injunctions, Mareva**  
**injunctions, trade-marks**
- Anton Piller orders, 249–271
  - interim/interlocutory injunctions, 15
  - mandatory injunctions, 16
  - Mareva injunctions, 207–248
  - permanent/perpetual injunctions, 28–32
  - quia timet injunctions, 5, 33–39
  - statutory injunctions, 40
- undertaking re damages**, *see*  
**damages (undertaking re);**  
**Mareva injunctions**
- undertakings, breach of**, 457
- waste, preventing**, 273, 280, 282, 284, 684–686

# Index to International Law

All references are to paragraph numbers.

- aboriginal peoples.** *See also* minorities.  
Canada 134, 178, 229  
children 302  
occupation of land, history  
247-50, 257  
self-determination 232, 254-56  
special status 229  
treaties 134
- Abyssinia** 97
- “Achille Lauro”** 6, 47, 147, 201, 203
- administrative tribunals** 420, 421,  
454, 455
- advisory opinions.** *See* **International  
Court of Justice.**
- aerial warfare** 350. *See also*  
**hijacking; international criminal  
law; terrorism.**
- aequo et bono, ex** 9, 29-31, 454
- Afghanistan** 98
- agenda for peace** 452
- aggression** 343, 374. *See also* **armed  
conflict; war.**
- air law.** *See also* **terrorism.**  
air traffic regulations 234-38  
conventions 10, 200, 233, 237,  
239-42, 245  
customary law 233  
international carriage 239-41, 321  
International Civil Aviation Or-  
ganization 234-36, 238, 242  
outer space 244, 245, 266
- Alaska** 259
- Albania** 88, 225, 227, 231, 283, 312,  
331, 339, 422, 423,
- Alberta** 65, 174, 245, 444. *See also*  
**Canada.**
- Algeria** 119, 214
- aliens** 136, 191, 249, 304, 333, 335,  
340
- Andorra** 56
- Anglo-Irish Treaty** 49. *See also* **Irish  
Free State (Agreement) Act, 1922.**
- animus belligerendi** 349, 416
- Antarctica** 169, 247, 266
- apartheid.** *See also* **human rights; in-  
ternational criminal law; South  
Africa.**  
children 302, 368  
crime of 200, 219, 369, 381  
condemnation by UN 24, 219  
ending of 121  
international covenants 300, 301,  
335  
International Law Commission  
200  
minorities 223-32  
organize, right to 435, 444  
prisoner transfer 309  
punishment 200, 219  
racial discrimination 224, 229  
refugees 297, 298  
rejection of South Africa 106  
women 302, 368
- Arctic** 169, 250, 266, 273, 314, 429
- Argentina** 247, 259, 262, 275, 334,  
341, 373. *See also* **Falklands.**
- armed conflict.** *See also* **war.**  
civil war 399-415  
civilians 352, 366-69, 374, 381  
human rights 60, 200, 220  
immunity from extradition 214,  
216  
international 92, 109, 202, 341-98,  
402  
Law of 205, 309, 314, 315,  
341-416  
non-international 108, 399-416  
protection of the environment 179
- artificial islands** 282
- asylum** 31, 208, 420. *See also*  
**diplomatic asylum; extradition;  
refugees.**
- Australia** 75, 173, 287, 310, 420. *See  
also* **Commonwealth.**
- Austria** 59, 81, 259
- aut dedere, aut judicare** 148, 200

INTERNATIONAL LAW

- baseline** 270, 272. *See also*  
**continental shelf; fishing; territorial waters.**
- Bangladesh** 122
- Belgium** 59, 163, 332, 335
- Belize** 30
- Blackstone's Commentaries on the Laws of England** 40, 168, 287
- Bormann, Martin.** *See* Nuremberg.
- Borneo** 254
- Bosnia & Herzegovina.** *See also*  
**genocide; human rights; Serbia & Montenegro; war crimes; Yugoslavia.**  
 civil war 82  
 genocide 198, 256, 276, 417, 419,  
 rape 412  
 role of UN Secretary-General 457  
 UN policy 445
- boundaries** 260-64. *See also* **state jurisdiction.**
- Britain.** *See* **United Kingdom.**
- British Commonwealth.** *See* **Commonwealth.**
- British East India Co.** 50, 254
- British Honduras.** *See* **Belize.**
- Bulgaria** 317, 423
- Burkina Faso** 252, 261, 310, 419
- Byeloruss.** *See also* **Union of Soviet Socialist Republics**  
 membership of USSR 64  
 independence 69  
 break-up of USSR 122
- Calvo Doctrine** 334. *See also*  
**Argentina; nationality.**
- Cambodia** 261
- Cameroon** 332
- Canada.** *See also* **aboriginal peoples; Alberta; Charter of Rights and Freedoms; fishing; Free Trade Agreement; human rights; international criminal law; Israel; Mexico; piracy; self-determination; Supreme Court of Canada; territorial waters; torture; Trail Smelter Arbitration award; United States of America; war crimes.**  
 aboriginal peoples 134, 178, 229,  
 254, 255, 258, 302
- air law 233-36, 239-45, 442
- Bill of Rights 24
- Canadian Criminal Code 41, 143,  
 148, 200, 203, 206, 272, 319,  
 377, 378
- Canadian Labour Congress 444
- customary law 182
- diplomatic asylum 208
- Double Taxation Agreement 122
- European Union 194
- extradition 209-13, 215, 217, 218
- Free Trade Agreement 195
- human rights 300-302
- immigration 292, 295, 298, 317
- impact of international law 34, 38,  
 43, 45, 52, 187, 314, 315, 337
- international civil service 449
- international criminal law  
 202-204
- international organizations 448
- Israel 66, 96, 102
- jurisdiction 89, 139, 145
- jurisdiction of World Court 24,  
 26, 428, 429
- labour organizations 443, 444
- Labrador 261, 263
- membership of UN 75
- minorities 229, 232
- most-favoured-nation 190-92
- nationality 292, 294, 295, 297,  
 305, 308
- Newfoundland 129
- Palestine 61
- pollution 174, 245
- Quebec 69, 231
- sanctions 235, 439, 440
- state immunity 166
- Statute of Westminster 75, 76,  
 129
- territorial waters 180-84, 186,  
 267-71, 274, 275, 277, 282, 286,  
 278-80, 287, 290, 417
- trade names 194
- transfer of prisoners 219, 304
- world wars 75
- canals** 183, 184. *See also* **territorial waters.**
- Chad** 260

INTERNATIONAL LAW

- Charter of Rights and Freedoms.** *See also* **aboriginal peoples; Canada; Supreme Court of Canada.**  
aboriginal rights 178  
application 105  
Canadian Bill of Rights 24  
conflicts with treaties 44  
conflict with international law 52  
executive certificates 105  
extradition 210, 215, 218  
war crimes 396
- Chile** 262, 298
- China**  
diplomatic asylum 208  
Hong Kong 327  
most-favoured-nation treatment 191  
recognition of 97, 98, 104, 106  
Security Council 436  
territorial boundary 260
- civil war** 103-109, 399-415. *See also* **armed conflict; Bosnia; Mexico; recognition; Somalia; Spain.**
- civilians, protection of in war** 352, 366-69, 381. *See also* **armed conflict; human rights.**
- codes of conduct** 311
- command responsibility** 354, 384, 385, 394. *See also* **war crimes.**
- common heritage of humanity** 80, 150, 287, 288
- Commonwealth.** *See* **aboriginal peoples.**  
aboriginal treaties 134  
application of international law 37  
Crown as head of 75  
independence of members 76  
jurisdiction of World Court 428, 429  
legal status 75  
most-favoured-nation treatment 190  
nationality 294  
Secretariat 75  
Security Council membership 75  
succession to treaties 130-34  
world wars 75
- conquest** 249, 258. *See also* **aboriginal peoples; state jurisdiction.**
- consent** 2, 7, 11, 15, 53, 77, 88, 90, 93, 324, 417
- contiguous zone** 143, 270. *See also* **continental shelf; fishing; territorial waters.**
- continental margin** 272, 279, 281. *See also* **continental shelf; fishing; territorial waters.**
- continental shelf** 182, 275-79, 281, 282, 320, 420. *See also* **territorial waters.**
- Costa Rica** 113, 337
- Council of Europe** 10
- crimes against humanity.** *See* **apartheid; Nuremberg; war crimes.**
- criminal jurisdiction** 90, 291. *See also* **international criminal law.**
- cultural heritage of people** 381
- customary law.** *See also* **international criminal law; state jurisdiction; war crimes.**  
air law 233  
continental shelf 276  
diplomatic asylum 209  
economic activities 189  
immunity 154, 155, 383  
international crimes 203-206, 372  
jurisdiction 149-63, 332, 399  
law of war 205, 206  
minorities 223  
national law and 34-42, 47, 48  
nuclear tests 173  
pollution 169  
territorial waters 180, 183, 184, 269, 276, 287
- Czechoslovakia** 75
- Danzig** 57
- debellatio** 258. *See also* **sovereignty.**
- declarations**  
Canadian view 435  
effect of 24, 26, 435
- denial of justice** 335, 336
- deportation from occupied territory** 363, 381, 391
- Denmark** 248, 258, 310
- Denning, Lord** 40, 187
- Deschênes Commission Report, 1986** 206. *See also* **war crimes.**



INTERNATIONAL LAW

- diplomatic asylum** 208, 209. *See also* extradition; refugees; war crimes.
- diplomatic immunity** 10, 18, 154-62, 202-383. *See also* customary law.
- domestic jurisdiction** 69, 82, 85-91, 103, 126, 293, 399, 414, 426, 374
- dual nationality** 294, 296. *See also* nationality.
- Dutch East India Co.** 254. *See also* Netherlands — *Island of Palmas Case*; United States of America — *Island of Palmas Case*.
- Eastern Greenland.** *See* Norway.
- ecology** 178, 179
- economic sanctions** 189, 235, 439, 440
- Egypt** 65, 122, 124, 183, 253, 348, 442. *See also* canals; territorial waters; United Arab Republic.
- endangered species** 178
- environment, protection of** 175-79
- Eichmann.** *See* Israel.
- Empire of India.** *See* India.
- England.** *See* United Kingdom.
- Entebbe** 80, 84. *See also* Israel.
- Estrada doctrine** 99. *See also* Mexico; recognition.
- equity.** *See* aequo et bono, ex.
- Ethiopia** 97, 323, 332, 419
- ethnic cleansing.** *See* genocide.
- European Community.** *See* European Union.
- European Communities Court.** *See* European Court of Justice.
- European Court of Human Rights** 19, 62, 210, 231, 335
- European Court of Justice** 19, 35, 187, 445, 458
- European Union.** *See also* European Court of Justice.  
     Canada 194  
     Convention for European Economic Cooperation 64  
     Court of European Union 303  
     European Monetary Policy 194, 445  
     limited right to individual proceedings 62  
     national law 445  
     territorial waters 187  
     trade names 194  
     treaties 35, 57, 187, 194, 303, 445
- “ex aequo et bono”** *See* aequo et bono, ex.
- exclusive economic zone** 80, 280, 281. *See also* fishing; state jurisdiction; territorial waters.
- executive certificates** 104, 105, 112, 351
- exhaustion of local remedies** 300, 334
- extradition** *See also* Charter of Rights and Freedoms.  
     application of national law 48, 137, 363  
     Canada 129, 140, 210-15, 217, 218  
     conventions 10  
     Council of Europe 10  
     death penalty 210, 218  
     diplomatic asylum 208, 209  
     double criminality 209, 210  
     fundamental justice 216  
     Newfoundland 129  
     political offences 212-14, 217  
     procedure 141, 142  
     speciality 211  
     transfer of prisoners 221  
     treaties 212, 218, 221, 324  
     war crimes 398
- extraterritorial jurisdiction** 139
- Falklands** 247, 249, 254, 341, 347, 350, 373
- federal states** 44, 45, 69
- fisheries** 181, 182, 267, 269, 271-74, 278, 280, 290, 429. *See also* continental shelf; territorial waters.
- flag of convenience** 441. *See also* ships, nationality of.
- France.** *See also* European Union; human rights; slave trade.  
     acquisition of territory 247, 257  
     extradition 211, 214  
     human rights 231  
     *Monetary Gold Case* 88, 422  
     nationality 292, 296, 320, 321  
     New Hebrides 253  
     Norwegian loans 425, 426

INTERNATIONAL LAW

- France** — *cont.*  
nuclear tests 114, 173, 310, 420  
slave trade 207  
territorial boundaries 261  
territorial waters 186, 267, 269, 287
- Free Trade Agreement** 195. *See also* **Canada; Mexico; United States.**
- Friendly Relations Declaration**  
domestic jurisdiction 86  
effect of 435  
principles 83, 84  
recognition of states 97, 189  
self determination 232, 414  
warfare 342, 343, 416
- frontiers.** *See also* **state jurisdiction; territorial waters.**  
land 260-64  
maritime 267-79
- general principles of law** 14, 206, 311, 379
- general law** 345. *See also* **Table of Treaties, Geneva Conventions 1929, 1949; Geneva Protocols.**
- genocide.** *See also* **Bosnia & Herzegovina; Nuremberg; Serbia & Montenegro; war crimes.**  
conventions 197, 198, 256, 315, 317, 319, 372, 419  
definition 374  
extradition 213  
International Law Commission 200  
prohibition 412
- German Democratic Republic** 112, 137. *See also* **Union of Soviet Socialist Republics.**
- German Federal Republic.** *See* **Germany.**
- German-Portuguese Special Tribunal** 21, 349
- Germany.** *See also* **extradition; German-Portuguese Special Tribunal Nuremberg; war crime; Austro-German Customs Union** 81  
basic law 33  
Berlin 57, 59, 65, 103  
cession of territory 258, 259  
extradition 378  
international personality 59  
Kiel case 183  
nationality 305, 320  
NATO 59  
Poland 362  
pollution 59, 112  
reunification 59, 112  
territorial waters 209, 277  
war claims 291, 331
- Ghali, Dr. Boutros Boutros** 457, 452
- Ghana** 75, 213, 386, 398
- Gibraltar** 259
- good faith** 210, 323, 324, 432
- government, recognition of.** *See* **recognition.**
- Great Britain.** *See* **United Kingdom.**
- Greece** 287, 314, 321, 334, 417
- Grenada** 415
- grave breaches** 356, 369, 373, 376, 377, 380, 385, 382, 385, 391, 393. *See also* **war crimes.**
- Greenland** 181, 267, 270, 277, 279, 310. *See also* **Norway; Denmark.**
- Guatemala** 30, 293
- Hague law** 345. *See also* **Table of Treaties, Hague Conventions 1899, 1907.**
- Haiti** 98, 298, 299, 436
- high seas** 150, 199, 283, 284, 286-90. *See also* **continental margin; continental shelf; exclusive economic zone; fishing; hot pursuit; territorial waters.**
- hijacking.** *See* **international criminal law.**
- Holy See**  
international personality 58  
Lateran Treaty 58  
Pope Alexander VI 247  
Portugal 247  
Spain 247  
Vatican City 58
- Hong Kong** 327
- hot pursuit** 286
- Hudson Bay Co.** 50, 254

## INTERNATIONAL LAW

**human rights.** *See also apartheid; minorities; self-determination; torture.*

children 302, 368  
international covenants 300, 301, 319, 335, 447  
jurisdiction 85, 91, 291, 303  
prisoners 311  
racial discrimination 224, 229  
refugees 297, 298  
women 301, 302, 368, 318

**humanitarian law.** *See also armed conflict; civilians; human rights; protection in war; Protocol II, 1977; war.*

armed conflict 343, 346, 352, 400, 402  
civil war 399, 405  
civilians, protection of 366, 369  
domestic jurisdiction 91, 416  
prisoner of war 241, 341, 347, 350, 354-61, 376, 381  
Protocol II, 1977 407-13

**humanity, crimes against.** *See apartheid; Nuremberg; war crimes.*

**Hungary** 259, 317

**Iceland** 267, 279, 281

**immunities.** *See international civil service.*

**India.** *See also air law; Commonwealth; extradition; minorities.*

air law 238  
creation of 124  
extradition 209  
membership of UN 64, 75  
minorities 227, 228  
national army 399  
Pakistan 98, 351  
recognition of 106  
sovereignty 247  
territorial boundary 260, 312, 424, 427

**Indian peoples.** *See aboriginal peoples.*

**individuals** 62, 126, 291-303. *See also human rights; nationality.*

**inland waters** 267, 269. *See also territorial waters.*

**innocent passage** 151, 185, 269, 283, 284. *See also customary law; territorial waters.*

**International Civil Aviation**

**Organization** 234-36 238, 442. *See also air law.*

**international civil service** 449-57

**International Court of Justice.** *See also air law; continental shelf; fisheries; human rights; Optional Clause.*

advisory opinions 14, 24, 25, 85, 87, 88, 188, 421, 422, 454  
air law 238  
compulsory jurisdiction 145, 424-29  
continental shelf 277, 278  
declaratory judgments 332  
fisheries 280  
impartiality 335, 419  
judges 418, 420  
ad hoc 418, 419  
impartiality 419  
nationality 294, 418, 419  
judicial independence 419  
jurisdiction 5, 7-9, 86-89, 134, 228, 321, 417, 420-30  
Statute of 58, 15, 20, 28, 29, 32, 62, 63, 86

**international criminal law.** *See also apartheid; genocide; terrorism; piracy; slave trade; torture; war crimes.*

application to national law 43  
counterfeiting of stamps 202  
crime against peace 274, 375, 376  
crimes 6, 146, 151, 197, 202, 217  
cultural property 202  
definition 217  
hijacking 10, 200, 148  
narcotics 202  
obscene publications 202  
prostitution 202  
state as criminal 222, 328  
state jurisdiction 90, 137, 140-48, 157, 196-222, 377, 378  
treason 146  
treaties 6, 198-200  
use of mail to commit crime 202

**international economic law.** *See also economic sanctions; exclusive economic zone; European Union.*  
adjudication 332

## INTERNATIONAL LAW

- international economic law** —*cont.*
- codes of conduct 311
  - corporations 305
  - customary law 189
  - economic rights and duties of states 188, 332
  - most-favoured-nation treatment 190-92
  - sovereignty 188
  - trade names 194
- International institutions.** *See also* **International Civil Aviation Organization; international civil service; International Court of Justice; International Labour Organization; Permanent Court of Arbitration; Security Council; United Nations; World Health Organization.**
- Canadian view of administrative structure 448
  - general 417
  - host state and 442
  - judicial 417-30
  - legal personality 54, 55, 320, 431
  - regional 445-48
  - specialized agencies 442-44
  - state jurisdiction 135
  - supranational 445, 458
  - United Nations 431-40
- International Labour Organization**
- Administrative Tribunal 454, 455
  - Canada 443
  - conventions 443
  - right to organize 443, 444
- international law.** *See also* **consent; customary international law; International Law Commission; international criminal law; League of Nations; jus cogens; pollution.**
- American 11, 226
  - application 4, 57
  - definition 1, 2
  - foundations 1-51
  - general 4, 11
  - national law and 17, 32-51, 311, 337, 351, 389, 398
  - nature and sources 1-31, 311
  - objects of 62, 246-308
  - particular 4
  - principles 11, 16
  - purpose 2, 13, 253
  - regional 4, 11, 226, 445
  - subject of 53-76, 232
  - university 4, 11
- International Law Commission** 5, 196, 200, 222, 328, 375, 383, 386, 391
- International Military Tribunal.** *See* **Nuremberg.**
- international minimum standards** 335
- international personality.** *See also* **recognition.**
- continuation of 122-34
  - human rights 62
  - immunity 54, 55
  - inchoate international personality 50
  - international institutions 54, 55
  - recognition 93-112, 122-34
  - sovereignty and equality of states 77-92
  - subjects of 53-76
  - United Nations 54, 87, 320, 431, 450
- international representation** 113-21
- international responsibility** 222, 323, 328-40
- International Tin Council** 55
- international tribunals** 17, 23, 24, 420, 421, 454, 455
- internationally protected person** 202.  
*See also* **diplomatic immunity.**
- Iran** 80, 84, 119, 122, 189, 308, 321, 339
- Iraq** 170, 308, 436
- Ireland** 216. *See also* **Irish Free State.**
- Irish Free State**
- neutrality during WWII 75
  - Irish Free State (Agreement) Act, 1922 49
- Israel.** *See also* **Jerusalem; Nuremberg; Palestine; war crimes.**
- admission to UN 66, 96
  - boundary disputes 183, 258, 260, 362, 364, 442
  - Camp David Agreements 65
  - Eichmann 211, 288
  - Entebbe 80, 84
  - extradition 211

INTERNATIONAL LAW

- Israel** — *cont.*  
 recognition of 102  
 Salah-Salah, Major 382  
 statehood 65, 68  
 Security Council 436  
 war crimes 141, 404
- Italy**  
 international personality of Holy See 58  
 King of Italy 97  
 Lateran Treaty 58  
*Monetary Gold Case* 88, 422  
 recognition of 107  
 territorial waters 269  
 Venezuela 349
- Jamaica** 295
- Japan.** *See also piracy.*  
 air piracy 200  
 cession of territory 259, 265  
 immunity 383  
 interpretation of contracts 47  
 maintenance of armed force 59  
 most-favoured-nation treatment 191  
 pollution 170  
 South Pacific Islands 73  
 territorial waters 265
- Jerusalem** 57, 258, 363. *See also Israel; Palestine.*
- Jordan** 65
- judicial institutions.** *See international institutions.*
- jurisdiction, state.** *See state jurisdiction.*
- jus cogens** 4, 8, 222, 323
- Korea** 100, 112, 235-37, 348
- Labrador** 261, 263
- League of Nations**  
 covenant 49, 71, 74, 78, 85, 86  
 mandated territories 68, 70-74, 120, 438, 133  
 membership 65, 75  
 minorities 224, 228  
 non-members 320  
 subject of international law 53  
 terrorism 196  
 United Nations 437, 438  
 voting 435, 438
- Lebanon** 349
- Libya** 260, 267, 277, 279, 281, 417, 420, 430
- Liechtenstein** 56, 293. *See also Switzerland.*
- Local Remedies Rule** 300, 334
- Malaya** 122, 247. *See also Malaysia; Singapore.*
- Malaysia** 75, 122
- Mali** 256, 261, 310, 419
- Malta** 277, 281
- mandates** 68, 71-74, 120, 131. *See also League of Nations; Namibia; Palestine; South-West Africa.*
- maritime law.** *See territorial waters.*
- maritime war** 352. *See also war.*
- Martens Clause** 344. *See also war.*
- Memel** 57
- mercenaries** 356. *See also prisoners of war.*
- Mexico** 99, 195, 211, 249, 258, 292, 294, 333-335, 338-40, 401, 402
- minorities.** *See also aboriginal peoples; human rights; self-determination.*  
 customary law 223  
 definition 226  
 education 231  
 equality 224, 229, 230, 231  
 human rights 223, 323
- Monaco** 56
- Morocco**  
 most-favoured-nation treatment 190, 191  
*Nationality Decrees in Tunis and Mexico* 85, 86, 89, 293, 321, 326
- most-favoured-nation.** *See treaties; international economic law.*
- Namibia.** *See also South-West Africa.*  
 "Namibia Opinion" 14, 24, 88, 91, 437, 438  
 independence 74
- national courts** 17, 18, 20, 22, 32-51
- national tribunal.** *See national courts.*
- national law** 17, 32-51, 337, 351. *See also domestic jurisdiction; national courts.*

INTERNATIONAL LAW

- national liberation movement.** *See* **self-determination.**
- nationality**
- advisory opinion 85
  - Calvo Doctrine 334
  - claims 296, 334
  - corporations 139, 305, 333
  - criminal jurisdiction 146
  - dual 294, 296
  - individuals 126
  - law of 291, 297, 334
  - naturalization 292-94
  - neutrality 109
  - ships 306-308
  - statelessness 297
- native Canadian.** *See* **aboriginal peoples.**
- Naulilaa Claim.** *See* **German-Portuguese Special Tribunal.**
- Netherlands** 50
- "Island of Palmas" Case 80, 249, 252, 253, 254, 261,
  - recognition of 107
  - "Island of Timor" Case 260, 261
  - territorial waters 277
- Newfoundland** 129. *See also* **Canada.**
- New International Economic Order** 193
- New Zealand** 75, 173, 310, 420. *See also* **Commonwealth.**
- Nicaragua** 312, 335, 343, 374, 415, 416, 420, 422, 424, 426, 429, 430
- non-government organizations** 68
- non-intervention** 13, 83-89, 136, 342, 408, 414, 415. *See also* **Friendly Relations Declaration.**
- non-recognition.** *See* **recognition.**
- non-refoulement** 199, 212, 298
- North American Free Trade Area.** *See* **Canada; Free Trade Agreement; Mexico; United States.**
- Northwest Territories**
- pollution from outer space 174, 245
- Norway**
- Eastern Greenland 248, 258, 279, 281, 310
  - Norwegian loans 425, 426
  - territorial waters 181, 267, 270, 277, 279
- nuclear materials** 202
- nuclear testing** 172, 173, 200, 420
- nuclear weapons** 343, 352
- Nuremberg.** *See also* **war crimes.**
- Bormann, Martin 137
  - Charter 374, 375
  - command responsibility 385
  - immunity 383
  - International Military Tribunal 137, 196, 352
  - laws and customs of war 346
  - war crimes 205, 206, 343
- objects of international law**
- individuals 63, 291-303
  - land frontiers 260-64
  - maritime frontiers 267-79
  - territory 246-59
- occupatio bellica** 258
- open door policy** 71
- opinio juris** 13, 24, 311
- opinio juris sive necessitatis.** *See* **opinio juris.**
- Optional Clause** 309, 312, 417, 424, 429
- Organization of African Unity**
- Constitution 64
  - affirmations 256
- Organization of American States**
- Charter 96
  - membership 36, 447
  - purpose 446
  - recognition of states 98
- outer space** 244, 245, 266. *See also* **air law; pollution.**
- Pacific Islands.** *See* **South Pacific Islands.**
- Pakistan**
- air law 238
  - creation of 124
  - India 351
  - minorities 228
  - recognition of 98, 122
  - successor to treaties 131

INTERNATIONAL LAW

- Palestine.** *See also* "Achille Lauro"; **Israel; mandates.**  
 Balfour Declaration 71  
 existence 64, 68  
 League of Nations 71  
 mandates 68, 71  
 piracy 203  
 proclamation by PLO 61  
 Salah-Salah, Major 382
- Palestine Liberation Organization**  
 61, 64, 68, 96, 100, 309, 442. *See also* **Palestine.**
- Panama** 98, 183, 338, 339, 340, 414, 441
- Pan-American Union**  
 Pan-American Convention on Extradition of Montevideo, 1933 10
- Papal States.** *See* **Holy See.**
- Peoples Republic of China.** *See* **China.**
- Permanent Court of Arbitration** 16, 19, 136, 182, 418
- Permanent Court of International Justice.** *See* **International Court of Justice.**
- piracy.** *See also* **international criminal law.**  
 air piracy 200  
 definition 6, 41, 147, 203  
 hot pursuit 286  
 offence 47, 147, 150, 291  
 pirates 62, 108, 319  
 state jurisdiction 287
- Poland** 264, 305, 320, 323, 331, 337, 362
- political offence** 212-14, 217
- pollution**  
 Canada 89, 168, 171, 175, 333  
 environmental 172-79  
 jurisdiction 145  
 law on 168-79  
 nuclear testing 172  
 outer space 174  
 Stockholm conference 175-77  
 territorial waters 271, 273, 282  
*Trail Smelter Arbitration* award 171, 175, 333
- Pope.** *See* **Holy See.**
- Portugal** 247, 260, 261, 312, 424, 427, 439
- prisoner of war.** *See* **humanitarian law.**
- protected emblems** 372, 381
- protecting power** 118, 365
- protectorates** 56, 70. *See also* **Liechtenstein.**
- Protocol II, 1877**  
 Canadian views 406, 414
- Quebec.** *See also* **Canada.**  
 international personality 69  
 language rights 231
- racial discrimination** 224, 229
- rebus sic stantibus doctrine** 326
- recognition**  
 belligerency 109, 400, 401  
 collective 67  
 constitutive theory 91, 99  
 de facto 96, 100, 101, 104, 106, 402  
 de jure 76, 100, 101, 103, 104, 106  
 declaratory theory 95, 96, 256  
 express 99  
 foreign sovereign 153  
 government 98, 99, 101, 103, 104  
 insurgents 108, 109  
 non-recognition 96, 103, 104, 111, 112  
 premature 97, 108, 111  
 retroactivity 104  
 states 61, 65, 95-99, 102, 254  
 "Stimson doctrine" 111  
 tacit 99  
 war 348
- refugees** 297-99
- reparation** 321, 331, 339, 431, 453
- reprisals** 349, 359, 367. *See also* **humanitarian law.**
- revolution** 401, 402. *See also* **civil war; Mexico.**
- Rhodesia** *See also* **Zimbabwe.**  
 independence 97  
 recognition of 102

- Rhodesia** — *cont.*  
 Unilateral Declaration of Independence 97, 102  
 economic sanctions 189, 439
- rivers** 185, 186, 257. *See also territorial waters.*
- Russia.** *See also Union of Soviet Socialist Republics.*  
 refusal to appear  
   League Council 87  
   Permanent Court of International Justice 87  
 break-up of USSR 122  
 Double Taxation Agreement 122  
 membership of Security Council 122, 125, 436
- Rwanda** 297
- San Francisco Conference 1945** 64, 432, 433. *See also United States; United Nations-(Charter).*
- sanctions, United Nations.** *See economic sanctions.*
- Saudi Arabia** 170, 308
- sea, law of.** *See territorial waters.*
- Security Council.** *See also economic sanctions; genocide; terrorism; United Nations.*  
 admission to UN 66, 432, 433, 434  
 boundary of non-members 88  
 Bosnia 82, 198, 391  
 election to 66  
 general 433-40  
 jurisdiction 420  
 membership 59, 75, 79, 122, 125, 436  
 South Africa 74, 88  
 supervision of strategic area 73  
 voting 79, 436
- self-defence** 323, 415
- self-determination.** *See also aboriginal peoples; terrorism.*  
 Canada 232, 406, 414  
 civil war 109  
 Mandates system 71  
 Palestine 68  
 right of 60, 121, 255, 256, 342, 354, 402, 406, 414  
 terrorism 201
- Serbia & Montenegro.** *See also Bosnia & Herzegovina; genocide; human rights; war crimes; Yugoslavia.*  
 civil war 82  
 genocide 198, 256, 376, 417, 419  
 Sarajevo 457  
 Security Council 433  
 tribunal 391
- ships, nationality of** 306-308, 319, 441
- Singapore.** *See also Malaysia.*
- slave trade**  
 conventions 202, 207  
 customary law 286  
 definition 47, 372, 374  
 history 207  
 jurisdiction 148
- Somalia** 82, 205, 382, 385. *See also war crimes.*
- South Africa** 64, 74, 75, 106, 133, 189, 219, 323, 440. *See also apartheid; Commonwealth; Namibia; South-West Africa.*
- South Pacific Islands.** *See also Japan.*  
 mandates 71, 73  
 United States 73  
 independence 74  
 nuclear tests 173, 420
- South-West Africa.** *See also Namibia.*  
 international status of 116  
 mandates 71, 72, 88, 116, 133, 437, 438  
 relationship between  
   Covenant and Charter 74  
 South-West Africa cases 25, 323, 332, 419  
 United Nations 74, 435, 437
- sovereign immunity.** *See sovereignty.*
- sovereignty**  
 acquisition of territory 247-66  
 economic independence 188  
 economic rights and duties 193  
 extradition 211  
 immunity 14, 163-67, 283  
 individuals as sovereign 254  
 meaning of 77-92  
 military occupation and 350  
 outer space 244-245  
 territorial waters 182, 267, 268, 270-74



INTERNATIONAL LAW

- Soviet Union.** *See* **Union of Soviet Socialist Republics.**
- Spain** 56, 104, 186, 213, 247, 259, 333, 340, 413
- Sri Lanka** 82, 287
- state jurisdiction.** *See also*  
**international criminal law; international economic law.**  
air law 233-45  
canals 183, 184  
customary law limitations 149-67  
environment and pollution controls 168-79  
extraterritorial 139  
fisheries 181, 182  
forms of 135-48  
international criminal law 192-222  
international economic law 187-95  
maritime 145, 267, 268, 270-77, 286-90  
minorities 223-32  
personal 139, 146  
protective principle 142, 143  
territorial 136-41, 146, 304, 379  
water use 185, 186
- statelessness** 212, 297
- state succession** 122-34, 256
- state trading** 163-67, 207
- states**  
continuation and succession 122-34  
criminal responsibility of 222  
equality of 5, 15, 20, 77-92, 149, 162  
neutralized 59  
recognition 60, 61, 65, 95-102  
responsibility 222, 232, 328-40  
sovereignty 77-92  
subject of international law 53, 62-69, 232
- “Stimson doctrine”** 111
- Stockholm Conference on Environment** 175-77
- straits** 283, 284. *See also* **territorial waters.**
- subrogation of rights and duties** 123-25
- superior orders** 199, 206, 385-90, 403
- Supreme Court of Canada.** *See also*  
**Charter of Rights and Freedoms.**  
application of international law 38, 43, 45, 52, 90  
effect of US law 34  
ownership of property 129  
state immunity 166  
territorial waters 268, 269, 272  
war crimes 378, 379, 388, 389, 396, 397
- Switzerland** 320, 327, 427
- Syria** 122, 124
- Taiwan** 265
- Tanganyika.** *See* **Tanzania.**
- Tanzania** 122, 124
- Tate Letter** 164. *See also* **state trading.**
- terra nullius** 247, 254, 255, 266
- territorial sea.** *See* **territorial waters.**
- territorial waters.** *See also* **fisheries; pollution.**  
artificial islands 282  
Canada 89, 143, 145  
canals 183, 184  
continental shelf 275-79  
criminal offences 140, 142, 143, 145, 272  
customary law 157  
hot pursuit 286  
jurisdiction 145, 157, 267, 270-74, 280-90  
lakes 186  
piracy 203  
pollution 170, 271, 273  
radio broadcasting stations 289  
right to use 180-86  
rivers 185, 186
- territory**  
acquisition 247-66  
arbitration 262  
boundaries 260, 261  
definition 246  
cession 259  
derivative title 249, 258  
discovery 249, 257  
maps 261  
maritime 246, 257

INTERNATIONAL LAW

- territory** — *cont.*  
 occupation 247-66  
 original title 249, 258  
 self-determination 255, 256
- terrorism.** *See also extradition; international criminal law.*  
 aircraft 10, 148, 200, 242, 243, 430  
 extradition 213, 216, 217,  
 League of Nations 196  
 treaties 200
- Thailand** 261
- “Torrey Canyon”.** *See pollution.*
- torture** 34, 40, 91, 147, 148, 199, 330.  
*See also international law.*
- trade names.** *See international economic law.*
- trading agencies.** *See also state jurisdiction.*  
 immunity 163-67
- Trail Smelter Arbitration award.** *See pollution.*
- transit passage, right of** 285. *See also territorial waters.*
- treaties.** *See also rebus sic stantibus doctrine.*  
 all participation clause 346  
 ambiguities 322  
 breaches 323, 328-40  
 conflicts with national law 44-51  
 consent 7  
 credentials of negotiators 115, 116  
 denunciation 324-27  
 duress 327  
 effect of 10, 314  
 Final Act 309, 314  
 good faith 210, 323, 324  
 human rights 316  
 Indian 134  
 individuals and 319  
 international personality 57  
 interpretation 135, 228, 316, 322  
 most-favoured-nation 190, 191, 316, 322  
 national law 33-35, 41, 42, 49-51  
 neutralization 59  
 preamble 318  
 ratification 314  
 registration 37, 309  
 reservations 13, 135, 315, 316, 428  
 signature 314  
 source of international law 8, 10, 11  
 succession to 123, 130-34  
 territorial waters 180-86  
 third parties 10, 63, 320, 321, 323, 346, 438  
 trading companies, of 49, 254  
 unequal 327  
 United Nations Charter as Treaty 431
- Treaty of Maastricht.** *See European Union.*
- Treaty of Rome.** *See European Union.*
- Trieste**  
 attempt to create special status 57
- Tunisia**  
*Nationality Decree in Tunis and Morocco* 85, 86, 293, 326  
 territorial waters 267, 279, 420
- Uganda** 84, 297
- Ukraine** 64, 69, 122. *See also Union of Soviet Socialist Republics.*
- Union of Soviet Republics.** *See also Byelorussia; Ukraine; Russia.*  
 Byelorussia 64  
 collapse of 64, 122  
 German Democratic Republic 112  
 Korean airline, destruction of 235-37  
 Ukraine 64  
 membership of Security Council 122  
 most-favoured-nation treatment 190  
 nationality 297  
 Poland 264  
 pollution in outer space 174  
 recognition of 112
- United Arab Republic** 122. *See also Egypt; Syria.*  
 membership of UN 124
- United Kingdom.** *See also aboriginal peoples; Commonwealth; European Union; Falklands Islands; human rights; Nuremberg; war crimes.*  
 aboriginal treaties 134

INTERNATIONAL LAW

**United Kingdom** — *cont.*

application of international law  
39, 40  
acquisition of territory 247, 257,  
253, 254  
Bizonia 64  
colonies and dominions 64, 75,  
76, 294, 295  
European Monetary Policy 194  
extradition 209, 212, 213, 216  
Gibraltar 259  
judicial precedent 20, 35  
*Monetary Gold Case* 88  
New Hebrides 253  
recognition policy 104  
Security Council seat 400  
Statute of Westminster 75, 76,  
129  
territorial boundaries 30, 259, 261  
territorial waters 181, 183,  
267-70, 283, 286, 289  
transfer of prisoners 304  
treaties 317  
war, declarations of 75, 308, 400

**United Nations.** *See also domestic jurisdiction; international civil service; International Law Commission; Security Council.*

admission 66, 98, 101  
agenda for peace 452  
Charter 5, 54, 60, 63, 64, 66-68,  
73, 74, 78, 79, 82, 83, 86, 87, 92,  
97, 111, 113, 120, 121, 124, 136,  
189, 193, 206, 219, 220, 258,  
314, 320, 322, 342, 343, 415,  
422, 430, 440  
decisions 436, 438-40  
expenses 437  
force, use of 343  
General Assembly 5, 66, 73-75,  
78, 79, 83, 86, 121, 175, 193,  
196, 201, 220, 228, 230, 300,  
322, 375, 420, 430, 435, 438, 440  
immunity 54  
legal personality 54, 87, 320, 431,  
450  
membership 59, 64-69, 75, 98,  
135, 432  
termination of 433, 434  
“nationals” 296, 333  
non-members 63, 82, 87, 320, 438

recommendations 5, 432, 435, 438  
refugees 297, 298  
resolutions 5, 23-26, 66, 68, 74,  
230, 300  
sanctions 189, 439, 440  
    Canadian approach 440  
Secretary-General 451, 452  
succession on treaties 133  
successor to League of Nations  
437, 438  
trusteeship 71, 73, 74, 120  
veto 5, 79, 420, 436  
voting 5, 66, 78, 79, 435-37

**United States of America.** *See also “Achille Lauro”; Canada; Free Trade Agreement; international civil service; Mexico; Organization of American States; Palestine; Trail Smelter Arbitration award; war crimes.*

Constitution 114  
constitutional status of treaties 34,  
337  
criminal law jurisdiction 141, 142,  
203  
extradition 209-12, 215-18  
Free Trade Agreement 195  
Iran 80, 84, 119  
*Island of Palmas Case* 80, 249,  
252-54, 261,  
Japan 73  
judicial precedent 20, 113  
jurisdiction of World Court 429  
minorities 226  
*Monetary Gold Case* 88  
Palestine 203  
pollution 170, 171  
recognition policy 98  
seat on Security Council 436  
South Pacific Islands 73  
territorial waters 180, 185, 267,  
269, 273, 277, 278, 280

**Universal Declaration of Human Rights** 26, 230, 300

**universal jurisdiction** 148, 150, 379.  
*See also international criminal law.*

**uti possidetis rule** 122, 256

**Vatican.** *See Holy See.*

**Venezuela** 349

INTERNATIONAL LAW

- Vietnam** 295
- Wallenberg, Raoul** 292
- war.** *See also* **armed conflict; war crimes.**
- air 352
  - animus belligerendi 349, 350, 416
  - armistice 350
  - civilians 109, 352, 366-69, 381
  - combatant status 352-55
  - commander, duty of 354, 384, 385, 394
  - declaration 341
  - definition 341, 342
  - illegality 342
  - international conflicts 60
  - insurance policies 348
  - law of 344-49
  - legal advisors, role of 390
  - liberation of 342, 343, 354
  - maritime 352
  - material sense 348
  - military objective 352
  - military occupation 350, 362-70, 380
  - prisoners of 24, 341, 347, 350, 354-61, 376, 381
  - recognition of 348
  - self-defence 342, 343, 415
  - submarine 352
  - termination of 350, 351
  - unnecessary suffering 343
  - world wars 75
- war crimes.** *See also* **armed conflict; Bosnia & Herzegovina; extradition; genocide; grave breaches; Nuremberg; war.**
- Canadian law 140, 204-206, 373, 375, 377-79, 382, 384-89, 391-97
  - commander, duty of 354, 384, 385, 394
  - common responsibility 384, 385
  - criminal codes 6, 41, 206, 377, 378, 387, 395, 396
  - customary law 205, 372
  - Deschêne Commission Report 206
  - definition 129, 372-76
  - English Royal Warrant, 1945 392
  - extradition 213, 214
  - jurisdiction 140-42, 147, 291, 371-98
  - manifest unlawfulness 387-90
  - medical experimentation 372, 380, 391
  - penalties 395
  - regulations 392, 393
  - Somalia 82, 205
  - superior orders 199, 206, 385-90, 398
  - tribunals 391-97
  - United Nations 206
  - war crimes 390, 392, 394-97
  - War Crimes Act, 1946 392
  - war criminals 62, 141, 319
  - Yugoslavia 212
- women.** *See* **human rights.**
- World Court.** *See* **International Court of Justice.**
- World Health Organization** 442
- Yugoslavia.** *See also* **Bosnia & Herzegovina; genocide.**
- assassination of Alexander 196
  - collapse 67, 194
  - genocide 198
- Zanzibar.** *See* **Tanzania.**
- Zimbabwe**
- independence 97

## Index to Internet Law

(All references are to paragraph numbers.)

- Access to Information Act*, *see*  
**government electronic records, access to**
- breach of confidence**, 116
- Canadian Radio-Television and Telecommunications Commission**, 3, 4
- Canadian Internet Registration Authority**, 133–146
- cloud computing**
- code of practice, 271
  - definition of, 266
  - private sector, use by, 268–270
  - public sector, use by, 267
- confidential information**
- breach of confidence, action for, 198
  - breach of confidence, liability for, 204
  - contempt of court, 206
  - damages, 207
  - interlocutory injunction, 205
  - obligation of confidence, 200–203
  - quality of confidence, 199
- conspiracy to injure**, 118
- consumer protection rules**
- Alberta, 87
  - application of, 86
  - British Columbia, 89
  - Manitoba, 87
  - Ontario, 88
  - Quebec, 90
  - Saskatchewan, 87
- contracts, online**
- agreements, offer and acceptance, 75–81
  - clickwrap agreement, 78, 79
  - electronic signature, definition, 62, 63
  - electronic signature, reliability test, 67, 68
  - electronic signature, security of, 69–74
  - enforceability of, 85
  - form, validity of, 56
  - general principles, 55
  - information, time and place of receipt, 58–60
  - legislation, application of, 57
  - mailbox rule, 58
  - mistake, 82, 83
  - procedures, electronic, 84
  - signature, electronic, 62–74
  - “web-wrap” agreement, “browse-wrap” agreement, 80, 81
  - written record requirements, 61
- copyright**
- damages, actual, 167
  - damages, exemplary, 169
  - damages, statutory, 168
  - fair dealing, 165
  - hyperlinks, protection of, 152
  - implied license, 161, 162
  - infringement, primary, 155, 156
  - infringement, secondary, 157
  - interlocutory injunction, 166
  - Internet generally, 147, 148
  - meta tags, protection of, 153

- copyright (*cont'd*)
  - online database, protection of, 154
  - permitted use, 161–165
  - private copying, 163, 164
  - rights of owner, 158–160
  - websites, protection of, 149–151
- crime, online**
  - child pornography, making, publishing and possession of, 295–301
  - cyberbullying, 289–291
  - fraud, 307–310
  - gambling, online, 310
  - hacking, definitions, 311–314
  - harassment, 287, 288
  - hate speech, 285, 286
  - investigative powers, 322–326
  - luring child by means of computer, 302, 303
  - malware, spyware, 317–321
  - mischief in relation to data, 315, 316
  - pornography/child pornography, definitions, 292
  - pornography/child pornography, distribution of, 293–294
  - sentencing, 304–306
  - software, unauthorized reproduction or sale of, 309
- damages**, 121, 122
- defamation online**
  - Anton Piller orders, 220
  - Damages, aggravated, 226, 227
  - damages, assessment of, 224, 225
  - differential impact, 208
  - fair comment, 219
  - forms of, 209–213
  - general, 119, 120
  - injunction, interlocutory, 221, 222
  - injunction, permanent, 223
  - innocent dissemination, 216
  - journalistic exception, 218
  - liability, general, 231
  - liability of Internet Service Providers, 232
  - procedure in defamation action, 233, 234
  - provincial laws, 228–230
  - qualified privilege, 217
  - rights, balancing of, 214, 215
- domain names**
  - declaration of ownership, 115
  - defamation, 119, 120
  - definition, 103, 104
  - disputes involving, 124–146
  - injunction, interlocutory, 109, 188
  - injunction, permanent, 113, 191
  - legitimate interest, 142
  - orders regarding transfer of, 110, 111, 114, 189, 192
  - registration of, 105, 124, 133
  - temporary custody of, 112, 190
  - trademark infringement, 107, 108
  - trademark rights, 106
- Evidence, electronic**
  - admissibility of, 21–33
  - authenticity of, 34
  - bank records, electronic, 27
  - banners, 26
  - best evidence rule, 35–40
  - browsing patterns, 28–30
  - business records, electronic, 27, 41–44
  - computer-generated, 23, 42, 43
  - computer printouts, 18

## INDEX

---

- Evidence, electronic (*cont'd*)
- electronic record, 20
  - e-mail, 25
  - general, 16
  - judicial notice, 17
  - legislation, 19, 20
  - meta-tags, 26
  - real evidence, 31
  - reliability of, 45
  - *Uniform Electronic Evidence Act, 1998*, 36, 40
  - website links, 26
- governance**
- federal regulators, 3
  - general, 2
- government electronic records, access to**, 327–329
- interference with economic relations**, 117
- Internet Corporation for Assigned Names and Numbers**, 124–132
- Internet law, scope of title**, 1
- Internet Service Providers**
- caching, 172
  - common carrier exception, 170
  - disclosure of subscriber names, 173
  - third party liability of, 170–172
- investigative powers over the Internet**, 322, 323
- jurisdiction**
- active and passive websites, 14
  - defamation on the Internet, 12, 13
  - domain names, 11
  - general, 6
  - interactive websites, 15
  - jurisdiction *simpliciter*, 10
  - real and substantial connection, 8, 9
  - *situs* of the tort, 7
- liability for Internet content**, 53, 54
- Office of the Privacy Commissioner of Canada**, 3, 5
- patents**, 178
- privacy, online**
- administrative and quasi-judicial decisions, disclosure of, 265
  - advertising, 158, 159
  - anonymity online, 239, 240
  - *Canadian Charter of Rights and Freedoms*, 235–252
  - cellphones, evidence obtained from search of, 242
  - child pornography, 245, 247
  - cloud computing, 266–271
  - common law privacy rights, 237, 272–274
  - copyright proceedings, 276
  - criminal proceedings, 277–279
  - defamation proceedings, 280
  - disclosure of subscriber information by ISP, 243, 244, 246
  - employment law, 281, 282
  - family law, 283
  - freedom of expression, 248–251
  - judicial transparency, 252
  - legislation, federal, 253–260, 263–265
  - legislation, provincial, 253, 261, 262, 257
  - personal information, definition of, 255, 256
  - *Personal Information Protection and Electronic Documents Act*, 254, 257, 260

privacy, online (*cont'd*)

- Personal injury proceedings, 284
- pseudonym, use of, 241
- reasonable expectation of privacy, 238–240
- rights, balancing of, 236, 248–252
- search warrant, 245
- social media, access to, 263, 264
- tort, invasion of privacy, 275
- transborder data flow, 260

**privilege, solicitor-client, 52**

**record keeping, electronic**

- *Income Tax Act*, 46–48
- Business Corporations Acts, 49, 50
- records kept outside Canada, 46
- *Uniform Electronic Commerce Act*, 51

**spam**

- anti-spam legislation, 91–100
- *Criminal Code of Canada*, 101
- malware, spyware, 317–321
- *Telecommunications Act*, 102

**trademarks**

- contempt of court, 194
- damages, general, 193
- damages, lump sum, 121
- damages, punitive, 122
- evidence, 123
- expungement of, 183

- infringement of domain name trademarks, 107, 108
- infringement of registered trademarks, 185
- injunctions, interlocutory, 188
- injunctions, permanent, 191
- Internet evidence, use of, 196
- loss of distinctiveness, proof of, 187
- official marks, 197
- order regarding transfer of domain names, 189, 192
- ownership, declaration of, 195
- passing-off, 186
- preservation order, 190
- registrability in relation to Internet use, 184
- rights, acquisition of, 179–181
- rights, cancellation for non-use, 182
- rights involving domain names, 106

**trade secrets, *see* confidential information**

**World Intellectual Property Organization Internet Treaties, 174–177**



## Index to Interpleader

(All references are to paragraph numbers.)

- abandonment of proceedings**, 84, 85, 86, 144
- action between claimants**, *see also* burden of proof; trial of issue
- dismissal, 93
  - general, 3
  - security by claimant, 82, 83, 93
- affidavits**
- discovery on, 112–114
  - sheriff's, 76
  - stakeholder's, 70, 71
- appeals**, *see also* trial of issue
- Alberta, 128
  - arbitration proceedings, 133
  - British Columbia, 126
  - error re burden of proof, 106
  - general, 131, 134
  - issue, setting aside of, 135
  - Manitoba, 127
  - Ontario, 125
  - plaintiff, naming of, 132
  - right to, 4
  - Saskatchewan, 128
  - sheriff's interpleader, 125, 129
  - time for, 130
- application by stakeholder**, *see also* burden of proof; sheriffs, interpleader by; trial of issue
- abandonment of proceedings, 86
  - affidavit in support, 70, 71
  - ex parte proceedings, 72
  - Federal Court, 73
  - garnishees, 71
  - general, 3, 68, 70
  - stay of proceedings, 69
  - timing of, 69
- arbitration proceedings**, 133
- assignments**
- debts, 48
  - equitable, 99
  - judgments, 21
  - legal, 99
- availability of procedure**, *see also* issues determinable; nature and scope of proceedings; specific parties, e.g., bailees
- assignments, 21, 48
  - bailees, to, 43–45
  - bankruptcy, effect of, 11, 12
  - builders' liens, effect of, 9, 22
  - Crown, to, 51
  - discretion of court, 7
  - equitable basis for, 6
  - executions, involving, 17, 18, 23
  - foreign proceedings, effect of, 30, 31
  - garnishees, 46, 47, 71
  - general, 1, 5, 32–35, 36, 42, 70
  - insurers, to, 22, 41, 47
  - landlord and tenant, 19
  - miscellaneous, 20
  - partial claims, 16
  - priority issues, 10–13, 17, 19, 42, 51
  - real property disputes, 14, 15, 19, 39, 63, 67
  - sheriffs, to, 4, 18–20, 52–67
  - solicitors, to, 49
  - stakeholders, to, 9, 22, 28, 37–42
- bailees**, 43–45
- bankruptcy proceedings, effect of**, 11, 12, 92
- builders' liens**, 9, 22, 28, 42

## INTERPLEADER

---

- burden of proof**, *see also* trial of issue
- debt, existence of, 102
  - estoppel, 111
  - general, 109
  - goods in claimant's possession, 102–104
  - goods in debtor's possession, 101, 103
  - husband/wife situations, 104, 105, 110
  - jointly-occupied premises, 103–105
  - judge's error concerning, 106
  - judgment creditor/garnishee, between, 107
  - naming of plaintiff and, 96, 101
  - partnership property, 108
  - sheriff's interpleader, 78, 102
  - status as creditor, 107
- chattel mortgages**, 25, 120
- civil enforcement (Alberta)**, *see* sheriffs, interpleader by
- commission claims**, 39
- conditional sales**, 12
- conflict of laws**, 30, 31
- costs**
- civil enforcement agency's, 142
  - divided success, effect of, 138
  - examination on affidavit, 112
  - general, 136, 146
  - priorities, 137
  - security for, 140
  - sheriff's, 142–146
  - solicitor-and-client basis, 141
- courts**, *see* jurisdiction of court
- crops**, 45, 65, 110
- Crown**, 51
- debts**, *see* assignments
- definition of "interpleader"**, 1
- delay, effect of**, 55, 77
- discovery**, *see* affidavits
- disposal of goods**, *see* seized goods
- equity, role of**, 6
- estoppel**, 111
- evidence**, *see* burden of proof; trial of issue
- executions**, *see* seized goods; sheriffs, interpleader by
- foreign judgments**, 30, 31
- forgotten property**, 114
- fraudulent transactions**, 15, 90, 103
- garnishees**, 46, 47, 71, 100, 107
- homesteads**, 63
- insurance claims**, 22, 41, 47
- interest, right to**, 139
- issues determinable**, *see also* availability of procedure; nature and scope of proceedings
- bankruptcy proceedings, effect of, 11, 12
  - builders' liens, involving, 9, 22, 28
  - disposition of money in court, 8
  - execution, concerning, 17–19
  - landlord and tenant, 17
  - marshalling, 13
  - miscellaneous, 20
  - partial claims, 16
  - priority of claims, 10–13, 17, 19
  - title to land, 14, 15
- issues, form and settling of**, *see also* order for interpleader; parties; pleadings
- appeal of, 135

## INDEX

---

- fraud, alleged, 90
- general, 87
- judge, by, 88
- object of, 95
- order for, 88, 89, 93
- particulars, 87
- parties, by, 88
- pleadings, 87, 91
- sheriff's interpleader, 89
- judgments, effect of**
  - execution, on, 24
  - finality of, 130
  - subsequent proceedings, on, 25, 123, 124
  - trespass, on, 24
- jurisdiction of court**
  - conflict of laws, 30, 31
  - costs, 136
  - discretionary remedy, 7, 55
  - disposition of money in court, 12
  - Federal Court, 29
  - foreign judgments, 30, 31
  - provincial courts, 26–28
- laches**, *see* delay, effect of
- landlord and tenant**, *see* real property
- liens, effect of**, 9, 22, 28, 66, 67
- lost property**, 114
- marshalling, doctrine of**, 13
- “money”, liability for**, 38
- nature and scope of proceedings**, *see also* availability of procedure; issues determinable
  - action between claimants, 3
  - application by stakeholder, 3
  - availability of procedure, 5
  - discretion of court, 7, 55
  - general, 1, 3, 4, 8
  - object of proceedings, 2
- object of proceedings**, 2
- order for interpleader**
  - breach of, 93
  - contents of, 88, 89, 93
  - effect of, 93
  - rescission of, 93
- parties**
  - liquidator as party, 92
  - plaintiff, naming of, 94–100, 132
  - substitution, 92
- plaintiff**, *see* parties
- pleadings**, *see also* issues, form and settling of
  - delivery of, 91
  - order to exchange, 87
  - particulars, 87
- practice and procedure**, *see* specific matters, e.g., issues, form and settling of
- priorities**
  - bankruptcy proceedings and, 11, 12
  - Crown, 51
  - execution, involving, 17, 19
  - interest on proceeds, 139
  - landlord and tenant, 17
  - marshalling, 13
  - sale of land, 17
  - validity of claims not disputed, 10
  - wage claims, 42
- real estate agents, claims of**, 39
- real property**
  - agreements for sale, assignment of, 19
  - commission claims, 39
  - execution against, 63, 67

## INTERPLEADER

---

- fraudulent conveyances, 15
- homesteads, 63
- landlord and tenant, 17
- title to, 14, 15
- right to interplead**, *see* availability of procedure
- sale of land**, *see* real property
- security by claimants**, 59, 82, 83, 93
- seized goods**, *see also* sheriffs, interpleader by
  - bond for security, effect of, 59, 82, 83
  - crops, 65
  - exemptions, 57
  - general, 4, 54
  - homesteads, 63
  - interpleader not available, 58, 63–67
  - irregular executions, 64, 65
  - liens, 66, 67
  - sale before trial, 79–82, 139
  - security by claimant, 82, 83
- sheriffs, interpleader by**, *see also* application by stakeholder; availability of procedure; burden of proof
  - abandonment by creditor, 84
  - abandonment generally, 86
  - affidavits, 76
  - appeals, 125, 129
  - availability generally, 54
  - civil enforcement agency (Alberta), 60–62
  - costs, 142–146
  - delay, 55, 77
  - discretion of court, 55
  - discretion of sheriff, 56
  - disentitlement, 55
  - executions, 18, 54, 57–67
  - failure to appear by creditor, 84
  - general, 20, 52, 54, 56, 74–78
  - issues in, 89
  - liability, 93
  - lien claim, 66
  - notice of claims, 75
  - onus of proof, 78
  - payments by debtor, 18
  - proof of claim, 118
  - sale of land, 19, 63, 67
  - seized goods, 4, 54, 57–67
  - statutory right, 53
  - timing of, 55, 77
- solicitors**, 49
- stakeholders**, *see also* application by stakeholder; specific parties, e.g., bailees
  - builders’ lien proceedings, 9, 22, 28, 42
  - general, 32, 37
  - insurers, 41
  - liability for “money”, 38
  - miscellaneous parties, 42
  - transfer agents, 40
  - vendor of land, 39
- stay of proceedings**, 69
- summary disposition**, 115, 116
- transfer agents**, 40
- trespass**, 24
- trial of issue**, *see also* appeals; burden of proof; costs; issues, form and settling of
  - chattel mortgage, proof of, 120
  - claim, proof of, 118
  - claimant’s rights, proof of, 121
  - general, 117
  - joint success in, 122
  - judgment, effect of, 123, 124
  - judgment, proof of, 119

## INDEX

---

- order for, 117
  - summary disposition, 115, 116
- unauthorized proceedings, 133**

## Index to Judgments and Orders

*(All references are to paragraph numbers.)*

- abandonment of judgments and orders, 46**
- actions on judgments and orders**
  - abuse of process, 413
  - action in debt, 413
  - action on default judgment, 415
  - action on foreign judgment, 418
  - any part of judgment unsatisfied, 419
  - false evidence by judgment debtor, 416
  - judgment modified by proposal, 417
  - successive actions on same judgment, 414
- amending and varying judgments and orders (after judgment entered)**
  - claims not adjudicated, 395–397
    - alternative remedy not pursued at trial, 396
    - re-opening order to hear, 397
    - rules re amendments, 395
  - consent of all parties, 391
  - errors of inadvertence, 379–389
    - clerical mistakes, 379
    - error re amount due corrected by appeal court, 383
    - formal judgment exceeding relief granted by judgment as pronounced, 388
    - inherent jurisdiction to ensure order carries into affect decision, 381
    - jurisdiction of Supreme Court of Canada to recall, 384
    - liberty to apply rule, 381
    - omission from caption of name of judge, 383
    - prescribed method of recovery frustrated, 385
    - rectification of slips, 382
    - relief not sought by party, 389
    - slip rule, 380
    - time passing since entry of order, 386
    - trial judge’s notes of evidence in appeal book not correct, 387
  - fraud or new facts, 390
  - general inability, 376–378
    - counterclaim not replied to/treated as defence, 377
    - court functus officio, 376
    - original argument well presented on appeal, 378
  - party failing to appear, 392
  - varying as to costs, 393, 394
- amending and varying judgments and orders (before judgment entered)**
  - altering expressed opinion, 369
  - appeal court varying on ground of misinformation, 374
  - application for rehearing within jurisdiction of local master/court, 368
  - further submissions, 371
  - judge assigned after retirement of trial judge, 375
  - not beyond reconsideration or recall, 367
  - only in exceptional cases/sparingly, 370
  - preventing miscarriage of justice, 370
  - reconsideration of general damages, 372

## JUDGMENTS AND ORDERS

---

- standard for reconsideration in complex litigation, 373
- **amending and varying judgments and orders (general)**
  - after entered (Alberta), 363
  - any time before entered (Alberta), 362, 366
  - distinction between order settling right/one dealing with procedure, 365
  - made without notice (Alberta), 364
  - party not appearing because of accident/mistake/insufficient notice (Alberta), 364
- **amending and varying judgments and orders (particular orders)**
  - application to appeal court for reargument, 401
  - default judgments, 399
  - ex parte orders, 398
  - order nisi, 402
  - order not made in court, 402
  - reversing decision refusing leave (Supreme Court of Canada), 404
  - written fiat or direction of judicial officer, 400
- **appeals from judgments and orders**
  - adjudications, 602
  - availability, 601
  - consent judgment, 608
  - ex parte order refused, 607
  - interlocutory proceedings rendered moot by settlement, 612
  - judgment made without jurisdiction, 602
  - judgment/order made by justice of appeal, 609
  - leave requirement re dismissal for insufficiency/imperfection of supporting material, 604
  - notice consenting to reversal or variation, 610
  - order made by judge/court of general and original jurisdiction, 602
  - order made ultra vires, 602
  - part of order acted upon by officer of court, 613
  - party who has elected to comply with order, 614
  - rehearing by judge who made order, 603
  - requirement of express right of appeal to Court of Appeal, 616
  - stay of proceedings pending appeal, 606
  - whole or part of judgment or order, 611
  - words “an absolute discretion” in statute, 615
- **collateral attacks on judgments and orders**
  - court of co-ordinate jurisdiction, 405
  - lack of jurisdiction obvious on its face, 407
  - leave required/not obtained prior to commencement of action, 409
  - made in absence of state of facts confirming jurisdiction, 408
  - order of superior court, 406
  - possibility of conflicting orders in same case, 410
  - stranger to judgment, 412
  - tribunal not having jurisdiction no matter what state of facts, 408
- **compliance with judgments and orders**
  - decree nisi in action for cancellation of agreement for sale of land, 49
  - enlarging/abridging time, 47

## INDEX

---

- order of deputy district registrar re costs, 50
- peremptory order, 48
- conditional orders**, 32
- consent judgments**
  - appeal from, 608
  - binds only parties, 83
  - binding until set aside, 85
  - British Columbia, 72
  - conclusions of law within domain of court, 100
  - court considered as private tribunal constituted by parties, 87
  - duty of court to question consent judgment against Crown, 104
  - enlargement of scope of injunctive/declaratory relief, 98
  - estoppels by record, 93
  - evidence, 94
  - executor having consented, 90
  - extension of time limited for doing of act, 99
  - Federal Court, 76–79
  - judgment by confession, 84
  - Manitoba, 73
  - mistaken consent, 102
  - order for procedure not provided for by rules of court, 97
  - order made against protest of defendant, 82
  - order re unlawful delegation of statutory authority, 97
  - principles re construction of contracts apply, 88
  - refusing to grant judgment agreed to by parties, 96
  - reliance on in prior action, 91
  - representative defendants, 84
  - res judicata, 95
  - Saskatchewan, 75
  - scope, 103
  - setting aside, 583–587
  - signed draft order marked “approved as to form”, 80
  - Supreme Court of Canada, 74
  - terms of settlement in dispute, 101
  - terms on which consent given, 95
  - where consent order in form not a consent order, 81
- currency in which judgment to be paid**
  - conversion date, 61
  - conversion under Federal Court Rules, 62
  - currency of Canada, 61
  - measured in foreign currency (British Columbia), 63
- date of judgments and orders; time when effective**
  - day pronounced in open court, 34
  - direction re date as to which order may take effect, 34
  - divorce decree, 37
  - Federal Court, 36
  - judgment not pronounced in open court, 34
  - nunc pro tunc order granting leave to bring action, 40
  - publishing of reasons, 34
  - silence re when spousal support effective, 38
  - Supreme Court of Canada, 35
- declaratory judgments (general principles)**
  - another remedy available, 128
  - circumstances where not granted, 142
  - discretionary, 134



## JUDGMENTS AND ORDERS

---

- foundation for substantive relief which fails, 145
  - interlocutory application, 139
  - judicial act not made merely on admission, 146
  - judicial review of findings of commission of inquiry, 137
  - likelihood of dispute on facts, 140
  - necessary/proper parties not joined, 138
  - obtaining relief in round about way, 144
  - real issues concerning interests of persons having legal relationship, 136
  - reasons for refusing to entertain application, 127
  - standing re declaration that municipal by-law invalid, 131, 132
  - statutory building restrictions, 133
  - statutory provisions for bringing action for declaration, 130
  - statutory remedies, 129
  - view to ulterior proceedings, 143
  - where applicant does not have cause of action, 135
  - where sought before damages suffered, 141
- declaratory judgments (jurisdiction)**
- civil relief by way of injunction, 126
  - criminal proceedings, 125
  - Manitoba, 122
  - merely advisory opinion not binding on parties, 124
  - merely declaratory judgment/order sought, 119
  - powers of court unlimited (British Columbia), 121
- requirement for legal issue, 120
  - summary conviction procedure, 126
  - suppliant's rights to specific performance of contract with Crown, 123
- declaratory judgments (specific actions)**
- matrimonial causes, 154–156
    - no reasonable prospect of reconciliation, 154
    - presumption of death of spouse, 155
    - validity of marriage/marital status, 154
    - variation of support in separation agreement (Manitoba), 156
  - other actions, 157–160
    - insurance policy, 157, 158
    - restrictive covenant, 159
    - taxing statute ultra vires, 160
  - sale of goods, 153
  - sale of land, 150–152
    - agreement providing for termination under certain conditions, 150
    - entitlement to mines and minerals, 151
    - entitlement to rely on vendor's covenant to convey, 152
- declaratory judgments (specific parties)**
- non-suable entity, 149
  - petition of right, 148
  - presence of Attorney General necessary, 148
  - test for standing re Act of Parliament ultra vires, 147
- default judgments (general)**
- Alberta, 208–213

## INDEX

---

- British Columbia, 214–220
- definition, 206
- Federal Court, 238–240
- Manitoba, 221–227
- motion to be supported by evidence, 206
- no defence filed to claim which claims damages, 207
- person under disability, 241
- Saskatchewan, 228–237
- default judgments (debt or liquidated demand)**
  - claim based on acceleration clause, 244
  - claim by insurer to recover settlement amount, 246
  - claim for conversion of automobile and money, 244
  - cost of repairs for damages to property, 245
  - liquidated damages provided for in contract to be paid upon breach, 243
  - liquidated demand defined (Alberta), 242
- default judgments (strict compliance required)**
  - action on foreign judgment, 250
  - appearance not entered in action where defendant not personally served, 249
  - condition precedent, 247
  - defence delivered after proper time, 257
  - defendant's appearance on motion for judgment, 259
  - defendant's liability for debt joint and not alternative, 265
  - extension of time for payment, 254
  - foreign company required to be registered within province, 251
  - judgment entered on default of defence, 248
  - judgment for fraud, 260
  - judicial notice re territorial jurisdiction (British Columbia), 262
  - leave to defend, 256
  - motion for summary judgment, 255
  - plea of limitation statute, 258
  - power to enlarge time fixed for filing defence (Alberta), 261
  - procedure re entering interlocutory judgment (British Columbia), 263
  - proof of default in either filing/service of defence, 252
  - right of plaintiff to proceed with action against any other defendants, 264
  - service of defence before default judgment entered in procedure book, 253
  - two persons sued jointly, 266
- different relief from that claimed, 43, 44**
- discretionary orders, 14**
- distinction between judgments and orders, 12, 13**
- drawing up and settling judgments and orders**
  - any party to proceeding (British Columbia), 16
  - application to settle and enter (Saskatchewan), 16
  - benefit of doubt as to scope, 20
  - duty re clear and unmistakable language, 20
  - endorsed (Manitoba), 17
  - entered if approved by all parties appearing (British Columbia), 16
  - Federal Court, 19

## JUDGMENTS AND ORDERS

---

- liberty to apply (Saskatchewan), 15
- settlement by court/registrar/judge who made order, 18
- vague order of board incapable of enforcement, 20
- ex parte orders**
  - against execution creditor in favour of wage claimants, 355
  - appeal where application refused, 607
  - applications by memorandum (Saskatchewan), 350
  - application to set aside/vary, 349
  - court's duty where party fails to appear, 352
  - delay and imminent expiry of limitation period, 353
  - duty of disclosure, 354
  - no costs rule, 356
  - not an adjudication, 354
  - party served with notice failing to appear, 349
  - rules, 348
  - setting aside, 590, 600
  - utmost good faith requirement, 351
- final judgments**
  - general principles, 161–170
    - • decision that no appeal lies, 169
    - • definition under Federal Courts Act, 162
    - • definition under Supreme Court Act, 161
    - • final order made in interlocutory proceeding, 168
    - • final within one rule but not another, 167
    - • finally disposes of rights of parties, 163
  - • in part final and in part interlocutory, 166
  - • more than one final judgment in action, 165
  - • supplemental orders, 170
  - • test as to whether order final or interlocutory, 164
- particular actions, 171–185
  - • adoption, 180
  - • application by administrator re beneficiary status, 173
  - • decision on liability where damages referred to referee, 176
  - • declaratory order and perpetual injunction, 172
  - • foreign decree for alimony, 179
  - • judge's review of taxing officer's decision, 182
  - • judgment in default of filing defence, 174
  - • mechanics' liens, 181
  - • preventing addition of defendants, 184
  - • proviso re right to file another petition, 177
  - • removing counsel, 183
  - • requiring provincial government to build French language school facilities, 185
  - • setting aside default judgment for unjustified amount, 174
  - • spouse in contempt of maintenance order, 178
  - • striking out/refusing to strike claim, 175
  - • trustee entitled to commission, 171
- further directions**
  - Alberta, 30
  - Saskatchewan, 31

## INDEX

---

### **interest on judgments**

- Alberta, 420–424
- Award of pre-judgment and post-judgment on compound basis, 445
- British Columbia, 425–434
- Federal Court, 441–443
- Manitoba, 435–438
- Saskatchewan, 437–440
- Supreme Court of Canada, 444

### **interlocutory orders**

- action for pecuniary damages where defence struck, 200
- any order on matter of jurisdiction, 205
- definition, 186
- definition when used in statute granting right of appeal, 187
- dismissal of application to set aside warrant of execution re appeal costs, 197
- dismissing application for *mareva* injunction, 203
- dismissing application to add defendant, 191
- disposition of motion for non-suit (British Columbia), 188
- extending limitation period, 190
- motion re manner facts to determined/damages assessed, 201
- not a judgment for purposes of taxing costs, 189
- orders held to be interlocutory, 202
- permitting amendment of pleadings, 192
- refusal of leave to apply for certification as class proceeding, 204
- refusing motion to allow further filing of affidavits, 196

- *res judicata* and issue estoppels, 194
- rescinding order re sale of property in undefended mechanics' lien action, 199
- sale of real property under executions legislation, 198
- striking counterclaim, 192
- summons for directions, 195
- where wholly unauthorized, 193

### **judgment as bar to further action**

- action against master and servant for servant's tort, 472
- action by creditor against surety, 477
- cause of action estoppels, 449
- cause of action estoppels not arising (Saskatchewan), 446
- doctrine of merger, 447, 452, 453, 469, 476
- election between alternative remedies, 470
- estoppels in motor vehicle accident actions, 466
- failure to reduce decision in form of judgment or order, 461
- foreclosure action in one province registered in another, 459
- irrebuttable legal presumption of validity of definitive judgment, 464
- issue estoppels, 465
- issues in previous actions defined against litigant, 458
- joint liability, 454
- judgment against one of several tortfeasors, 471, 474
- judgment for libel against wholesale news agency for distribution of defamatory matter, 473

## JUDGMENTS AND ORDERS

---

- judgment in rem, 468
  - jurisdiction on issues not decided on arbitration, 479
  - lack of jurisdiction, 467
  - new evidence discovered, 463
  - privities, 467
  - proceedings where fraud established, 463
  - recovery of damages for continuing cause of action, 462
  - relitigation of employee's criminal conviction during grievance, 480
  - res judicata, 451
  - res judicata and Charter based stay of proceedings, 450
  - res judicata and consent judgment, 456
  - res judicata and summary nature of proceedings, 457
  - rule re one cause of action in case of joint contractors, 455
  - separate judgments for same debt, 475
  - statute imposing one penalty for each day person in contravention of statute, 478
  - where res judicata does not apply, 460
- judgment in rem**
- distinction between action in rem and judgment in rem, 41
  - divorce decree, 42
- judgments on admissions**
- admissions in alternative, 107
  - admissions made on examination for discovery, 110
  - application for, 105
  - chambers motion, 109
  - clear cases only, 107
  - informal admissions, 108
  - necessary to proceed to trial on another issue, 107
  - no question of fact to be tried, 107
  - rule in British Columbia, 106
- judgments on counterclaims, crossclaims, third party claims and in class actions**
- Alberta, 111, 112
  - British Columbia, 113
  - class actions, 118
  - Manitoba, 114
  - Saskatchewan, 115, 116
  - third party in Federal Court, 117
- reasons for judgment**
- after notice of appeal filed, 53
  - entitlement of litigant to reasons, 53
  - Federal Court 51
  - filing oral reasons, 53
  - property of profession, 57
  - reasons for disbelieving witness, 54
  - role of appeal court where no reasons given, 5
  - supplementing oral with written reasons, 53
  - supported by arguments not presented, 59
  - varying text or disposition of written judgment, 52
- reservations in judgments and orders**
- conditional order of master in chambers, 361
  - installment of purchase money due to vendor of land, 357
  - judgment obtained for portion of claims without reserving right to recover full amount, 358
  - reserving right to reduce damages on application, 360

## INDEX

---

- satisfaction of judgments,**  
482–487
- service of judgments and orders,**  
45
- setting aside judgments and orders (default judgments and orders)**
- affidavit of merits, 569–574
    - • circumstances under which default arose, 569
    - • cross-examination, 570
    - • different requirements re noting in default/setting aside default judgment, 573
    - • disclosure of defence on merits, 569
    - • may be set aside even where no affidavit filed, 572
    - • plaintiff’s failure to file affidavit of default, 571
    - • reply, 574
  - amount of judgment excessive, 579–582
    - • amendment by insertion of proper amount, 579
    - • costs against plaintiff, 580
    - • delay not a material factor, 580
    - • duty of creditor to set right, 580
    - • interest at excessive rate after maturity of promissory note, 581
    - • set aside regardless of whether good defence, 579
  - delay in applying, 575–578
    - • excessive delay can be fatal, 575
    - • imposition of terms, 576
    - • irregular judgment, 577
    - • ordinarily not refused if good defence on merits, 576
  - • question of effect of delay, 578
  - • solicitor’s failure to act, 578
  - • time considered, 578
  - • wilful delay, 576
  - general, 533–568
    - • appeal court decision bar to summary judgment, 557
    - • appeal from refusal to set aside, 548, 549
    - • application, 544
    - • beneficiary of estate who has settled with executor, 566
    - • case not properly listed on trial list, 545
    - • default in appearance at trial not fault of defendant, 543
    - • default of appearance defence re default judgment on foreign judgment, 568
    - • delay, 533
    - • deliberately allowing default judgment against self, 553, 560
    - • demand for particulars, 555
    - • failure to serve process, 551
    - • general equitable jurisdiction, 538
    - • infant, 564
    - • judge’s order signed in default of defence, 542
    - • judgment against company reopened to reframe action as against directors, 563
    - • motion to set aside judgment and execution (Saskatchewan), 550
    - • not supported by pleadings, 554
    - • noting of default (Alberta), 539
    - • noting of default (Manitoba), 540

## JUDGMENTS AND ORDERS

---

- • noting of default (Saskatchewan), 541
  - • obtained by unregistered foreign company, 567
  - • party not obtaining notice of served document, 534
  - • second application on different ground, 556
  - • set aside in part, 537
  - • signed before time for filing defence expired, 552
  - • terms imposed, 536, 546, 547, 559, 576
  - • third party injuriously affected, 565
  - • two defendants alternatively liable, 535
  - • vendor's action on agreement for sale of land, 562
- setting aside judgments and orders (general principles)**
- British Columbia, 501
  - consent order made by prothonotary not sitting in court, 490
  - declaring order bad instead of quashing, 499
  - delay, 494–496
  - Federal Court, 491
  - inherent jurisdiction to set aside consent judgment, 489
  - judgment affirmed by appeal court, 504
  - judgment from defended action not attacked on grounds of fraud/perjury/new evidence, 498
  - jurisdiction of provincial court where judgment registered in Queen's Bench (Alberta), 502
  - party who may apply, 488
  - person must have some interest in order or its effect, 493
- plaintiff moving to set aside own judgment, 500
  - solicitor served substitutionally having no instructions, 493
  - varying judgment/order (Alberta), 503
  - where new action required to set aside defended judgment, 497
- setting aside judgments and orders (grounds)**
- evidence subsequently discovered, 520–524
    - • Federal Court, 524
  - motion in proceeding (Manitoba), 523
  - not available at time of trial, 521
  - reasonable diligence/materiality/conclusiveness, 522
  - reasonable probability of success, 520
  - fraud or perjury, 505–519
    - • action dismissed as result of plaintiff's own evidence, 512
    - • defence inconsistent with defence at trial, 519
    - • Federal Court, 507
    - • fraud must be established by preponderance of evidence, 516, 517
    - • motion in proceeding (Manitoba), 506
    - • must be discovered since judgment given, 508
    - • new evidence not required to be alleged in claim, 514
    - • obtaining judgment by extraneous fraud, 505
    - • perjury must be material to decision, 509
    - • proof of fraud in resisting motion to strike claim, 511

## INDEX

---

- • statement of claim re perjury, 515
- irregularity and procedural errors, 525–532
  - • copy of notice of motion for judgment not filed for each defendant, 532
  - • default judgment irregularly entered, 529
  - • irregularity defined, 525
  - • judgment irregularly entered, 531
  - • judgment signed irregularly, 530
  - • mandatory statutory requirements, 527
  - • order for substitutional service, 528
  - • whether irregularity has caused failure of natural justice, 526
- setting aside judgments and orders (other judgments and orders)**
  - consent judgment, 583–587
  - ex parte, 590, 600
  - joint judgment, 588
  - summary judgment, 589
- signing and entering**
  - Alberta, 22, 23
  - binding whether or not formally entered, 28
  - British Columbia, 22
  - Federal Court, 26
  - local master’s formal order, 29
  - Manitoba, 24
  - Saskatchewan, 25
  - Supreme Court of Canada, 27
- summary judgments (availability)**
  - actions on foreign judgments, 286
  - Alberta, 269–274
  - application for summary dismissal prior to filing of defence, 289
  - available to plaintiff (Saskatchewan), 268
  - available to plaintiff and defendant, 268
  - British Columbia, 275, 276
  - defendant not appearing on plaintiff’s application, 288
  - Federal Court, 283–285
  - issue in developing area of law, 291
  - Manitoba, 277–280
  - motion for directions, 287
  - Saskatchewan, 281, 282
  - test applied on defendant’s application for summary dismissal, 290
- summary judgments (court’s powers)**
  - acknowledgement of claim and assertion of counterclaim, 344
  - Alberta, 314–318
  - British Columbia, 320–323
  - despite existence of counterclaim, 345
  - factual inferences, 319
  - Federal Court, 337–342
  - issues as set out in pleadings at time application considered, 346
  - Manitoba, 324–332
  - Saskatchewan, 333–336
  - where not to be granted, 343
- summary judgments (effect of), 347**
- summary judgments (evidence)**
  - admissions on examination for discovery, 303
  - affidavit made by manager of corporate plaintiff, 306



## JUDGMENTS AND ORDERS

---

- affidavit merely raising set-off/counterclaim, 310
- affidavits based on information and belief, 305
- Alberta, 294–296
- British Columbia, 297
- burden of proof, 298
- burden where defendant seeks summary dismissal, 313
- defence of factual defences, 311
- defendant may rely on evidence filed, 309
- defendant merely required to show triable issue, 307
- defendant's affidavit, 308
- discovery evidence, 305
- failure to file direct evidence, 304
- Federal Court, 301
- Manitoba, 299
- no party may hold back, 302
- possibility of amendment, 305
- Saskatchewan, 300
- steps to resist application, 312
- test re genuine issue for trial, 298
- **summary judgments (general)**, 267
- **summary judgments (urgent motions and delay)**, 292, 293
- **time of recovery**, 33
- **what constitutes**
  - adjudication on issues defined by pleadings, 11
  - claims abandoned at trial, 3
  - conferring rights that court cannot confer, 7
  - date of entry, 3
  - effective date of order 4
  - form of judgment, 2
  - installments, 10
  - interlocutory remarks, 5
  - judgment, defined, 1
  - judicial discretion, 3
  - more than one ground for making order, 9
  - opinion at end of argument changed in written reasons, 6
  - order, defined, 1
  - order on proper case made, 8
  - reasons for judgment, 3
  - rulings, 3
- **whether judgment may be void or voidable**
  - erroneous order for trial by jury, 69
  - obtained by collusion to defeat/delay creditors, 67
  - death of appeal court justice, 65
  - lack of jurisdiction to pronounce judgment, 64
  - order made by court having jurisdiction, 71
  - requirement of action or proceeding, 66
  - setting aside judgment overruled in subsequent action, 70
  - voidable judgment remains valid/binding until vacated, 68

## Index to Labour Law — Alberta

(All references are to paragraph numbers.)

- Alberta legislation, history,** 1
- application,** *see* complaint
- appropriate bargaining unit**
- aging-in-place facilities, 456
  - construction industry, 457–465
  - firefighter units, 466
  - generally, 417–439
  - hospital/nursing home units, 440–448
  - regional health authority unites, 449–455
- arbitration,** *see also* collective agreement arbitration
- awards, 1039–1044
  - collective agreement arbitration, *see* collective agreement arbitration
  - generally, 1035–1038
  - voluntary interest arbitration, 1020–1026
- bargaining rights**
- filing constitutions/bylaws, 304–309
  - modifying or revoking, 618–628
  - voluntary recognition, 293–303, 361
- bars to certification,** 331–358, *see also* certification
- Canadian Charter of Rights and Freedoms,** *see* protection of freedoms
- certification,** 312–330, *see also* bars to certification, discretionary certification, mandatory certification
- certification and voluntary recognition, effect of**
- duty to bargain, 535, 536
  - exclusive authority, 532–534
- certified bargaining agents**
- board, 652–654
  - change in bargaining agent, 655
  - employee choice, 629–646
  - employer, 649–651
  - revocation, 656–658
  - trade union, 647, 648
- collective agreement**
- effect, 767, 768
  - filing, 766
  - parties, 748
  - signature, 749–753
  - term, 754–765
  - void agreements, 769, 770
  - writing, 748
- collective agreement arbitration,** *see also* arbitration
- appeal, 1116–1134
  - appointment of arbitrator, 1081–1087
  - decisions, 1112, 1113
  - documents, 1110, 1111
  - enforcement, 1114, 1115
  - filing decisions, 1135–1137
  - generally, 1070
  - powers, 1092–1109
  - settlement without work stoppage, 1071–1080
  - summary decision, 1088–1091
  - witnesses, 1110, 1111
- collective agreement under federal law,** 359
- collective bargaining**
- exchange of proposals, 696–700
  - forms of notice, 673–683
  - good faith bargaining, 717–747

- notice to bargain, 669–672
- prohibited bargaining relationships, 714–716
- representatives, 687–695
- service during collective bargaining, 684–686
- statutory freeze, 701–713
- collective bargaining legislation**
  - application, 4
  - construction industry, 3
  - generally, 2
  - preamble, 5
- complaint**, *see also* unfair labour practice complaint
  - contents, 57, 58
  - costs, 63
  - facts, 59
  - forms, 56, 57
  - remedies sought, 60
  - replies, 64, 65
  - summary dismissal of complaint, 62
  - violations of law, 61
- compulsory arbitration**
  - compulsory arbitration board, 1030–1034
  - generally, 1027–1029
- constitutional issues**, *see* protection of freedoms
- construction industry**
  - bargaining units, 457–465
  - collective bargaining agreements, 771, 772
  - collective bargaining legislation, 3
  - major construction projects, 773–794
  - work jurisdiction disputes, 1138–1147
- construction industry registration of employers' organization**
  - application for registration, 490–510
  - certificate, 511–531
  - collective bargaining, 992–1019
- courts**
  - admissibility of board evidence, 210, 212
  - certiorari, 203, 205
  - compellability of witnesses, 213
  - defined, 201
  - evidence before board, 207
  - judicial enforcement of board orders, 1209, 1210
  - judicial review, 202
  - mandamus, 203
  - new issue on judicial review, 211
  - refusal to hear judicial application, 208
  - standard of review, 204, 206
  - subject matter of application, 209
- discretionary certification**, 469, 470, *see also* certification, mandatory certification
- disputes inquiry boards**
  - attendance of witnesses, 191, 192
  - disputes defined, 179
  - documents, 191, 192
  - economic conflict, 825–827
  - evidence, 190
  - meetings, 186
  - members, 182–184
  - notice of establishment, 178–181
  - proceedings, 187–189
  - recommendations, 193–199
  - reconvening, 200
  - referral, 185

## INDEX

---

- disputes resolution tribunals**
  - appointment, 1046–1052
  - award, 1065, 1066
  - evidence, 1064
  - generally, 1045
  - meetings, 1056–1058
  - procedure, 1059–1063
  - remuneration, 1053, 1054
  - review, 1067–1069
  - undue delay, 1055
- dues deduction, 795–801**
- duty of fair representation**
  - generally, 537–541
  - remedies, 575–580
  - scope of duty, 542–574
- economic conflict**
  - Disputes Inquiry Board, 825–827
  - lockout, 876–878
  - strike, 870–875
- emergencies, 981–991**
- employee**
  - agricultural employees, 267–269
  - confidential information, 263, 264
  - domestic employees, 270, 271
  - exempt employees, 273
  - generally, 253–259
  - management functions, 260–262
  - professional employees, 265, 266
  - public service employees, 272
- employer, 274–278**
- employer-dominated trade union, 362, 363**
- employers' organization, 286–288, *see also* registered employers' organization**
- enforcement of law**
  - common law, 1202, 1203
  - compliance orders, 1207, 1208
  - consent to prosecute, 1217
  - interference with process, 1204–1206
  - judicial enforcement of board orders, 1209, 1210
  - offences, 1211–1216
- evidence at hearings**
  - board not bound by judicial rules of evidence, 123
  - Charter rights/search and seizure, 128
  - compelling attendance, *see* notice to attend hearings
  - confidentiality, 124, 125
  - contempt, 130, 131
  - generally, 122
  - media as witness, 129
  - membership evidence, 126
  - witnesses, 127
- firefighters, compulsory arbitration, 1027–1029**
- full membership of board/policy considerations, 76**
- good faith bargaining, 717–747**
- health and welfare trusts, 1166, 1167**
- hearings**
  - adjournments, 117, 118
  - certification hearing, 105, 121–126
  - constitutional/Charter arguments, 112
  - cross-examination, 111
  - director of settlement, 99, 100, 104, 116
  - evidence, *see* evidence at hearings
  - evidence on oath, 111
  - formal hearings, 101, 102
  - formality, 110

- generally, 98
  - in absentia hearings, 109
  - informal hearings, 101
  - intervenors, 113–116
  - no hearing, 119
  - participants, 108
  - prehearing conference, 120
  - public hearings, 107
  - revocation hearing, 105
  - service of documents, *see* service of documents
  - special hearings, 106
  - transcriptions, 103
- hospital employees, compulsory arbitration, 1027–1029**
- human rights legislation, 75**
- investigation powers of board**
- copies of records, 87
  - demands, 86
  - director of settlement, 93–95, 99, 100, 104, 116
  - generally, 85
  - issues, 92
  - place of investigation, 91
  - posting of board orders, 89
  - reasonable assistance to board, 90
  - report, 96, 97
  - statements, 88
- judicial review, *see* courts**
- jurisdiction of board**
- civil rights outside Alberta, 72
  - external statutes, 71
  - generally, 69, 70
  - human rights legislation, 75
  - party’s immunity from jurisdiction, 73
  - property outside Alberta, 72
- reconsideration of bargaining certificate issued by former board, 78
  - review of jurisdiction, 74
  - subordinate legislation, 71
- Labour Relations Board**
- business, 13
  - chair, 7
  - decisions, 20–22
  - director of settlement, 8, 93–95, 99, 100, 104
  - evidence, 23
  - generally, 6
  - hearings, *see* hearings
  - interim orders, 24
  - liability, 27
  - manager of settlement, 9
  - meetings, 14–16
  - notice of proceedings, *see* notice of proceedings
  - policy considerations/full membership of board, 76
  - powers, *see* powers of board
  - quia timet orders, 25
  - quorum, 17–19
  - Regulations Act, 26
  - remuneration, 12
  - resignations, 11
  - rulemaking, 77
  - service of documents, *see* service of documents
  - terms of office, 10
- lockout**
- board regulation, 903–916
  - court regulation, 897–902
  - generally, 876–878
  - offences and penalties, 960–967
  - remedial measures where lockout illegal, 939–959
- lockout votes, 828–869**

**major construction projects,**  
773–794

**mandatory certification,** 467, 468,  
*see also* certification, discretionary  
certification

**Mediation**

- generally, 802–815
- votes on proposals, 816–824

**Minister of Labour,** 170–173

**notice of proceeding**

- authority of representative of party, 54
- bargaining agent, 50
- dispensing with notice, 53
- posting of notice, 49
- proper recipient, 48
- verbal notice, 51,52
- waiver of proprieties, 55

**notice to attend hearing**

- confidentiality, 144
- contents of notice, 137, 138
- failure to attend, 145
- generally, 134–136, 141
- refusal to issue notice, 140
- service, 142, 143
- time and place other than hearing, 139

**pension trusts,** 1166, 1167

**picketing,** 968–980, *see also*  
recognition picketing

**policy considerations/full  
membership of board,** 76

**powers of board**

- arbitration matters, 83, 84
- generally, 79–82
- investigations, *see* investigation powers of board
- procedural irregularities, 66–68

**prohibited employer conduct**

- contributing support, 224–226
- denial of employee benefits, 248
- discrimination, 227–239
- expulsion/suspension, 1165
- interference, 217–223
- intimidation, 240–244
- participation, 217–223
- yellow dog contract, 245–247

**prohibited trade union conduct**

- coercion/intimidation, 252
- expulsion/suspension, 1148–1158
- expulsion/suspension, timeliness of complaint, 1159–1161
- interference, 249
- loss of employment, 1162–1164
- organizing during working hours, 250, 251
- participation, 249

**protection of freedoms**

- generally, 214–216
- prohibited employer conduct, *see* prohibited employer conduct
- prohibited trade union conduct, *see* prohibited trade union conduct

**recognition picketing,** 364–366,  
*see also* picketing

**reconsideration of board order**

- application for reconsideration, 1221–1232
- generally, 1218–1220

**registered employers’  
organization,** 289–292, 310, 311,  
581, 615, 616, *see also*  
employers’ organization

**registered employers’  
organization, cancellation of,**  
659–668

- regulated activity**
  - employee reinstatement, 935–938
  - prohibited dispute-related misconduct, 931, 932
  - prohibited employer conduct, 917–923
  - prohibited refusal to do work, 925, 926
  - protected benefits, 927–930
  - protected refusal to do struck work, 924
  - protected refusal to participate in illegal work stoppage, 933, 934
- religious beliefs, trade union member**, 800, 801
- representation votes**, 387–416
- roundtable conference**, 177
- service of documents**
  - bargaining committee, 31–33
  - board’s rules of service, 36–38
  - corporation, 29
  - dispensing with service, 45
  - employers’ organization, 30
  - facsimile copy, 42
  - individual, 28
  - mail, 43
  - office, 46, 47
  - party responsible for service, 35
  - proving service, 34
  - registered mail, 40
  - responsible official, 39
  - solicitor ceasing to act for party, 41
  - substitutional service, 44
  - trade union, 30
- settlement**
  - advance ruling, 165
  - arbitral matter, 161
  - board as arbiter, 160
  - board member as arbiter, 148, 159
  - confidentiality, 147, 152
  - contents of report, 150
  - delayed complaint, 163
  - director of settlement, 147, 149, 153–156
  - evidence, 158
  - frivolous or vexatious matter, 162
  - generally, 146
  - hearing, 151
  - issue estoppel, 164
  - new hearing, 157
  - non-Labour Relations Code issues, 166
- settlement not constituting collective agreement**, 360
- single employer declaration**, 471–489
- statutory freeze**, 377–386, 701–713
- strike**
  - board regulation, 903–916
  - court regulation, 897–902
  - generally, 870–875
  - measures where strike illegal, 939–959
  - offences and penalties, 960–967
- strike votes**, 828–869
- successor rights**
  - bankruptcy, 617
  - governing body reorganization, 613, 614
  - merger of registered employers’ organization, 615, 616
  - sale by employer, 588–612
  - trade union reorganization, 582–587

## INDEX

---

**supervised votes**

- generally, 167, 169
- locked out employees, 168

**timeliness**

- lockout, 883, 884
- settlement, 885–896
- strike, 879–882

**trade union**, 279–285

**unfair labour practice**

**complaints**, *see also* complaint

- deferral to arbitration, 1176, 1177
- generally, 1168–1175
- remedies, 1178–1201

**votes**, *see* supervised votes

**40 per cent support**, 367–376



## Index to Labour Law — British Columbia

*(All references are to paragraph numbers.)*

- appropriate bargaining unit**
- bargaining agent, appropriateness of, 393
  - British Columbia Rail, 455
  - buildup principle, 396–400
  - changing by agreement, 418, 419
  - changing unit, 409, 410, 412, 576–606
  - community of interest, 401, 402–405, 440–442, 446
  - construction, 401, 449, 621
  - corporate relationships, 416
  - craft group, 428–436
  - departmental unit, 420
  - determining appropriate unit, 394–427
  - excluded employees, 2, 419, 421, 438, 445, 446, 447
  - foremen, 444, 445
  - forest industry, 451
  - generally, 388, 407, 437–446
  - health care, 456–458
  - historical patterns, 410
  - inclusion irrespective of union membership, 395
  - job functions, 394
  - labour relations history, 416
  - laid-off employees, 401
  - merchant mariners, 454
  - police, 450
  - policy favouring large units, 413–415
  - powers of Labour Relations Board, 389–392
  - public sector, 448
  - qualified recognition, 417
  - raid application, 426, 427
  - salespeople, 461, 462
  - security guards, 459
  - shipbuilding, 460
  - single or multiple locations, 422–425
  - trade union business representatives, 453
  - universities, 463
  - warehousemen, 452
- arbitration**, *see also* collective agreement
- after expiry of collective agreement, 920, 921
  - appeal to Court of Appeal, 1108–1119
  - appeal to Labour Relations Board, 987–1016
  - applying Charter of Rights, 950
  - applying statutes, 950
  - appointment of arbitrators, 930–932, 987
  - arbitration board, 913
  - award under collective agreement, 919
  - burden of proof, 941, 1285, 1286
  - Collective Agreement Arbitration Bureau, 914, 917, 918
  - Commercial Arbitration Act, 923
  - consensual mediation-arbitration, 986–990
  - decision binding, 975
  - declining jurisdiction, 1057, 1059
  - denial of fair hearing, 1017–1056
  - director, 914, 917
  - discipline, 1174
  - discretionary decisions, 1058, 1082, 1083, 1087

- effect of breach of duty of fair representation, 973
  - enforcing decision, 976
  - enforcing independent obligations, 939
  - error in applying statute, 1076–1099
  - error in interpreting collective agreement, 1062–1075
  - evidence, 937–939, 1083
  - expedited arbitration, 979–985
  - expired collective agreement, 920, 921
  - fees and costs, 749, 978
  - filing award, 971
  - functus officio, 946, 1102–1107, 1165, 1166
  - hearing date, 934
  - hearing de novo, not, 916
  - human rights tribunal, 947
  - improper delegation, 1061
  - inadequate reasons, 1100, 1101
  - inquiry by Labour Relations Board, 922
  - inspection or report, 942
  - interpreting collective agreement, 939, 940, 993
  - interpreting Labour Relations Code, 950
  - joint advisory committee, 918
  - judicial review, 1008
  - jurisdiction, 915, 927, 946–948
  - Labour Relations Board, deferring to, 747, 748, 797, 1219
  - majority decision, 970
  - mandate, 933
  - modifying arbitration provision, 929
  - notice of hearing, 925
  - ordered by Labour Relations Board, 922
  - particulars, 945
  - parties, 936
  - potential bases of decision, 1019
  - prehearing matters and orders, 944
  - privative provision, 972, 973
  - procedure, 935, 1064
  - procedure on appeal to Labour Relations Board, 1009–1016
  - production of documents, 945
  - purpose, 915
  - rectification of collective agreement, 948
  - reference to Labour Relations Board, 977
  - remedies, 952–969
  - remedy contravening seniority provisions, 1060
  - required in collective agreement, 926, 928
  - review application, 36, 992
  - right to participate, 925
  - settlement officer, 914, 997, 1121
  - special officer, 159
  - stay pending appeal, 996
  - undue delay in rendering decision, 974
  - unreasonable delay, 949
  - witnesses, 942, 943
- British Columbia Labour Relations Board**
- accreditation application, 36
  - adding parties, 85–89
  - adjournment, 70–75, 81
  - Adjudication Division, 4, 20, 22
  - adverse party as witness, 98–100
  - affidavits, 108, 109
  - amending documents, 63
  - annual report, 141, 142
  - appeal from arbitrator, 991–1016
  - application, 30–44, 76–81

## INDEX

---

- appointment of panel, 25
- associate chairs, 4, 5
- boycotting proceedings, 101
- breach of freeze provision, 36
- case management, 34, 48
- certification application, 301–308
- chair, 3–5, 15, 24
- Charter of Rights issues, 103, 220, 221, 226, 227
- commencement of proceeding, 39
- common site picketing, 884
- compellability of member or employee, 122
- composition, 3
- consolidating proceedings, 67
- contract of employment, 216, 222
- contracting in disputes, 237
- costs, 139
- counsel, 45
- credibility, 124
- curative provisions, 64, 65
- decisions, 129–132
- declaratory opinion, 133, 902–911
- deferral to arbitration, 747, 748
- delegation of powers, 25
- determining appropriate bargaining unit, 389
- determining good faith, 660
- determining successor rights, 537–541
- determining trade union membership, 340–361
- determining trade union status, 268
- discretion in revoking bargaining rights, 624–638
- disqualification of member, 22
- documents, 54–60
- draft decisions, 19
- employer’s position, 183–188, 191–214
- evidence, 114–127
- evidence of membership in union, 111, 119
- exclusive jurisdiction concerning collective agreements, 708, 710
- exclusive jurisdiction concerning picketing, 892–894
- exclusive jurisdiction regarding fair representation, 1124
- exclusive jurisdiction to determine employment status, 224
- exercising powers, 11, 12
- expedited applications, 79–84
- expert evidence, 117
- extending or abridging time, 65–69
- failure to attend hearing, 92
- failure to bargain in good faith, 702–704
- filing documents, 7, 33, 43, 51–54, 743
- forms, 32
- hearing, 48, 90–105
- hearing proceedings together, 67
- hearsay evidence, 116, 127
- information officer, 9
- inquiry into differences between parties, 922
- investigations, 106–111
- judicial review, 1310–1326
- lockout vote, 135–137
- majority vote, 130
- Mediation Division, 4
- moot issues, 103
- non-suit, 141
- notice of application, 42
- oath of office, 14

- obtaining union constitution, 269, 302
  - office, 7
  - officers and employees, 8, 9
  - onus of proof, 127
  - order nunc pro tunc, 338
  - panels, 16–22
  - parties, 41, 60
  - policy discussion, 19
  - policy guidelines, 27–29
  - posting notices, 138, 139
  - powers, 24–26
  - practice generally, 30
  - precedent, 105, 133
  - privilege, 125, 126
  - production of documents, 115
  - proof of regulation or order, 120
  - purposes, 10, 11
  - quorum, 23
  - ratification vote, 135–137
  - reconsideration, 1279–1309
  - reconsideration application, 36
  - reconsideration of appeal, 1005
  - recording proceedings, 93, 94
  - reference from arbitrator, 977
  - refusing relief, 900, 901
  - registrar, 4, 6
  - regulations, 144, 145
  - replies, 46, 47
  - report by industrial relations officer, 49
  - representation vote, 368–378, 607–616
  - resignation, 13
  - restricting picketing, 896
  - rules, 31
  - service, 57–63
  - settlement agreement, 104
  - settlement discussions, 50
  - single employer declaration, 474–503
  - sittings, 7
  - statutory declaration, 44, 45, 110
  - strike vote, 135–137
  - summons, 110–113
  - tape recordings, 93, 123
  - telephone conference, 91
  - termination of appointment, 13
  - trusteeship application, 36
  - undertakings, 129
  - vacancy, 13
  - varying or cancelling certification or accreditation, 576, 605, 606
  - verification of facts, 44
  - vice-chairs, 4–6, 15
  - votes, 134–136
  - withdrawing application, 52, 53
  - witnesses, 26
- certification**, *see also* appropriate bargaining unit
- accreditation of employers' organization, 513–518
  - amending application, 321, 337
  - application, 36, 301–308, 326, 343
  - application by two or more unions, 315, 316
  - certification of another bargaining agent, 631
  - conditions on order, 473
  - contracting out, 524
  - council of trade unions, 36, 339, 504–512
  - dependent contractors, 240
  - determining union membership, 340–360
  - discretion of Labour Relations Board, 325, 343, 465–472
  - during strike or lockout, 311

## INDEX

---

- effect, 519–526
- effect of Charter of Rights, 236
- effect of unfair labour practices, 374
- effective date of application, 321, 337
- eligibility to vote, 361–367
- employer-dominated organization, 309, 310
- estoppel, 324
- new application, 327
- order nunc pro tunc, 338
- partial decertification, 599
- representation vote, 330–336, 368–378
- single employer declaration, 474–503
- statutory freeze on terms and conditions of employment, 379–387
- timeliness, 312–314, 317–319, 322, 328, 343
- varying or cancelling, 576, 1302
- voluntary recognition, 323
- **collective agreement**, *see also* arbitration
  - adjustment plan, 779–784
  - appointment of special officer, 157–164
  - arbitration, 747–749, 936
  - binding effect, 744–746
  - compulsory dues checkoff, 760–762
  - compulsory union membership, 757–759
  - concluded outside province, 319, 663, 706
  - conflict with statute, 924
  - consultation committee, 775–778
  - contracting out, 755
  - defined, 708, 709
  - discriminatory organization, 292
  - dismissal and discipline, 733–737
  - dispute resolution, 926, 928
  - effect after expiry, 729–731
  - employer-dominated organization, 287
  - error by arbitrator in interpreting, 1062–1075
  - exclusive jurisdiction of Labour Relations Board, 708, 710
  - filing, 743
  - first, 409, 797
  - generally, 715–719, 727
  - human rights issues, 712
  - interpretation by arbitrator, 939, 940
  - interpretation by Labour Relations Board, 750–754
  - made by agent, 716, 723–725
  - mediation on first agreement, 791–795, 797
  - mutual mistake, 720
  - no strike or lockout, 740, 741
  - notice to terminate, 732
  - presumption of effectiveness, 714
  - ratification, 135–137, 706, 707, 847
  - rectification, 948
  - religious objections, 763–774
  - requirements, 711, 712, 721, 722, 726
  - right not to cross picket lines, 739
  - secondary boycott provision, 738
  - term, 728–732
  - two or more agreements, 320
  - two or more documents, 713
  - union as necessary party, 290
  - unworkable arbitration provision, 929

- voluntary recognition, 297, 299, 300
- collective bargaining**
  - appointment of fact finder, 817–821
  - authority, 668, 669, 691–694
  - collective agreement in effect, 664
  - deadline for commencing, 659, 662
  - defined, 660
  - dormant operation, 665
  - duty to bargain, 664–667
  - employer communicating with employees, 186–188, 190
  - employer discrimination or intimidation, 191–212
  - employer interference or participation, 183–185
  - excluded employees, 2
  - good faith bargaining, 660–704
  - notice to bargain, 643–647, 659
  - protected freedoms, 165–182
  - statutory freeze on terms and conditions of employment, 648–658, 756
  - termination of collective agreement, 297
- compulsory dues checkoff**
  - effect of Charter of Rights, 772
  - generally, 760–762
  - religious objections, 763–774
- employee**
  - casual employees, 232
  - confidential capacity, 257–261
  - contracting in disputes, 237
  - defined, 222
  - dependent contractor, 222, 238–242, 699
  - determinants of status, 225–229, 233, 234
  - determination by Labour Relations Board, 224
  - effect of agreement, 224
  - employees of Crown agencies, 230
  - exclusions, 231, 235, 243–261
  - laid-off employees, 464
  - legal strike, 223
  - lockout, 223
  - manager or supervisor, 243–256, 406, 863
  - part-time workers, 232
  - “person”, 294
  - potential employees, 232
  - public servants, 230
  - retired workers, 234
  - temporary workers, 232
  - volunteer, 235
  - volunteer, non-profit organizations, 235
  - wrongful dismissal, 223
- employer**
  - generally, 262–267
  - “person”, 294
- employers’ organizations**, 293, 513–518, 640–642
  - discriminatory dues, 1197
  - financial statements, 1190–1194
  - refusing membership, 1197
  - terminating membership, 1197
  - varying or cancelling accreditation, 1302
- fair representation**
  - application, 36
  - application of duty, 1146–1149
  - arbitrary conduct, 1132–1137
  - bad faith, 1142–1145
  - breach of duty, 1155–1163
  - collective bargaining, 1146, 1150–1154

## INDEX

---

- complaint, 1125–1127
  - contract between member and union, 1181
  - deferral to union’s internal processes, 1185–1188
  - discriminatory conduct, 1138–1141
  - discriminatory dues, 1184
  - dismissal of complaint, 1125, 1129
  - dismissal of expelled employee, 1141, 1189
  - duty generally, 1122
  - duty to accommodate employee, 1140
  - employers’ organizations, 1190–1194, 1197
  - employment relationship, 1149, 1153
  - exclusive jurisdiction of Labour Relations Board, 1124
  - fair referral, 1175–1177
  - financial statements, 1190–1194
  - grievances, 1134, 1136, 1137, 1155–1163, 1225, 1226
  - industrial relations officer, 1128
  - internal union affairs, 1146, 1178–1180
  - misleading employees, 1147
  - mistaken decisions, 1135, 1160
  - negligence, 1133, 1135
  - negotiating collective agreement, 1146
  - notice of complaint, 1125
  - onus on employee, 1123
  - precertification activities, 1154
  - reconsideration, 1129
  - referral to hearing, 1125
  - remedies, 1164–1170, 1172, 1173, 1261
  - reply, 1125
  - sanctions against union member, 1182, 1183
  - seniority rights, 1161
  - test, 1131
  - timeliness of complaint, 1130
  - voluntarily-recognized bargaining agent, 1148
- grievance adjudication**, *see* arbitration
- industrial inquiry commissions**, 151–156
- labour statutes**
- general, 1
  - purposes, 10
- mediation**
- appointment of facilitator, 822
  - appointment of mediator, 786–788
  - deadline for reporting, 789
  - essential services, 806–816
  - final offer vote, 798–805
  - first collective agreement, 791–797
  - generally, 785
  - information from parties, 790
  - special mediator, 823–826
- ministerial duties and powers**
- committee of special advisors, 149
  - dealing with dispute posing threat to residence, 807
  - direction concerning council of trade unions, 504
  - generally, 146–148
  - industrial inquiry commission, 151–156
  - industry advisory council, 150
  - modifying arbitration provision, 929
  - special officer, 157–164

- statements outside legislature, 189
- offences and enforcement under labour legislation**, 1328–1335
- “person”**, 294
- picketing**
  - anticipatory cease and desist order, 897
  - application to board, 36
  - Charter protection, 882
  - counselling, 869
  - damages, 898
  - definitions, 868–879
  - exclusive jurisdiction of Labour Relations Board, 892–894
  - information pickets, 880
  - injunction, 898, 1315
  - jurisdiction of board, 869, 881
  - jurisdiction of courts, 895, 1313, 1315
  - leaflets, 870
  - permitted activities, 881–891
  - refusing relief, 900, 901
  - restriction by Labour Relations Board, 896
  - secondary picketing, 885
- revocation of bargaining rights**
  - abandonment, 628–630
  - application, 36, 617
  - certification of another bargaining agent, 631
  - deaccreditation of employers’ organization, 640–642
  - discretion of Labour Relations Board, 624–627
  - dissolution of union or council, 637–639
  - effect, 633–636
  - effect of Charter of Rights, 615
  - eligibility to vote, 618–623
  - loss of employer status, 632
  - loss of union status, 632
  - representation vote, 607–616
  - voluntary recognition, 298
- strikes and lockouts**
  - application to board, 36
  - continuation of worker benefits, 866, 867
  - declaratory opinion of Labour Relations Board, 902–912
  - effect on employment status, 223
  - injunction, 1315
  - jurisdiction of court, 1313, 1315
  - lockout, 838–843
  - lockout notice, 858
  - lockout vote, 856, 857
  - notification of chair, 827
  - professional strike breakers, 859
  - replacement workers, 860–865
  - strike, 831–837
  - strike notice, 853–855
  - strike vote, 844–852
  - “struck work”, 865
  - timeliness, 828–830
  - votes, 135–137
- successor rights**
  - determination by Labour Relations Board, 537–541
  - effect, 563–575
  - trade union reorganization, 527–531
  - transaction constituting transfer, 546–562
  - transfer of business, 532–536, 542–545, 582–595
- trade unions**
  - compulsory membership, 757–759
  - conduct, 223–225
  - council of trade unions, 291, 292, 504–512



## INDEX

---

- defined, 268, 270, 274, 275
- determining membership, 340–361
- dissolution, 637–639
- employee association, 284
- employer domination, 285–289
- employer interference or participation, 183–185
- financial statements, 1190–1194
- incorporation, 283
- international trade union, 274
- Labour Relations Board determining status, 268
- local officers, 282
- local or provincial criterion, 271–273
- organization, 276–280
- “person”, 294
- religious objections to membership, 763–774
- trusteeship, 273, 1195, 1196
- trusteeship application, 36
- viability, 277, 281
- unfair labour practice complaints**
  - adverse party as witness, 1215
  - anti-union animus, 199, 203, 205, 206
  - application, 36
  - back pay, 1242, 1247–1251
  - burden of proof, 1207–1214
  - changing or closing operation, 202, 203
  - coercion affecting trade union membership, 217
  - complaint, 1198, 1199
  - consent order, 1222
  - costs, 1273–1278
  - deferral to arbitration, 1216–1219
  - discharge hearing, 1220, 1221
  - disciplining or terminating employee, 191, 199, 205, 212
  - inquiry by Labour Relations Board, 1204
  - inquiry by officer, 1203
  - interim order, 1223–1227
  - layoffs, 191, 200, 208, 212
  - remedies, 1228–1246, 1252–1272
  - replacement workers, 213
  - reply, 1200
  - service of complaint, 1201
  - statutory declaration, 1202
  - timeliness, 1205, 1206
  - union raid, 1219
  - yellow dog contract, 214–216
- union security, 757–759**
- voluntary recognition**
  - abandonment, 628, 630
  - generally, 295–299

## Index to Labour Law — Federal

(All references are to paragraph numbers.)

- airlines**, 410, 411
- appropriate bargaining unit**, *see* bargaining unit; union certification; union organization
- arbitration (private sector)**, *see also* arbitration (public sector); conciliation (private sector)
- appointment of arbitrator, 661–663, 666
  - “arbitration board”, 665
  - “arbitrator”, 664
  - cost/fees/expenses of, 678
  - decisions, effect of, 676
  - decisions, enforcement of, 685, 686
  - decisions, filing/publication of, 677
  - decisions, time limits on, 679, 680
  - judicial review, 687–692
  - orders, enforcement of, 685, 686
  - powers of arbitrator/board, 667–675
  - referrals to C.I.R.B., 681–684
  - settlement without work stoppage, 661–666
- arbitration (public sector)**
- amending award, 1014
  - arbitral award, 1005–1008
  - duration/operation of award, 1009–1012
  - duties/powers, 999–1004
  - establishment of arbitration board, 992–996
  - generally, 988
  - matters not dealt with, 1013
  - referral to arbitration, 997, 998
  - request for arbitration, 989–991
- armed forces employee**, 889
- artists’ associations**, 4
- “bargaining agent” (private sector)**, *see also* union certification
- duty to bargain, 381
  - exclusive authority, 375–380
  - generally, 220, 222–225
  - new bargaining agent, 468, 469
  - voluntary recognition, 457–459
- “bargaining agent” (public sector)**, 955–959, *see also* union certification
- bargaining impasses (public sector)**
- generally, 985, 986
  - mediation, 987
- bargaining rights (private sector)**, *see also* collective bargaining (private sector); revocation of bargaining rights; union certification
- effect of grant of, 375–384
  - voluntary recognition of, 220–229
  - wishes of employees, 268–270
- “bargaining rights” (public sector)**, 909–915, *see also* collective bargaining (public sector); union certification
- “bargaining unit” (private sector)**, *see also* union certification
- appropriate bargaining unit, 299–321
  - change, 436
  - generally, 221, 222
  - modifying, 412–428

- reorganization, 437
- revocation, 429–435
- bars to certification (public sector)**
  - discriminatory practices, 932
  - employer-dominated trade union, 931
  - previous unsuccessful application, 930
  - timeliness, 927–929
- board employee**, 890
- business**, 393
- Canada Industrial Relations Board (C.I.R.B.)**
  - abridging/enlarging time, 52, 53
  - adjournments, 60, 61
  - annual reports, 78
  - appearances by former members, 25, 26
  - applications/replies/interventions, 54–57, 74
  - appointments/tenure, 7–9, 13
  - chairperson, 6, 43
  - chief executive officer, 39
  - collective bargaining with employees, 3
  - compliance orders, 70–72
  - composition of, 6
  - confidentiality of documents, 73
  - consolidation of proceedings, 51, 85
  - contempt of board, 75
  - decisions/opinions of board, 30, 36–38, 48, 113
  - delegation of powers, 41, 42
  - eligibility for appointment, 10–13
  - employees of, 28, 28
  - evidence before, 115
  - expedited process, 58, 59, 68
  - general, 5, 6, 76
  - head office of, 29
  - initiation of proceedings before, 49
  - interim decisions/orders, 66–68
  - labour relations officers, 77
  - orders of board, 69–72, 113
  - panels of board, 31–35
  - powers generally, 46, 47, 85, 115
  - production of documents, 50, 87
  - public hearings
    - • adjournment, cancellation, or postponement, 81
    - • general, 79
    - • location of, 80
    - • natural justice, requirement for, 82
    - • notes of members/draft orders, 84
    - • notice of, 83
  - reappointments, 13
  - regulations, making of, 44, 45
  - removal of members/inquiries, 14–24
  - remuneration, 27, 28
  - review (judicial), 826–833
  - reviews/rehearings (internal), 62–65, 815–825
  - subpoena duces tecum, 50
  - withdrawal of applications, 74
  - witnesses before, 86
- Canada Labour Code**
  - application, 210–212
  - Crown corporations, 213–217
  - federal government employees, 218, 219
- certification (private sector)**, *see also* multi-employer certification
  - appropriate bargaining unit, 299–321
  - automatic certification, 324

## INDEX

---

- bars to certification, 235–241
- effect of, 375–380
- generally, 230–234
- longshoring, 353–375
- mandatory certification, 322, 323
- modifying bargaining unit, 412–428
- representation votes, 271–287
- statutory freeze, 287–298
- wishes of employees, 268–270
- certification (public sector)**, *see also* bars to certification (public sector)
  - appropriate bargaining unit, 924–926
  - conditions for certification, 916, 917
  - effect of, 933, 934
  - evidence, 918–923
  - generally, 910–916
- changes to certification (public sector)**
  - managerial/confidential positions, 936
  - review of bargaining units, 935
- Charter of Rights**, *see also* freedom of association
  - imposed collective agreements, 540
  - strikes/lockouts, 616, 617, 636
- coercion/intimidation**, 162
- collective agreement (private sector)**, *see also* collective bargaining (private sector); technological change
  - compulsory union membership, 517–519, 522, 523
  - effect of, 516
  - filing of, 514
  - major projects, 524
  - parties to, 505, 506
  - religious matters, 522, 523
  - term of, 507–511
  - terms of, 508, 510–512
  - union dues, deduction of, 520, 521
  - writing requirements, 505
- collective agreement (public sector)**
  - amendments, 979
  - authority to enter into agreement, 975
  - definition, 974
  - duration/effect, 976–978
  - terms/scope, 980–984
- collective bargaining (artists' associations)**, 4
- collective bargaining (private sector)**, *see also* bargaining rights (private sector); collective agreements (private sector); collective bargaining (public sector); union certification
  - board directing vote on offer, 504
  - freeze on employment conditions, 476–480
  - good faith bargaining
    - • continuous nature of, 494
    - • examples of bad faith, 495–503
    - • failure to disclose information, 493
    - • general, 487, 488, 491
    - • hard bargaining, 492
    - • rules of, 490
    - • subjective/objective components of, 489
  - imposed first agreements
    - • bad faith bargaining, 542, 543
    - • Charter issues, 540
    - • direction of minister, 541
    - • discretion of board, 542–547

- • effect of order for, 548
- • general, 539
- • grounds for, 542–547
- • investigation/procedure, 551
- • jurisdiction to interpret agreements, 550
- • term of agreement, 550
- • terms of, setting, 553, 554
- major projects, 524
- notice to bargain
  - • after certification, 463, 464
  - • consent of board, by, 470
  - • during term of collective agreement, 466, 467
  - • duty to meet after, 473–475
  - • form of notice, 471, 472
  - • new union certified, 468, 469
  - • prior to expiration of collective agreement, 465
- prohibited bargaining relationships, 481–486
- collective bargaining (public sector)**
  - dispute resolution, 1034, 1035
  - duty to observe terms and conditions, 1055, 1056
  - effect of notice, 968–970
  - mediation, 971
  - notice, 966, 967
  - parties, 965
  - two or more units, 972
  - two-tier bargaining, 973
  - vote on employer’s offer, 1036, 1037
- complaints/enforcement (public sector), 1058–1063**
- compulsory dues deduction, 520, 521**
- compulsory union membership, 517–519**
- conciliation (private sector), *see also* arbitration (private sector)**
  - conciliation board/commissioner
    - • appointment of members, 563–569
    - • definition, 562
    - • duties of, 575
    - • eligibility to sit on, 564
    - • employment status of, 587
    - • judicial proceedings involving, 588–591
    - • notice of dispute, 574
    - • notice of establishment, 563
    - • powers of, 578, 579
    - • procedures of, 578, 580
    - • quorum, 581
    - • referral of questions to, 575
    - • remuneration/expenses, 586, 587
    - • report of, 576, 577, 582–585
    - • witnesses before, 579
  - conciliation officer
    - • definition, 561
    - • duties of, 571–573
    - • employment status of, 587
    - • judicial proceedings involving, 588–591
    - • remuneration/expenses, 586, 587
    - • report of, 572, 573
    - “dispute”, 570
    - general, 554, 555
    - notice of dispute, 556–558
    - powers/duties of minister, 559, 560
- conciliation (public sector)**
  - generally, 1015
  - public interest commission, 1017–1033
  - request, 1016

## INDEX

---

- constitutional issues**, *see* Charter of Rights; courts; legislation
- council of employee organizations**, 951
- council of trade unions**, 200, 202–206, 438, *see also* trade unions
- courts**, *see also* Federal Court of Canada
- constitutional issues, 112
  - judicial review by, 111
  - jurisdiction generally, 110
- Crown corporations**, 213–218
- CSIS**, 888
- dependent contractors**
- fishers, 185
  - generally, 186–191
  - truckers, 184
- designated employees**, *see* collective bargaining (public sector); employees (private sector); employees (public sector)
- discipline of trade union members**
- loss of employment, 765–768
  - prohibitions, 751–761
  - remedies, 764
  - timeliness, 762, 763
- dispute resolution (public sector)**, 963, 964
- duty of fair referral**
- C.I.R.B., 749
  - duty, 737, 738
  - jurisdiction, 739, 740
  - referral rules, 742–748
  - remedies, 750
  - timeliness, 741
- duty of fair representation**
- burden of proof, 707
  - collective bargaining, 731, 732
  - employer of party, 705, 706
  - former employees, 704
  - generally, 693–695
  - procedure before C.I.R.B., 696–702
  - remedies, 733–736
  - remedy, 384
  - standard, 382, 383, 708–730
  - voluntary recognition, 703
- duty to bargain**, *see* union certification
- economic conflict, strikes/lockouts (private sector)**, *see also* picketing
- application to C.I.R.B., 630–632
  - authorization for strike, 593–596
  - Charter issues, 616, 617, 636
  - court, jurisdiction of, 633, 634
  - discrimination by employer (prohibited), 635–641
  - dissolution of parliament, during, 611, 612
  - duties, 592–596
  - essential services, 597–605
  - illegal work stoppages, 652–654
  - lockout, 618, 619
  - longshoring/related industries, 606, 607
  - notice of strike/lockout, 592
  - obligations re strikes/lockouts, 592–596
  - offences/penalties re, 655–659
  - participation by employees, 610
  - picketing, 660
  - protection of pensions/benefits, 648–651
  - refusal to do strike work, 642–644
  - replacing striking employees, 645–647

- “strike”, 613–617
  - timeliness of, 608, 609, 611
  - timing, 608, 609
  - unlawful strike/lockout, declaration re
    - • application for, 630–632
    - • general, 620–625
    - • supplementary orders, 629
    - • terms/duration of, 626–628
  - voting on strike/lockout, 593–596
- employees (private sector)**
- confidential capacity, employment in, 165, 178, 179
  - definition, statutory, 165, 166
  - dependent contractors, 165, 184–191
  - employees of employers’ organization, 169
  - fishers, 185
  - independent contractors, 168
  - managers, 165, 170–177
  - part-time employees, 180
  - private constables, 165, 181–183
  - “professional employees”, 192–194
  - security guards, 179, 183
  - test for determining status, 167, 168
- employees (public sector)**
- complaints/offences, 878
  - exclusions, 881–997
  - generally, 879, 880
  - prohibited conduct, 876, 877
  - organizations, 904–909
- employer (private sector)**
- generally, 195–197
  - organizations, 207–209
- employer (public sector)**
- definition, 898–900
- Treasury Board, 901–903
- employer conduct (private sector)**
- contributing support, 144–147
  - denial of benefits post-dismissal, 158, 159
  - discrimination, 148–154, 635–641
  - dominance of trade union, 251–253
  - employer speech, 140–143
  - interference/participation in union activity, 131–39
  - replacement workers, 155
  - yellow dog contract, 156, 157
- employer conduct (public sector)**
- complaints/offences, 878
  - discrimination, 871–875
  - interference/participation in union activity, 869, 870
- “employers’ organization”, 207–209, *see also* employees (private sector); “employer” (private sector)**
- enforcement, *see* offences/penalties**
- enforcement under Canada Labour Code, *see also* prosecution under Canada Labour Code**
- common law, 797
  - compliance orders, 800
  - contempt, 801
  - interference with process, 798, 799
  - judicial enforcement of board orders, 802–808
- essential services, *see* economic conflict**

## INDEX

---

- essential services agreements**
- amendment of agreement, 1049–1052
  - creation, 1044–1048
  - notification of employees, 1054
  - replacement positions, 1053
- evidence**
- certificate of minister/mediator, 114
  - orders of C.I.R.B., 113
  - previous proceedings, 51
- evidence (private sector)**
- certificate of minister/mediator, 114
  - orders of C.I.R.B., 113
  - previous proceedings, 51
  - trade union membership, 260–267
- fair referral (duty of private sector), see also fair representation (private sector); unfair labour practices; union membership**
- duty of, 737, 738
  - jurisdiction re complaints, 739, 740
  - referral rules, 742–748
  - remedies, 750
  - role of C.I.R.B., 749
  - timeliness of complaints, 741
- fair representation (private sector), see also fair referral (duty of); unfair labour practices; union membership**
- burden of proof, 707
  - collective bargaining, during, 731, 732
  - duty of, 693–695
  - employer as party, 705, 706
  - former employees' rights, 704
  - jurisdiction to hear complaints re, 696, 697
  - remedy for breach, 384, 733–735
  - standard of/examples of breach, 382, 383, 708–730
  - timing of complaints, 698–702
  - voluntary recognition not affecting duty, 703
- fair representation (public sector), 968–970, see also unfair labour practices; union membership**
- Federal Court of Canada, 104–109, see also courts**
- federal Crown employees, 892**
- federal government employees, 219**
- financial statements, 767–773**
- fishers, 185**
- freedom of association, see also Charter of Rights; union organization**
- employer interference, 131–159
  - general, 115–118
  - union access to employees, 119–130
- freedoms (private sector)**
- generally, 116–118
  - trade union access to employees, 119–130
- freedoms (public sector), 867, 868**
- good faith, see collective bargaining**
- good faith bargaining, 487–503**
- grievances (public sector)**
- generally, 1077–1081
  - group grievances, 1092–1097
  - individual grievances, 1082–1086



- policy grievances, 1098–1111
- reference to adjudication, 1087–1091
- House of Commons employees**, 219
- independent contractors**, *see* employees (private sector)
- Industrial Inquiry Commission**, 98–104
- intimidation/coercion**, 162
- judicial review**, *see* arbitration (private sector); Canada Industrial Relations Board; courts; grievance adjudication; Public Service Staff Relations Board
- legislation, application of (private sector)**
  - constitutional concerns, 211, 212
  - Crown corporations, 213–217
  - federal government employees, 218, 219
  - general, 210
- legislation, application of (public sector)**, 904–908
- lockouts (private sector)**, *see* economic conflict, strikes/lockouts
- lockouts (public sector)**, 1057
- longshoring**
  - generally, 353–375
  - strikes, 606, 607
- major projects**, 524
- managerial position (public sector)**, 893–897
- Minister of Labour**
  - collective agreements, filing with, 94
  - general, 87
  - Industrial Inquiry Commission, 98–104
  - inquiries by, 89
- mediators, appointment of, 90, 91
- orders/decisions, filing with, 94–96
- powers generally, 88, 92
- referrals to board, 97
- war/economic emergency, 93
- multi-employer certification**
  - employers' organization as employer, 346–352
  - single employer declaration, 325–345
- offences/penalties (private sector)**
  - common law, 797
  - compliance orders, 800
  - consent to prosecution, board's, 813–815
  - contempt, 801
  - failure to appear/produce/testify, 811
  - general, 808, 811
  - illegal strikes/lockouts, 809
  - interference with process, 797, 798
  - judicial enforcement of board orders, 801–807
  - procedure, 811
- part-time employees (public sector)**, 883–885
- pension protection**, 648–651
- picketing**, 660
- private sector regulation (general)**, 1, 4
- professional employees**, 192–194
- prohibitions/enforcement (public sector)**
  - essential services, 1070
  - generally, 1064
  - offences/punishment, 1071–1076
  - strikes, 1065–1069

- prosecution under Canada Labour Code**
- consent to prosecute, 813–815
  - generally, 164
  - offences, 809–812
- provincial and territorial Superior Courts**, 110–112
- provincial business**, 394
- public interest commission**
- establishment, 1017–1023
  - powers, 1024–1027
  - report, 1028–1033
- Public Sector Alliance of Canada (PSAC)**, 906, 907
- public sector regulation (general)**, 2, 3
- public sector reorganization**, 405–409
- Public Service Labour Relations Board**
- advisory board, 862
  - chair, 860, 861
  - composition, 840–848
  - evidence, 865, 866
  - Federal Court of Canada, 863, 864
  - functions, 836–839
  - generally, 3, 835
  - mandate, 836–839
  - powers, 849–859
  - procedure, 849–859
  - structure, 840–848
- RCMP**, 887
- refusal to do work**, 642–644
- refusal to participate in work stoppage**, 652–654
- religious issues**, 522, 523
- replacing striking employees**, 645–647
- representation votes (private sector)**, *see also* union certification
- additional votes, 278, 285
  - ballots/conduct of election, 275–277, 279, 280, 284
  - bargaining agent already existing, 282, 283
  - eligibility to vote, 275
  - general, 271, 278
  - reasons for ordering, 272
  - regulations re, 273
  - required votes, 281
  - returning officer, 274
- review of board orders**
- external, 827–834
  - internal, 816–826
- revocation of bargaining rights (certified agents)**, *see also* union certification
- change of bargaining unit, 436
  - council of trade unions, 438
  - employee seeking, 429–431
  - employer seeking, 431
  - fraud, 433–435, 443, 453
  - orders of board, 460–462
  - procedure, 454–456
  - purpose of revocation right, 442
  - reasonable efforts at collective agreement, 447–453
  - reorganization of bargaining unit, 437
  - time for application, 439–446
  - union seeking, 432
- revocation of bargaining rights (private sector)**
- application, 439–446
  - board decision-making, 460–462
  - employee choice, 429–431
  - fraud, 433–435
  - procedures, 454–456

- reasonable efforts to enter into collective agreement, 447–453
- trade union choice, 432
- revocation of bargaining rights (public sector)**
  - bargaining agent choice, 946
  - ceasing to act as bargaining agent, 947, 948
  - displacement by another bargaining unit, 943
  - effect, 958–961
  - employee choice, 944, 945
  - fraud, 950
  - procedure, 952–957
  - prohibited activities, 949
  - status of applicant, 962
- revocation of bargaining rights (voluntarily recognized agents),** 448, 457–462, *see also* union certification
- security guards,** 179, 305, 306
- statutory freeze,** 287–298, 476–480
- strikes (private sector),** *see* economic conflict, strikes/lockouts
- strikes (public sector)**
  - essential services, 1041–1043
  - generally, 1038, 1039
  - strike votes, 1040
- student employees,** 891
- successor contracts,** 410, 411
- successor rights/obligations (private sector)**
  - airline industry, 410, 411
  - general, 385
  - public sector reorganization
    - general, 405
    - privatization, 406–409
  - sale of employer
    - applicability of legislation, 400–402
    - appropriate bargaining unit, determining, 403
    - bankruptcy, 396, 400
    - “business”, 393
    - date of sale, 397
    - general, 392
    - jurisdiction of board, 404
    - “provincial business”, 394, 395
    - “sale”, 396–401
    - union reorganization
      - application to determine rights/duties, 387, 388, 390
      - deemed acquisition of rights/duties, 386
      - purpose of legislation, 388
      - transfers of jurisdiction, 386, 389, 391
- successor rights/obligations (public sector)**
  - employer changes, 938–942
  - trade union, 937
- teachers,** 886
- technological change**
  - definition, 525
  - details of, request for, 529
  - exemption from legislation, 538
  - notice to bargain, 531
  - notice to employees re, contents of, 527, 528
  - notice to employees re, failure to give, 534–537
  - notice to employees re, general, 526
  - “significant number of employees”, 526, 530
  - stay of implementation, 533, 535
  - substantial adverse effect, 532

## INDEX

---

- trade union**
  - conduct, 160, 161
  - council of trade unions, 202–206
  - definition, 198–201
  - discriminatory practices, 254–256
  - evidence of membership, 260–267
  - financial statements, 769–773
  - union membership, 257–259
- Treasury Board**, 901–903
- unfair labour practices**
  - burden of proof, 78–81
  - costs, 795
  - deferral to arbitration, 782–784
  - definition, 774
  - interest, 796
  - mitigation, 794
  - parties, 777
  - “person”, 777
  - procedure for challenging, 774
  - remedies, 785–793
  - settlement of disputes, effect of, 785
  - timeliness of complaint, 775, 776
- union certification**, *see also*  
bargaining rights (private sector);  
collective bargaining (private  
sector); fair representation (private  
sector); representation votes  
(private sector); revocation of  
bargaining rights; successor rights  
(private sector)
  - applications, form/content of, 232
  - appropriate bargaining unit
    - agreements between union/employer, 311, 312
    - “all employee units”, preference for, 317
    - craft units, 308, 309
    - criteria for determining, 319
    - definitions, 299
    - determination by board, 301
    - discretion of board, 311, 314–316
    - duty of board, 312
    - employees leaving unit, 321
    - general, 300
    - part-time employees, 318
    - previously unorganized units, 310
    - private constables, 305
    - professionals, 302
    - purpose of, 307
    - security guards, 305, 306
    - supervisors, 302–304
    - technical employees, 302
    - “ultra petita” doctrine, 313
  - automatic certification, 324
  - bars to
    - discriminatory membership practices, 254–256
    - employer domination, 251–253
    - strike/lockout in progress, 244
    - timeliness of application, 235–246
  - change of bargaining agent, 320
  - collective agreement, need for/existence of, 247–250
  - declaration as single employer
    - commonality of control/ownership, 340–343
    - criteria governing, 329
    - discretion of board, 330–336
    - general, 325, 345
    - meaning of, 325
    - merger vs. fracturing of units, 338
    - parties subject to, 325, 336
    - purpose of declaration, 339

- • retrospectivity, 344
  - • review of bargaining units, 326–328
  - duty to bargain, 381
  - effect of certification/voluntary recognition, 375–384
  - employee support
    - • date for determining, 268–270
    - • proof of, 257–267
    - • representation votes, 271–285
  - employer domination, 251–253
  - employer’s interest, relevance of, 286
  - employers’ organization as employer, 346–352
  - freedom of contract, effect on, 376
  - freeze of employment conditions, 287–298
  - general, 230–234, 238
  - longshoring/designated industries
    - • bargaining unit, 373, 374
    - • definition/nature of industry, 367–369
    - • employer seeking declaration, 355
    - • general, 353, 354
    - • hiring hall system not required, 371
    - • inquiries, regulations re, 356
    - • jurisdiction of board, 361
    - • purpose of legislation re, 366
    - • representative of employers, 358–360, 362–365, 370, 372
    - • single port, 357
  - mandatory certification, 322, 323
  - public hearings, 234
  - review/variation of bargaining unit
    - • agreements between parties re units, 417, 428
    - • applications for, 427
    - • authority of board, 416, 422, 425, 426
    - • discretion of board, 415
    - • during term of agreement, 423, 424
    - • general, 412–414
    - • merger vs. fracturing of units, 419
    - • radical alteration of units, 421
    - • “raiding”, 418
    - • rules governing, 420
  - timeliness of application
    - • abridgment of time, 246
    - • certified union in place, 236, 237
    - • collective agreement in place, 239–243
    - • general, 235, 236
    - • subsequent applications, 245
    - • work stoppage, effect of, 238, 244
- union membership (denial/suspension/expulsion),**  
*see also* union certification
- acts contrary to labour code, 753
  - condition of employment, membership as, 765–768
  - discrimination by union, prohibition re, 751, 752
  - discrimination, examples, 757, 758
  - grounds for discipline, 760
  - membership in more than one union, 759
  - purpose of protections, 754, 755
  - remedies for breach, 764
  - singling out employees, 756
  - timeliness of complaint, 762, 763
  - union rules, 758
- union organization**
- access to employees

## INDEX

---

- • bulletin boards/walls/electronic access, 128
- • campaign buttons, 125
- • employees off premises, 121
- • general, 119
- • method/timing of, 120, 121, 123, 124, 127
- • privacy/safety issues, 122
- • soliciting during working hours, 123, 124, 129
- appropriate bargaining unit, 299
- complaint to C.I.R.B., 163
- freedom of association generally, 116–118, 126
- prohibited conduct generally, 162–164
- prohibited employer conduct
  - • Charter issues, 130
  - • denial of benefits, 158, 159
  - • employer speeches, 140–143
  - • financial/other support, 144–147
  - • firing/discrimination, 148–154
  - • interference/participation generally, 131–139
  - • replacement workers, 155
  - • yellow dog contracts, 156, 157
- prohibited union conduct, 160, 161
- “unit”, 299, *see also* “bargaining unit”
- **voluntary recognition**, *see* bargaining rights (private sector)
- **votes, representation**, 271–285
- **yellow dog contracts**, 15, 157

## Index to Labour Law — Manitoba

*(All references are to paragraph numbers.)*

- action for damages**, 561–563
- arbitration**
  - adjournment, 471
  - appointment of arbitrator, 452–461
  - Arbitration Act, 450
  - “arbitration board”, 453, 464
  - “arbitrator”, 452
    - adjournments, 512
    - decisions, timing of, 510
    - jurisdiction, 455
    - production of documents, 470
  - casting vote, 477
  - enforcing decision, 479
  - expenses, 487
  - filing of final decision, 488
  - in camera hearing, 475
  - inspection and interrogation, 472
  - interest arbitration, 303, 304
  - judicial review of award, 490–496, 545
  - Labour Relations Act, 331
  - majority decision, 477, 478
  - objection to jurisdiction, 463
  - personal grievance, 451
  - powers generally, 466
  - procedures, 465
  - public hearing, 475
  - public inspection of final decision, 488
  - quorum, 462
  - real substance of dispute, 483
  - remedial authority, 484, 485
  - retaining jurisdiction, 486
  - time limits for decision, 479–482
  - witnesses and evidence, 467–471, 473, 474
- “**bargaining agent**”, 177, 199, 388, 500
- certification**
  - application, 142, 177–179, 197
  - appropriate bargaining unit, 185–196
  - “certified bargaining agent”, 143
  - discretionary, 198
  - employer influence, 160
  - employer standing, 183
  - joint application, 161
  - majority support, 162–182
  - representation votes, 177
  - statutory freeze on terms and conditions of employment, 184
  - timeliness requirements, 145–159
- “**certified bargaining agent**”, 143
- Charter challenges**, 94, 95, 464
- collective agreement**
  - compulsory check-off, 296–299
  - defined, 266
  - discipline or dismissal, 279–281
  - expiration of, 328
  - fair administration, 283, 284
  - filing, 288
  - final settlement provision, 274–278
  - grievances, 500
    - dismissals, 502, 503
    - suspensions, 502, 503
    - timing of, 502, 503
  - human rights issues, 287
  - imposed first agreement, 319–327
  - interest arbitration, 303, 304
  - jurisdiction of court, 496

- naming grievance mediator, 498
  - negotiated under federal jurisdiction, 267
  - ongoing consultations, 285, 286
  - prohibited bargaining relationship, 291–293
  - public inspection, 289, 290
  - religious objections, 300–302
  - requiring termination of employee, 521
  - signing, 72
  - term, 270–273
  - termination, 254–257
  - union security, 294, 295
  - writing and delivery, 268, 269
- collective bargaining**
- defined, 247
  - duty to meet, 252, 253
  - employer disclosure of information, 258–262
  - exclusive authority of bargaining agent, 199–202
  - final offer selection, 385, 386
  - good faith bargaining, 264, 265, 329, 330
  - imposed first agreement, 319–327
  - mediator, appointment of, 356
  - notice to bargain, 203–205, 246, 248–251
  - prohibited bargaining relationship, 291–293
  - protected freedoms, 92–124
  - ratification vote, 177, 387–396
  - right to membership in employers’ organization, 93
  - right to union membership, 92
  - statutory freeze on terms and conditions of employment, 305–308
  - suspension, 263
  - termination of collective agreement, 254–257
  - trade union access to employees, 96–108
  - voting
    - • generally, 394
    - • notice, 388
    - • requirement for conducting, 390
- compulsory check-off**, 296–299
- conciliation and mediation**
- casting vote, 370, 388
  - conciliation board, 342–353, 363–365, 384
  - conciliation officer, 333–341
  - conferring with parties, 367
  - disclosure of information, 372
  - enforcing recommendations, 383
  - failure to co-operate, 354, 355
  - generally, 333, 366
  - inspection, 375
  - interrogation, 375
  - majority decision, 370
  - mediator, 356–365, 384
  - offence, 373
  - powers, 371
  - quorum, 369
  - report, 376–382
  - sittings, 368
  - witness expense allowance, 374
- economic conflict**
- charter rights, 405
  - discrimination, 413
  - freedom of expression, 114, 447
  - imposed first collective agreement, 321
  - lockout, 328, 407, 435
  - offences and penalties, 440–444
  - permanent replacement workers, 414



## INDEX

---

- picketing, 445–449
- freedom of expression, 114, 447
- permissible vs. impermissible, 448
- professional strikebreaker, 415, 416
- prohibited strike and lockout, 401–403
- refusal to do struck work, 430
- refusal to facilitate struck employer, 419–429
- reinstatement of employees, 434, 437, 438
- strike, 328, 404, 405, 406, 408–412, 417
- strike-related misconduct, 417, 418
- threatening pension or insurance benefits, 431, 432
- timeliness, 399, 400
- voting on last offer, 388, 397, 398
- “**employee**”
  - confidential capacity, 129
  - determining status, 126, 127
  - generally, 125
  - management functions, 128
  - professional employee, 130
- “**employer**”
  - common employer, 134–137
  - generally, 133
  - successor rights and obligations, 215–229
- employers’ organization**
  - defined, 140
  - right to membership, 93
- fair representation**, 206–211, 545
- freedom of association**, 94
- freedom of expression**, 114, 447
- grievance mediation**
  - decision, 509–516
  - dismissals, 502, 503
  - mediator, 497–499, 508
  - referral to board, 232, 500–507
    - timing of, 502, 503
  - report, 508
  - suspensions, 502, 503
- “**individual**”, 132
- industrial inquiry commissions**, 80–83
- judicial review**
  - constitutional jurisdiction, 84
  - court referring question to board, 90
  - generally, 85, 87, 207
  - jurisdictional error, 491
  - privative clause, 86
  - record, 91
  - reference to Court of Appeal, 88
  - standing of board, 89
- jurisdiction**, 60, 228
- Labour Relations Act**
  - application, 2, 3
  - generally, 1, 4, 331
  - purpose, 5
- lockout**, *see* economic conflict
- Manitoba Labour Board**
  - ancillary powers, 54, 55
  - annual report, 18, 19
  - application or complaint, 50, 59, 72, 197
  - appointment, 9–12
  - Charter challenges, 94, 95, 464
  - completion of duties, 14
  - compellability, 70
  - compliance order, 547
  - composition, 7
  - consent order, 53

- consent to prosecution, 556, 557, 559
  - decisions, 27–29, 64, 230
  - defects in form, 77
  - deferral to arbitration, 51
  - determination of questions, 59
  - disqualification of members, 15
  - enforcement and prosecution, 545–560
  - evidence, 40–45
  - fees, 29
  - generally, 6
  - hearings, 32–34, 476
  - information, 558, 560
  - interference with process, 546
  - judicial enforcement, 548, 549
  - jurisdiction, 60, 228
  - limitation on liability, 71
  - notices, 72
  - oath of office, 13
  - offences, 550–555
  - orders, 64, 230
  - panels, 22–24
  - policy discussions, 25
  - power to investigate, 46–49
  - practice and procedure, 30, 31, 54–61
  - presiding officer, 20
  - quorum, 26
  - rehearing, 64
  - review of orders, 62–69
  - rules of procedure, 31, 64, 230
  - salary and expenses, 16, 17
  - service of notices and documents, 73–76
  - settlements, 52, 53
  - substitute chair, 21
  - successor employer determination, 228
  - technical irregularities, 77
  - tenure, 8
  - witnesses, 35–39
- ministerial powers and duties**
- generally, 78, 79
  - industrial inquiry commissions, 80–83
- modifying or revoking bargaining rights**
- abandonment, 231, 232
  - discretion of board, 244
  - effect, 245
  - employee choice, 233–239
  - fraud, 240, 241
  - modifying bargaining unit, 230
  - voluntary recognition, 242, 243
- picketing**, *see* economic conflict
- professional employees**, 131
- prohibited employer conduct**
- discrimination, 115–118
  - employer speech, 113
  - interference or participation, 109–111
  - interrogation, 121
  - yellow dog contract, 119, 120
- prohibited union conduct**, 122–124
- Public School Act**, 3, 282
- religious objections**, 300–302
- strike**, *see* economic conflict
- successor rights and obligations**
- attaching assets, 229
  - generally, 219, 223
  - hearing, 224
  - sale of employer, 215–225, 15, 16
  - successor employer determinations, 228
  - trade union reorganization, 212–214

## INDEX

---

- technological change**
  - arbitration, 313–316
  - defined, 309
  - exemptions, 317, 318
  - failure to serve notice, 315, 316
  - notice, 310, 311
  - notice to commence collective bargaining, 312
- trade unions**
  - access to employees, 96–108
  - “bargaining agent”, 199
  - defined, 138
  - dues, 58
  - duty of fair representation, 206–210, 211, 545
  - financial/compensation statements, 58
  - formation, 139
  - liability, 522
  - membership, 92, 517, 518, 520
  - successor rights and obligations, 212–214
- unfair labour practices**
  - burden of proof, 535
  - declining further action, 532
  - duty of fair representation, 206–211
  - expelling or suspending union member, 518, 519
  - final finding, 534
  - final offer selection, 386.1
  - freedom of expression, interference with, 114
  - generally, 423
  - hearing, 530, 531
  - hiring permanent replacement workers, 414
  - interim order, 533
  - jurisdiction of board, 524
  - not offences, 525
  - parties, 527
  - penalizing refusal to participate in illegal strike, 433
  - pension or insurance benefits, 431, 432
  - professional strikebreakers, 415, 416
  - refusal to reinstate after strike or lockout, 434–439
  - remedies, 536–544
  - representation vote, interference in, 112
  - requiring termination of employee, 520
  - settlement efforts, 528, 529
  - statutory freeze on terms and conditions of employment, 184
  - strike-related misconduct, 417, 418
  - timeliness, 526
- union security**, 294, 295
- voluntary recognition**
  - “bargaining agent”, 177, 199
  - generally, 141
  - revocation of bargaining rights, 242, 243
- voting**
  - generally, 394
  - notice, 388
  - requirement for conducting, 390

## Index to Labour Law — Saskatchewan

(All references are to paragraph numbers.)

- access to employees by trade union**, 100
- arbitration**
- human rights, 561
  - judicial review, 553
  - jurisdiction of arbitrator, 562
  - jurisdiction of court, 547, 548, 557
  - legislation, 545
  - powers of arbitrator, 554–556
  - procedure, 549–552, 558, 559
  - standard of review, 546
  - termination of employment, 560
- bargaining rights**
- abandonment of bargaining rights, 406–408
  - amalgamating order, 395
  - amendment of certification order, 386, 388
  - board order to rescind, 409–423
  - craft unit, 396
  - enlarging bargaining unit, 389, 405
  - fraud, orders obtained by, 424–427
  - modifying bargaining rights, 386–405
  - provisional determination, 391
  - *res judicata*, 394
  - successorship of, 387
- bargaining unit**
- application for certification, 257
  - appropriateness, 260–280
  - build-up principle, 280
  - construction industry, 259
  - definition, 256
  - exclusion of supervisory employees, 258
  - successorship, 275
- certification order**
- anniversary date, 217
  - application for, 209
  - effect of, 288–290
  - employer interference, 218, 219
  - second application, 213
  - timeliness, 210–217
  - withdrawal of application, 211
- Charter rights**, 160–164, 289
- collective agreement**
- content of, 447
  - filing of, 454
  - human rights protections, 453
  - interpretation of, 449
  - parties to, 448
  - term of, 450–452
- collective bargaining**, *see also* duty to bargain collectively
- dues collection, 467–469
  - duty to bargain, 435–438
  - employer’s last offer, acceptance of, 476
  - first agreements, 446
  - legislation, 1
  - notice to bargain, 428–434
  - prohibited bargaining relationships, 445
  - ratification votes, 474, 475
  - religious objections to, 470–473
  - rights of employees, 98
  - statutory freeze on employment conditions, 439–444
  - union security, 455–466

- conciliation board**, 492–496
- constitution, fair procedure under**, 571–574
- construction industry**
  - bargaining rights, 281–287
  - bargaining unit, 259
  - legislation, 2
  - representative employers’ organization, 282–287
  - rights of unionized employers, 99
  - strike and lockout, 543, 544
  - successorship rights, 384
- councils of local unions**
  - agreement determining council, 344
  - fees, 345
  - grievances, 347
  - rights and duties of, 346
- duty of fair representation**
  - bad faith, 325, 326
  - board involvement, 332, 333, 335
  - breach of duty, 327–331, 568, 569
  - discrimination, 565
  - excluded persons, 570
  - former employee, representation of, 334
  - general, 323, 324
  - grievance, 567
  - member rights, 564–566
- duty to bargain collectively**
  - breach of duty, 301–322
  - circumvention of union, 303
  - creation of, 294
  - duty to disclose, 299, 300
  - employer’s obligations, 299
  - failure or refusal to bargain, 291, 292
  - impasse, 301, 302
  - legislation, 293
  - nature of duty, 295–297
  - statutory time limits, 298
  - wages, unilateral changes to, 304–306
- economic conflict**
  - benefits, protection of, 533–535
  - construction industry strike and lockout, 543, 544
  - hiring replacements, 536
  - lockout, 523, 524
  - notice of strike, 514–517
  - picketing, 537–542
  - preservation of employee status, 529–532
  - prohibited employer discrimination, 526–528
  - strike, 517–522, 525
  - strike vote, 507–513
  - timeliness of strike, 500–506
- employees and unions, prohibited conduct of**
  - denial of membership, 575–577
  - denial of rights of members by union, 158
  - expulsion from union membership, 159
  - interference, 149
  - membership in multiple unions, 156
  - strike without vote, 150
  - termination of employment, 151
  - unfair labour practices, 151–154
  - union’s constitution, 155
  - waiver of initiation fees, 157
- employees, definition of**
  - deemed employee by board, 169

## INDEX

---

- employees, definition of (*cont'd*)
  - dismissed employee subject to grievance or arbitration, 171
  - during strike or lock-out, 170
  - employed outside of province, 166
  - excluded due to confidential capacity of duties, 177
  - general, 165
  - independent contractor, 167
  - management company, employee of, 168
  - managerial functions, 172–176
- employers, communication of facts and opinions by**, 130–139
- employers, definition of**
  - contractor, 180, 184
  - contradictory definitions, 186
  - corporate veil, piercing of, 185
  - criteria for determining, 181
  - ecclesiastical organizations, 179
  - general, 178
  - Indian band council, 183
  - joint venture, 182
- employers, prohibited conduct of**
  - assignment of job duties, 115
  - censure for insubordination, 122, 125
  - communication, 130–139
  - contracting out, 113, 114
  - contributing support, 140–144
  - denial of benefits, 146–148
  - discharge of employee, 117–121
  - discriminatory hiring, 123
  - industrial espionage, 129
  - interference, 101–106, 124, 126–128
  - layoff, 119
  - unfair labour practices, 107–112, 116, 119–121
  - yellow dog contract, 145
- employment terms and conditions, statutory freeze of**, 254, 255
- enforcement and prosecution**, 627–634
- firefighters**, 354–358
- grievance mediation**, 563
- health sector bargaining**, 350–353
- industrial dispute commission**, 86–88
- labour management actions**, 635
- labour organization, definition of**, 189
- Labour Relations Board**
  - amendment of decisions, 76
  - amendment of proceedings, 33–38
  - annual report, 78
  - appeal brought by board, 95
  - appeal of decisions, 75, 90
  - compellability of members, 96, 97
  - composition, 8, 9
  - contempt, findings of, 44, 45
  - decisions of, 13–16
  - declarations regarding employers, 43
  - definition of, 207
  - dispute resolution, 19–21
  - evidence, 50–59
  - executive officer, 17, 18
  - *ex parte* applications, 22
  - filing, 62–64
  - forms, 61, 65
  - interim orders, 40–42

Labour Relations Board (*cont'd*)

- judicial review of decisions, 77, 89, 91, 94
- jurisdiction of, 5, 7, 39
- notice of application, 66, 67
- oath of office, 11
- policy discussions, 92, 93
- pre-employment agreement, 7
- procedural powers, 23–32
- public hearings, 46–48
- quorum, 12
- remuneration of members, 10
- replies, 68–72
- service, 60
- time limits, 73–74
- witness fees, 49

**labour relations officer**, 491

**majority support of union by employees**

- board determination of, 220–227
- campaign literature, 253
- certification order, 242
- conduct of vote, 243–251
- evidence of, 221, 223, 227, 230–233
- presumption of, 224
- representation vote, 228–240
- secrecy of vote, 252
- voter eligibility, 234–240
- voting procedure, 241–253
- voting results, 241

**mediation**, 497–499

**minister**

- administration of *Saskatchewan Employment Act*, 79
- definition of, 206
- industrial dispute commission, 86–88

- powers of, 80–88

**organizational change**

- definition of, 477, 479, 480
- notice, 483–490
- significant number of employees, 481, 482

**pre-job conferences**, 349

**project agreements**, 348

**representative employers' organization**

- amalgamation of, 342
- conduct of, 343
- definition of, 205
- effect of designation, 336–340
- related employers, 341
- responsibilities of, 339

*Saskatchewan Employment Act*

- application of, 3
- construction industry, 2
- crown, 6
- enactment of, 1
- minister responsible for, 79
- violations of, 4

**successor rights and obligations**

- construction industry, 384
- dual unionism, 382
- jurisdiction of board, 385
- public to private sector, 383
- purpose of, 368–369
- related employers, 365, 366
- sale of employer, 361–385
- successorship, finding of, 372–377, 379–381
- union reorganization, 359, 360

**supervisory employee, definition of**, 187, 188

**technological change**

- definition of, 477, 478

## INDEX

---

- technological change (*cont'd*)
  - notice, 483–490
  - significant number of employees, 481, 482
- trade division, definition of**, 201
- unfair labour practice complaints**
  - board authority, 582
  - burden of proof, 591–600
  - court jurisdiction, 584
  - dismissal of complaint, 586
  - improper intent, 587
  - legislation, 583
  - other forums, deferral to, 601–606
  - regulations, 585
  - remedies, 607–626
  - timeliness, 588–590
- union, definition of**
  - anti-union employee association, 196
  - company-dominated organization, 197–199
  - constitution, 194
  - criteria for determining, 193
  - delegation of responsibilities, 195
  - finding that organization not union, effect of, 200
  - general, 190
  - locals, 191, 192
- union, financial statement of**, 581
- unionized employee, definition of**, 202
- unionized employer, definition of**, 203, 204
- union membership, loss of**, 578–580
- unions, prohibited conduct of**, *see* employees and unions, prohibited conduct of
- voluntary recognition of union**, 208



## Index to Landlord and Tenant

(All references are to paragraph numbers.)

### **abandonment**

- Alberta, 778–783
- British Columbia, 784, 785
- constructive abandonment, 777
- Manitoba, 786, 787
- mitigate, duty to, 773
- “reasonable legal fees”, 776
- remedies, common law, 769–777
- residential premises, 778–790
- Saskatchewan, 788–790

### **acceleration clauses, see rent**

### **access to residential premises, by landlord**

- Alberta, 280
- British Columbia, 281, 282
- Manitoba, 283, 284
- Saskatchewan, 285, 286

### **agreements for lease**

- general, 238–240
- requisites of valid agreement, 241–245

### **agreements for lease (requisites of valid agreement)**

- commencement of term, 244
- consensus ad idem, 241
- duration of term, 244
- letter, 243
- writing, 242

### **Alberta, see statutes, application of (Alberta)**

### **alterations and improvements**

- covenant to pay, 324–327
- general, 322, 323

### **apportionment of rent**

- crop payment lease, 456
- estate administrator, 454

- general, 451
- gross rent, 455
- notice to surrender, 452
- reversion, 453
- undertenant, tenant for life, 454

### **appurtenances, see content of lease**

### **assignment and subletting, see also assignment and subletting (tenant parting with premises)**

- assignment by trustee in bankruptcy, 571, 572
- assignment of reversion, 515–523
- assignment on bankruptcy, 510–514
- assignment on death, 506–509
- tenant parting with premises, 524–570

### **assignment and subletting (tenant parting with premises)**

- amalgamation by corporate tenant, 542
- assignment and sublease distinguished, 528–533
- collateral security, 544
- consent, withholding of, 550, 553–564
- corporate tax legislation, failure to comply, 541
- general, 524–527
- liability for rent, 547
- non-residential tenancies, 534–550
- partnership lease, 540
- remedies, 565–570
- residential tenancies, 551, 552

### **attornment, tenancy by, 52–56**

**bankruptcy, assignment of**, *see* assignment and subletting

**British Columbia**, *see* statutes, application of (British Columbia)

**commencement of term**, 170, 173–175

**content of lease**

- apartment building, 167
- appurtenances, 163–169
- commencement of term, 170–178
- covenants, 180–209
- duration of term, 170–178
- general, 152, 153
- parties, identity of, 154–157
- premises, lease of, 158–162
- reservation of rent, 179
- shopping centre, 168
- water lot, 169

**covenant (for quiet enjoyment)**

- breach of covenant, 263–269
- express covenants, 260, 261
- implied covenants, 260–262
- nature of covenant, 258, 259
- nuisance by landlord, 264
- physical interference, 263
- remedies for breach, 270–279
- whole premises, enjoyment of, 265

**covenant (to insure)**

- additional insurance, 423
- fire, 421, 422, 424
- subrogated claim, 424

**covenant (to pay taxes)**

- Alberta Land Titles Act, 414
- bankruptcy of tenant, 417
- electricity, 416
- fixtures, 415
- landlord's obligation, 413

- municipal taxes, 417
- shopping centre, 418, 419

**covenant (to repair)**, *see also* repairs and maintenance, tenant

- breach, damages for, 358–360
- commercial premises, 351
- covenant, particular forms, 349–352
- covenant to leave in repair, 345–348
- defects, 350
- farm lands, 349
- fire, exception for, 340, 341
- fixtures, repair of, 344
- notice to repair, 353
- remedy, landlord's right to, 354–357
- tempest, exception for, 342, 343
- wear and tear, exception for, 334–339

**covenants**

- condition distinguished, 180
- dependent, 181–184
- independent, 181–184
- usual covenants, 185, 186

**covenants (implied)**

- common law, at, 187–192
- construction of lease, by, 200–206
- permitted in residential tenancies, 207–209
- statute, by, 193–199

**covenants (running with land)**

- collateral covenants, 586–588
- covenants in esse, 584
- covenants in posse, 584
- express covenants, 577–584
- general, 573–576
- Grantees of Reversions Act, 574–576

## INDEX

---

- hotelkeeper, covenant by, 588
- implied covenants, 585
- security deposits, 589
- taxes, covenant to pay, 579
- cultivation, husband-like**
  - covenants, other, 385–387
  - damages, 377
  - default to cultivate, 378
  - forfeiture of farm lease, 376
  - general, 374–378
  - pasturing, 385
  - summer fallow, covenant to, 379–384
  - threshing, 387
  - trees, 386
- damages, action for**
  - covenants for quiet enjoyment, breach of, 270–274
- death, assignment on, *see* assignment and subletting**
- deposit, *see* security deposits**
- discriminatory practice, 43**
- duration of term, 171, 172, 176–178**
- essential services, provision of**
  - Alberta, 292
  - breach of covenant at common law, 291
  - British Columbia, 293
  - Manitoba, 294
  - Saskatchewan, 295
  - statutory obligations, 292–295
- estoppel, tenancy by, 57–65**
- family arrangements, 35–38**
- fitness and habitability, *see* landlord, obligations of**
- fixtures**
  - chattels becoming fixtures, 952–955
  - general, 951
  - landlord's fixtures, 956, 957
  - lease, provisions in, 958–962
  - right to remove fixtures, 963–968
  - tenant's fixtures, 956, 957
- forfeiture and re-entry, *see also* forfeiture, relief against**
  - acceleration of rent, 710
  - breach, notice of, 728–738
  - covenant, breach of, 729–733
  - distrain, landlord's ability to, 713
  - distress, remedy of, 711, 712
  - election to forfeit, 702
  - election to forfeit, evidence of, 703–714
  - forfeiture, court leaning against, 693, 694
  - forfeiture, waiver of, 717–727
  - general, 683–690
  - goods, seizure of, 709
  - locks, changing of, 708
  - non-payment of rent, 728
  - notice, sufficiency of, 734–738
  - re-entry, right to effect, 695–701
  - retraction, 715, 716
  - tenant, disclaimer by, 691
  - trustee in bankruptcy, disclaimer by, 692
  - unequivocal acts, 704
- forfeiture, relief against**
  - court, power of, 739–747
  - covenant, breach of, 755–764
  - factors, 740
  - persistent late payment of rent, 751
  - non-payment of rent, 748–754
  - practice, 766–768
  - re-entry, relief after, 765

- unconscionable transaction against landlord, 752
- form, requisites of**
  - defective lease, giving effect to, 216–219
  - general, 210
  - land titles system, leases under, 224, 225
  - residential tenancy agreements, 226–228
  - sealing, 215
  - short form of lease, 220–223
  - statutory forms, 220–228
  - statutory requirements, 211–219
  - writing, 211–214
- implied tenancy, year to year**, 82–88
- improvements**, *see* alterations and improvements
- injunction**
  - covenant for quiet enjoyment, breach of, 277–279
- landlord, obligations of**, *see also* access to residential premises; alterations and improvements; covenant for quiet enjoyment; essential services, provision of; locks and security devices; remedies for breach (covenant for quiet enjoyment); repairs and maintenance, landlord
  - access to residential premises, 280–286
  - alterations, 322–327
  - covenant for quiet enjoyment, 258–279
  - essential services, provision of, 291–295
  - fitness, 247–251
  - habitability, 247–251
  - improvements, 322–327
  - locks and security devices, 287–290
  - maintenance, 296–321
  - notice of landlord, 246
  - relocation, 328
  - repairs, 296–321
- landlord, obligations of (fitness and habitability)**
  - commercial lease, 250, 251
  - elevator service, 253
  - furnished premises, 252–255
  - residential premises, 256, 257
  - unfurnished premises, 247–251
- lease**, *see* content of lease; tenancy agreements
- lease vs. licence**, 44–50
- lease vs. profit à prendre**, 51
- licence vs. lease**, 44–50
- locks and security devices**
  - Alberta, 287
  - British Columbia, 288
  - covenants running with the land, 589
  - Manitoba, 289
  - Saskatchewan, 290
  - tenant, obligations of, 412
- maintenance**, *see* repairs and maintenance, landlord; repairs and maintenance, tenant
- Manitoba**, *see* statutes, application of (Manitoba)
- merger**, *see also* surrender of lease
  - general, 643
  - subtenancies, effect on, 681, 682
- mortgagees and mortgagors**
  - mortgagee, power to lease, 24–27

- mortgagor, power to lease, 28–30
- non-citizens**, 39–42
- notice to quit, termination by**, *see* termination, notice to quit
- options to purchase**, *see also* renewals and options
  - damages for breach, 642
  - enforceability, 637–641
  - general, 627–636
  - vendor and purchaser, 629
- parties**
  - agents, 19, 20
  - discriminatory practices, 43
  - family arrangements, 35–38
  - general, 12–15
  - infants, 21–23
  - mortgagee, power to lease, 24–27
  - mortgagor, power to lease, 28–30
  - non-citizens, 39–42
  - trustee as landlord, 31
  - trustee as tenant, 32–34
  - unincorporated bodies, 16–18
- periodic tenancies, less than a year**, 89–92
- profit à prendre vs. lease**, 51
- rectification**
  - assignment, 235
  - evidence, 236, 237
  - mutual mistake, 233
  - requirements, 234
- re-entry**, *see* forfeiture and re-entry
- relationship (landlord and tenant)**
  - attornment, tenancy by, 52–56
  - burden of proof, 6
  - creation of relationship, 1–11
  - discriminatory practices, 43
  - estoppel, tenancy by, 57–65
  - family arrangements, 35–38
  - mortgagee, power to lease, 24–27
  - mortgagor, power to lease, 28–30
  - non-citizens, 39–42
  - obligation, mutual, 10
  - parties, agents, 19, 20
  - parties, general, 12–15
  - parties, infants, 21–23
  - parties, intention of, 3
  - parties, unincorporated bodies, 16–18
  - purchase, option to, 4
  - trustee in bankruptcy, 31–34
  - void lease, 9
- relocation**, 328
- remedies for breach (covenant for quiet enjoyment)**, *see also* covenant for quiet enjoyment; landlord, obligations of (fitness and habitability)
  - action for damages, 270–274
  - injunction, 277–279
  - suspension of rent, 275, 276
- remedies, statutory (Alberta)**, 865–876
- remedies, statutory (British Columbia)**
  - breach of covenant, remedy for, commercial tenancies, 885–888
  - distress, commercial tenancies, 889, 890
  - jurisdiction, residential tenancies, 891–896
  - overholding tenant, commercial tenancies, 877–884
  - procedure, 897–901

**remedies, statutory (Manitoba)**

- general, residential tenancies, 914, 915
- mediation by rentalsman, residential tenancies, 918–925
- non-payment of rent, proceedings for, non-residential tenancies, 910–913
- overholding tenant, non-residential tenancies, 902–913
- overholding tenant, residential tenancies, 916, 917

**remedies, statutory (Saskatchewan)**

- non-residential tenancies, 926–941
- notice of motion, non-residential tenancies, 928, 929
- overholding tenant, non-residential tenancies, 926
- Provincial Mediation Board, 937–940
- residential tenancies, 942–950

**renewals and options, *see also* options to purchase**

- absentees, renewal by, 605
- acceptance of rent, renewal by, 590–593
- conditions precedent, 614
- economic distress, 613
- franchise, 617
- notification, 621
- option to renew, enforceability of, 606–621
- options to purchase, 627–642
- perpetual renewal, 625
- rental rate, 623
- residential tenancies, 603, 604
- right to renew, 594–602
- rule against perpetuities, exception to, 626
- terms of renewal, 622–626

- unconscionability, 613
- undue influence, 613

**rent, *see also* rent (apportionment of); rent (landlord's priority); rent (notice of increase); rent (suspension of); security deposits**

- acceleration clauses, 461–464
- action to recover, 492–494
- additional rent, 447
- Alberta, assignment of rents payable, 426
- allowances, 466–469
- apportionment, 451–456
- appropriation, 427
- British Columbia, overholding tenant, 442
- commercial lease, periodic review, 450
- covenant, enforceability of, 444–450
- “current market rate”, 445
- deductions, 466–469
- eviction, 441
- “fair rent”, 448
- income, gross monthly, 446
- increase, notice of, 486–491
- labour, payment in, 429
- late payments, acceptance of, 440
- liability of tenant, 435
- landlord's priority, 478–485
- manner of payment, 457, 458
- mining lease, royalties payable, 431
- nature of rent, 425–434
- operating expenses, 447, 449
- obligation to pay, 435–443
- obligation to pay, discharged, 437, 438
- place of payment, 457, 458
- post-dated cheques, 465

## INDEX

---

- “premium”, 432
  - reduced rent, 439
  - refusal of rent by landlord, 440
  - refusal to pay, 436
  - second lease, 428
  - security deposits, 499–505
  - statute, defined by, 434
  - surrender of lease, 441
  - suspension of rent, 470–477
  - taxes as rent, 430
  - third party, 443
  - time for payment, 459, 460
  - “triple net basis”, 433
  - use and occupation, recovery for, 495–498
  - waiver of, 439
- rent (apportionment of)**, *see* apportionment of rent
- rent (landlord’s priority)**
- bankruptcy of tenant, 478–480
  - crop payments, 481–485
- rent (notice of increase)**
- Alberta, 486
  - British Columbia, 487, 488
  - Manitoba, 489, 490
  - Saskatchewan, 491
- rent (suspension of)**
- abatement of rent, 476
  - destruction of premises, 475
  - eviction, suspension on, 470–473
  - fire, 477
- repairs and maintenance (landlord)**
- access, common means of, 303–306
  - Alberta, 307–309
  - British Columbia, 310–315
  - elevator, 204
  - Manitoba, 316–319
  - non-residential premises, 296–306
  - residential premises, 307–321
  - Saskatchewan, 320–321
  - sidewalk, 305
- repairs and maintenance (tenant)**, *see also* covenant (to repair)
- covenant, particular forms, 349–352
  - covenant to leave in repair, 345–348
  - covenant to repair, 334–360
  - damages for breach, 358–360
  - defects, structural, 350, 351
  - farm lands, 349
  - fire, exception for, 340, 341
  - fixtures, repair of, 344
  - notice to repair, 353
  - obligation of tenant-like user, 329–333
  - oil, 332
  - plumbing, 331
  - remedy, landlord’s right to, 354–357
  - residential premises, 361–363
  - tempest, 342, 343
  - vermin, 330
  - wear and tear, exception for, 334–339
- reservation of rent**, 179
- restrictions on user**
- Alberta, 409
  - British Columbia, 404
  - Criminal Code, 406
  - grocery store, 396, 403
  - fitness facility, 394
  - injunction, 402, 405
  - language training school, 395
  - Manitoba, 403

- prohibited uses, 406–411
- restaurants, 391, 392
- restrictive covenants, 388–405
- “restrictive use”, defined, 400
- Saskatchewan, 410
- shopping centre, 390, 393, 398, 399, 403, 404
- statutory form of lease, 407, 408
- trade, restraint of, 389
- reversion**, *see* covenants (running with land)
- reversion, assignment of**, *see* assignment and subletting
- right to possession, tenant**
  - entry under lease, 95, 96
  - rights before entry, 93, 94
- Saskatchewan**, *see* statutes, application of (Saskatchewan)
- security deposits**
  - Alberta, 502, 503
  - British Columbia, 505
  - fiduciary relationship, 504
  - interest required, 500
  - Manitoba, 501
  - offence, 499
  - pet damage deposit, 505
  - return of, 502
  - Saskatchewan, 503
- security devices**, *see* locks and security devices
- statutes, application of (Alberta)**
  - abandonment, 778–783
  - access to residential premises, landlord, 280
  - assignment by trustee in bankruptcy, 572
  - assignment on bankruptcy, 511
  - assignment or subletting, consent to, 551
  - content of lease, 153
- contracting out, 103
- covenants implied by statute, 193–195, 199
- covenant to pay taxes, 414
- Crown, binding on, 104
- duration of term, 171
- essential services, provision of, 292
- fitness and habitability, residential premises, 256
- Grantees of Reversions Act, 575
- landlord, notice of, 246
- land titles system, leases under, 224
- locks and security devices, 287
- mobile home sites tenancies, 99–102, 106, 108
- notice to terminate, residential tenancies, 822–832, 850, 858, 859
- prohibited uses, 409
- regulations, 105–108
- remedies, statutory, 865–876
- “rent”, 434
- rents, assignment of, 426
- rent, notice of increase, 486
- repairs and maintenance, 307–309
- residential tenancies, 97, 98, 105, 107
- security deposits, 502, 503
- waiver, notice to quit, 818
- statutes, application of (British Columbia)**
  - abandonment, 784, 785
  - access to residential premises, 281, 282
  - amalgamation by corporate tenant, 542
  - assignment or subletting, consent to, 551
  - assignment on bankruptcy, 512



## INDEX

---

- Commercial Tenancy Act, 109
- contracting out, 114
- covenants, dependent and independent, 183
- covenants implied by statute, 196, 197
- covenants permitted in residential tenancies, 208
- duty of reasonable inspection, 362
- essential services, provision of, 293
- fitness and habitability, residential premises, 256
- forfeiture, relief from, 746
- locks and security devices, 288
- non-residential tenancies, 109–113
- notice to terminate, residential tenancies, 833–838, 851, 860, 861
- overholding tenant, 442
- regulations, 115
- remedies, statutory, commercial tenancies, 877–890
- remedies, statutory, residential tenancies, 891–901
- “rent”, 434
- rent, notice of increase, 487, 488
- repairs and maintenance, 310–315
- residential tenancies, 109–115
- restrictive covenants, 404
- right of first refusal to land, 641
- security deposit, 505
- short form of lease, 221
- tenancy agreement, 111
- time, 151
- **statutes, application of (Manitoba)**
  - abandonment, 786, 787
  - access to residential premises, landlord, 283, 284
  - assignment on bankruptcy, 512
  - assignment or subletting, consent to, 551
  - assignment or subletting, non-residential tenancies, 534
  - covenants, dependent and independent, 184
  - covenants implied by construction of lease, 206
  - covenants implied by statute, 199
  - covenants in esse, 584
  - covenants in posse, 584
  - covenants permitted in residential tenancies, 209
  - Crown, binding on, 121
  - distrain, landlord’s ability to, 713
  - essential services, provision of, 294
  - fitness and habitability, residential premises, 256, 257
  - forfeiture, right of for breach of covenant, 730
  - “landlord”, 118
  - land titles system, leases under, 225
  - Life Leases Act, 123, 124
  - locks and security devices, 289
  - non-residential tenancies, 116–120
  - notice to terminate, residential tenancies, 839–846, 852, 862–864
  - re-entry, for breach of covenant, 730
  - re-entry, for non-payment of rent, 689
  - registration of lease, 232
  - regulations, 122

- remedies, statutory, non-residential tenancies, 902–913
- remedies, statutory, residential tenancies, 914–925
- “rent”, 434
- rent, notice to increase, 489, 490
- “rental unit”, 119
- repairs and maintenance, 316–319
- residential tenancies, 116–122
- residential tenancy agreements, statutory form of, 226, 227
- restrictive covenants, 403
- security deposits, 501
- Short Forms Act, 117
- short form of lease, 222
- “tenancy agreement”, 120
- statutes, application of (Saskatchewan)**
  - abandonment, 789–790
  - access to residential premises, landlord, 285, 286
  - assignment on bankruptcy, 511
  - assignment or subletting, consent to, 551
  - assignment or subletting, non-residential tenancies, 534
  - cleanliness of exterior, 363
  - contracting out, 130, 131
  - covenants implied by statute, 198, 199
  - dependent and independent, 183
  - essential services, provision of, 295
  - fitness and habitability, residential premises, 256
  - forfeiture, right of for breach of covenant, 730
  - forfeiture, right of for non-payment of rent, 754
  - “landlord”, 129
  - lease, 135
  - locks and security devices, 290
  - non-residential tenancies, 125–129
  - notice to terminate, residential tenancies, 847–849, 853
  - prohibited uses, 410
  - re-entry, for breach of covenant, 730
  - re-entry, for non-payment of rent, 689, 754
  - regulations, 132
  - remedies, statutory, non-residential tenancies, 926–941
  - remedies, statutory, residential tenancies, 942–950
  - “rent”, 434
  - rent, notice to increase, 491
  - repairs and maintenance, 320–321
  - “residential property”, 126
  - residential tenancies, 125–129
  - residential tenancy agreements, statutory form of, 228
  - security deposits, 503
  - “tenant”, 509
- sublease**, *see* assignment and subletting; assignment and subletting (tenant parting with premises); surrender of lease
- subletting**, *see* assignment and subletting; assignment and subletting (tenant parting with premises)
- sufferance, tenancy at**, 66–69
- surrender of lease**, *see also* merger
  - deed, surrender by, 651–654
  - effect of surrender, 679, 680
  - general, 644–650
  - keys, delivery of, 646, 670, 671
  - mutual consent, 647
  - notice to quit, 648

## INDEX

---

- operation of law, surrender by, 655–676
  - sublease, surrender of, 677, 678
  - submission to arbitration, 653
  - subtenancies, effect of surrender on, 681, 682
  - “under protest”, 645
- taxes**, *see* covenant (to pay taxes)
- tenancy**
- implied, year to year, 82–88
  - periodic, less than a year, 89–92
  - sufferance, at, 66–69
  - tenant’s right to possession, 93–96
  - will, at, 70–75
  - years, for, 76
  - year to year, from, 77–88
- tenancy agreements**, *see also* content of lease; covenants; covenants (implied); form, requisites of; rectification
- ambiguity, 138, 139
  - habendum clause, 140
  - consent, 147
  - content, 152–209
  - copy to tenant, 229
  - form, requisites of, 210–228
  - intended meaning, 143
  - interpretation, 137–151
  - nature of lease, 133–136
  - oral testimony, 137
  - oral warranty, 146
  - penalty clause, 144
  - punctuation, 141
  - rectification, 233–237
  - registration, 230–232
  - written lease, 145
- tenant, obligations of**, *see also* covenant (to insure); covenant (to repair); cultivation, husband-like; locks and security devices; repairs and maintenance, tenant; restrictions on user; waste
- cultivation, husband-like, 374–387
  - insure, covenant to, 421–424
  - locks, 412
  - maintenance, 329–363
  - pay taxes, covenant to, 413–420
  - repair, covenant to, 334–360
  - repairs, 329–363
  - residential premises, 361–363
  - restrictions on user, 388–411
  - security devices, 412
  - waste, 364–373
- tenant’s right to possession**
- entry under lease, 95, 96
  - rights before entry, 93, 94
- termination, notice to quit (non-residential tenancies)**
- form and content, 804–813
  - notice, none required, 791–793
  - period of notice, 794–803
  - reasonable notice, 794–798
  - statutory provisions, 803
  - stipulation for notice, 799–802
  - waiver, 814–821
- termination, notice to quit (residential tenancies)**
- Alberta, 822–832
  - British Columbia, 833–838
  - form and content, 850–853
  - Manitoba, 839–846
  - notice, giving and receiving, 854–864
  - period of notice, 822–849
  - Saskatchewan, 847–849
- trustee in bankruptcy**
- trustee as landlord, 31
  - trustee as tenant, 32–34

## LANDLORD AND TENANT

---

### **waste**

- ditch, 370
- fire, accidental, 371
- general, 364–366
- permissive waste, 367–373
- vandalism, 369
- voluntary waste, 367–373
- weeds, 373

### **will, tenancy at, 70–75**

### **years, tenancy for, 76**

### **year to year, tenancy from**

- general, 77–81
- implied tenancy, 82–88

## Index to Liens

(All references are to paragraph numbers.)

- builders' liens**, 39
- chattel mortgage, distinguished**, 61
- common carriers, by**, 18
- common law liens**
  - contract excluding, 11
  - defined, 2
  - express agreement, by, 8
  - general, 7, 12
  - implied, 10
  - lien note, distinguished, 63
  - particular, 7
  - standard form contract, in, 8
  - Statute of Frauds not applying, 9
  - trade usage, by, 12–14
- concurrent liens**
  - basis of, 96
  - garagemen, by, 98
  - innkeepers, by, 98
  - vendor of land, by, 97
  - warehousemen, by, 98
- conversion, action for**, 36, 47
- Crown**, 39
- custom, see trade usage, by**
- definitions**
  - common law lien, 2
  - equitable lien, 51
  - general lien, 3
  - legal lien, 2
  - lien note, 62
  - particular lien, 6
  - pledge, 59
  - possessory lien, 2
  - security interest, 65
- duty to repair**, 21
- equitable liens**
  - arising from contract, 53
  - bona fide purchaser for value, 57
  - enforceable by action, 54
  - legal lien, distinguished, 54
  - loss of, 56, 58
  - nature of, 58
  - remedies available, 55
  - trust relationship creating, 52, 87
- garagemen's liens**
  - Alberta, Garage Keepers' Lien Act, 71–77
  - British Columbia, Repairers Lien Act, 78–82
  - Manitoba, Garage Keepers' Act, 83–84
  - Saskatchewan, Commercial Liens Act, 85–95
- general liens**
  - banks, money on deposit in respect of debts owed to bank, 5
  - created by custom, 5, 7, *see also trade usage, by*
  - creditor, by, 38
  - defined, 3
  - innkeepers, lodging and boarding costs, 5
  - lien note, distinguished, 64
  - pledge, distinguished, 60
  - scope of, 4, 40
  - warehousemen, storage charges, 5
- hotelkeepers, see innkeepers, by**
- innkeepers, by**, 5, 17, 18, 30, 37, 98
- labourers, by**, 15, 19
- lien note, distinguished**, 62–64

**lienholders**

- liability of, 45–47
- negligence of, 44
- standard of care of, 44

**loss of lien**

- expiry of limitation period, 58
- inconsistent acts, by, 42, 58
- loss of possession, by, 48
- satisfaction of claim, by, 49
- settlement, by, 50
- waiver, by, 50

**“no lien” clauses, effect of**, 21, 22

**perishable goods**, 36

**Personal Property Security Acts**, 66, 67, 68 (Supp.), 88

**pledge distinguished**, 59, 60

**possession**, *see also* **loss of lien; possessory liens**

- acquired by wrongful act, 29, 43
- agent, by, 26
- essential element, 24
- innkeepers, by, 30, *see also* **innkeepers, by**
- intention, on, 25, 27
- negotiable instruments, of, 30
- regaining, 32
- release of, 27, 28, 31, 33

**possessory liens**, 71–95, *see also* **possession**

**receivers of goods, by**, 15, 16

**remedies**, 35–36

**repairers, by**

- duty to repair, 21

- implied authority to repair, 21, 22
- owner’s consent necessary to, 20
- possession, element of, 26
- right to lien, 15
- seizure, 82

**replevin**, 47

**rights of lienholder**

- inconsistent acts, effect of, 35, 42, 58
- nature of rights, 34, 35
- only for amount due, 40, 45
- passive, 35
- perishable goods, 36
- power of sale, not inherent, 36
- precluded by contract, 11, 43
- retain possession, to, 37
- storage charges excluded, 41
- waiver, 42

**security interest, distinguished**, 65

**statutory liens**

- Alberta, 71–75
- basis of, 69
- British Columbia, 78–81
- garage keepers, 70
- Manitoba, 68, 83, 84
- Saskatchewan, 85–95

**sureties, by**, 15, 23

**trade usage, by**

- basis of lien, 12
- knowledge of, required, 13
- strict proof necessary, 14

**warehousemen, by**, 98

## Index to Limitation of Actions

(All references are to paragraph numbers)

- aboriginal claims**, 56, 320, 321
- absentees**
  - evidentiary burden, 111
  - Manitoba, 110
- acknowledgement of title, debt or cause of action**, 123
  - acknowledgement by agent, 132, 143
  - acknowledgement of debt, 128, 133
  - interest claim, 140, 219
- acquiescence**, *see also* laches and acquiescence
  - defined, 10
  - evidence of, 13
  - legal claims and, 14
  - plaintiff's knowledge, 12
  - pleaded, 15
  - types of, 11
- actions for recovery of money**, 317
- actions for return of personal property (British Columbia)**, 308
- actions of account**, 301
- actions on collateral**, 344
- actions on judgments**
  - domestic judgments, 306–309
  - foreign judgments, 310, 312
- actions with no limitation period, Ontario**, 344, 348
  - prevailing over ultimate limitation periods, 349
- adding or changing parties after expiration of limitation period**, 154, 155
  - Alberta, 158
  - British Columbia, 159
  - family law derivative claim, 193
  - motion to add or change parties, 156
  - Ontario, 154
  - revived corporation, 157
  - Saskatchewan, 160
- adverse possession**, 228, 244–254
  - bona fide purchaser from registered owner, 254
- agreement for purchase and sale of land (Manitoba)**, 278, 279
- agreement to extend limitation period**
  - Alberta, 121
  - Ontario, 122
- arbitration**, 80, 145, 322
  - action to enforce arbitration award, 344, 345
- assault, action for**
  - Ontario, 29
  - British Columbia, 47
  - Manitoba, 21
  - Saskatchewan, 347
- assignment of debt judgment**, 138
- barristers and solicitors**, 212, 213
  - negligence, 79, 214, 215, 341
- bona fide purchaser from registered owner, adverse possession claim and**, 254

- breach of duty (Alberta)**, 69
- breach of trust**
  - British Columbia, 108, 177
- “bring an action” (British Columbia)**, 36
- burden of proof**, 29, 30
  - Discoverability, 30
  - Ontario, 29
  - Saskatchewan, 29
- Canadian Charter of Rights and Freedoms**, 52, 54
  - economic rights, 55
  - security of the person, 55
- cestui que trust*, 241
- chattel mortgage**
  - British Columbia, 286
  - claim against bona fide purchaser, 289
  - Manitoba, 287, 288
- collateral, actions on**, 344, 345
- commencement of limitation period**, 62–69
- conflicting limitation periods**, 40
- constitutional issues**, 49–58
  - aboriginal or treaty rights, 56
  - declarations of constitutional invalidity, 51
  - enforcement of Charter right, 52
  - municipalities and road repair, 54
  - navigation and shipping, 58
  - security of the person, 55
  - special short limitation periods, 53
  - spousal support, 57
  - validity of limitation period in context of Charter claim, 50
- constitutionality of limitation provision**, 94
- construction of limitation legislation**
  - best furtherance of objects, 26
  - generally, 78
  - *in pari materia*, 23
  - Manitoba, 25
  - strict interpretation rule, 24
- contingency or condition precedent on repayment**, 222
- continuous act or omission**, 69
- contract actions**
  - commencement of limitation period and, 62, 220
  - insurance policies, 226
  - promissory notes, 223–225
  - simple contracts, 216, 221
  - termination of limitation period, 227
- corporations, dissolution and revival**, 109
- counterclaim**, 152
- Crown**, 6, 324–332
  - adverse possession claims and, 253
  - Alberta, 327
  - British Columbia, 325
  - defences available, 329, 330
  - federal Crown, 328
  - notice provisions, 331
  - Ontario, 326, 348
  - pleading limitation period, 27
  - Saskatchewan, 327, 350
  - subrogated claim, 332
- damages, plaintiff’s knowledge of**, 170
- “day”**, 32
- death claims (Saskatchewan)**, 20
- debtor, payment of multiple debts**, 139



## INDEX

---

- declaratory action**, 344
- defamation (Manitoba)**, 164
- default in performing demand obligation**, 69
- discoverability rule**, 18
- additional evidence and, 70
  - Alberta, 172, 173
  - British Columbia, 177
  - burden of proof, 30
  - effect of, 75
  - family law derivative action (Ontario), 171
  - fraud, 115–117
  - ignorance of law and, 105
  - latent damage, 169
  - legislation and, 62
  - Manitoba, 63, 81, 82, 179, 180
  - multiple injuries and, 72
  - Ontario, 66, 182
  - predecessor in right, title or interest, 66
  - purpose, 62
  - Saskatchewan, 67–68, 182
  - specific date not related to plaintiff’s knowledge, 64
  - third party claim and, 65
  - tort actions and, 167–170
  - ultimate limitation period in Alberta and, 19
- discriminatory limitation periods**, 53
- distinguishing between procedural and substantive matters**, 47
- doctrine of special circumstances**
- Manitoba, 96
  - Ontario, 91
- domestic judgments**, 306–308
- drainage works (Manitoba)**, 330
- easements**, 255
- Saskatchewan, 256
- employment law**, 59
- enforcement of orders action**, 344
- environmental claims**, 323, 348
- equitable fraud**, 118
- equitable relief actions**, 319
- equity**, 4, 9, 15, 81, 83
- estates**, *see* **trusts and estates**
- estoppel, doctrine of**, 11, 147–149
- motor vehicle accidents and, 196
- expiry of limitation period**, 27, 44–47
- expropriation**, 280
- extension of limitation period**, 76–90
- extension under specified conditions, 77
  - inherent jurisdiction, 76
  - joint tortfeasors, 88
  - Manitoba, 63, 77, 89, 181
  - Ontario and Saskatchewan, 90
  - Ontario family law legislation, 79
  - principles applied, 78
  - time limit fixed, 89
- family law derivative action**, 188–194, 303
- Alberta, 189
  - amending claim to add claimant, 191
  - deceased claimant, 192
  - Ontario, 171, 188, 190
- family law legislation, Ontario**, 38, 79

- family law proceedings**, 304, 348
- fatal accidents legislation**, 5
- federal and provincial limitations periods**
- conflicts between, 8
- federal law**, 49
- fiduciary relationship**, 116, 169
- foreclosure action**, 267–277
- accrual of right of action, 270–277
- foreign judgments**, 310–312
- fraud**, 113–118, 242
- British Columbia, 106, 177
  - burden of proof, 29
  - concealment, 114
  - discoverability, 115
  - equitable fraud, 118
  - fraud or misleading conduct, 113
  - incest and, 119
  - Manitoba, 81, 179
- fraudulent misrepresentation**, 21, 83
- future interest in trust property**, 107
- guarantee**, 216
- health profession corporation (Manitoba)**, 204
- highway actions**, 330, 337
- hospitals**, 18, 163, 205–206
- identity, fraudulent concealment of**, 117
- in pari materia*, 23
- indemnity actions**, 314–316
- injunctions**, 308, 344
- insurance legislation**, 5
- interest on debt**, 219
- interruption of limitation period**, 73
- British Columbia, 103
- joint debtors**, 110, 112
- Manitoba, 129
- judgment creditor**, 138
- judgment for possession of land**, 308
- joint tortfeasors**, 88
- actions between, 185
  - claim for contribution (Alberta), 186
- laches and acquiescence**, 9
- acquiescence, 10
  - clean hands doctrine, 10
  - constitutional division of powers case and, 10
  - non-expiry of limitation period, 10
  - unreasonable delay, 10
- landlord and tenant**, 240, 241
- recovery of possession, 281
  - recovery of rent, 282–284
- latent damage**, 169
- lease of goods**, 127, 285
- lex loci delicti*, 47
- libel and slander legislation**, 5, 187
- limitation periods**
- civil actions, 1
  - criminal actions, 1
  - defined, 1
  - equitable claims and, 9
  - general limitation periods, 4, 302
  - purpose, 2
  - statutory history, 3
- liquidated sum**, 128

## INDEX

---

- litigation guardian**, 97, 102
- malicious prosecution**, 164
- maritime law**, 58
- material facts**, 82, 180
- medical practitioners**, 18,  
198–203
  - battery, 202
  - diligence of solicitor in investigating claim, 201
  - discoverability rule and, 199
  - equitable fraud, 203
  - fiduciary relationship, 203
  - malpractice, 202
  - Manitoba, 200
- misnaming or misdescription of party in pleading**, 150, 154
- money claims (Saskatchewan)**, 20
- “month”**, 33
- mortgage actions**
  - British Columbia, 260
  - foreclosure action, 267–277
  - Manitoba, 257, 261, 262, 264, 266
  - Ontario, 257, 258, 259, 262, 263, 264, 265
- mortgages and title**, 124–126, 241
- motor vehicle claims**
  - estoppel and, 196
  - owner’s liability, 197
  - two-year limitation period, 195
- multiple limitation periods**, 37–39
- municipal law**, 54, 336–339
  - notice provisions, 337, 338, 340–342
- municipality, adverse possession claims and**, 253
- new cause of action**, 153
- new claims**, 150, 151
- new parties**, 150
- notice of claim**
  - conditions precedent and, 61
  - minors and, 60
  - persons under disability and, 60
- onset of disability postponing limitation period (British Columbia)**, 103
- part payment and extension of limitation period**, 123, 131, 134–139
  - assignment of debt judgment, 138
  - burden of proof, 135
  - by cheque or promissory note, 137
  - revival of claim, 136
- penalty, damages or money action**, 313
- person under age of majority**
  - British Columbia, 97, 163
  - notice of claim and, 60
  - Ontario, 22, 97
  - purpose of suspension of limitation period, 99
  - suspension of limitation period, 92
- person under disability**
  - Manitoba, 21, 100, 101
  - mental disability, 96
  - new claims, 150, 151
  - notice of claim and, 60
  - Ontario, 22, 93, 98
  - physical disability, 94

## LIMITATION OF ACTIONS

---

- person under disability (*cont'd*)
  - purpose of suspension of limitation period, 99
  - Saskatchewan, 102
  - suspension of limitation period, 92
- personal injury claims**, 153
- pleading limitation periods**, 27
  - amendments, 28
- postponement of running of limitation period (British Columbia)**, 106
- predecessor in right, title or interest**, 66, 241
- prescriptive easements**, 255
- proceedings with no limitation periods**, 343–350
- professions**, 6
  - British Columbia, 163
- profits a prendre**, 230, 255
  - Saskatchewan, 256
- promissory estoppel**, 147, 148
- psychotherapy**, 169, 207
- public authorities and officers**
  - Manitoba, 332
  - persons protected, 333
  - tort of negligent investigation, 335
- Public Trustee**, 101
- public utilities**, 339
- purchaser of property for value**
  - Ontario, 22
  - Saskatchewan, 20
- real property claims**
  - accrual of right, 231
  - acknowledgement of title, 243, 251
  - adverse possession, 228–254
  - Alberta, 230
  - British Columbia, 229, 230, 308, 346
  - dispossession or discontinuance, 232
  - forfeiture, 235
  - fraud, 242
  - future estates, 236–239
  - land titles system, 230
  - limited estates, 248–250
  - profits a prendre, 230, 255
  - quieting title action, 228
  - Saskatchewan, 230
  - succession of title, 233
  - tax deed, 252
- remedial orders**, 19
  - Alberta, 47
- road repair**, 54, 337
- sale of goods**, 127, 285
- security agreements**, 141
- settlement**, 144–146
  - estoppel and, 147
- sexual abuse/assault claims**, 18, 47, 207–211
  - British Columbia, 163, 208, 347
  - discoverability rule and, 71, 169
  - Manitoba, 21, 209, 343
  - Ontario, 29, 97, 211, 347
  - Saskatchewan, 210, 347
- slander and libel**, 187
- specific statute-created limitation periods**, 6, 7
- spousal support**, 57
- stale claim for debt**, 130
- student loans**, 348
- successor in title**, 175

## INDEX

---

- termination of limitation period**, 74, 184
- contracts and, 227
- third party claim**
- discoverability rule and, 65
- time, computation of**, 31
- day, 32
  - holiday, 34
  - month, 33
  - next business day, 34
  - rules for calculation, 31
  - triggering event, 35
  - year, 33
- title and mortgages**, 124–126
- title to property actions (British Columbia)**, 346
- tort actions**
- Alberta, 162
  - basic two-year period (Alberta), 174, 175
  - British Columbia, 163, 177
  - discoverability rule and, 167, 168
  - libel and slander, 187
  - Manitoba, 164, 179–181
  - notice of claim (Ontario), 187
  - Ontario, 165, 182
  - plaintiff's knowledge of damages, 170
  - Saskatchewan, 166, 182
  - ultimate ten-year period (Alberta), 176
- tort, commencement of limitation period and**, 62
- transition provisions**, 41–46, 48
- British Columbia, 43
  - extending limitation period, 45
  - Ontario, 42
  - reduction of limitation period, 46
  - revision of statute barred claim, 44
- trespass to person**, 347
- trustees**, 142, 163, 297–301
- actions of account, 301
  - defined, 297
  - fraud/conversion, 120, 300
  - Manitoba, 298
- trusts and estates**, 303
- actions against estate, 295
  - actions against trustees, 297–282, 299
  - Alberta, 291
  - British Columbia, 292
  - Manitoba, 293
  - Saskatchewan, 294
  - survival of actions, 290–294
- ultimate limitation periods**, 17
- Alberta, 19, 176
  - British Columbia, 18, 163
  - extension of time and, 83
  - Manitoba, 17, 21, 83, 179
  - Ontario, 22, 69, 98, 349
  - Saskatchewan, 20
- Unsatisfied Judgment Fund (Manitoba)**, 343
- “unsound mind”**, 95
- vicarious liability**, 59
- waiver, doctrine of**, 147–149
- wilful concealment/misleading**, 22, 113, 114
- British Columbia, 106, 177
  - Manitoba, 113, 114, 179
  - Ontario, 113
  - Saskatchewan, 113

## Index to Liquor Control

(All references are to paragraph numbers.)

- advertising**, 60
- beer**, 21, 26
- beverage alcohol**, 26
- boards or commissions**, *see also*  
**licensing**
  - discretion of, 64, 65
  - hearings by, 66
  - judicial review of decisions, 68–70
  - nature of and powers, 61–63
  - suspension of licences, 67
- canvassing**, 60
- Charter of Rights and Freedoms**, 103, 125
- commercial host liability**, 117
- constitutional jurisdiction (federal)**, 2, 5, 14, 18, 19
- constitutional jurisdiction (provincial)**
  - detention of intoxicated persons, 7, 59
  - effect on federal legislation, 6, 14
  - exportation, 6
  - licensing, 12
  - local or private matters, 6, 11, 14
  - offences, 11
  - patent medicines, 9
  - penalties, 10
  - premises, consumption on, 8
  - prohibition, 6
- consumption**, *see* **offences, illegal consumption**
- conversion**, 122, 124
- corporations**
  - parties to offences, 110
  - penalties imposed on, 114
- detention**, 7, 125, 126
- distilling**, 20, 22
- evidence**
  - certificate of analyst, 104
  - general, 97
  - mens rea, 22, 23, 32, 98–100
  - onus of proof, 101–103
- exportation**, 6
- federal powers**, *see* **constitutional jurisdiction**
- forfeiture**
  - effect of order, 87
  - Excise Act, under, 90
  - general powers, 85
  - quashing of order, 74
  - relief from, 91–96
  - scope of order, 86
  - vehicles, 88–90
- harbouring off-shore**, 24
- homemade wine or beer**, 40
- illegal contracts**, 121
- importing**, 1, 13–16
- inspectors**, 75, 77, 79–83
- intemperance**, *see* **prohibition**
- interprovincial shipments**, 14, 15
- intoxicated persons**
  - detention, 7, 125, 126
- legislation**
  - general, 1–4
  - interpretation, 27

- licensees, duties and liability**
- adult entertainment, 50
  - disorderly conduct, 52
  - ejection of patrons, 55, 115, 120
  - intoxicated patrons, 49, 53, 116–120
  - minors, 54
  - safety evaluation, 51
  - vicarious liability, 56, 115, 120
- licensing, *see also* boards or commissions**
- discretion of board or commission, 64, 65
  - general, 12, 25, 61
  - suspension of licence, 67
- liquor, definition, 26, 27**
- local option areas, 28, 29**
- medicinal use, 15, 30, 31**
- minors, *see* offences**
- native people, 17–19**
- obstruction of officer, 71**
- offences, *see also* evidence**
- general, 10
  - harbouring off-shore, 24
  - illegal consumption, 8, 41, 42
  - illegal possession, 22, 23, 34–40
  - illegal purchase, 47, 48
  - illegal sale, 31, 43–46
  - importation, 1, 13–15
  - Indian Act, under, 18, 19
  - manufacture of spirits, 24
  - minors, 22, 32, 33, 47, 54
  - obstruction of officer, 71
  - operation of railway equipment while intoxicated, 12
  - parties to, 109–111
  - public drunkenness, 10, 19, 57–59, 125
  - sale to railway employee, 17
  - stills, operation of, 20, 22
  - trespass, 55
  - unauthorized advertising, 60
  - unauthorized keeping for sale, 45, 46
  - unauthorized soliciting or canvassing for orders, 60
  - unlicensed brewing, 21
- parties, *see* licensees; offences; prosecutions**
- patent medicines, 9**
- peace officers, liability, 124, 125**
- penalties**
- general, 112–114
  - increased penalty for subsequent offence, 108
- penalty, 10**
- plebiscites, 28, 29**
- possession, *see* offences**
- practice and procedure, *see* prosecutions**
- prohibition, 5, 6**
- prosecution, *see also* evidence**
- general procedure, 105
  - limitation periods, 106–108
  - parties, 109–111
- provincial powers, *see* constitutional jurisdiction**
- public drunkenness, 10, 19, 57–59**
- public place, 57**
- purchase, illegal, 47, 48**
- railway employees, 17**
- replevin, 122**
- restoration, 74, 122–124, *see also* forfeiture**
- sacramental liquor, 15, 30**

## INDEX

---

- sale, definition**, 43, *see also*  
**offences**
- searches (warrant, under)**
- authority under, 72–74
  - grounds for obtaining, 72, 73
  - invalidity, effect of, 74
  - necessity for, 72
- searches (warrantless)**
- exigent circumstances, 78
  - licensed premises, 75–77
  - peace officers, by, 75, 76
  - persons, 75, 76
  - residences, 75, 76
- seizure**, *see also* **restoration**
- books and records, 79–83
  - Crown, goods in possession of, 84
  - grounds and procedure, 79
  - vehicles and conveyances, 79–83, 88–90
  - warrant, 75, 79, 124
- statutes**, *see* **constitutional jurisdiction; legislation**
- taxation, Excise Act**, 2
- trade offences**, 14, 15
- transportation**, 13
- trespass**, 55, 122, 123
- vehicles and conveyances**
- forfeiture, 88–90
  - relief from forfeiture, 91–95
  - search, 75
  - seizure, 79–83, 88



## Index to Malicious Prosecution and False Imprisonment

(All references are to paragraph numbers.)

- abduction of child/young person**, 322
- absconding debtors**, *see* **malicious arrest for debt**
- abuse of process/powers/office**, *see* **malicious abuse of process**
- “action on the case”**, 1, 7
- arrest**, *see* **false arrest; false imprisonment; malicious arrest for debt; malicious prosecution (arrest requirements)**
- bankruptcy proceedings**, 15–17, 47
- case, action on the**, 1, 7
- Charter of Rights**, *see* **false arrest**
- children welfare proceedings**, 13
- contempt**, *see* **malicious arrest for debt**
- criminal offences, related**, 321, 322
- damages**, *see* **false imprisonment; malicious prosecution**
- debtor/creditor**, *see* **malicious arrest for debt**
- defamation**, 7, 11, 24
- false arrest**, *see also* **false imprisonment; mental incompetency proceedings**
- “arrest”, 232, 233
  - Charter rights, 251
  - creditor’s liability, 261
  - delivery to police officer, 256
  - dwelling house, entering, 238, 244
  - general, 225, 231
  - intoxication in public place, 273
  - judicial intervention, effect of, 224, 226
  - magistrate’s liability, 262
  - “malicious arrest”, 231
  - obligations on arrest, 251–260
  - private citizen, arrest by, 246–250, 255, 256, 276, 277, 290, 294, 296
  - protection from liability (police), 239, 242, 245, 255, 258, 259, 276, 291
  - protection from liability (private citizen), 250, 255, 276, 277, 290, 294
  - release after arrest, 257–260, 278
  - sheriff’s/bailiff’s liability, 261, 262
  - shoplifters, 246–248, 264
  - trespass, as, 247
  - vicarious liability, 263–267
  - warrant to police, 234–239, 255
  - warrant/reasons for arrest, notice of, 252–255
  - warrantless arrests, 240–245, 255, 258, 259, 291–293
- false imprisonment**, *see also* **false arrest; mental incompetency proceedings**
- false imprisonment (damages)**
- aggravated damages, 306
  - counsel fees, 308
  - error on difficult issue, effect of, 304
  - general, 299
  - general damages, 300–305
  - interruption of business, 308

MALICIOUS PROSECUTION AND  
FALSE IMPRISONMENT

---

- loss of liberty, 302
  - loss of time, 302, 308
  - malice, relevance of, 268, 303, 304, 306, 308
  - mental suffering, 302
  - nominal damages, 305
  - physical damages, 302
  - presumption of injury, 300
  - punitive damages, 307
  - reasonable cause for arrest, effect of, 293
  - reasonableness of amount, 301
  - reputation, injury to, 303
  - special damages, 308
- false imprisonment (defences),**  
*see* **false imprisonment (justification); false imprisonment (protection from liability); false imprisonment (reasonable cause)**
- false imprisonment (defendant causing)**
- causation, direct, 227
  - denial of bail hearing, 228
  - general, 211, 225, 312
  - judicial intervention, effect of, 224, 226
  - psychiatrists, liability of, 230
  - reliance on other judicial officer, 229
- false imprisonment (deprivation of liberty)**
- absolute loss, 216, 220, 312
  - arrest not required, 216
  - consent, effect of, 217
  - contractual restrictions, 217
  - delay in notifying police, 225
  - force not required, 216, 218, 219
  - general, 6, 212, 216
  - psychological/moral imprisonment, 218
  - reasonable restriction, contractual, 217
  - shopkeeper's rights, 221
  - solitary confinement/segregation, 214, 222
  - trespasser, of, 223
  - voluntariness, 217, 219
- false imprisonment (elements of)**
- defendant causing imprisonment, 224–230
  - deprivation of liberty, 6, 212, 216–223
  - general, 1, 6, 211–215
  - probable cause, absence of, 6
- false imprisonment (general)**
- arrest without warrant, 4
  - criminal offences, related, 321, 322
  - denial of bail hearing, 228
  - detention after arrest, unreasonable length, 214
  - error in jurisdiction, effect of, 5, 226, 229
  - extension for improper purpose, 278
  - false arrest distinguished, 231
  - judicial intervention, effect of, 224, 226
  - malice, relevance of, 268
  - malicious prosecution distinguished, 1–6
  - ministerial acts, effect of, 226
  - multiple vs. continuing imprisonment(s), 213
  - public policy, 208–210
  - reasons for arrest, failure to give, 254
  - shoplifters, 246–248, 264
  - witness immunity, 210

- false imprisonment (justification)**
- acquittal of detainee, effect of, 275, 314
  - false information, effect of, 274
  - onus on defendant, 275
  - warrant, arrest under, 3, 274
- false imprisonment (liability — judges, etc.)**
- Alberta, 281
  - British Columbia, 282
  - errors of law/fact, 288
  - issue of warrant, re, 287
  - Manitoba, 283
  - Ontario, 280
  - pleading of statute, 289
  - proof of conviction, 285
  - quashed proceedings, 286
  - Saskatchewan, 284
- false imprisonment (liability — police)**
- breach of peace, preventing, 296
  - execution of warrant/process, 239, 255, 294
  - general, 245, 276, 290
  - invalidity of court order, 295
  - non-compliance with statute, 242
  - protection orders, 297
  - reasons/warrant for arrest, not giving, 255
  - release from custody, delay in, 258, 259, 278
  - warrantless arrests, 242, 245, 255, 258, 259, 291
- false imprisonment (liability — private citizens)**
- assisting judicial officer, 294
  - general, 208, 209, 213, 224, 250, 276, 277, 290
  - reasons for arrest, giving, 255
- false imprisonment (negligent), 215, 222**
- false imprisonment (onus of proof)**
- defendant causing imprisonment, 211, 312
  - fact of imprisonment, 6, 211, 275, 312
  - general, 6, 54, 211
  - reasonable cause, 6, 268–270, 272
  - shift to defendant, 6, 211, 275
- false imprisonment (pleadings)**
- distinct causes of action, 137
  - particulars of crime, 313
  - reasonable cause, 6, 268, 313
  - statutory protection, 289
- false imprisonment (practice)**
- costs, 314
  - judge’s/jury’s role, 309–311
  - jurisdiction of court, 315, 316
  - limitation periods, 318–320
- false imprisonment (reasonable cause)**
- absence of generally, 6
  - error of law, effect, 271
  - intoxication in public place, 273
  - meaning of, 271
  - objective test, 272
  - onus on defendant, 6, 211, 268–270, 272
- forcible confinement, 321**
- immunity, see malicious prosecution (immunity/privilege)**
- improper purpose, see malicious prosecution (malice/improper purpose)**
- informants, see malicious prosecution (immunity/privilege)**
- limitation periods**
- false imprisonment, 318–320

MALICIOUS PROSECUTION AND  
FALSE IMPRISONMENT

---

- malicious prosecution, 35, 175, 176
- malicious abuse of process**, *see also vexatious use of process*
- abusive defence, 191, 201
- damages, 203, 204
- defences, 191, 192, 202, 205, 206
- elements of, 193–204
- general, 9, 37, 189–192
- improper purpose, 193, 197–201, 205
- overt conduct, 202
- parties to action, 190
- reasonableness, relevance of, 196
- striking out/ summary dismissal, 195
- termination in plaintiff's favour, relevance of, 196
- malicious arrest for debt**
- absconding debtors, 179
- contempt, 183
- examination in aid of execution, 181, 182
- fraudulent judgment debtors, 180
- general, 10, 177, 178, 184, 231, 261
- malicious issue/execution of search warrant**
- absence of malice, 185
- evidence/proof of, 186
- general, 185, 188
- termination in plaintiff's favour, 188
- warrant issued during ongoing prosecution, 187
- malicious prosecution (appeals)**
- evidence not supporting findings, 169
- inadequate jury charge, 171–173
- new evidence, 174
- setting aside/dismissal, 170
- setting aside verdict/new trial, 169, 171–174
- malicious prosecution (arrest requirements)**, 1
- malicious prosecution (damages)**
- aggravated/punitive/exemplary, 119, 122–125
- at large, 119
- excessive/insufficient awards, remedying, 127, 128
- general, 118, 119
- instructions to jury, 168
- loss of freedom, 118
- necessity to prove, 118
- nominal damages, 126
- property, harm to, 118
- reputation, harm to, 118
- special damages, 120, 121
- malicious prosecution (defences)**
- absence of malice, 101
- committal/prosecution not justifying false charge, 3, 67
- conviction of plaintiff, 37, 68, 70
- Crown attorney's advice, acting on, 81, 82
- justice's/judicial officer's advice, acting on, 79, 80
- mistake, 72, 73, 90
- nullity of information irrelevant, 5
- police officer's advice, acting on, 83–86
- solicitor's advice, acting on, 66, 71–78, 152

**malicious prosecution (elements generally)**

- arrest, requirement for, 1, 4, 5
- criminal vs. civil proceedings, 9, 10
- general, 3
- imprisonment, threat of, 11
- initiation by defendant, 28–33
- injury, 28
- malice/improper purpose, 6, 28
- pecuniary loss, 11
- probable cause, absence of, 1, 6, 28
- scandal, 11
- termination in plaintiff's favour, 28, 34–47

**malicious prosecution (general)**

- abuse of process as alternative action, 9
- actionable proceedings, 9–18
- bankruptcy proceedings, 15–17
- child welfare proceedings, 13
- criminal vs. civil proceedings, 9, 10
- death of plaintiff, effect of, 8
- defamation, relation to, 7
- false imprisonment distinguished, 1–6
- foreign proceedings, 12
- mental incompetency proceedings, 14, 46, 80
- nature of action, 7, 8
- professional disciplinary proceedings, 18, 27

**malicious prosecution (immunity/privilege)**

- Crown, 22, 53
- general, 19, 20
- informants, 25, 26
- loss of immunity, 19
- private prosecutors, 21

- professional disciplinary bodies, 18, 27
- public policy, 19, 53
- witnesses, 23, 24

**malicious prosecution (jury trials)**

- demand/direction for, 149
- elements of offence, determination by jury, 151
- instructions generally, 161
- instructions re damages, 168
- instructions re malice, 166, 167
- instructions re reasonable cause, 162–165
- malice, determination by jury, 106, 150, 151, 159, 160
- reasonable cause, determination by judge, 56, 150, 153–158, 171
- reasonable cause, determination by jury, 153, 167

**malicious prosecution (limitation periods), 35, 175, 176**

**malicious prosecution (malice/improper purpose)**

- absence of, effect, 101
- absence of reasonable cause, 87, 94, 96, 151
- criminal law, use to enforce civil right, 99
- delay in charging, 87
- determination by jury, 106, 148, 149, 157, 158
- dual motives, 100
- failure to make inquiries, 64, 65, 164
- general, 6, 28, 73, 102, 103
- honest belief, effect of, 98, 100, 107–109, 111
- instructions to jury, 164, 165
- justice's/judicial officer's advice, acting on, 80

MALICIOUS PROSECUTION AND  
FALSE IMPRISONMENT

---

- meaning/examples of, 93, 96, 98, 100, 102, 114–117
  - police officer’s advice, acting on, 86
  - proof of, 6, 53, 54, 87, 94, 96, 97, 104, 105, 108–113, 116, 117, 151, 159, 160, 167
  - reasonable/probable cause outweighing, 49, 101
  - solicitor’s advice, effect of, 71–73, 78, 87, 152
  - state of mind of prosecutor, 102, 103
- malicious prosecution (onus/burden of proof)**
- absence/existence of reasonable cause, 6, 37, 41, 53–55, 91, 143
  - general, 6, 34, 142
  - innocence, of, 34, 41
  - malice, of, 6, 53, 54, 104, 105, 143
  - standard of proof, 55
  - termination in plaintiff’s favour, 34, 144, 145
- malicious prosecution (pleadings)**
- distinct causes of actions, 137
  - general, 138–140
  - malice, 6
  - particulars, 131
  - probable cause, absence of, 6
  - striking out, 138–140
  - termination in plaintiff’s favour, 34, 139
  - vicarious liability, founding, 131
- malicious prosecution (practice)**
- costs, 126, 146–148
  - discovery, 131
  - jurisdiction of court, 135, 136
- malicious prosecution (proceedings initiated by defendant)**
- active role required, 30
  - general, 28
  - “institution of proceedings”, 29
  - laying information vs. giving information, 23, 31, 32
  - “prosecution”, 29, 30
  - vicarious liability, 33
- malicious prosecution (reasonable cause)**
- absence of generally, 1, 6, 87, 95
  - bad character, relevance of, 91
  - Crown attorney’s advice, acting on, 81, 82
  - determination by judge, 56, 148, 153–158, 171
  - determination by jury, 153, 167
  - due care, prosecutor’s duty re, 90
  - explanation for impugned action, effect of, 89
  - general, 48–53
  - good faith not sufficient, 50, 58
  - honest and reasonable belief, 50, 51, 57–66, 68, 73, 83, 91, 107–109, 111, 163, 164
  - information acquired after charge, effect/disclosure of, 52, 111
  - inquiry into facts, 62–66, 163
  - instructions to jury, 162–165
  - justice’s/judicial officer’s advice, acting on, 79, 80
  - knowledge/belief of complainant, relevance, 51, 58
  - malice evidencing lack of cause, 87
  - malice not outweighing, 49, 101
  - mistake, effect of, 72, 73, 90

## INDEX

---

- onus of proof, 6, 34, 41, 53–55
  - plaintiff asserting arguable legal right, 88
  - police officer’s advice, acting on, 83–86
  - proceeding without required leave, 92
  - proof of, 6, 37, 53–55, 67–70, 87, 91, 92, 94, 96, 110–113, 151, 153–158, 167
  - “reasonable and probable cause”, 48
  - result of original proceedings, as proof, 3, 37, 39, 67–70
  - solicitor’s advice, acting on, 66, 71–78, 84, 152
  - suspicion insufficient, 50, 59
- malicious prosecution (termination in plaintiff’s favour — civil)**
- bankruptcy proceedings, 47
  - ex parte proceedings, 47, 179
  - exceptions, 47
  - general, 45
  - mental incompetency proceedings, 46
- malicious prosecution (termination in plaintiff’s favour — criminal)**
- acquittals, 68, 69, 144
  - appeals, effect of, 36, 37
  - dismissal for want of prosecution, 39
  - election not to proceed/indict, effect, 38
  - exceptions, 47
  - habeas corpus, effect of, 43
  - innocence, proof of not required, 34, 41
  - limitation period, 35
  - modes of termination, 38–43
  - onus on plaintiff, 34, 144, 145
  - partially favourable results, 44
  - preliminary inquiry, 39, 42
  - quashing of charge/indictment/count, 39
  - refusal to commit for trial, 39, 42
  - staying of charge, 39, 67
  - withdrawal of case from jury, 40
  - withdrawal of charge, 39, 67
- malicious prosecution (vicarious liability)**
- authority of agent, 129–132, 134
  - constructive liability, 129
  - corporations, 129–132
  - general, 33, 129
  - municipal corporations, 133
  - scope of employment, 129, 132
- mental incompetency proceedings**
- false imprisonment, 230, 279, 298
  - malicious prosecution, 14, 46, 80
- mistake, see malicious prosecution (defences)**
- municipal corporations, 133, 265–267**
- private prosecutors, 21, 67, 93**
- probable cause, see malicious prosecution (reasonable cause)**
- privilege, see malicious prosecution (immunity/privilege)**
- professional disciplinary proceedings, 18, 27**
- public policy, see false imprisonment (general); malicious prosecution (immunity/privilege)**
- reasonable cause, see malicious prosecution (reasonable cause)**

MALICIOUS PROSECUTION AND  
FALSE IMPRISONMENT

---

- search warrants, *see* malicious issue/execution of search warrant**
- shoplifters, 246–248, 264**
- solitary confinement/segregation, 214, 222**
- trespass, 1, 5, 54, 223, 231, 238, 244, 322**
- vexatious use of process, 207, *see also* malicious abuse of process**
- vicarious liability, *see* false arrest; malicious prosecution (vicarious liability)**
- warrant, *see* false arrest; false imprisonment**
- witnesses, *see* false imprisonment (general); malicious prosecution (immunity/privilege)**



## Index to Medicine

(All references are to paragraph numbers.)

- abortions**, 83, 150
- artificial insemination**, 112
- assault**, *see* **battery/assault**
- battery/assault**, *see also* **consent to treatment**
- absence of/exceeding consent, 178
  - burden of proof, 180
  - causation, 180
  - emergencies, 178
  - general, 178, 179
  - misrepresentation/non-disclosure, 179
  - punitive damages, 178
- billing**, *see* **compensation**
- college of physicians**, *see* **governing bodies**
- compensation**
- Alberta, 138, 141, 142
  - British Columbia, 141, 145
  - excessive charges, 140
  - general, 138–140, 141
  - Manitoba, 141, 143
  - Saskatchewan, 141, 144
  - third party requesting services, 139
- conduct unbecoming**, 82, 83, *see also* **discipline**
- confidentiality**, *see* **doctor-patient relationship; medical records**
- consent to treatment**, *see also* **battery/assault; negligence; professional corporations**
- anaesthetic, advice re, 176
  - causation, 125, 126, 130
  - children, 118–120
  - coercion, 123
  - emergencies, 133
  - express vs. implied, 121, 122
  - fraud/misrepresentation, 123
  - general, 117–120
  - informed consent, 125–132
  - materiality, 117, 127–130
  - mental incompetence, 120
  - parens patriae jurisdiction, 118
  - persons who can disclose risks, 130, 131
  - risks of treatment, 125, 127–130
  - scope of, 121, 124
  - standard forms, effect of, 132
  - voluntariness, 123
- constitutional/Charter issues**, *see* **discipline; professional corporations**
- corporations**, *see* **professional corporations**
- criminal liability**
- abortions, 150
  - criminal negligence causing death/bodily harm, 146–148
  - defences, 151
  - emergency/necessity, 149
  - general, 146
  - manslaughter, 147
  - reasonable care/skill, duty to have, 149
- criminal offences/records**, *see also* **discipline**
- Alberta, 85
  - British Columbia, 16, 84
  - federal, 88
  - Manitoba, 87
  - Saskatchewan, 86

- discipline**, *see also regulation of profession*
- abortions, 83
  - appeals, 46, 68–75, 78–81
  - certiorari, 73
  - Charter rights, 47
  - civil proceedings, effect of, 53
  - constitutional issues, 45, 47, 83
  - counsel, right to, 48
  - criminal offences/records, 16, 84–88
  - delegation of powers, 50
  - duties/powers generally, 50, 54, 56, 65
  - duty to report unfitness, member's, 46
  - evidence/burden of proof, 59–62, 71
  - fitness to practice, 76–81
  - in camera hearings, 64
  - mandamus re exercise of powers, 55
  - misconduct, 82, 83
  - natural justice/fairness, 57, 58
  - nature of proceedings, 47
  - notice of penalty, 68
  - penalties/remedies, 46, 66, 68
  - procedure generally, 46, 49
  - professional corporations, 103–105
  - res judicata, 53
  - scope of inquiry, 51
  - statutory authority for, 45
  - suspended judgment/punishment, 68
  - temporary suspensions, 52
- doctor-patient relationship**, *see also compensation; consent; medical records*
- confidentiality, 116
  - duty to act, 114, 115
  - duty to report illness, 116
  - duty to treat, 115, 157
  - fiduciary relationship, as, 110, 111
  - nature of, 110–113
  - professional corporations, 99–101
  - termination of, 113
  - warranty of competence, 162
- duties**, *see doctor-patient relationship; negligence*
- emergencies**, 43, 44, 133, 149, 178
- fitness to practice**, 76–81, *see also discipline*
- governing bodies**, *see also regulation of profession*
- Alberta, 2–4
  - British Columbia, 1
  - federal, 8–10
  - Manitoba, 6, 7
  - nature of, 11, 14
  - Saskatchewan, 5
- hospital privileges**, *see registration/licensing*
- legislation**, *see regulation of profession*
- liability**, *see battery/assault; consent to treatment; criminal liability; negligence; professional corporations*
- licensing**, *see registration/licensing*
- malpractice**, *see battery/assault; consent to treatment; criminal liability; negligence*
- medical records/reports**, 134–137
- misconduct**, 82, 83, *see also discipline*

## INDEX

---

- necessity, see criminal liability; emergencies**
- negligence, see also battery/assault; consent to treatment; professional corporations**
- “but for” test, 154
  - causation, 152, 154–156, 177
  - contributory negligence, 185, 186
  - damage, 152, 153
  - defences, 181–190
  - duty of care, 152, 157–160
  - elective surgery, 176
  - emergency treatment, 43, 149
  - evidence/privilege, 64
  - general, 152–156
  - instructions/warnings, 186
  - jury trials, 192, 193
  - limitation periods, 187–191
  - medical-legal reports, 136
  - professional corporations, 103–105, 198
  - proximate cause, 156
  - reliance on others, 171, 172, 194–198
  - res ipsa loquitur, 177
  - standard of care, 152, 161–176, 181
  - statutory protection re, 43
  - third parties, liability to, 159, 160
  - vicarious liability, 172, 194–198
- payment, see compensation**
- practice/unauthorized practice, see also professional corporations; regulation of profession**
- Alberta, 35
  - British Columbia, 30, 31, 33, 34
  - corporations, 40
  - emergencies, 43
  - evidence/witnesses, 42
  - healing arts, 37
  - Manitoba, 32, 34
  - number of patients irrelevant, 39
  - offence generally, 38, 41
  - “practicing medicine”, 30–38
  - Saskatchewan, 36
  - single acts, 39
  - use of titles, 29
- privacy, see doctor-patient relationship; medical records**
- professional corporations, see also registration/licensing**
- Alberta, 90, 91, 95, 99, 103, 106
  - British Columbia, 94, 98, 102, 109
  - Charter issues, 89
  - discipline, 103–105
  - effect of incorporation, 95–97
  - general, 40, 90
  - liability issues, 103–105
  - Manitoba, 90, 93, 97, 101, 105, 108
  - relationship to patients, 99–101
  - right to practice (general), 89, 90
  - right to practice (loss of), 106–108
  - Saskatchewan, 90, 92, 96, 100, 104, 107
- professional relationship, see doctor-patient relationship**
- qualifications, see regulation of profession**
- records, see medical records/reports**
- registration/licensing, see also discipline; professional corporations; regulation of profession**
- Alberta, 18, 19, 25

## MEDICINE

---

- appeals, 24–28
  - authority to require, 12
  - British Columbia, 16, 24
  - criminal offences/records, 16, 84–88
  - discretion of college, 15
  - duty of fairness, 14
  - effect of, 16
  - federal, 23, 28
  - hospital privileges, 13
  - Manitoba, 22, 27
  - professional corporations, 89–108
  - reports, use of, 15
  - review of applications, 14
  - Saskatchewan, 20, 21, 26
  - suitability of applicant, 14
  - use of titles, effect on, 29
- regulation of profession, *see* discipline; governing bodies; practice/Unauthorized practice; registration/licensing**
- relationship to patient, *see* doctor-patient relationship**
- remuneration, *see* compensation**
- right to practice, *see* governing bodies; practice/Unauthorized practice; professional corporations; registration/licensing**
- Unauthorized practice, *see* practice/Unauthorized practice**
- use of titles, *see* practice/Unauthorized practice**

## Index to Mental Incapacity

(All references are to paragraph numbers.)

- admission certificate, Alberta,**  
*see also formal admission*
- authority for involuntary admission, 19, 20
  - requirement for issuance, 18
  - renewal certificates, 33–36
  - two certificates issued, 22
- admission certificate, Alberta, patient rights, see right of patient to information**
- admission to mental health facility**
- involuntary, Alberta, 17–46
  - involuntary, British Columbia, 47–61
  - involuntary, Manitoba, 62–80
  - involuntary, Saskatchewan, 81–96
  - refusal of, 7, 9
  - voluntary, Alberta, 6, 7
  - voluntary, British Columbia, 8–11
  - voluntary, Manitoba, 12–14
  - voluntary, Saskatchewan, 15, 16
- agents**
- appointment by mentally incompetent, 290
  - revocation of authority, 291
- application for involuntary psychiatric assessment, Manitoba**
- authority for involuntary admission, 64
  - compliance with, 65, 66
  - general, 63
  - test for capacity, 67
- apprehension for examination, see warrant to apprehend**
- breach of promise to marry, 350, 351**
- capacity of patient to make treatment decisions**
- certificate of incompetence, appeal of, 223
  - certificate of incompetence, cancellation of, 218
  - determination of, Alberta, 205, 206
  - determination of, Manitoba, 215–217
  - diagnostic procedures, 224
  - general, Alberta, 203, 204, 211
  - general, British Columbia, 212
  - general, Manitoba, 213
  - general, Saskatchewan, 224
  - *parens patriae*, 229, 230
  - psychosurgery, 210
  - right to refuse treatment, 226–228, 231
  - substitute decision makers, Alberta, 207
  - substitute decision makers, Manitoba, 214
  - treatment orders of review board/panel, Alberta, 208, 209
  - treatment orders of review board/panel, Manitoba, 219–222
- capacity to marry**
- evidence, 343–344
  - general, 341, 342, 345, 346
- causing harm, prevent patient from, 235**

- certificate of involuntary admission**
- Manitoba, 68, 70, 71
  - Saskatchewan, 82, 89–92
- co-decision, making, Alberta,** 436–443
- committeeship, Alberta, see trusteeship and guardianship, Alberta**
- committeeship, British Columbia**
- appointment of, 445–460
  - compensation of, 477
  - costs of application, 463, 464, 479, 480
  - discharge of, 461, 462, 481–487
  - rights and duties of, 465–472, 478
- committeeship, Manitoba**
- certificate of incapacity, by, 495–504
  - certificate of incompetence, by, 489–494
  - court appointment, by, 505–521
  - committee of property and personal care, powers and duties of, 537–542
  - committee of property, duties of, 524–536
  - committee of property, powers of, 522, 523
  - general, 488, 543, 544
  - termination of, 545–551
- committeeship, Saskatchewan, see guardianship, Saskatchewan**
- community treatment orders, Alberta**
- cancellation of, 39
  - compliance with, 40, 41
  - deemed review, 43
  - issuance of, 37
  - renewal of, 38
  - review of, 42–46
- community treatment orders, Saskatchewan,** 95, 96
- confidentiality of health records/information**
- disclosure permitted, 241–244
  - general, 238
  - general, Alberta, 239
  - general, British Columbia, 245, 246
  - general, Manitoba, 247
  - general, Saskatchewan, 248
  - records not containing identity of patient, 240
- constitutional challenges to involuntary admission,** 73
- constitutional/charter rights, see discrimination; right of patient to be informed; treatment, right to refuse**
- contract, ability of mentally incompetent to enter into**
- determination of mental competence to contract, 276–279
  - necessities, rule with respect to, 288, 289
  - *non est factum*, 284
  - undue influence, 285, 286
  - void contracts, 287
  - voidable contracts, 275–283
- correctional facility transfer,** 80
- criminal code admission, Manitoba,** 78, 79
- criminal justice provisions**
- appeal of court and review board decisions, 107
  - application for assessment, 98

## INDEX

---

- criminal justice provisions (*cont'd*)
  - criminal responsibility, exemption from, 97, 103–106
  - duration of assessment orders, 100
  - fitness to stand trial, 101–104, 106
  - review of assessment decisions, 99, 108, 109
  - statements made by accused during assessment, use of, 148
  - transfer of detainee, 110, 111
  - warrant or process, extraprovincial execution or service of, 112
- default proceedings**
  - Alberta, 672
  - British Columbia, 673, 674
  - Manitoba, 675, 676
  - Saskatchewan, 677
- designated facilities**
  - definition, British Columbia, 8
  - involuntary admission to, Alberta, 17
  - involuntary admission to, British Columbia, 47
  - involuntary admission to, Manitoba, 62
  - involuntary admission to, Saskatchewan, 81
- detention, unlawful, see false imprisonment, action for; habeas corpus**
- discharge/release**
  - against patient's will, 182
  - authority to, 183
  - certificates, expiration and cancellation, 179, 180, 192
  - deemed discharge, 184
  - general, 177, 178
  - incarcerated persons, 186, 191
  - mandatory, Alberta, 21
  - mandatory, British Columbia, 61, 185, 186
  - mandatory, Manitoba, 10, 11, 69, 188–190
  - mandatory, Saskatchewan, 16
  - notice of, 181, 192
  - request for, 13, 187
- discrimination, 375–377**
- divorce, 352–358**
- dower rights**
  - Alberta, 297
  - British Columbia, 298
  - general, 296
  - Manitoba, 299
  - Saskatchewan, 300
- emergency admission/ apprehension, 58, 85**
- enduring power of attorney**
  - Alberta, 697–703
  - British Columbia, 704–709
  - general, 696
  - Manitoba, 710–729
  - Saskatchewan, 730–748
  - suspension of, Manitoba, 721, 722
  - termination of, Manitoba, 723, 724
  - termination of, Saskatchewan, 743, 744
- examination for discovery of mentally incompetent persons**
  - Alberta and Saskatchewan, 679
  - British Columbia, 680
  - Manitoba, 681
- false imprisonment, action for**
  - limitation periods, 196–202

false imprisonment, action  
for (*cont'd*)

- protection for health care professionals/facilities against, 193–195

**financial assistance**

- Alberta, 941–947
- British Columbia, 948–954
- Manitoba, 955–957
- Saskatchewan, 958–967

**fitness to stand trial, see**  
**criminal justice provisions**

**formal admission**

- Alberta, 31–36
- British Columbia, 48–57
- Manitoba, 63–73

**gifts *inter vivos* by mentally incompetent persons, 293–295**

**guardianship, Alberta, see**  
**trusteeship and guardianship, Alberta**

**guardianship, Saskatchewan**

- appointment of personal decision maker, 560–570
- appointment of property decision maker, 579–588
- certificate of incompetence, by, 614–617
- compensation of personal decision maker, 575
- compensation of property decision maker, 603
- costs of application, 589
- discharge of, 609–613
- duties of personal decision maker, 571–574
- duties of property decision maker, 590–602, 604, 605
- general, 552–554, 576
- personal co-decision, makers, 555, 556

- personal guardian, 557–559
- property co-decision, maker, 577
- property guardian, 578
- termination of appointment of Public Guardian and Trustee, 618, 619
- testamentary nomination, 606–608

***habeas corpus*, 173–176**

**handicap benefit, Alberta, see**  
**financial assistance, Alberta**

**health care directives, Manitoba**

- capacity, 798, 799
- effectiveness, 802, 803
- existing rights, 816, 817
- general, 796, 797
- proxies, 804–814
- revocation of, 815
- validity, 800, 801

**health care directives, Saskatchewan**

- capacity, 819
- effectiveness, 822–825
- entitlements, effect on, 842
- general, 818
- health care decisions, 826, 827
- nearest relative, health care decisions by, 835–840
- proxies, 828–834, 839, 840
- revocation of, 841
- validity, 820, 821

**health records, see also**  
**confidentiality of health records/ information**

- correction of errors and omissions, Alberta, 251
- correction of errors and omissions, British Columbia, 264



## INDEX

---

- health records (*cont'd*)
- correction of errors and omissions, Manitoba, 267
  - patients' access to, 249
  - patients' access to, Alberta, 250
  - patients' access to, British Columbia, 258
  - patients' access to, Manitoba, 265
  - patients' access to, Saskatchewan, 268
  - reviews, Alberta, 252–257
  - reviews, British Columbia, 259–263
  - reviews, Manitoba, 266
- hospital charges, 269–274**
- immigration, inadmissibility to Canada, 369–374**
- jury service, disqualification from, 367, 368**
- land (spouse protection) act, British Columbia, *see* dower rights, British Columbia**
- litigation guardian, committee or substitute decision maker, Manitoba**
- duties of, 645–648
  - general, 641, 642
  - litigation guardian, 643, 644
- litigation guardian, British Columbia**
- approval of settlements, 636, 637
  - general, 627–633
  - powers and duties of, 634–640
- litigation guardian, Manitoba, *see* litigation guardian, committee or substitute decision maker, Manitoba**
- litigation guardian, Saskatchewan**
- appointment, 651–654
  - general, 649, 650
  - powers and duties of, 655–662
- litigation representative, Alberta**
- general, 620–622
  - powers of, 623–626
- limitation periods, 678**
- mail tampering/ interference, 232, 233**
- marriage, *see* breach of promise to marry; capacity to marry; solemnizing marriage, restrictions on**
- medical certificate, British Columbia**
- authority for involuntary admission, 48, 50, 51
  - renewal of, 55, 56
  - two certificates issued, 52, 53
  - validity of, 49
- mental disorder, definition of, 1–5**
- mines and minerals act, Manitoba, non, compliance with, 301**
- money obtained on behalf of mentally incompetent persons, *see* payment into court of money**
- payment into court of money, 694**
- personal assistance and support**
- Alberta, 844
  - British Columbia, 845–851
  - general, 843
  - protective action, Manitoba, 858–864
  - Saskatchewan, 940

- personal assistance and support (*cont'd*)
  - support services, Manitoba, 856, 857
  - vulnerable persons, Manitoba, 852–855
- personal directives, Alberta**
  - agents, authority and duties of, 755–762
  - effectiveness, 753, 754
  - general, 749, 750
  - remuneration of agents, 763
  - revocation of, 764
  - validity, 751, 752
- personal security of patient**, 236, 237
- power of attorney**
  - general, 292, 695
  - springing, 696, 710, 730
- power of attorney, enduring**, *see* **enduring power of attorney**
- public trustee, rights and duties of**
  - Alberta, 444
  - British Columbia, 473–476
  - Manitoba, 498–504, 533–535
- representation agreement, British Columbia**
  - amendment and termination of, 790–792
  - appointment of representatives, 775, 776
  - effect of, 774
  - formal requirements, 771–773
  - general, 704, 765–770
  - investigations into, 793–795
  - monitors, duties of, 787
  - monitors, general, 784–786
  - monitors, removal and replacement of, 788, 789
  - objections, 793–795
  - representatives, duties of, 777–783
- review, right of**
  - application for, Alberta, 136
  - application for, British Columbia, 149, 151
  - application for, Manitoba, 159–161
  - application for, Saskatchewan, 166, 168
  - deemed application/ appeal, 137, 167
  - onus of proof before board/ panel, 142
  - review board/panel, composition of, 135, 146, 158, 165
  - review board/ panel, powers of, Alberta, 138–141
  - review board/ panel, powers of, British Columbia, 147, 150, 152, 153
  - review board/panel, powers of, Manitoba, 158, 162
  - review board/panel, powers of, Saskatchewan, 169
  - right to appeal, Alberta, 143–145
  - right to appeal, British Columbia, 154–157
  - right to appeal, Manitoba, 164
  - right to appeal, Saskatchewan, 170–172
  - statements made by accused during assessment, use of, 148
  - written reasons for decision, 138, 163, 169
- right of patient to be informed**
  - change in status of patient, Alberta, 118
  - change in status of patient, Saskatchewan, 133, 134

## INDEX

---

- right of patient to be informed (*cont'd*)
  - community treatment orders, Saskatchewan, 129
  - competency of patient, Alberta, 117
  - competency of patient, Manitoba, 124
  - competency of patient, Saskatchewan, 128
  - consideration for outside treatment, 125
  - issuance of admission certificate, Alberta, 115, 116
  - notice of patient's rights, Manitoba, 121, 123
  - notice of patient's rights, Saskatchewan, 127
  - patients under age 16, 120
  - reason for arrest, detention or transfer, 113, 119, 122, 126, 130, 131
  - right to appeal, 132
  - right to counsel, 114
- service of documents**
  - Alberta, 663, 664
  - British Columbia, 665
  - Manitoba, 666–668
  - Saskatchewan, 669–671
- settlement of action, restrictions on**
  - Alberta, 686
  - British Columbia, 687–689
  - Manitoba, 690, 691
  - Saskatchewan, 692, 693
- solemnizing marriage, restrictions on**
  - Alberta, 347
  - British Columbia, 348
  - Manitoba, 349
- substitute decision, makers for personal care, Manitoba**
  - appointment of, 867–872
  - duties of, 878–881
  - general, 865, 866
  - powers of, 873–877
- substitute decision, makers for property, Manitoba**
  - appointment of, 884–890
  - appointment of, for persons not residing in Manitoba, 909
  - appointment, replacement of, 929–931
  - appointment, review and renewal of, 932–939
  - appointment, termination of, 928
  - appointment, variation of, 924–927
  - duties of, 896–908
  - emergency appointment of, 913–917
  - emergency suspension of, 918–921
  - emergency variation of, 922, 923
  - enduring power of attorney, effect on, 891
  - general, 882, 883, 910–912
  - powers of, 892–895
- supported decision, making, Alberta, 431–435**
- testamentary capacity**
  - ademption, 328
  - dementia, 306
  - evidence of incapacity, 314–322
  - fraud by legatee, 309
  - general, 302
  - hearings, Saskatchewan, 310
  - Indians, 313

## MENTAL INCAPACITY

---

### testamentary capacity (*cont'd*)

- legislation, support of dependents, 329–335
- life insurance beneficiary, designation of, 325
- onus of proof, 303–305
- solicitor's duty, 323, 324
- trial, Alberta, 311, 312
- witnesses, 326, 327

### treatment

- definition, 3
- right to refuse, 225
- timing, 307, 308

### treatment, capacity to consent, *see* capacity of patient to make treatment decisions

### trusteeship and guardianship, Alberta

- appeal and review of orders, 423–428
- application for, 380–385
- application by Public Trustee, 391
- appointment of alternates, 392
- bonding of trustees, 386
- costs of application for, 393–396
- discharge of, 429, 430
- general, 378, 379
- guardian, rights and duties of, 408–416
- multiple appointments, 392
- notice of appointment, 390
- temporary protection order for represented adult, 417–422

- test for granting, 387–389
- trustee, compensation of, 407
- trustee, duties and responsibilities of, 404–406
- trustee, rights and powers of, 397–403

### tort, liability of mentally incompetent persons

- intentional tort, 336–338
- *McNaughten's Case*, rule in, 336
- negligence, 339, 340

### visitors, right of patient to receive, 234

### voting rights

- Alberta, 362, 263
- British Columbia, 364
- Federal, 359–361
- Manitoba, 365
- Saskatchewan, 366

### warrant to apprehend

- Alberta, 24–26
- British Columbia, 59, 60
- Manitoba, 74–77
- Saskatchewan, 82–94

### witness, competency of, 682–685

## Index to Military Law

(All references are to paragraph numbers.)

### appointments

- Chief Military Judge, 77, 78
- Chief of Defence Staff, 66
- Court Martial Administrator, 79
- Deputy Minister of National Defence, 65
- DND/CF Legal Advisor, 68
- Governor General serves as Commander-in-Chief, 62
- Judge Advocate General, 69–73
  - • Director of Defence Counsel Services, 71, 72
  - • Director of Military Prosecutions, 70
  - • general, 69
- Minister of National Defence, 63, 64
- Office of the DND/CF Ombudsman, 73–76
  - • complaints, investigations and referral to competent authority, 74
  - • duty of competent authority to inform ombudsman, 75
  - • duty to provide information, 75
  - • limits on authority to investigate certain complaints, 76
  - • mandate, 73
- Vice Chief of Defence Staff, 67

### Code of Service Discipline

- Arrests, 228, 229
- dependants, 209
- disciplinary investigations, 222–224
- fitness to stand trial, 231
- forensic DNA analysis, 232
- jurisdiction, 203, 204

- • military nexus, 203
- • trial by civilian court, 204
- laying of charges, 233
- offences not triable by service tribunals, 213
- period of liability, 212
- persons accompanying, 207, 208
- persons subject, 205, 206
  - • broad range, 205
  - • types of offences, 206
- pre-trial procedure, 230
- punishments, 234, 235
  - • factors governing, 235
  - • scale of, 234
- searches and inspections, 225–227
- service offences, 214, 215
  - • negligent performance of military duty, 214
  - • restriction re charge and trial, 215
- service tribunals, 216–221
  - • amendments to constitution of courts martial, 217
  - • courts martial, 216
  - • right to elect court martial, 218
  - • right to elect type of court martial, 219–221
  - • summary trials, 216
- territorial limitation, 210, 211

### court martial

- general court martial, 261
- initiation of proceedings, 256–260
  - • charge preferred by Director of Military Prosecutions, 256
  - • Court Martial Administrator, 258

## MILITARY LAW

---

- joint referral where offence committed collectively, 259
  - referral to summary trial, 257
  - right to representation, 260
  - pre-trial matters, 263–266
    - delivery to accused of copy of charge sheet and notice of witnesses, 265
    - determination before commencement of trial, 266
    - irregularity in procedure, 264
    - powers, rights and privileges of provincial superior court of criminal jurisdiction, 263
  - right to be represented, 255
  - standing court martial, 262
  - trial procedures, 267–277
    - adjournments, 276, 277
    - appeals, 282, 283
      - Court Martial Appeal Court, 282
      - time limits, 283
    - evidence, 273–275
      - admission of documents/records, 274
      - attendance of witnesses, 274
      - commission evidence, 274
      - rules prescribed by regulation, 273
      - voir dire to determine admissibility, 275
  - exception to open to public principle, 269
  - findings and sentences, 278–281
    - consideration of service offences similar in character, 280
    - disputed facts and determination of sentence, 279
  - members of panel determine findings, 278
  - military judge determines questions of law/mixed fact and law, and sentences, 278
  - military nexus exception to Charter right to jury trial, 270
  - objection to constitution of court martial, 272
  - powers, rights and privileges of provincial superior court of criminal jurisdiction, 268
  - prescribed by statute/regulation, 267
  - presumption of innocence, 271
  - release pending appeal, 284, 285
    - appeal of decision denying release, 285
    - general, 284
  - review by departmental authorities, 286, 287
  - royal prerogative of mercy, 288
- Court Martial Appeal Court**
- dispositions of appeals, 291–300
    - decision terminating proceedings, 294
    - finding of guilty, 291, 292
    - finding of not guilty, 293
    - finding of unfit to stand trial, 297
    - order for stay of proceedings, 299
    - sentence, 295–297, 300
    - right to appeal, 289, 290
      - general, 289
      - no substantial miscarriage of justice, 290
    - rules of appeal procedures, 301
- Criminal Records Act, 304**

## INDEX

---

### **grievances**

- Canadian Forces Grievance Board, 189, 190
- Chief of Defence Staff final authority, 191
- initial grievance authority, 188
- judicial review, 193–195
- manner and conditions for submitting, 186, 187
- right to grieve, 185

### **human right and the military**

- common-law relationships, 144, 145
  - • denial of promotion on basis of marital status, 145
  - • married quarters policy, 144
- disabilities, 141, 142
- pregnancy, 148
- religion, 143
- security clearances, 147
- sexual harassment, 149
- sexual orientation, 146
- universality of service, 140
- women in combat roles, 150

### **law of armed conflict defined**

- custom, 3
- evolution from British roots, 8
- Geneva law, 3
- Hague law, 3
- prisoner of war, 4

### **legislative authority**

- Canadian Forces Administrative Orders, 38
- Canadian Forces Members and Veterans Re-establishment and Compensation Act, 9
- Canadian Forces Organization Orders, 36
- Canadian Forces Superannuation Act, 10
- Code of Service Discipline, 7

- Defence Administrative Orders and Directives, 37
- Defence Clothing and Equipment Loan Order, 22
- Defence Controlled Access Area Regulations, 20
- Defence Floating Equipment Rental Order, 23
- Defence Maps and Charts Transfer Order, 24
- Defence Materiel and Equipment Loaned to Contractors Order, 25
- Defence Materiel Loan or Transfer for Test and Evaluation Regulations, 27
- Defence Materiel Loan Regulations, 26
- Defence Production Act, 11
- Defence Production and Development Sharing Remission order, 29
- Defence Research Board Employees Regulations, 30
- Defence Services Pension Continuation Act, 12
- Defence Services Pension Continuation Regulations, 21
- Defence Services Pension Part V Regulations, 19
- Defence Survival Training Indemnity Order, 28
- general, 5
- Ministerial Organization Orders, 35
- National Defence Act, 6
- Queen's Regulations and Orders, 15–18
  - • administration, discipline, financial, 15, 18
  - • exempt from registration, 16
  - • explanatory notes, 17
  - • force and effect of law, 17

## MILITARY LAW

---

- Status of Forces Agreement, 33, 34
- • military service outside of Canada, 33
- • offences re foreign enlistment, 34
- Visiting Forces Act, 13, 14
- Visiting Forces Attachment and Serving Together Regulations, 32
- Visiting Forces Regulations, 31
- military administrative law**
- actions barred, 174
- administrative investigations, 151–155
  - • board of inquiry, 155
  - • general, 151
  - • harassment, 154
  - • informal, 152
  - • summary, 153
- claims by or against Crown, 163–168
  - • dangerous objects escaping from military testing grounds, 164
  - • exception re purpose of defence of Canada, 163
  - • improper treatment at Canadian Forces medical facility, 165
  - • liability in tort, 163
  - • mandamus against military college, 168
  - • no proceedings where pension or compensation paid, 165
  - • provincial garnishment laws re pay and allowances, 166
  - • right of action re negligent injury to armed forces member, 167
- elections, 160
- exemption from jury service, 156
  - • exemption from tolls, 157
  - • limitation of civil liabilities, 169–173
    - • exemption from jury service, 171
    - • general, 169
    - • immunity, 173
  - • service personnel under National Defence Act, 170
  - • testimonial immunity, 172
- non-public fund, 158
- political activities, 175
- salvages, 159
- service estates, 162
- wills, 161
- military law defined**
- Geneva Conventions Act, 1
- National Defence Act, 1
- separate system of military and appellate tribunals, 2
- Visiting Forces Act, 1
- military police**
- Canadian Forces National Investigative Service, 201
- complaints against military police officer, 202
- general, 196, 197
- peace officers, 198–200
- military service**
- annuities, 118–121
  - • Canadian Forces Superannuation Act, 118
  - • denial of survivor's benefits, 121
  - • division of matrimonial property, 120
  - • Service Pension Board, 119
- enrolment, 94–96
  - • commissions of officers, 94
  - • enrolment of non-commissioned members, 94



## INDEX

---

- • persons precluded from enrolment, 96
- • requirements for enrolment, 95
- leave, 110–113
  - • general, 110
  - • long leave, 111
  - • short leave, 112
  - • withholding of and recall from leave, 113
- officers and non-commissioned members, 97–99
  - • duties, 99
  - • non-commissioned member, defined, 98
  - • officer, defined, 97
- pay and allowances, 104–109
  - • established by Treasury Board, 104
  - • re-hearing where common law spouse's allowance withdrawn, 106
  - • retirement compensation arrangement, 109
  - • students, 108
  - • War Veterans Allowance Act, 105
  - • widow's benefit, 107
- pensions, 122–139
  - • benefits payable for disabilities or death, 127
  - • Canadian Forces Members and Veterans Re-establishment and Compensation Act, 129–139
    - • • application for services or compensation, 136
    - • • compensation exempt from seizure and execution, 139
    - • • compensation not assignable/given as security, 139
    - • • death benefits, 134
    - • • death of member or veteran before application made, 132
    - • • detention benefits, 135
    - • • disability, death and detention benefits, 131
    - • • injury or disease subject of application under Pension Act, 133
    - • • jurisdiction of Veterans Review and Appeal Board, 138
    - • • non-service related injury or disease aggravated by service, 132
    - • • payments and services, 129, 130
    - • • review of decision by Minister, 137-138
    - • • service related injury or disease, 132
  - • general, 122, 123
  - • improper conduct, 125
  - • objective and interpretation of Act, 124
  - • pensions payable to children, 127
  - • powers of Minister, 128
  - • treatment at military hospital, 126
  - • Veterans Review and Appeal Board, 128
- promotions, 103
- releases, 114–117
- terms of service, 100–102
  - • declaration of war emergency, 101
  - • performance of lawful duties, 102
  - • placement on active service in or beyond Canada, 100
- **operational law**
  - • aid to civil power, 183

## MILITARY LAW

---

- crimes against humanity and war crimes, 176–180
  - • accused ordered by government or superior to perform act, 180
  - • application of Criminal Code provisions, 178
  - • breach of responsibility by military commander, 179
  - • crime against humanity, defined, 176
  - • genocide, defined, 176
  - • offences committed outside of Canada, 177
  - • war crime, defined, 176
- manoeuvres, 182
- placing forces on active service, 181
- ships in convoy, 184
- organization**
  - Canadian Forces, 47–52
    - • general, 47
    - • regular force, 48
    - • reserves, 49, 50
    - • special force, 51, 52
  - Department of National Defence, 41–46
    - • Canadian Forces Grievance Board, 43
    - • Canadian Forces Housing Agency, 45
    - • Canadian Forces Military Police Complaints Commission, 44
    - • Canadian Forces Support Personnel Agency, 41
    - • Communications Security Establishment, 42
    - • Defence Research and Development Canada, 46
  - exercise of authority, 60, 61
  - general, 39
  - organizational structure of the Canadian Forces, 53–59
    - • Canada Command, 54
    - • Canadian Expeditionary Force Command, 55
    - • Canadian Operational Support Command, 58
    - • Canadian Special Operations Forces Command, 56
    - • Military Personnel Command, 59
    - • National Defence Headquarters, 53
    - • Standing Contingency Task Force, 57
  - unification of armed forces, 40
- ranks**
  - acting rank, 92
  - corporal, 82
  - exercise of command, 83–89
  - honorary rank, 93
  - non-commissioned member, defined, 80
  - officer, defined, 80
  - ranks for members of navy, 81
  - ranks of non-commissioned members, 81
  - ranks of officers, 81
  - substantive rank, 90
  - temporary rank, 91
- review**
  - authority to quash or substitute findings, 306
  - authority to substitute punishment, 307, 308
  - review of findings and punishments by department authorities, 305
  - right to petition for new trial, 309

## INDEX

---

- service prisons and detention barracks**
    - committal, 315
    - general, 310
    - rules of penitentiaries and civil prisons, 316, 317
    - suspension of imprisonment or detention, 311–314
  - summary trials**
    - by commanding officers, 236, 237
    - by delegated officers, 238
    - by superior commanders, 239, 240
      - general, 239
      - sentence, 240
    - judicial review, 251
    - non-judicial review by departmental authorities, 252–254
      - no right to access grievance process, 254
      - review authorities, 252
        - role of unit legal advisor, 253
  - procedures, 245–250
    - general, 245
    - limitation period, 250
    - open to public, 248
    - participation of counsel, 249
    - right to consult with legal counsel, 246
    - usual rules of evidence do not apply, 247
  - referral of charges, 241–244
    - adjournment, 242
    - functions of commanding officer administrative, 243
    - general, 241
- Supreme Court of Canada**
  - appeal against decision of Court Martial Appeal Court, 302
  - powers, duties and functions in relation to appeal, 303

## Index to Mines and Minerals

(All references are to paragraph numbers.)

- abandoned mines**, 332
- aboriginal rights**, *see* native ownership
- accretion, effect of**, 19
- actions**, *see* dispute resolution
- adverse proceedings (British Columbia)**, 167–172, *see also* dispute resolution
- agreements for sale**, *see also* mining agreements (general)
- cancellation by vendor, 215
  - conditions precedent, 207
  - damages for breach, 206, 211, 216, 217
  - default by purchaser, effect of, 213, 215–217
  - fraud, effect of, 211
  - general, 204, 205
  - incomplete transfers, effect of, 214
  - innocent purchasers, illegal/fraudulent claims, 208
  - misrepresentation, effect of, 209–211
  - mistake, effect of, 17, 209
  - option distinguished, 233
  - proceeds, share in, 205
  - rejection by joint transferee, 218
  - rescission of, 209, 210
  - specific performance, 207
  - time of the essence, 212
  - trusts, 213, 214
  - warranty of title, 206
- arbitration**, *see* dispute resolution
- claims**, *see* staking of claims
- coal**
- Alberta, 398, 399
  - British Columbia, 400, 401, 402, 403, 404–407
  - Manitoba, 408
  - reservation of right to, 29
  - Saskatchewan, 409–413
- construction**, *see* definitions; interpretation/construction
- contractor**, *see* mining agreements (general)
- corporations**
- amalgamation of, effect, 258
  - dissolution of, effect, 114
- criminal liability**, *see also* environmental protection; mine safety
- criminal negligence, 335
  - fraud re precious metals, 336
  - fraud re testing/valuation, 340
  - precious metals, sale/possession, 337, 338
  - search warrants, 339
- Crown ownership**, *see also* ownership
- Alberta, 24–28
  - British Columbia, 29, 30
  - Crown prerogative, 21
  - federal Crown, 27
  - gold, 21, 25
  - homesteaders' rights, 25
  - Manitoba, 24–28
  - precious metals, 21–23, 29
  - railway lands, 25, 30
  - Saskatchewan, 24–28
  - silver, 21, 25
  - soldier settlement, 26

- definitions**, *see also*  
interpretation/construction
- construction/interpretation of terms, 1–9
  - contest, effect of, 8
  - Crown grants, in, 1
  - ejusdem generis rule, 9
  - intention of parties, 6
  - land, 33, 180
  - legislation, in, 1
  - mines/minerals, 1, 6–11, 20, 33, 34
  - oil, 11
  - petroleum, 11
  - placer claim, 386
  - placer mineral, 386
  - placer mining, 385, 391
  - present vs. past meanings, 4
  - private instruments, in, 1
  - quarry, 12
  - question of fact, as, 2
  - royalty, 251
  - statutory, 1, 5, 10–12
  - vernacular vs. scientific, 3–5
- discretionary systems (Alberta)**, *see also* ownership
- cancellation of licence/permit, 146
  - general, 145, 147
  - lease, effect of, 152
  - lease, issue of, 151
  - renewal of lease, 154
  - restrictions on permits, 147
  - surrender of lease, 155
  - term of lease, 153
  - term of permit, 148
- discretionary systems (Manitoba/Saskatchewan)**, *see also* ownership
- conversion into claim, 156
  - general, 156
  - lapse of permit, 163
  - reduction of permit area, 158
  - required work, 157
  - rights under, 160
  - surrender of exploration permit, 158, 162
  - suspension/revocation of permit, 159, 163
  - term of permit, 161
- dispute resolution**, *see also* ownership
- Alberta, 164
  - appeals, 178
  - British Columbia, 165–172
  - Manitoba, 173, 174, 294
  - powers of boards/commissioners, 175–177
  - Saskatchewan, 164
- entry on land**, *see also* ownership; placer mining; surface rights
- lands accessible, 48–52
  - prospecting licence, acquisition, 42–45
  - prospecting/licence, loss of, 46–47
- environmental protection (Alberta)**
- appeals, 346
  - application for approval, 345
  - conservation/reclamation, 348
  - contaminated sites, 348
  - enforcement orders, 349
  - environmental assessments, 347
  - offences, 349
  - prohibited substances, 348
  - reviewable projects, 344
  - reviews, 343, 344

- environmental protection (British Columbia)**
- assessments, 357
  - cancellation of permit, 353
  - general, 350, 357
  - historic site, 356
  - permits, 351, 353
  - prohibited undertakings, 354
  - reviewable projects, 357
  - security for reclamation, 352
- environmental protection (general)**, 341, 342
- environmental protection (Manitoba)**
- assessments, 360
  - closure plan, 358
  - general, 358
  - licence for development, 360
  - mine rehabilitation fund, 359
  - offences, 361
  - security for reclamation, 359
- environmental protection (Saskatchewan)**
- assessments, 362
  - dispositions, 362
  - general, 363
  - ministerial responsibility, 364
  - pollution control, 364
- estoppel**, 95
- exploration**, *see* discretionary systems; staking of claims
- fishing rights**, 31
- forfeiture**, *see* lease, right to obtain; staking of claims
- fraud**, 211, 336, 340
- free entry system (general)**, *see also* ownership
- applicability of, 40, 145
  - elements of, 41
- gold**, 21, 25, 421
- grubstaking agreements**, 244, 245, *see also* mining agreements (general)
- homesteaders' rights**, 25
- hunting rights**, 31
- inspections**, *see* mine safety
- interpretation/construction**, *see also* definitions; mining agreements (general)
- context, effect of, 8
  - ejusdem generis rule, 9
  - intention of parties, 6
  - joint venture agreements, 248
  - reservation clauses, 6, 7, 9
- joint ventures**, *see also* mining agreements (general)
- “area of mutual interest” clauses, 250
  - fiduciary duties, 249
  - interpretation/construction, 248
  - liability of venturers, 247
  - nature/effect of, 246
  - operator’s powers/duties, 249
  - rights/obligations, 248
- “land”**, 33, 180
- lease, right to obtain**, *see also* mining agreements (general); ownership; surface rights (acquisition)
- Alberta, 151, 152
  - duties/rights of lessee, 126–129
  - forfeiture of lease, 136–144
  - general, 43, 121–125
  - nature of interest, 130, 131
  - prospecting licence, effect of, 43
  - renewal of lease, 132–134
  - surrender of lease, 135
  - validity of, challenging, 165

- liability of mining operators**, *see* criminal liability; environmental protection; mine safety
- lien claims**, *see also* ownership
- enforceability, 238–270
  - lien claimants, 268–270
  - lienable interests, 263–267
  - priority of, 264
  - registration of lien, 259–262
- marking of precious metals**, 421
- mine safety**, *see also* criminal liability
- Alberta, 325, 326
  - British Columbia, 327–329
  - Manitoba, 330–332
  - Saskatchewan, 333, 334
- mineral exploration**, *see* discretionary systems; mining agreements (general); staking of claims
- “mines”/“minerals”**, 1, 6–11, 20, 33, 34
- mining agreements (general)**, 18, 203, *see also* agreements for sale; definitions; dispute resolution; grubstaking agreements; interpretation/construction; joint ventures; option agreements; partnerships; private leases; royalty agreements; transfer of interests
- mining legislation, interpretation**, 422
- misrepresentation**, 209–211
- mistake**, 17, 209
- native ownership**, 31, 32, 283, *see also* ownership
- nuisance**, 281
- offences**, *see* criminal liability; environmental protection
- “oil”**, 11
- option agreements**, *see also* mining agreements (general)
- agreement for sale distinguished, 233
  - conditions precedent, 227
  - default, effect of, 230, 235
  - enforcement of, 228
  - interest obligation under, 234
  - nature/requirements of, 225, 226
  - optionee’s rights, 231–235
  - rescission, 229
  - right of first refusal distinguished, 226
  - strict observance of terms, 228
  - time of essence, 229
  - working bond, 233
- ownership**, *see* Crown ownership; discretionary system; dispute resolution; entry on land; free entry system (general); lease, right to obtain; lien claims; mining agreements; native ownership; private ownership; railway lands; staking of claims; surface rights; title (general); transfer of interests
- partnerships**, *see also* mining agreements (general)
- assets of, 240
  - co-ownership, 237, 238
  - evidence of, 237–240
  - existence of, 236–240, 242
  - grubstaking distinguished, 244
  - interest in claim distinguished, 238
  - new stakings, 242, 243
  - profits, participation in, 237, 241
- permits**, *see* discretionary systems
- “petroleum”**, 11
- placer mining**
- entry for exploration, 387

## INDEX

---

- Gold Commissioner, powers, 390
- “lay” agreements, 385
- “mineral substance”, 386
- nature of, 385, 391
- “placer claim”, 386
- placer leases, 388, 389, 392
- “placer mineral”, 386
- pollution**, *see* environmental protection
- precious metals**, 21–23, 29, 336–339, 421
- priorities**, *see* staking of claims; transfer of interests
- private leases**, *see also* mining agreements (general)
  - assignability, 220
  - breach, re-entry for, 221
  - confidence, duty of, 224
  - exclusive possession, right to, 219
  - fiduciary duties, 224
  - general, 219, 220
  - licence distinguished, 220
  - rent, covenant to pay, 223
  - specific performance, 222
- private ownership**, *see also* ownership
  - accreted lands, 19
  - common law rule, 13
  - corporations, 114
  - defects in title, 18
  - general, 13
  - gold, 21
  - loss of interests, 16
  - non-reservation of minerals, 15, 17
  - precious metals, 21–23
  - profit — prendre, 20
  - reservation of interests, 15, 17
  - separation of surface/mineral rights, 14
  - silver, 21
  - staking of claims and, 48
- profit** — **prendre**, 20, *see also* ownership
- prospecting**, *see* entry on land; ownership
- “quarry”**, 12
- railway lands**, 25–30, *see also* ownership
- recording of claims**, *see* staking of claims
- reservation**, *see also* ownership
  - effect of, 33
  - failure to reserve interest, 15, 17
- right of first refusal**, 226, *see also* option agreements
- royalty agreements**, *see also* mining agreements (general)
  - amalgamation of companies, effect of, 258
  - claims subject to, 257
  - enforceability, 253, 256
  - interest in land, as, 254
  - nature of, 252–254
  - rent, covenant to pay, 255
  - “royalty”, 251, 252
- safety**, *see* mine safety
- silver**, 21, 25, 421
- soldier settlement**, 26
- staking of claims**, *see also* ownership
  - abandonment/surrender, 71, 97, 107–109
  - British Columbia, general, 56, 57, 59, 61, 62, 63
  - British Columbia on line registry, 36–39, 72, 73



- conversion of permit into claim, 156
  - corner post, 58, 60
  - discovery, 54
  - errors in, 70–87
  - excess acreage, 70, 84
  - forfeiture of claims, 111–120
  - fractional claims, 59
  - general, 45, 48, 53, 70, 71, 196
  - good faith in, 74, 75, 79–81, 83
  - lapsed claims, 50
  - Manitoba, general, 58, 59
  - movement of posts, effect, 57
  - nature of interest acquired, 88–92, 196
  - old posts, use of, 61
  - one valid claim per parcel, 49
  - paramountcy of staking, 55
  - priorities, 93–97
  - recording of claim, 54, 55, 64–70
  - relocation of, 109
  - renewal/working of claim, 98, 99–103, 104–106
  - requirements, 53–61
  - Saskatchewan, general, 45, 58, 59
  - sketches, 54, 55, 64, 70
  - stakes/posts, 54, 57–61, 76, 79, 81–87
  - substantial compliance, 70–87
  - sufficiency of, 71
  - topographical impediments, 60
  - validity of claims, 50, 74–87
  - witness posts, 60
- Statute of Frauds**, 180–185
- support, right of**, 277–281
- surface rights (acquisition)**, *see also* ownership
- Alberta, 282–284
  - British Columbia, 285–287
  - Manitoba, 293–299, 303
  - Saskatchewan, 298, 299
- surface rights (compensation.)**, *see also* ownership
- appeal of orders, 316–321
  - artificial depreciation, effect of, 315
  - comparable sales as evidence, 310
  - damage to land, for, 314
  - entry fee, 301
  - expropriation principles, applicability, 307, 315
  - general, 300–305
  - hearings, 300, 305
  - measure of, 306–325
  - onus on operator, 311
  - owner vs. lessee, 302
  - pattern of agreements as evidence, 312, 313
  - present use, relevance of, 308
  - present value governing, 308
  - review of order, 320
  - statutory factors (Alberta), 306
  - statutory factors (British Columbia), 322
  - statutory factors (Manitoba), 323, 324
  - transfer value as evidence, 309
- surface rights (general)**, *see also* ownership
- creation of, 271, 272
  - implied rights, 274
  - instrument of severance, 271, 272
  - Manitoba, 293
  - obsolete methods of work, 275
  - reasonable work methods, 276
  - right of working, 273–281

## INDEX

---

- support, surface owner's right, 277–281
- surface, destruction of, 278, 279
- trespass, 281
- failings**, 395, 416, 417
- taxation (Alberta)**, 365, 366
- taxation (British Columbia)**
  - mineral land, 372, 373
  - mineral production, 367–371
- taxation (general)**
  - constitutional issues, 382–384
  - forfeiture of lands, 380
  - tax sales, 381
- taxation (Manitoba)**
  - mineral production, 374
  - mining claims, 375
- taxation (Saskatchewan)**
  - mineral production, 376, 377
  - mineral rights, 378, 379
- title (acquisition under legislation)**, *see* ownership
- title (general)**, *see also* ownership
  - British Columbia, 34, 36
  - “land”, 33
  - reservation of interests, 33
  - Saskatchewan, 35
- transfer of interests**, *see also* mining agreements (general); ownership
  - defects in title, 18
  - effect of, 197–201
  - errors re, 202
  - failure to reserve minerals, 15, 17
  - formal requirements, 179–188
  - general, 179
  - incomplete transfer, effect of, 214
  - ministerial consent, requirement for, 186–188
  - mutual mistake and, 17
  - native lands/interests, 32
  - option agreements, 195
  - order for, 188
  - part performance, effect of, 182–184
  - priorities, 197–201
  - recording of, 189–191, 192–201
  - repudiation of agreement, 18
  - Statute of Frauds, applicability, 180–185
- trespass**, 67, 88, 281, 418–420
- uranium**, 414, 415
- water rights**
  - British Columbia legislation, 397
  - exclusive rights, 396
  - general, 393, 394
  - tailings, control of, 395
- working bond**, *see* option agreements

## Index to Mortgages

(All references are to paragraph numbers.)

- absolute conveyances, *see also* nature of mortgages**
- burden of proof, 15
  - consideration, relevance of, 17
  - covenant to pay, effect of, 21
  - evidence of, 15, 16, 24, 25
  - general, 14
  - possession, power of, 21
  - redemption vs. repurchase, 20, 22
  - rights of parties, 22, 23
  - sale with right of repurchase, 18–21
  - transfer by mortgagor after, effect, 23
- acceleration clauses**
- absence of, effect of, 727
  - action on, 725
  - breach of covenant, for, 737
  - distress satisfying arrears, 732
  - interpretation of, 729, 736
  - notice re invoking of, 724
  - relief from, 722, 723, 726, 728, 730–732, 736
  - sale of land, upon, 733, 734
  - “short form” mortgages, 728, 729
  - taxes, non-payment of, 730, 731
  - waiver of rights, under, 734, 735
- accounting, *see also* foreclosure (accounting); possession**
- application of payments, 658, 659
  - general, 653
  - joint debtor’s right to, 536
  - set-off, 660, 661
- accretion, 39**
- action on covenant, *see also* foreclosure; implied covenants (purchaser’s); redemption; sale by mortgagee (contractual power); sale/transfer by mortgagor**
- adjournment during redemption period, 469, 513
  - Alberta, 544
  - appeal from, 477
  - bankruptcy, effect of, 517
  - bars to (Alberta), 521–528
  - bars to (Manitoba), 529, 530
  - bars to (modification of mortgage), 539–542
  - bars to (Saskatchewan), 531–534
  - British Columbia, 547, 614
  - collateral mortgages, 296
  - corporate mortgages (Alberta), 524, 525
  - default judgment, 614
  - deficiency judgments, 349, 383, 388, 389, 477, 543–551, 610
  - duty of care of mortgagee to mortgagor, 760
  - duty of mortgagee to mitigate, 518
  - farmland (Saskatchewan), 533
  - foreclosure, after, 550–563
  - general, 388, 389, 512–519, 543, 548
  - heirs, liability of, 516
  - insured mortgages (National Housing Act), 526, 534
  - joint debtors, 536–538
  - land titles statutes, effect of, 557–559
  - mitigation, 518
  - mortgagee-mortgagor relationship, 519

## MORTGAGES

---

- nature of, 512, 518
  - personal judgment, as, 512
  - prior realization of security, requirement for, 570, 571
  - redemption rights, 549
  - res judicata, 545
  - restoration of property, mortgagee's obligation re, 552–556
  - Rice orders, 345–349
  - sale, after, 543–549
  - Saskatchewan, 383
  - setting aside personal judgment, 512
  - stay of, 513, 546
  - subsequent mortgagee, by, 561–564
  - subsequent mortgagees, liability of, 560, 565
  - tax sales, effect of, 566–569
  - trustees, liability of, 514
- actions, see acceleration clauses; accounting; action on covenant; concurrent remedies; foreclosure; possession; priorities; receivers; redemption; sale by mortgagee (contractual power); subrogation**
- advances, see also consideration; priorities**
- Alberta, 92, 93
  - British Columbia, 94
  - common law, at, 91
  - failure to make, 655, 656
  - fraud, effect of, 98
  - general, 99
  - Manitoba, 95
  - Saskatchewan, 96, 97
- after-acquired property, see also property subject to mortgage**
- accretions, 39
  - fixtures, 28
  - general, 39, 42
  - leases, 41
  - vesting of property, effect of, 40
- agreement to mortgage, see also equitable mortgages**
- charge on land, need for, 56
  - contents of, 53
  - general, 51
  - registration, 54
  - Torrens system, under, 54
  - writing requirements, 55
- assignment of mortgage, see also seizure/sale of mortgage; transfer of mortgage**
- Alberta, 126
  - British Columbia, 125
  - estoppel, 131–133
  - forgery, effect of, 134
  - Manitoba, 125
  - non-compliance with statute, 127
  - payment by mortgagor after, 146
  - rights of assignee, 129–138
  - set-off, 129
  - subsequent assignments, 128
- attornment, see leases**
- banking legislation, 123**
- bankruptcy, 517, 741**
- “blanket” mortgages, 675**
- builders' liens, see also priorities**
- Alberta, 92, 93, 110, 111
  - British Columbia, 112, 114
  - Manitoba, 95, 116
  - payment of/priority, 657
  - registration, time/effect of, 115
  - Saskatchewan, 96, 113
- caveats, see also priorities**
- equitable mortgages, 54, 69–72

## INDEX

---

- general, 68
- purpose of, 69
- change of ownership of mortgage**, *see* **assignment of mortgage; seizure/sale of mortgage; transfer of mortgage**
- chattel mortgages**, *see also collateral security*
  - enforceability, 631
  - land mortgage subsequent to, 633
  - mobile homes, 632
- clog on equity**, *see* **redemption**
- closed mortgages**, 773
- collateral mortgages**, 296
- collateral security**, *see also chattel mortgages; concurrent remedies; guarantees/promissory notes*
  - assignment of rents, 620
  - general, 618
  - Manitoba, 616
  - shares, 617, 619
  - stay of proceedings, 615
- concurrent remedies**, *see also collateral security; receivers*
  - action on covenant, 614
  - deficiency claims, 610
  - merger, 611
  - order nisi, effect of, 612
  - right to pursue, 608, 609
  - stays, 613
- condominiums**, 121
- consideration**, *see also advances*
  - absolute conveyances, 17
  - evidence of, 8, 17, 654
  - forbearance as, 3, 681
  - lack of, 655, 656
  - necessity for, 8
  - sufficiency of, 11
- consolidation, doctrine of**, 176, 177, 312, *see also redemption*
- costs**
  - apportionment/contribution, 717
  - disclaimer by defendant, effect of, 718
  - general, 694–701
  - misconduct, effect of, 710–715
  - payment/tender terminating further liability, 157
  - reopening of foreclosure, on, 719
  - sale of property, of, 720, 721
  - solicitor-and-client, 701–709
- covenant to execute further assurances**, 634
- crops**, 38
- deferred indefeasibility, rule of**, 22–96, 74
- deficiency judgments**, *see also action on covenant; foreclosure (sales)*
  - Alberta, 544
  - appeal from, 477
  - British Columbia, 547
  - foreclosure, after, 550, 551
  - general, 388, 389, 543, 548, 610
  - redemption rights, 549
  - res judicata, 545
  - Rice orders, 349
  - Saskatchewan, 383
  - stay pending sale, 546
- definition**, *see* **nature of mortgages**
- deposit of title deeds**, *see also equitable mortgages*
  - advance upon deposit, 47
  - charging of lands, 50

## MORTGAGES

---

- depositor not holding legal title, 49
- evidence of intent, 48
- general, 45
- discharge of mortgage (by court),** *see also* **payment of mortgage; redemption**
  - Alberta, 207
  - British Columbia, 208
  - farm protection legislation, 210
  - Manitoba, 209
  - Saskatchewan, 202
- discharge of mortgage (general),** *see also* **payment of mortgage; redemption**
  - beneficiaries of estate, by, 211
  - entitlement to, 146
  - executors, by, 203
  - general, 197
  - joint owner's rights, 202
  - mortgagee acquiring land, 206
  - mortgagor purchasing from mortgagee, 201
  - operative date of, 198
  - partial, 205
  - refusal of, wrongful, 196
  - signing of, 200
  - third party paying, 199
  - void discharges, 200
- distress,** *see* **leases**
- dower rights,** 106–109, 399, *see also* **priorities**
- duty of care, mortgagee and person having interest in mortgage,** 772
- elements of mortgages,** *see* **nature of mortgages; statutory mortgages (Torrens.)**
- emblemments,** 38, *see also* **property subject to mortgage**
- equitable mortgages,** *see also* **nature of mortgages; priorities**
  - action on covenant, 528
  - agreement to mortgage, 51–56
  - creation of, 45–58, 585
  - debt secured, ascertainment of, 44
  - defective legal mortgages, 57, 63
  - deposit of title deeds, 46–50, 585
  - foreclosure, 307
  - general, 43, 44, 52
  - merger, effect of, 63
  - misdescription of subject matter, 58
  - receiver, appointment of, 637
  - Torrens system, under, 43, 45, 54, 69
- equity of redemption,** *see* **redemption**
- estoppel,** 768, *see also* **assignment of mortgage**
- evidence**
  - absolute conveyance, of, 15
  - agent's, 25
  - consideration, 8
  - interest of claimant, re, 9
  - parol evidence, 8, 24, 25, 48, 152, 654
  - payment of mortgage, re, 152
- executions/judgments,** 103–105, *see also* **priorities**
- expropriation, effect of,** 487
- farms,** *see* **action on covenant; foreclosure (farmland)**
- fixtures,** *see also* **property subject to mortgage**
  - annexation, degree of, 27, 35
  - attachment after mortgage, 28
  - general, 26, 32

## INDEX

---

- machinery, 27
- priority to, 29
- severance of annexation, 35
- third-party rights, 30–32, 37
- trade fixtures, 33, 34
- wrongful removal of, 35–37
- forbearance, effect of**, 3, 681
- foreclosure, *see also* accounting; action on covenant; costs; redemption; sale by mortgagee (contractual power)**
- foreclosure (accounting)**
  - amounts included, 436, 439
  - general, 435, 483
  - second mortgagee's entitlement to, 437
  - second/new accounting, 439–441
  - trustees, by, 435
- foreclosure (actions generally)**
  - affidavit of default, 310
  - affidavit of value, 311
  - appeals, 438, 467, 475–477
  - costs, 700, 716
  - demand of notice, 307
  - discontinuance, 411
  - equitable mortgages, 307
  - general, 280–283
  - location for bringing, 315
  - noting in default, 308
  - quitclaims, effect of, 309
  - references, 313, 314
  - stays, 408, 416, 463, 468, 470, 613
  - tort liability, mortgagee's, 771
  - trial, ordering of, 414
- foreclosure (defences)**
  - amount claimed, re, 313
  - conduct of mortgagee, 463
  - fraudulent preference, mortgage being, 290
  - interest exceeding legislated rate, 431
  - misrepresentation, 426
  - set-off, 660, 661
- foreclosure (farmland)**
  - federal legislation, 305, 306
  - Manitoba, 300, 415, 454
  - redemption period, 448
  - Saskatchewan, 322–325, 342, 415–420, 448
- foreclosure (final order)**
  - ancillary nature of, 412
  - application for, 478–484
  - effect of, 485–488, 589
  - reopening of, 489–511
- foreclosure (general)**
  - indemnity of mortgagor by purchaser, 222
  - interest claimable, 676–678
  - practice/procedure, general, 280–282, 326–332
  - remedies available, 284
  - rights of purchaser from mortgagor, 216
- foreclosure (judgment/order nisi)**
  - affidavit of default, 310, 362
  - affidavit of value, 311, 328, 338
  - amending/varying, 421–425
  - amount owing, statement of, 410
  - appeal of, 438, 467
  - date for repayment, stating of, 410
  - discontinuance of, 411
  - effect of, 409–414, 429, 612, 613
  - errors in description, effect of, 371
  - ex parte orders, 408
  - notice of motion for, 408
  - quitclaims, effect of, 309, 551

## MORTGAGES

---

- second order nisi, availability of, 327
- service of, 406
- setting aside, 426–428, 430, 740
- summary judgment, 431–434
- foreclosure (parties)**
  - adding of, 405
  - Crown, 407
  - deceased mortgagor, 397
  - defendants, 394–407
  - general, 390, 391, 652
  - infants, 398
  - lessees/tenants, 403, 404
  - mortgagor, 396
  - plaintiffs, 292, 293
  - prior encumbrancers, 394, 395
  - receivers, 402
  - spouses, 399
  - subsequent encumbrancers, 405, 406
  - transferees of land, 400, 401
  - trustees, 393
- foreclosure (redemption)**
  - extending time for, 453–477, 484
  - final order, after, 489
  - general, 442, 443, 484, 496–502, 613
  - new title issued, after, 506–511
  - sale by mortgagee, after, 505, 507–510
  - shortening time for, 444–451
- foreclosure (right to)**
  - collateral mortgages, 296
  - default triggering, 292, 293, 295
  - destruction of premises not barring, 297
  - forfeiture, relief from, 294
  - fraudulent preference barring, 290
  - general, 285–300
  - injunction barring, 299
  - leave of court, 300–304
  - loss of/alternative remedy used, 289
  - power of sale, effect of, 291
  - purchaser from mortgagor, rights of, 216
  - second mortgagee's right, 286
  - taxes, non-payment of, 294
  - time limitations on, 298
  - trust property, against, 287
  - where funds not advances, 288
- foreclosure (sale)**
  - advertising sale, 333, 355–359, 363, 373
  - affidavit of value, 311, 328, 338, 346, 347, 364
  - Alberta, 317
  - availability generally, 330, 412, 443
  - British Columbia, 317–320
  - carriage of sale, etc., 334, 337
  - commissions on, 370
  - conditions of, 351–354
  - confirmation of sale, 361–369, 372–374, 375, 392, 652
  - co-owner, purchase by, 341
  - deficiency judgments, 349, 383, 388, 389, 476
  - deposits, 360
  - encumbrances, effect on, 352, 353
  - failure of defendant to appear, 331, 332
  - farmland (Saskatchewan), 322–325, 342, 415–419, 448
  - jeopardy, proof of, 329
  - Manitoba, 321
  - method/conduct of, 333–339, 379



## INDEX

---

- mortgagee, purchase by, 343–349, 365, 366
- multiple parcels, 350
- no tenders obtained, effect of where, 327
- notice of application for, 332, 652
- parties entitled to purchase, 322–325, 341–349, 365, 366
- proceeds, 382–387
- purchaser's rights, 372, 378–381
- purpose of order for, 329
- recovery of instalment vs. entire amount, 326
- res judicata, 415
- reserve bids, 336
- Rice orders, 345–349
- Saskatchewan, 322
- setting aside, 344, 363, 371–376, 380
- sheriff's liability, 379
- stay of, 340, 377, 395
- tenders, 335, 338, 339, 367, 369, 392, 468
- valuation of property, 311, 328, 338, 346, 347, 364
- vesting of property, 372, 375, 380
- forfeiture, relief from, see foreclosure (right to); foreclosure (redemption)**
- forgery, 134**
- form of mortgage, see nature of mortgages; statutory mortgages (Torrens)**
- fraud, 73–78, 98, 344, see also notice; priorities**
- fraudulent preferences, 290**
- guarantees/promissory notes, see also collateral security**
  - Alberta, 621
  - identical obligation with mortgage, 622–625
  - indirect enforcement of mortgage covenant, 622–625, 628, 629
  - interest rate, 668
  - Manitoba, 624
  - order of realization, 625–627
  - Saskatchewan, 621, 630
  - settling of accounts, 653
- homestead land (Alberta), 108**
- implied covenants (purchaser's), see also sale/transfer by mortgagor**
  - assignee of mortgage, rights of, 228
  - assignment by mortgagor, 232
  - general, 223–229
  - joint purchasers, 227, 233
  - mortgagee's position, 230–233
  - mortgagor's position, 234
  - negating of, 235–244
  - partial transfers, 245
  - successive transferees, 226
- improvements, see possession**
- injunctions, 299**
- insurance**
  - assignment as collateral security, 172
  - covenant to insure, 756
  - entitlement to proceeds, 754, 755, 759
  - failure to insure, 753
  - foreclosure, effect of, 755
  - hail insurance, 759
  - legislation applicable, 754
  - right to benefit of, 221
  - standard mortgage clause re, 757, 758

## MORTGAGES

---

### **interest**

- advancement of funds, effect of, 669
  - after maturity, 670, 690–692
  - agreements re, interpretation of, 768
  - ambiguity, disentitlement for, 664
  - “blanket” mortgages, 675
  - blended payments, 685–689
  - bonus/prepayment penalties, 676–678
  - calculation annually not in advance, 665
  - “compensation” in prepayment clause, 679
  - compound interest, 692, 693
  - Criminal Code provisions, 671–673
  - errors in calculating, challenging, 666
  - federal legislation, application of, 184–192, 662, 663, 667, 668 678–689
  - indexed mortgages, 663
  - Interest Act, 185
  - liability for, stopping of, 153, 156
  - mortgage not stipulating rate, 667
  - penalty on default, increase as, 676, 680–684
  - priorities, 674
  - rebates of, 663
  - verbal agreements re, 670
  - “wrap-around” mortgages, 675
- leases, see also possession**
- assignment of, 143
  - attornment, 738, 739, 748–752
  - distress by mortgagee, 594, 595, 741–746
  - ejection of tenant, 590
  - enforcement of covenants, 644
  - foreclosure of mortgage, effect of, 486
  - general, 590
  - mortgage of, 41
  - mortgagee granting lease of secured premises, 573
  - receiver of rents, 640, 643–645, 649–651, 747
  - redemption rights of lessee, 161–163
  - rent, assignment of, 747
  - rent, attachment/distress, 593, 594, 740–747
  - rent, receipt by mortgagee, 592, 595
  - rent, reservation of, 748, 749
  - third-party rights, 750–752
  - transferee’s rights under, 143
- legal mortgages (defective), 57, 63, see also equitable mortgages; nature of mortgages**
- liens, see builders’ liens; priorities; statutory liens**
- marshalling, 82–85, see also priorities**
- mental incompetency, 144**
- merger**
- equitable mortgages, 63
  - general, 59, 611
  - intentional parties, 59, 60, 63
  - stranger paying mortgage, 61
  - Torrens systems, 59, 62
- misdescription, effect of, 58**
- mistake, 58**
- mitigation, 518**
- mobile homes, 632**
- nature of mortgages, see also absolute conveyances;**

## INDEX

---

- equitable mortgages; property subject to mortgage; statutory mortgages (Torrens)**
  - common law, 2, 281
  - consideration for, 8
  - equity, 2
  - forbearance in enforcing, 3
  - form of, 8, 9
  - general, 2, 3
  - personal property, as, 5
  - Torrens systems, 6, 7, 281–283
  - trusts, distinguished from, 4
- notice**, *see also* **priorities**
  - fraud, effect of, 73, 75, 77
  - general, 73, 76
  - imputed notice, 73, 76, 78
- novation**, 217–219, 539, 540, 542, *see also* **sale/transfer by mortgagor**
- open mortgages**, 773
- ownership of mortgage, change of**, *see* **assignment of mortgage; seizure/sale of mortgage; transfer of mortgage**
- payment of mortgage**, *see also* **discharge of mortgage; redemption**
  - after assignment by mortgagee, 146
  - after maturity, 150
  - application of, 658, 659
  - arrears, 158
  - costs of foreclosure and, 157
  - evidence re, 152
  - gold, in, 149
  - mortgagee in default, 154
  - proper party, to, 146, 147
  - renewal agreements, effect of, 148, 150, 151
  - tendering of, 153–156
  - timing of, 148
  - transferee's liability, 158
- personal property security**, *see also* **priorities**
  - Alberta, 92, 93
  - Saskatchewan, 96
- possession**
  - accounting by mortgagee, 596, 603
  - action for, 404, 607
  - attornment clauses, 738, 739
  - environmental damage, liability re, 574
  - improvements by mortgagee, 605, 606
  - lease by mortgagee, authority for, 573, 582, 583
  - lease by mortgagor binding mortgagee, 591
  - mismanagement by mortgagee, 597–599
  - mortgagee deemed in possession, 587–589
  - mortgagee's common law right to, 579–581
  - mortgagee's costs re, recovery of, 604
  - mortgagee's statutory right to, 584–586
  - mortgagor, by, 575
  - occupation rent, mortgagee's, 603
  - purchaser's right to, 378
  - taxes, payment of, 607
  - tenant of mortgagor, by, 590–595
  - trespass, 572
  - waste, 576–578, 600, 601, 602
- priorities**
  - British Columbia, 65
  - builders' liens, 92–96, 110–116

## MORTGAGES

---

- caveats, 54, 68–72, 118
  - charge registered prior to transfer, 66
  - dower rights, 106–109
  - equitable charges, 67
  - equitable mortgages, 69–72, 104
  - executions/judgments, 103–105
  - fixtures, re, 29
  - general, 64–67
  - interest, effect of increase in, 674
  - marshalling, nature/effect of, 82–85
  - modification of mortgage, effect of, 79–81, 104
  - notice, 73–78
  - personal property security, 92, 93, 96
  - registered judgments, 118
  - rent, to, 643, 649, 747
  - statutory liens, 117–123
  - subrogation, 86–89
  - subsequent advances, 91–99, 118
  - Torrens legislation, under, 64
  - unregistered interests, 68–78
- promissory notes, see guarantees/promissory notes**
- property subject to mortgage, see also nature of mortgages**
- after-acquired property, 28, 39–42
  - crops, 38
  - emblements, 38
  - fixtures, 26–37
- receivers**
- Alberta, 635
  - duties of, 647, 648
  - equitable mortgagee seeking, 637
  - general, 636, 642
  - judgment creditor appointing, 642
  - order vesting title in purchaser, 646
  - refusal of appointment, 638
  - rents of, 640, 643–645, 649–651
  - substitution of new receiver, 641
  - taxes, non-payment of, 613
- redemption, see also absolute conveyances; costs; discharge of mortgage; foreclosure (redemption); nature of mortgages; payment of mortgage; sale by mortgage (contractual power)**
- action on covenant creating right, 549
  - amount required, 441
  - clog on equity of, 166–175
  - consolidation, doctrine of, 176, 177
  - default, after, 180, 181
  - discontinuance of action upon, 183
  - estate in land, as, 159
  - foreclosure, after, 193–196
  - Interest Act, effect of, 184–192, 676, 680–684
  - loss of right of, 178, 179
  - parties having right of, 160–163
  - payment into court, 182
  - price of, 164, 165
  - reduction of redemption period, 452
  - right to repurchase distinguished, 20
  - sale, after, 372, 381
  - statutory alternatives to, 165
  - time for, 193, 195, 196, 312, 372, 381, 442, 613
- reduction agreements, 770**

## INDEX

---

- registration, see priorities; statutory mortgages (Torrens)**
- remedies, see accounting; action on covenant; concurrent remedies; foreclosure; possession; priorities; receivers; redemption; sale by mortgagee (contractual power); subrogation**
- renewal of mortgage**
- extension vs. renewal, 150
  - general, 151
  - payment, effect on, 148
- Rice orders, see foreclosure (sale)**
- sale by mortgagee (contractual power), see also foreclosure; redemption**
- advertising, 259
  - clog on equity, as, 170
  - creation of power, 252
  - credit, sale on, 263
  - exercise of power, 256, 257
  - extinguishing of power, 253
  - foreclosure, effect on, 291
  - good faith, duty of, 258
  - improvident/improper sales, 259, 278
  - mortgagee's duty/liability, 258–262, 277
  - nature of power, 252–254
  - notice re intent to exercise, 266–271, 278
  - offers, disclosure of, 262
  - parties entitled to purchase, 264, 265
  - passing of title, 256
  - proceeds, distribution of, 279
  - quitclaims, effect of, 551
  - registrar's powers/duties, 272–275
  - restraint of by court, 261
  - setting aside, 276–278
  - time for exercising, 255
  - Torrens systems, under, 247–251
- sale/transfer by mortgagor, see also implied covenants (purchaser's)**
- insurance, effect on, 221
  - mortgagor's liability after, 217–219
  - mortgagor's standing after, 246
  - novation, 217–219
  - prior owner, liability of (British Columbia), 224
  - purchaser's implied covenants, 223–245
  - purchaser's liability/rights, 23, 2112–216, 220–222
- scope of title, 1**
- seizure/sale of mortgage, 145, see also assignment of mortgage; transfer of mortgage**
- set-off, 660, 661**
- sheriff's liability, 379**
- Statute of Frauds, see equitable mortgages; evidence**
- statutory liens, see also priorities**
- banking legislation, 123
  - condominium legislation, 121
  - co-operatives legislation, 122
  - GST, unremitted, 124
  - home purchase assistance legislation, 119
  - taxes, 120
  - wages, 118
  - workers' compensation, 117
- statutory mortgages (Torrens), see also foreclosure; nature of mortgages; possession;**

## MORTGAGES

---

- priorities; sale by mortgagee (contractual power)**
  - consideration, 8, 11
  - effect of statute, 7
  - equitable mortgages, 43, 45, 54, 63, 69–72, 104
  - form of, 10
  - general, 6
  - merger, effect on, 59, 62, 63
  - prescribed form, non-compliance with, 10, 12
  - registration/enforceability of, 10, 13, 43, 46, 54, 69–72
  - trust deeds, incorporation of, 13
- stay of proceedings, see action on covenant; collateral security; concurrent remedies; foreclosure (actions generally); foreclosure (sales)**
- subordination agreements, 769**
- subrogation, see also priorities**
  - cestui que trust, by, 86
  - subsequent mortgagee, by, 87, 88
  - tax payments, payor of, 89
- taxes**
  - acceleration clauses and, 730, 731
  - Alberta, 761
  - collateral security, land held as, 764
  - covenant to pay, 761, 766, 767
  - guarantor/assignee paying, 766
- liens, 120
- mortgagee's liability for, 606, 763, 765
- receiver, appointment of, 639
- tax sales, 382, 566–569, 762, 765, 767
- tender, see payment of mortgage**
- Torrens system, see statutory mortgages (Torrens.)**
- tort liability, 771**
- transfer of mortgage, see also assignment of mortgage; seizure/sale of mortgage**
  - general, 139, 141
  - mortgage of mortgage as, 140
  - registration, 139
  - rights of transferee, 142–144
- trespass, see possession**
- trusts**
  - accounting, 435
  - actions by trustees, 393
  - distinguished, 4
  - incorporation in mortgage, 13
  - trustees' liability on covenant, 514
- wage liens, 118**
- waste, see possession**
- workers' compensation liens, 117**
- “wrap-around” mortgages, 675**

## Index to Motor Vehicles

(All references are to paragraph numbers.)

- abandoned vehicles**, 286
- accident claims**
  - claim against fund after judgment, 489–491
  - claim against fund without judgment, 477–485
  - costs, 529–531
  - judgments not payable, 495–499
  - limits on payment, 515–526
  - non-residents and governments, 527, 528
  - payment of judgments, 492–494
  - undefended actions, 486–488
  - uninsured vehicle, 475, 476
  - unknown owner or operator, 500–514
    - • adding defendants after action commenced, 508, 509
    - • defences, 506, 507
    - • limitation and notice periods, 504
    - • reasonable efforts to ascertain identity, 511–514
    - • right to bring action against administrator/insurer, 500–503
    - • right to jury trial, 505
    - • settlement of action, 510
- air cushion vehicles**, 289
- applicability of provincial legislation**
  - Indians and Indian reservation, 3
  - national park, 4
- arrests and penalties**
  - arrests, 457
  - evidence, 449–451
    - • accuracy of radar, 450
    - • certificates in aid of prosecution, 449
  - • erasing of videotape by police, 451
  - general, 436
  - general penalty, 452, 453
  - power of police to stop vehicle, 454–456
  - procedure, 438–447
    - • duplicitous traffic ticket, 446
    - • enforcement of voluntary payment of fine option (Alberta), 442
    - • imprisonment for failure to pay parking fine (Saskatchewan), 440
    - • information (British Columbia), 444
    - • photo radar settings, 447
    - • police officer as witness and prosecutor, 441
    - • setting aside of conviction re excuse for not disputing, 443
    - • specified penalties (Alberta), 445
    - • summary conviction legislation, 438
    - • validity of tickets, 439
  - recovery, 437
  - report on conviction, 448
  - seizure of vehicles, 458–462
    - • contraventions of legislation, 459
    - • impoundment (British Columbia), 460
    - • impoundment not seizure for Charter purposes, 462
    - • present or potential hazard to persons/property, 458
    - • seizure (Manitoba), 461
- backing prohibited**, 231

**careless driving**

- elements of offence, 172
- informations, 177
- legal power of province, 173
- momentary inattention/simple error of judgment, 174
- nature of offence, 177–181
  - • inadvertence, 178
  - • intent and mens rea, 179
  - • objective and shifting standard, 180
  - • stopping of vehicle, 181
- strict liability offence, 176

**certificates of registration**

- change of name, 21
- incorrect information, liability of Crown, 22
- maintenance enforcement (Alberta), 24
- motor vehicle insurance, 20
- offence to knowingly make false statement, 21
- offence to operate vehicle without, 18
- production for inspection on demand of peace officer, 23
- strict observance, 19
- transfer of ownership, 21
- valid for prescribed period, 20
- vehicle on which manufacturer's serial number removed, 21

**compulsory automobile insurance**

- Alberta, 463–465
- British Columbia, 466–469
- Manitoba, 470, 471
- Saskatchewan, 472–474

**consent**

- limited consent, 369–374
  - • limitation of purpose, 369, 370
  - • limitation on person, 371–374

- possession, 364–368

**constitutional validity, 2**

**construction and maintenance vehicles**

- British Columbia, 294
- Saskatchewan, 295

**defence of ex turpi causa, 391**

**demerit point system, 81**

**driver's licenses**

- class or classes of motor vehicles, 31
- exemptions for non-residents and new residents, 34
- general, 29
- insurance premiums indebtedness (British Columbia), 32
- minimum age restrictions, 31
- not having as evidence of negligence, 33
- photograph (Alberta), 35
- production for inspection on demand of peace officer, 30

**driver training schools and driver examiners, 37**

**driving instructor's licenses, 36**

**driving while suspended**

- calculation of driving prohibition (British Columbia), 79
- essential elements of offence, 76
- essential elements re driving while prohibited (British Columbia), 77
- offence and penalty, 75
- presumption of service of notice of suspension (Manitoba), 80
- seizure and impounding of vehicle (Manitoba), 78

**emergency vehicles**

- driving with due regard for safety (British Columbia), 292



## INDEX

---

- driver's standard of care, 291
- right of way, 293
- statutory exemptions from rules of road, 290
- equipment**
  - brakes, 95–100
    - brake fluid, 100
    - defective brakes, 97–99
    - general, 95, 96
  - bumpers, 119
  - federal safety standards, 129, 130
  - helmets, 128
  - lights, 83–94
    - dazzling lights, 88
    - driving within range of limits, 89, 90
    - general, 83–85
    - headlights, 86, 87
    - rear lights and clearance lights, 91–94
  - mudguards, 104
  - noise and fumes, 110–115
    - general, 110
    - sounding horn, 111–115
  - odometer, 109
  - radar warning devices, 117
  - rearview mirror, 103
  - seat belt assemblies, 131–134
    - Alberta, 132
    - duty of care to child passenger, 134
    - general, 131
    - Saskatchewan, 133
  - speedometer, 108
  - television sets, 116
  - tires, 105–107
  - trailer attachments, 118
  - vehicle inspection, 120–127
    - police powers of inspection, 120
    - provincial powers of investigation and inspection, 121
    - unsafe vehicles, 122–127
      - Alberta, 122, 123
      - British Columbia, 124
      - Manitoba, 125
      - Saskatchewan, 126, 127
  - windows, 102
  - windshield wipers, 101
- effect of non-compliance with legislation**
  - breach as bar to action, 6
  - breach as evidence of negligence, 5, 33
- evidence**
  - inferences from physical facts, 393, 394
  - res ipsa loquitur, 392
  - statutory onus, 395–404
    - collision between vehicles, 401
    - contributory negligence, 404
    - general, 395–400
    - nature and discharge of onus, 402, 403
- following too closely**, 232, 233
- funeral processions**
  - Alberta, 296
  - Manitoba, 297
- highway**
  - Alberta, 7
  - defined for purposes of statutes only, 9
  - other provinces, 8
  - parking lots, 11
  - privately owned roads with unrestricted public right of access, 10

- road in an Indian reserve, 10

**interference with driver, 235**

**liability for loss or damage**

- general, 347
- vicarious liability of Attorney General of British Columbia re police officers, 349
- vicarious liability of employer, 348

**license plates**

- attachment, 26
- general, 25
- taking of possession by peace officer, 27

**license suspensions following Criminal Code convictions**

- application for stay of driving prohibition, 40
- automatic suspension (Manitoba), 43
- disqualification from driving (Saskatchewan), 42
- general, 38
- interlock program for setting aside part of suspension, 41
- validity of legislation re conviction for driving while intoxicated, 39, 70

**license suspensions for contravention of Act (Alberta)**

- administrative license suspension program re drinking and driving, 48
- appeal from administrative license suspension, 47
- broad discretion of Alberta Transportation Safety Board, 44
- contravention of Traffic Safety Act or Fuel Safety Act, 44
- driving while impaired/refusal to provide breath sample, 45

- due diligence defence re driving while suspended, 49
- service of notice of suspension/cancellation, 49

**license suspensions for contravention of Act (British Columbia)**

- appeal to Superintendent, 56, 58, 61
- application for stay of suspension pending judicial review, 59
- determination of reasonable excuse for refusing breath sample, 62
- general, 50
- judicial review of administrative driving prohibition, 60, 65, 71
- mandatory minimum sentence, 55
- notice of prohibition is temporary driver's license expiry, 64
- objective of authority to prohibit person from driving, 51
- reference by adjudicator to report issued by Superintendent on calculating blood alcohol concentration, 68
- report to Superintendent by peace officer serving notice, 63
- requirement for written reasons on review, 67
- right of driver to contest proposed prohibition, 53
- scope of Superintendent's review of driving prohibition, 66
- speeding infractions alone may warrant prohibition, 52
- timing of application for review of driving prohibition, 69
- validity of legislation re prohibition from driving for impaired driving, 54

## INDEX

---

### **license suspensions for contravention of Act (Manitoba), 72**

### **license suspensions for contravention of Act (Saskatchewan), 73**

### **limitation of actions**

- damages occasioned by motor vehicle, 428–430
- fatal accidents, 424
- federal Crown, 427
- injury to chattels/person, 424
- operative condition for application (Saskatchewan), 425
- running of time, 431–435
  - • acknowledgement of cause of action by defendant, 432
  - • extension of time (Manitoba), 431
  - • extension of time to add third party (Alberta), 433
  - • extension of time to infants, 435
  - • postponement of commencement of (British Columbia), 434
- Small Claims Court (Saskatchewan), 426

### **litter on highway, 288**

### **load and dimensions**

- general, 135, 136
- overhanging loads, 137
- overweight permits, 144
- penalties, 146
- powers of police to inspect, 145
- weight, 138–143
  - • Alberta, 138, 139
  - • British Columbia, 140
  - • Manitoba, 141, 142
  - • Saskatchewan, 143

### **meaning of owner**

- general, 350–355
- nature and extent of liability, 356–363
  - • deemed agents (Alberta), 362
  - • duty of owner to deny permission to drive to impaired person, 363
  - • liability of driver as agent or servant of owner, 356
  - • owner may include lessee and lessor (Alberta), 357
  - • test of consent of owner, 358
  - • vicarious liability of owner, 360–361

### **meeting and overtaking**

- breach of duty to turn out to right, 223
- emergency vehicles, 229
- general, 217
- moving to right within reasonable time, 222
- narrow roads, 226
- negligence when both drivers hugging centre line, 225
- overtaking stopped public transit buses, 228
- parking permitted on one side of road, 220
- passing stationary vehicle, 227
- responsibility of overtaken driver, 224
- snow covered highway, 219
- travelling in oncoming lane, 218
- where passing prohibited, 221

### **motor vehicle**

- Alberta, 12
- British Columbia, 13
- Manitoba, 14
- Saskatchewan, 15
- specific motor vehicles, 16, 17

## MOTOR VEHICLES

---

- • farm tractor, 17

### **municipal by-laws**

- injunction prohibiting breach of towing by-laws, 406
- parking meters, 409
- prohibition of parking on street (British Columbia), 408
- regulation and control of vehicle, animal and pedestrian traffic (Alberta), 405
- voluntary payment of parking fine, 407

### **negligence**

- causation, 301
- claim against mother by child once born, 303
- definition, 299
- elements of actionable negligence, 300
- mere fact of collision, 302

### **opening doors, 242**

### **parking**

- disabled vehicles, 252
- flares, 253
- park or leave standing, 248–250
- parking on travelled portion, 251
- precautions against being set in motion, 256, 257
- statutory provisions, 243–247
- unlighted vehicles, 254, 255

### **passengers**

- acceptance of risk *volenti non fit injuria*, 386–390
- contributory negligence of, 378–390
  - • action against drunk driver, 381
  - • duty to maintain proper lookout, 380
  - • failure to wear seat belts, 383–385

- • legislation, 378

- • person having right to control driver, 379

- • reasonable precautions for own safety, 382

- general, 375–377

### **pedestrians**

- crossing roadway, 265–276
  - • at intersections, 270, 271
  - • at traffic lights, 265–269
  - • not at intersection, 272–275
- walking along roadway, 259–264
  - • duty of motorist, 261–264
  - • duty of pedestrian, 259, 260

### **private road, 203**

### **racing and stunting, 276, 277**

### **railway crossings**

- common law duty of care owed by railway to public, 240
- failure of train to give statutory warnings, 241
- general, 236
- reasonable care to know way clear, 238, 239
- uncontrolled railway crossing, 237

### **records and reporting of accidents**

- admissibility of statements, 412–416
- duty of motorist, 411
- false statements, 423
- general, 310
- remaining at scene, 417–419
  - • Alberta, 418
  - • British Columbia, 417
- contact without damage or injury, 419
- repair of damaged vehicle, 422
- report by police, 421

## INDEX

---

- report of damage, 420
- removal of damaged vehicle**, 285
- riding in trailers**, 287
- riding on outside of vehicle**, 278, 279
- right of way**
  - at traffic lights, 192, 193
  - nature of right of way, 184–188
  - • first into intersection, 186–188
  - • general, 184–195
  - reliance on right of way, 189–191
  - through highways, 194, 195
- school buses**, 280
- signs**
  - informative non-mandatory signs, 282
  - requirements as to erection of stop signs, 283
  - traffic control devices, 281
  - unauthorized traffic signs, 284
- speed, rate of**
  - defence of necessity, 153
  - excessive speed and negligence, 167–171
    - • causal connection between speeding and accident, 167
    - • driver's range of vision, 170
    - • intersections, regulation of speed at, 171
    - • nature and condition of highway, 168
    - • travelling at excessive rate but below posted limit, 167
    - • unfavourable road conditions, 169
  - gauging speed by police vehicle speedometer, 155
  - judicial notice of speed limit, 154
  - laser device, evidence from, 156
  - no defence of honest and reasonable mistake of fact, 152
  - physical proof of speed, 165
  - radar, 160–164
    - • equipment in good working order/properly used, 160
    - • photo radar (Alberta)
    - • photo radar (British Columbia), 162, 163
    - • photo radar (Manitoba), 161
  - signs, 157–159
  - slow driving, 166
  - speed limits, 147–151
    - • construction zone, 150
    - • general, 147
    - • punishment, Alberta, 151
    - • speed when passing emergency vehicle, 149
    - • unreasonable speed in all circumstances, 148
- standard of care**
  - degree of care varies with circumstances, 306
  - disabilities of driver, 312–321
    - • disabling factors, 315–321
      - • • anticipation of onset of debilitating condition, 316
      - • • conscious act of volition, 315
      - • • falling asleep, 318
      - • • intoxication, 321
      - • • mechanical failure, 319
      - • • mental illness, 317
      - • • running out of fuel, 320
    - • skill and experience, 312–314
  - special factors affecting duty, 322–328
    - • • animals and persons, 342–346

## MOTOR VEHICLES

---

- anticipation of presence, 343
- contact with wildlife, negligence and, 345
- duties of driver riding animal, 342
- greater duty towards oncoming motorist, 344
- waiting outside of vehicle, 346
- cyclists, 338–341
- duty of care to avoid collision with vehicle, 341
- riding as near to right side, 339
- riding on crosswalk (British Columbia), 340
- rules of road, 338
- dangerous highways, 327, 328
- keeping a lookout, 332–337
- negligence to not see what is clearly visible, 333
- obstructions or traffic, 332
- radio use on radio controlled logging roads, 336
- rear end collision with stationary vehicle, 337
- taking eyes off road, 334
- watching for objects coming from both sides, 335
- emergencies, 329–331
- visibility, 322–326
- dazzling lights, 325, 326
- weather conditions, 322–324
- duty of care to pedestrians by drivers of scooters, 311
- duty to keep vehicle always under control, 307
- general, 304
- inferences re negligence, 310
- question of fact, 309
- test driving car, 305
- traffic rules are in addition to duty to use due care, 308
- statutory construction, 1**
- stop signs, 196–201**
- suspension for failure to pay judgments, 82**
- towing, 234**
- traffic direction by police and flag persons, 182, 183**
- traffic lanes, 230**
- traffic lights**
  - amber/yellow light, 216
  - duty to take care, 213
  - general, 212
  - pedestrians, 214, 215
- turns**
  - general, 204, 205
  - left turns, 206
  - signaling turns, 207–210
  - u-turns, 211
- vehicle inspection, 120–127**
  - police powers of inspection, 120
  - provincial powers of investigation and inspection, 121
  - unsafe vehicles, 122–127
    - Alberta, 122, 123
    - British Columbia, 124
    - Manitoba, 125
    - Saskatchewan, 126, 127
- yield signs, 202**
- 24-hour suspension, 74**

## Index to Municipal and School Taxation

(All references are to paragraph numbers.)

- appeals**
  - appeals by stated case, 479–495
  - • procedure and evidence, 486–495
  - • right to appeal, 479–485
  - appeals from board of review/review boards, 390–478
    - • Alberta, 391–419
      - • • appeal to Queen’s Bench, 393–400
      - • • decision of board, 408–419
      - • • evidence, 407
      - • • general, 391, 392
      - • • hearing before Municipal Government Board, 401–405
        - • • • establishment, constitution, jurisdiction, 401–403
        - • • • initiation of hearing, 404, 405
        - • • • procedure, 406
      - • • British Columbia, 420–435
        - • • • decision of board, 431–434
        - • • • establishment, constitution, jurisdiction, 422–426
        - • • • general, 420, 421
        - • • • initiation of hearing, 427–429
        - • • • orders for compliance, 435
        - • • • procedure, 430
      - • • general, 390
      - • • Manitoba, 436–460
        - • • • appeal from Municipal Board/Queen’s Bench, 456–460
        - • • • Court of Queen’s Bench, 453–455
        - • • • general, 436–438
      - • • • Municipal Board, 439–452
        - • • • • decision of board, 449–452
        - • • • • establishment, constitution, 439–440
        - • • • • evidence, 446–448
        - • • • • initiation of hearings, 441, 442
        - • • • • procedure, 443–445
      - • • Saskatchewan, 461–478
        - • • • decision of board, 475–478
        - • • • establishment, constitution of Municipal Board, 464, 465
        - • • • evidence, 473–474
        - • • • general, 461–463
        - • • • initiation of hearing, 466–470
        - • • • procedure, 471, 472
    - initial appeal, 338–389
      - • decision of board of revision/review panel, 375–389
        - • • Alberta, 375–378
        - • • British Columbia, 379–381
        - • • Manitoba, 382–384
        - • • Saskatchewan, 385–389
      - • establishment, constitution of appeal boards/panels, 339–351
        - • • Alberta, 339–342
        - • • British Columbia, 343, 344
        - • • Manitoba, 345–347
        - • • Saskatchewan, 348–351
      - • evidence, 369–374
      - • • burden of proof, 372–374
      - • • general, 369–371
      - • • general, 338
      - • • initiation of appeals, 352–367
        - • • • Alberta, 352–354

## MUNICIPAL AND SCHOOL TAXATION

---

- British Columbia, 355–357
- Manitoba, 358–360
- Saskatchewan, 361–367
- judicial review of assessment process, 499–511
  - effect of privative clauses, 504
  - remedies, 509–511
  - right to review, 505–508
  - validity and finality of assessment roll, 499–503
- other appeals, 496–498
- procedure, 368
- assessment process**
  - assessment equalization, 335–337
  - business valuation, 283–286
  - curative provisions, 165–166
  - description of lands, 307–310
  - fixed assessments, 287–292
  - identification of person assessed, 293–306
    - description of assessed person, 306
    - persons subject to assessment, 293–305
      - Alberta, 293–294
      - British Columbia, 295
      - Manitoba, 296–298
      - Saskatchewan, 299–305
  - mandatory and directory aspects, 161–164
  - necessity for assessment, 159, 160
  - notice of assessment, 311–334
  - requirement of giving notice, 311, 312
  - statutory provisions, 314–334
    - Alberta, 314–320
    - British Columbia, 321–326
    - Manitoba, 327
    - Saskatchewan, 328–334
  - statutory procedure, 167–216
    - Alberta, 167–180
    - British Columbia, 181–195
    - Manitoba, 196–205
    - Saskatchewan, 206–216
  - valuation of property, 217–282
    - approaches to valuation, 221–235
      - actual sales, 229
      - comparable sales, 230–231
      - replacement costs, 232–235
      - use of formula, 221–228
    - determination of actual value, 217–220
    - factors to be considered, 236–259
      - general, 236, 237
      - obsolescence and depreciation, 255–259
      - prospects for development, 250–251
      - statutory provisions, 238–259
        - Alberta, 238
        - British Columbia, 239, 240
        - Manitoba, 241, 242
        - Saskatchewan, 243–249
    - use of property, 252–254
  - separate valuation of land and improvements, 281, 282
  - valuation of particular properties, 260–279
    - mines and minerals, 272–275
    - miscellaneous, 276–279
    - railways, 260–271
- business assessment**
  - character of occupancy, 139–142
  - imposition of tax, 145–158



## INDEX

---

- • general, 145
- • statutory provisions, 146–158
  - • • Alberta, 146–152
  - • • Manitoba, 153–158
- collection and payment**
- apportioning legal costs of enforcement, 581
- authority of collection, 538
- demand for payment, 539–549
  - • Alberta, 539–541
  - • British Columbia, 542, 543
  - • Manitoba, 544–546
  - • Saskatchewan, 547–549
- lien for taxes, 576–580
- payment of taxes, 550–566
  - • appropriation and apportionment, 559–563
  - • compromise or abatement, 564–566
  - • general, 550–555
  - • penalties, discounts, instalment payments, 556–558
- recovery, 567–575
  - • taxes by action, 567–569
  - • taxes paid, 570–575
- tax certificates, 585–591
  - • Alberta, 585
  - • British Columbia, 586–588
  - • Manitoba, 589
  - • Saskatchewan, 590, 591
- taxes on rental premises, 582–584
- constitutional jurisdiction**
- Constitution Act, 1867, 1–3
  - • assessment laws for municipal purposes, 1
  - • direct taxation for provincial purposes, 2
- Constitution Act, 1982, 3
- construction of statutes**, 9, 10
- distress**
- authority to levy, 592
- liability for illegal distress/loss/damage to goods, 604–606
- property subject to, 593–606
- local improvement taxes**
- abutting land, 743
- grant of total exemption from taxation, 744
- policy of, 741
- special assessments, 740
- undertaking for general public benefit, 742
- property assessment and taxation**
- exemptions, 27–125
  - • aboriginal property, 47–48
  - • agricultural lands and property, 88–99
    - • • Alberta, 88–91
    - • • British Columbia, 92–94
    - • • Manitoba, 95, 96
    - • • Saskatchewan, 97–99
  - • cemeteries, 72–76
  - • charities and non-profit organizations, 81–87
  - • churches and places of worship, 65–71
    - • • Alberta, 65
    - • • British Columbia, 66, 67
    - • • Manitoba, 68, 69
    - • • Saskatchewan, 70, 71
  - • Crown lands, 31–46
    - • • agent or servant of Crown conducting operations/occupying, 34
    - • • assessment by municipality, 38
    - • • buildings brought on property for use by contractor, 35

## MUNICIPAL AND SCHOOL TAXATION

---

- development cost charge imposed by bylaw, 39
  - interests of Crown in privately owned property, 36
  - lands or property belonging to Canada or province, 31
  - occupant of, 33
  - property vested in foreign sovereign, 37
  - taxation of persons deriving beneficial interests, 32
  - educational facilities, 52–64
    - Alberta, 52–54
    - British Columbia, 55–57
    - Manitoba, 58–60
    - Saskatchewan, 61–64
  - general, 27–30
  - hospitals, 77–80
  - municipal lands, 49–51
  - other exemptions, 100–125
    - Alberta, 100–106
    - British Columbia, 107–115
    - Manitoba, 116–120
    - Saskatchewan, 121–125
  - specific legislative provisions, 40–46
    - Alberta, 40–42
    - British Columbia, 43, 44
    - Manitoba, 45
    - Saskatchewan, 46
  - general, 11–14
  - land improvements, 15–26
    - Alberta, 15, 16
    - British Columbia, 17, 18
  - categorization of specific items, 25–26
    - Manitoba, 19–22
    - Saskatchewan, 23, 24
  - taxation in respect of exempt property, 126–135
    - Alberta, 126, 127
    - British Columbia, 128–131
    - Manitoba, 132–133
    - Saskatchewan, 134, 135
- rating and the tax rolls**
- preparation of tax rolls, 528–537
    - Alberta, 528–531
    - Manitoba, 532–535
    - Saskatchewan, 536, 537
  - rating, 512–527
    - general, 512
    - statutory authority, 513–527
- school taxes**
- Alberta, 694–710
    - imposition and collection, 694–698
    - payment of rates, 709, 710
    - public and separate school assessment, 699–708
  - British Columbia, 711–718
    - exemptions, 717, 718
    - imposition and collection, 711–716
      - general, 693
    - Manitoba, 719–725
      - exemptions, 724, 725
      - imposition and collection, 719–723
    - Saskatchewan, 726–739
      - imposition and collection, 726–735
      - public and separate school assessment, 736–738
      - remedial authority of minister, 739
- scope of municipal authority**
- discrimination, 7, 8
  - jurisdiction, 4–6
  - foregoing collection from assessable property funds, 5

## INDEX

---

- • methods in accordance with enabling statute, 6
- • requisites to imposition of municipal tax, 4
- special rates**
  - Alberta, 747–749
  - British Columbia, 750–752
  - definition, 745
  - Manitoba, 753, 754
  - Saskatchewan, 755, 756
  - special rates that may be imposed, 746
  - water rates, 757
- tax sales**
  - Alberta, 607–636
    - • conduct of sale, 611–614
    - • designated manufactured homes, 625–636
    - • land not sold at auction, 616–621
    - • land, tax recovery notification, 607–610
    - • proceeds of sale, 622–624
    - • right to clear title, 615
  - British Columbia, 637–650
    - • application of surplus, 646, 647
    - • conduct of sale, 637–641
    - • proceeds of sale, 642
    - • redemption, 643–645
    - • registration of title, 648
    - • setting sale aside, 649, 650
    - liability for wrongful sale, 686–692
    - Manitoba, 651–666
      - • application of surplus, 660–663
      - • conduct of sale, 652–659
      - • general, 651
      - • registration of purchaser, 660, 661
      - • setting sale aside, 664–666
    - Saskatchewan, 667–685
      - • application for title, 677–681
      - • disposition of lands, 682–684
      - • disposition of proceeds, 685
      - • general, 667, 668
      - • prevention of waste, 673
      - • redemption, 674–676
      - • tax lien, 669–672

## Index to Municipal Corporations — Administration and Council

(All references are to paragraph numbers.)

- administration of justice,  
policing and inquiries**
  - court house and jail expenses, 838–841
  - erection and maintenance of buildings, 839
  - general, 838
  - maintenance of prisoners, 840–841
  - general, 835–837
  - investigation by judge, 842–848
- borrowing and debentures**
  - bonds and debentures, 584–667
    - date, 629
    - form, 619–623
      - execution, 622–623
      - general, 619–621
    - general, 584–590
    - guarantees, 656–657
    - hypothecation, 658–660
    - interest and interest coupons, 600–604
    - issue and sale, 624–628
    - negotiability, 596–597
    - power to issue debentures, 591–595
    - purposes and objects, 598–599
    - redemption and refunding, 617–618
    - repayment, 605–616
      - general, 605–608
      - medium of payment, 611–616
      - time and place of payment, 609–610
  - right to receive and disburse monies, 661–667
    - general, 661–664
    - surplus, 665–667
  - rights and obligations of holders, 636–655
    - contracts to take debentures, 646–647
    - holders for value, 636–641
    - modification of rights, 653–655
    - remedies on default, 648–652
    - rights of holders inter se, 642–643
    - transfer, 644–645
  - validation, 630–635
  - money by-laws, 509–583
    - amendment, 555–561
    - approval of provincial authority, 542–552
    - effective date, 525–526
    - general, 509–511
    - invalidity, 581–583
    - period of loan, 522–524
    - provision for repayment and special rates, 527–536
    - ratification of ratepayers, 537–541
      - exemptions respecting submission, 540–541
      - general, 537–539
    - registration, 562–565
    - repeal, 553–556
  - statutory recitals and contents, 512–521

MUNICIPAL CORPORATIONS — ADMINISTRATION AND  
COUNCIL

---

- borrowing and debentures (*cont'd*)
- amount of debt created, 514-515
  - amount of rateable property, 518-519
  - approval of provincial authorities, 520-521
  - general, 512-513
  - object, 516-517
  - validation, 566-580
    - by approval of provincial board, 570-577
    - by payment of interest and principal, 578-580
    - by promulgation, 566
    - by registration, 567-569
  - power to borrow, 489-508
    - general, 489-493
    - limits, 499-504
    - power to guarantee, 508
    - statutory, 494-498
    - statutory conditions, 505-507
  - power to incur debts, 475-488
    - debt limit, 484-488
    - general, 475-479
    - purposes, 483
    - restrictions, 480-482
  - temporary borrowing, 668-700
    - bank overdraft, 699-700
    - general, 668-669
    - in anticipation of revenue, 680-694
      - general, 680-685
      - limitation on amount, 687-690
      - purposes, 686
      - validity or invalidity, 691-694
    - power to make promissory notes, 670-679
  - to finance capital expenditures, 695-698
- corporate property**
- acquisition, 797-808
    - extent of judicial control, 807
    - extent of power, 797-799
    - land outside of municipal limits, 804-805
    - provision for payment, 806
    - purpose of acquisition, 800-803
    - registration of documents, 808
  - disposal of municipal property, 820-834
    - judicial review, 831-832
    - leasing of municipal real property, 824-825
    - mode of sale and price, 826-830
    - power of alienation — general, 820-823
    - prescriptive rights, 833-834
  - general, 786-796
    - lack of power to acquire or dispose, 789
    - land defined, 795-796
    - mode of acquisition and disposal, 790-794
    - power to hold in trust or on condition, 788
    - power to hold land, 786-787
    - right to erect buildings, 809-810
    - use and change of land, 811-819
      - general, 811-812
      - lands held subject to condition, 815
      - lands held subject to trust, 813-814

## INDEX

---

- corporate property (*cont'd*)
  - public use of municipal lands and buildings, 817–819
  - remedy for breach of trust or condition, 816
- council members**
  - contracts with the corporation, 263–267
    - Alberta, 264
    - general, 263
    - Manitoba, 265
    - Ontario, 266
    - Saskatchewan, 267
  - election, 100–170
  - declaration of office, 101–107
    - Alberta, 101
    - British Columbia, 102
    - Manitoba, 103
    - Ontario, 104–106
    - Saskatchewan, 107
  - disclaimer, 108–116
    - Alberta, 110
    - general, 108–109
    - Manitoba, 111
    - Ontario, 112–115
    - Saskatchewan, 116
  - disqualification after election, 117–170
    - bribery and corrupt practices, 167–170
      - Alberta, 167
      - British Columbia, 168
      - Ontario, 169
      - Saskatchewan, 170
    - disclosure of conflict of interest, 128–159
      - closely connected individuals, 146
      - community of interest, 147–150
  - corporations, 142–143
  - duty to disclose, 131
  - employees, 144
  - exculpatory provisions, 158–159
  - insignificant interest, 151
  - not to vote, participate or influence, 132–135
  - pecuniary interest, 137–141
  - proceedings to unseat member, 152–157
  - relatives, 145
  - record of disclosure, 136
  - statutes, 128–130
    - general, 117–127
      - Alberta, 121
      - British Columbia, 122
      - introduction, 117–120
      - Manitoba, 123
      - Ontario, 124–126
      - Saskatchewan, 127
  - voting illegality, 160–166
    - Alberta, 160
    - British Columbia, 161
    - Manitoba, 162
    - Ontario, 163–165
    - Saskatchewan, 166
- general, 100
  - eligibility, 13–99
    - continuing to meet qualifications during term, 20
    - declaration of qualification, 34–41
      - Alberta, 37
      - British Columbia, 38
      - general, 34–36
      - Manitoba, 39
      - Ontario, 40–41
    - disqualifications, 16

MUNICIPAL CORPORATIONS — ADMINISTRATION AND  
COUNCIL

---

- council members (*cont'd*)
  - disqualifying clauses strictly construed, 18
  - grounds for disqualification, 42–96
    - arrears of taxes, 56–58
    - claim against municipality, 90–92
      - Alberta, 90
      - Ontario, 91
      - Saskatchewan, 92
    - general, 42–55
      - Alberta, 48
      - British Columbia, 49–50
      - Manitoba, 51
      - Ontario, 52–54
      - Saskatchewan, 55
    - incompatible offices, 59–74
      - Alberta, 66
      - British Columbia, 67
      - general, 59–65
      - Manitoba, 68
      - Ontario, 69–74
    - interest in contract or matter, 75–89
      - Alberta, 86
      - general, 75–85
      - Ontario, 87–88
      - Saskatchewan, 89
    - other grounds for disqualification, 93–96
      - Alberta, 94
      - British Columbia, 95
      - general, 93
      - Manitoba, 96
  - non-applicability of Charter, 14
  - notice of disqualification, 97–99
  - qualifications, 21–33
    - Canadian citizenship, 27
    - property, 28–33
      - British Columbia, 29–31
      - general, 28
      - Manitoba, 32–33
    - residence, 21–26
      - Alberta, 22
      - British Columbia, 23
      - general, 21
      - Manitoba, 24
      - Ontario, 25
      - Saskatchewan, 26
  - principal qualifications, 19
  - restrictions strictly construed, 13
  - retention of seat, 17
  - enforcement of statutory duty, 243–245
  - filling vacancies, 204–223
  - election by council, 215–221
    - Alberta, 215–216
    - Manitoba, 217
    - Ontario, 218–221
    - general, 204
    - holding a by-election, 205–214
      - Alberta, 206
      - British Columbia, 207
      - general, 205
      - Manitoba, 208–209
      - Ontario, 210–212
      - Saskatchewan, 213–214
  - new election or awarding seat to runner-up, 222–223
  - libel and slander actions, 246–249
  - personal liability, 224–242
    - costs of proceedings, 239–242

## INDEX

---

- council members (*cont'd*)
  - general, 224–234
    - Alberta, 229
    - British Columbia, 230
    - Manitoba, 231–232
    - Ontario, 233–234
  - liability for wrongful act of corporation, 235
  - liability on notes and contracts, 236
  - protection from actions, 237–238
  - remuneration, 250–262
    - Alberta, 254
    - British Columbia, 255
    - general, 250–253
    - Manitoba, 256
    - Ontario, 257–261
    - Saskatchewan, 262
  - status, 1–12
  - agents or employees, 12
  - de jure/de facto occupation of office, 3
  - duty to act in best interests, 2
  - not officers or employees of corporation, 4
  - officials under Criminal Code, 4
  - standing to appeal amendment in official plan, 5
  - trustees, 6–11
    - account for profits made from confidential information, 10
    - fiduciary capacity in relation to corporation funds, 7
    - for the community, 8
    - quasi-trustees (Ont.), 11
    - real property, 7
    - subject to equitable jurisdiction, 6
  - vacancies, 171–203
    - declaring a seat vacant by court order, 188–194
      - Alberta, 188
      - British Columbia, 189
      - Manitoba, 190–191
      - Ontario, 192–193
      - Saskatchewan, 194
    - general, 171–177
      - Manitoba, 171
      - Ontario, 172–176
      - Saskatchewan, 177
    - vacancy created by resignation, 195–203
      - Alberta, 199
      - British Columbia, 200
      - general, 195–198
      - Manitoba, 201
      - Ontario, 202
      - Saskatchewan, 203
    - vacancy declared by council, 178–187
      - British Columbia, 181
      - general, 178–180
      - Ontario, 182–185
      - Saskatchewan, 186–187

### **municipal arbitrations**

- expropriation of or damage to land, 875
- general, 849–864
  - arbitration under the Ontario Municipal Arbitrations Act, 862–864
  - applicability of statutes, 858–861
  - compulsory arbitration, 852–853
  - definitions, 849–851
  - power to arbitrate, 854–857



MUNICIPAL CORPORATIONS — ADMINISTRATION AND  
COUNCIL

---

- municipal arbitrations (*cont'd*)
  - procedure, 865–874
  - appointment of arbitrator, 871–874
  - general, 865–868
  - qualifications of arbitrators, 869–870
  - review of and appeal from, 887–894
  - appeals on question of law, 893
  - appeals upon quantum of award, 892
  - general, 887–889
  - limitation for, 889–891
  - remission of award, 894
  - the award, 876–886
  - cost of municipal arbitrations, 886
  - effect of award on expropriation, 876–877
  - enforcement of award, 884–885
  - power to allow interest, 878–879
  - power to amend, 882–883
  - reasons, 881
  - statement in writing, 880
- municipal contracts**
  - authorization: by-law or resolution, 747–758
  - contract in performance of statutory duty, 757
  - executed contracts, 753–756
  - general, 747–752
  - ratification of unauthorized contract, 758
  - construction agreements, 770–785
  - bids and tenders, 770–783
  - engineer acting as arbitrator, 785
  - extra work, 784
  - contracts unsupported by available funds, 759–762
  - executed contracts, 762
  - general, 759–761
  - enforcement of obligations in favour of inhabitants, 767–769
  - general, 701–723
  - capacity to contract, 701–707
  - estoppel, 722–723
  - formal requisites essentials of contract, 712–721
    - general, 712–713
    - seal, 715–721
    - writing, 714
  - natural person powers, 708
  - statutory restrictions and limitations, 709–711
  - power of officers and agents to bind corporation, 724–732
  - committees, 730
  - general, 724
  - municipal employees, 727
  - officers, 725–726
  - ratification of unauthorized contract, 731–732
  - statutory agents, 728–729
  - statutory validation of agreements, 764–766
  - rescission by repeal of by-law or resolution, 763
  - ultra vires, invalid and illegal contracts, 733–746
  - contracts requiring electoral or government approval, 737–738
  - contracts restricting legislative powers, 741–743

## INDEX

---

- municipal contracts (*cont'd*)
  - contracts with council members, 744–746
  - general, 733–736
  - recovery of money paid, 739–740
- municipal council**
  - attributes, 269
  - composition, 296–315
    - general, 296–302
    - specific provisions, 302–315
      - Alberta, 303
      - British Columbia, 304
      - Manitoba, 305
      - Ontario, 306–314
        - local municipalities, 310–313
        - police villages, 314
        - regional municipalities, 309
        - upper-tier councils, 306–308
      - Saskatchewan, 316
  - continuing body, 271
  - council and corporation distinct entities, 272
  - functions, 283–292
    - administrative functions, 288
    - failure to take into account relevant considerations, 286
    - general agent of corporation, 291
    - judicial powers, 287
    - legislative and administrative, 284
    - legislative and executive, 283
    - procedural fairness, 289
    - procedures analogous to judicial process, 285
  - local Boards and Commissions, 275
    - means whereby municipality may bind itself to course of action, 268
    - meetings, 316
    - organization, 293–295
      - county council, 295
      - exceptions to election to office, 293
      - procedure of taking the declaration of office, 294
    - status, 276–282
      - agency relationship between councilors and corporation, 282
      - legal fiduciary relationship, 281
      - personal liability for specific breaches re municipal funds, 279
      - trustees, 276–277, 280
      - trustees of municipal property, 278
- officers and employees**
  - appointment, 330–341
    - appointing authority, 335–336
    - declaration of office, 341
    - filling vacancies, 340
    - general, 330–334
    - manner of appointment, 337–339
  - authority, 374–378
  - definitions, 317–329
    - officers, 317–325
    - officers and employees, 326–328
  - duties, liabilities and immunities, 379–389
    - certification, 389
    - duties, 379–382
    - immunities, 385–386
    - liabilities, 383–384

MUNICIPAL CORPORATIONS — ADMINISTRATION AND  
COUNCIL

---

- officers and employees (*cont'd*)
  - • misrepresentation by officials, 387
  - • surety bonds, 388
  - power to create offices, 329
  - remuneration, 367–373
  - tenure, 342–345
  - termination of service, 346–366
    - • dismissal or removal, 346–360
    - • manner of exercise, 362–363
    - • quo warranto, 366
    - • resignation, 364–365
    - • suspension, 361
  - various officers, 390–397
    - • auditor, 397
    - • clerk, 390–391
    - • treasurer, 392–396
- revenues, expenditures and fiscal management**
  - accounts, 441–449
  - expenditures, 405–445
    - • by outgoing council after election, 416
    - • general, 405–409
    - • injunctions to restrain illegal payments, 439–443
    - • mode of exercise, 410–411
    - • recovery of funds illegally paid out, 444–445
  - • statutory authority, 412–414
  - • statutory restrictions, 417–420
  - • ultra vires expenditures, 421–438
    - • • court costs, 436–437
    - • • extra-territorial expenditures, 425–426
    - • • general, 421–424
    - • • grants to organizations and individuals, 427–431
    - • • miscellaneous, 438
    - • • payments to council representatives, 432–433
    - • • travelling and entertainment expenses, 434–435
  - • under special statutory authority, 415
    - • general, 398–404
    - • investigation, 466–467
    - • municipal audits, 450–454
    - • receivership, 468–474
    - • reserve funds, 465
    - • sinking funds, 455–464
    - • deficits and surpluses, 460–461
    - • diversion, 463–464
    - • general, 455–458
    - • investments, 462
    - • rates, 459

## Index to Municipal Corporations — By-laws, Permits and Legal Proceedings

*(All references are to paragraph numbers.)*

- actions by and against municipal corporations**
  - actions generally, 1397–1453
  - authority to sue or defend, 1408–1410
  - capacity to sue and be sued, 1397–1406
  - cause of action, 1407
  - compromise and settlement, 1449–1451
  - conditions precedent, 1411–1416
    - general, 1411–1413
    - necessity for quashing illegal by-law, 1414–1416
  - costs, 1452–1453
  - discovery, 1439–1444
  - enforcement of judgments: executions, 1445–1448
  - limitations, 1417–1428
  - parties, 1429–1433
  - practice, 1434–1438
  - compensation for injurious affection, 1559–1569
    - basis of compensation, 1568–1569
    - general, 1559
    - persons entitled to compensation, 1566
    - property rights for which compensation to be made, 1567
    - right of action apart from compensation, 1564–1565
    - right to compensation, 1560–1563
  - injunctions, 1546–1547
  - general, 1546
  - principles governing grant, 1547
  - mandamus, 1529–1545
    - demand and refusal, 1540
    - general, 1529–1533
    - persons entitled to apply, 1534–1536
    - statutory duty, 1537–1539
    - to whom directed, 1541
    - where mandamus will not lie, 1542–1545
  - notice of action, 1454–1497
    - failure to give notice, 1482–1496
      - general, 1482–1486
      - prejudice, 1494–1496
      - reasonable excuse, 1487–1493
    - general, 1454–1461
    - pleading, 1497
    - service and time, 1470–1472
    - sufficiency, 1473–1481
    - when not required, 1466–1469
    - when required, 1462–1465
  - ratepayers' actions, 1498–1507
    - classes of ratepayers' actions, 1505–1507
      - recovering funds illegally paid out, 1506
      - restraining illegal expenditures, 1505
      - to restrain or avoid illegal contracts, 1507
    - general, 1498–1502
    - parties, 1503–1504

MUNICIPAL CORPORATIONS — BY-LAWS, PERMITS AND  
LEGAL PROCEEDINGS

---

- actions by and against municipal corporations (*cont'd*)
  - right of corporation to indemnity, 1548–1558
  - covenant to indemnify, 1557–1558
  - general, 1548
  - statutory procedure, 1553–1556
  - statutory remedy over, 1549–1552
  - suits by Attorney General, 1521–1528
    - general, 1521–1523
    - when intervention unnecessary, 1524–1528
  - suits by individual ratepayer or inhabitant, 1508–1520
    - abatement of nuisance, 1520
    - enforcement of by-laws, 1517–1518
    - general, 1508–1511
    - restraining enforcement of by-laws, 1519
    - restraining or compelling submission or enactment of by-law, 1515–1516
    - to enforce municipal contracts, 1513
    - to restrain ultra vires acts, 1512
    - to restrain use of sale of public property, 1514
- attacks on by-laws**
  - applications to quash, 1248–1290
  - costs, 1289–1290
  - failure to apply in time, 1277–1284
  - jurisdiction of court, 1253–1254
  - nature of remedy, 1248–1252
  - practice and procedure, 1285–1288
  - right to apply, 1255–1264
  - right to oppose application, 1265–1266
  - time for applying, 1267–1276
  - grounds of attack, 1327–1359
    - general, 1327–1329
    - illegality: improper motive or objet, 1330–1339
      - bad faith, 1330–1334
      - evasion of a statute, 1339
      - private interest, 1335–1337
      - violation of contractual rights, 1338
    - illegality: non-observance of statute, 1347–1348
    - illegality: others, 1349–1359
      - discrimination, 1349–1352
      - unreasonableness, 1353–1359
    - illegality: ultra vires, 1340–1346
      - conflict with provincial statutes, 1346
      - excess of jurisdiction over property and persons, 1343–1344
      - excess of territorial jurisdiction, 1342
        - general, 1340–1341
        - unconstitutionality, 1345
  - judicial discretion in quashing, 1371–1391
    - delay in applying, 1377–1378
    - discretion to adjourn application, 1381
    - general 1371

## INDEX

---

- attacks on by-laws (*cont'd*)
  - • illegality on face or extraneous to by-law, 1372–1376
  - • refusal to exercise power, 1380
  - • severability, 1382–1391
  - • spent by-laws, 1379
  - matters not constituting illegality, 1360–1370
  - • by-law passed by de facto council, 1362
  - • contrary to public policy or in restraint of trade, 1370
  - • failure to observe internal procedure, 1360–1361
  - • uncertainty of meaning or application of by-law, 1363–1369
  - other methods of attack, 1291–1326
    - • attack in an action, 1300–1309
      - • • attack by ratepayers' action, 1308
      - • • estoppel of enacting municipality, 1306
      - • • general 1300–1303
      - • • necessity of enacting municipality, 1306
      - • • necessity of municipality as party, 1307
      - • • right to attack, 1304–1305
      - • • suit by Attorney General, 1309
    - • attack in proceedings to enforce by-law, 1310–1316
    - • general, 129–1299
    - • injunction to restrain action, 1317–1318
    - • judicial review, 1325–1326
    - • mandamus, 1323–1324
    - • prohibitions and certiorari, 1319–1322
    - • privative and curative provisions, 1392–1396
    - • proceedings to determine validity, 1234–1247
    - • acts under illegal by-laws, 1246–1247
    - • burden of proof, 1239
    - • general, 1234–1235
    - • jurisdiction of the courts, 1236–1238
    - • loss of right to attack, 1244–1245
    - • who can attack, 1240–1243
- building construction and permits**
  - building inspector, 914–954
    - • appeals, 935–947
    - • general, 914–917
    - • inspection, 918–934
      - • • Alberta, 929
      - • • British Columbia, 930
      - • • general, 918–928
      - • • Manitoba, 931
      - • • Ontario, 932–933
      - • • Saskatchewan, 934
    - • liability of municipality for faulty permits or inspections, 948–954
  - building permit system, 812–888
    - • Alberta, 812
    - • application for permit, 826–832
    - • British Columbia, 813–817
    - • delay or refusal of permit, 848–855
    - • demolition permits, 864–871
    - • effect of permit, 833–847
    - • Manitoba, 818–820

MUNICIPAL CORPORATIONS — BY-LAWS, PERMITS AND  
LEGAL PROCEEDINGS

---

- building construction and permits (*cont'd*)
  - Ontario, 821–823
  - revocation of a permit, 856–863
  - Saskatchewan, 824–825
  - unsafe and unsightly premises, 872–888
    - Alberta, 881–882
    - British Columbia, 883
    - general, 872–880
    - Manitoba, 884
    - Ontario, 885–887
    - Saskatchewan, 888
  - general principles of construction law, 806–811
  - mandamus to compel issuance, 889–913
  - sign regulation, 955–962
- by-laws general**
  - amendment and repeal, 296–322
    - amendment, 296–298
    - repeal, 299–319
      - by-laws affecting vested rights, 309–313
      - effect of annexation or change of status, 319
      - power to repeal, 299–306
      - repeal by implication, 307–308
      - repeal of enabling statute or by-law, 315–318
      - repeal of repealing by-law, 314
    - waiver and suspension, 320–322
  - authentication — signing and sealing, 115–131
  - duty of head to sign, 129–131
    - general, 115–118
    - sealing, 119–120
    - signing, 124–126
    - time for sealing, 121–123
    - time for signing, 127–128
  - authority to enact, 85–94
    - general, 85–90
    - loss of authority, 91–94
  - conditions precedent to enactment, 74–84
    - curative provisions, 81–82
    - general, 74–80
  - presumption of regularity, 83–84
    - definitions, 1–12
    - by-law, 1–8
    - resolution, 9–12
  - enactment, 152–186
    - approval and assent, 161–165
    - general, 152
    - passing, 153–157
    - promulgation, 166–171
    - publication, 172–180
    - ratification, 158–160
    - registration, 181–186
  - enforcement and sanctions, 220–286
    - by corporation doing the thing required, 270–272
    - creation or enlargement of civil liability, 283–286
    - destruction or removal of property, 261–265
    - fine, 242–253
    - general, 220–241
    - imprisonment, 254–256
    - injunction to restrain violation, 266–269
    - right to enter and inspect, 273–282

## INDEX

---

- by-laws general (*cont'd*)
  - Alberta, 279
  - general, 273–278
  - Manitoba, 280
  - Ontario, 281
  - Saskatchewan, 282
  - seizure and forfeiture, 257–260
  - form and content, 13–39
    - authority to enact, 26–29
    - definitions, 23–25
    - effective date, 36–39
    - enacting clause, 30
    - general, 13–16
    - plurality of matters, 18–19
    - recitals, 20–22
    - schedules, 32–35
    - statutory exceptions, 31
    - subject matter and title, 17
  - judicial construction of by-laws, 205–219
    - building restriction by-laws, 213–217
    - by-laws granting privileges, 219
    - by-laws restricting common law rights, 212
      - general, 205–209
    - local improvement and drainage by-laws, 218
    - rules of construction, 210–211
  - notice of intention to pass, 95–114
    - general, 95–105
    - non-conformity of by-law with notice, 113–114
    - sufficiency of notice, 106–112
  - operation and effect, 132–149
    - conflict of by-laws, 149
    - date by-law comes into force, 132–137
    - duration, 138–139
    - effect on persons, 143–145
    - retroactivity, 146–148
    - territorial effect, 140–142
  - order of passing by-laws having a common object, 150–151
  - proof of by-law, 287–295
  - validation, 187–204
    - by special legislation, 198–202
    - curative provisions, 187–197
    - suspension of remedy pending validation, 203–204
  - when by-law necessary, 40–57
    - estoppel from pleading no by-law, 54–57
    - exercising powers outside the Act, 51–53
      - general, 40–41
      - statutory requirements, 42–50
    - when by-law unnecessary, 58–73
      - appointment and dismissal of officials, 71
      - discharge of statutory duty, 66–68
      - enactment of certain regulations, 69–70
      - general, 58–59
      - matters of detail, 72–73
      - statutory provisions, 60–63
- by-laws requiring approval of external authority**
  - approval of government, 420–422
  - approval of municipal board or commission, 423–425
  - effect of lack of consent, 414–417
  - general, 405–410



MUNICIPAL CORPORATIONS — BY-LAWS, PERMITS AND  
LEGAL PROCEEDINGS

---

- by-laws requiring approval of external authority (*cont'd*)
  - validating effect, 418–419
  - when approval to be secured, 411–413
- by-laws requiring electoral assent**
  - effect of failure to submit, 439–448
  - enactment of by-law, 518–526
    - by-law not to be amended, 524–525
    - duty to pass by-law for which there has been assent, 522
    - general, 518
    - premature passing, 519–520
    - reconsideration of refusal to pass, 523
    - restraining final passing, 526
    - time within which to be passed, 521
  - enforcing submission, 452–453
  - enquiry into vote upon motion to quash, 531
  - form of submission, 449–451
  - general, 426–438
  - judicial recount, 514–517
    - finality of judge's findings, 517
    - right to recount, 514–515
    - who may seek a recount, 516
  - non-compliance with statutory provisions, 478–486
    - general, 478–483
    - publication requirements, 484–486
  - onus of proof in attacking by-law, 532–535
  - procedure on voting, 496–502
    - form of ballot, 501–502
    - general, 496–500
    - procedure prior to taking the vote, 458–477
  - appointment of scrutineers, 464–466
    - necessity for a separate by-law, 462
    - polling subdivisions and places, 463
    - publication of by-law and notice of vote, 467–477
    - time for taking the vote, 458–461
  - restraining submission, 454–457
  - right to vote on by-laws and questions, 487–495
    - general, 487–491
    - money by-laws, 492
    - voters' lists, 493–495
  - submission of second by-law after adverse vote, 527–530
  - summing up the vote, 503–513
    - duty of clerk, 503–506
    - equality of votes, 513
    - more than a majority, 510–512
    - votes required for assent, 507–509
- by-laws upon petition**
  - by-law to conform to terms of petition, 376–377
  - duty to enact or submit by-law, 378–384
  - right to withdraw, 367–370
  - procedure, 371–375
  - statutory petitions in general, 323–334
  - sufficiency of petition, 335–366
    - alterations in petition, 346–347

## INDEX

---

- by-laws upon petition (*cont'd*)
  - certificate of sufficiency, 360–366
  - determination of sufficiency, 348–359
  - form and content of petition, 341–345
  - necessity, 335–337
  - petitions having a common object, 338–340
- by-laws upon requisition**
  - effect of non-compliance by council, 390–393
  - general, 385–386
  - requisitions by various boards, 404
  - requisitions for school purposes, 394–403
    - duty of council, 402–403
    - general, 394–400
    - reconsideration by council, 401
  - sufficiency of requisition, 388–389
- fixed assessment by-laws and bonuses**
  - extent of authority, 980–996
    - business established elsewhere, 993–994
    - consent of established businesses, 987
    - effect on school and local improvement taxes, 995–996
    - grant of fixed assessment or tax exemption, 980–984
    - limited to lands used in manufacturing, 985–986
    - method of enactment, 988–989
    - terms and conditions of grant, 990–992
  - general, 963–979
    - bonus prohibited, 978–979
    - definition of bonus, 968–977
    - nature of authority, 963–967
    - judicial control over bonus by-laws, 997–998
    - rights and liabilities created thereby, 999–1005
      - assignability, 999
      - damages for breach of agreement, 1000–1003
      - recovery of remitted taxes, 1004
      - repeal of by-law, 1005
    - sale of lease or lands for industrial sites, 1006–1007
- local and other public improvements**
  - borrowing for local improvements and other works, 1097–1100
    - general, 1097–1099
    - surplus funds, 1100
  - general, 1008–1017
    - judicial construction, 1017
    - nature of authority, 1008–1016
  - judicial control, 1038–1043
    - after certification of special roll, 1043
    - bad faith, 1041–1042
    - general, 1038–1039
    - non-observance of statutory requirements, 1040
  - local improvement and other special rates, 1081–1096
    - extent of judicial control, 1092–1096
    - general, 1081–1091
  - reconstruction, 1101–1102
  - repairs, 1103
  - sewers and sewage systems and works, 1069–1080

MUNICIPAL CORPORATIONS — BY-LAWS, PERMITS AND  
LEGAL PROCEEDINGS

---

local and other public  
improvements (*cont'd*)

- • approval of water resources, 1075–1077
- • authority to construct, 1073–1074
- • extension of sewers into adjacent municipalities, 1078–1079
- • general, 1069–1072
- • private sewer connections, 1080
- source and extent of authority, 1018–1037
  - • acquisition of lands, 1035–1037
  - • classes of local improvements, 1028–1032
  - • legislation, 1018–1027
  - • mode of exercise, 1033–1034
- utility connections and highway improvements, 1068
- works constructed on sanitary grounds, 1067
- works undertaken on council initiative, 1055–1066
  - • counter petitions, 1062–1066
  - • general, 1055–1056
  - • notice of intention to proceed, 1057–1060
  - • want of or irregular publication or service, 1061
- works undertaken on petition, 1044–1054
  - • general, 1044–1048
  - • signatures required, 1049–1050
  - • sufficiency, 1052–1053
  - • withdrawal, 1051
  - • work to be as petitioned for, 1054

**miscellaneous matters**

- animals running at large, 1109–1114
- cemeteries, 1115–1121
- dogs: licensing of and running at large, 1122–1130
- explosives and combustible substances, 1131–1132
- fences, 1133–1134
- garbage, 1135–1147
- keeping of animals, 1104–1108
- markets, 1148–1150
- noises, 1151–1160
- nuisances, 1161–1169
- offensive and noxious trades, 1170–1172
- parks and recreation grounds, 1173–1180
- pits and quarries, 1181–1186
- plebiscites, 1187–1196
- privies and comfort stations, 1197–1198
- public health, 1199–1212
- public libraries, 1213–1216
- signs, 1217–1220
- smoke prevention, 1221–1227
- tree planting and trimming by-laws, 1228–1233

**municipal wrongs**

- general liability, 1570–1591
  - • defence of no by-law or resolution, 1588–1589
  - • defence of ultra vires, 1585–1587
  - • general, 1570–1572
  - • misfeasance and nonfeasance, 1576–1577
  - • rule of non-liability, 1578–1584
  - • statutory liability, 1573–1575

## INDEX

---

- municipal wrongs (*cont'd*)
    - who can sue, 1590–1591
    - liability for other torts, 1705–1718
      - defamation, 1706
      - false imprisonment, 1705
      - illegal distress, 1718
      - misrepresentation, 1707–1717
      - negligence, 1656–1687
        - in protection of public, 1658–1687
          - defective electric and lighting system, 1659–1660
          - defective gas system, 1658
          - failure to disclose geotechnical information, 1686
          - failure to enforce or enact by-law, 1681–1685
          - inadequate fire protection, 1661–1666
          - inadequate police protection, 1667–1669
          - non-repair of municipal highways, 1687
          - non-repair of municipal property, 1670–1672
          - non-repair of municipal servicing, 1673
          - parks and recreation grounds, 1674–1680
        - nature and extent of liability, 1656–1657
        - nuisance, 1600–1655
          - forms of municipal property nuisances, 1608–1646
            - contamination of water supply
            - flooding, 1617–1646
              - due to bridge or culvert, 1617–1618
- due to drain or road ditch, 1619–1624
  - due to highway construction or non-repair, 1625–1628
  - due to improvement and diversion of watercourses, 1645–1646
  - due to overcharged or defective sewers, 1629–1640
  - due to water mains and systems, 1641–1644
  - garbage dumps, 1614
  - hospitals and other institutions, 1615
  - maintained on municipal property, 1616
  - noise and vibration, 1608
  - pollution of land, air and water by sewage, 11611–163
  - public conveniences, 1609
  - general, 1600–1607
    - nuisance in exercise of statutory power, 1601–1602
    - permitting or adopting a nuisance, 1604–1605
    - prescription, acquiescence or easement, 1603
    - statutory limitation of liability, 1606–1607
    - what constitutes, 1600
  - remedies, 1647–1655
    - abatement by local boards of health, 1654–1655
    - damages, 1651–1652
    - indictment, 1653
    - injunction to restrain, 1649–1650
    - who may bring action, 1647–1648

MUNICIPAL CORPORATIONS — BY-LAWS, PERMITS AND  
LEGAL PROCEEDINGS

---

- municipal wrongs (*cont'd*)
  - statutory authority, 1592–1599
  - general, 1592–1596
  - negligence in choice of means, 1599
  - negligent exercise, 1598
  - proper exercise of power, 1597
  - wrongful acts of third persons, 1688–1704
  - boards and commissions, 1698–1699
  - council members, 1700
  - independent contractors, 1701–1703
  - officers and servants, 1688–1691
  - statutory officers, 1692–1697
  - unauthorized wrongful acts of others, 1704
- trade regulation and licensing by-laws**
  - early closing by-laws, 682–715
  - by-laws passed on initiative of council, 708–709
  - classification of shops, 711–714
  - exceptions and exemptions, 703–707
  - nature and extent of authority, 682–702
  - petition for enactment, 710
  - principal trade, 715
  - licensing powers and by-laws, 586–681
  - cancellation or suspension, 673–681
  - delegation of authority, 616–623
  - fees, 658–672
  - general, 658–668
  - limitation on amount, 669–672
  - nature and extent, 586–615
  - conditions attached to licence, 611–615
  - general, 586–593
  - limit on number of licences, 603–610
  - prohibition without licence, 594–595
  - qualifications of applicant, 596–602
  - right to grant or refuse, 624–657
  - general, 624–633
  - grounds of refusal or revocation, 634–645
  - judicial review of refusal, 646–657
  - particular calling or thing, 716–805
  - amusement places, 716–738
  - auctioneers, 739
  - bill distributors and sign painters, 740–744
  - billiard tables, 745–746
  - businesses and professions generally, 747–750
  - butchers and slaughter houses, 751
  - cabs, buses and drivers, 752–769
  - garages and service stations, 771–776
  - group homes, 803
  - hawkers and pedlars, 778–784
  - heating and cooking appliances, 770
  - junk, second-hand shops and salvage yards, 785

## INDEX

---

- trade regulation and licensing
  - by-laws (*cont'd*)
    - motor vehicle racing, 805
    - parking garages and parking lots, 777
    - restaurants, 786–787
    - tourist and trailer camps, 788–791
    - trailers, 804
    - transient traders, 792–796
    - trucks and commercial vehicles, 797–802
  - regulatory and licensing powers generally, 536–585
    - judicial construction, 551–552
    - manner of exercise, 566–579
    - equality of operation, 571–579
    - general, 566–569
    - good faith, 570
    - nature and extent, 536–539
    - prohibition against monopoly, 562–565
    - right to prohibit, 553–561
    - source and scope, 540–550
    - to whom applicable, 580–585

## Index to Municipal Corporations—General

(All references are to paragraph numbers.)

- aboriginal law, impact on municipal corporations**, 85, 266
- amalgamation**, 128–132, *see also* **corporate boundaries**
- annexation**, 205–208, *see also* **corporate boundaries**
- arbitration**, 155, 230, 232, 348, 519, 537, 546, 593, 604
- assets/liabilities, adjustment of**, *see* **corporate boundaries; incorporation**
- boards/commissions (provincial and local)**
  - creation/appointment, 496–501
  - local boards of health, 521–525
  - municipal service boards, 529, 530
  - other local boards/commissions, 536
  - planning boards/commissions, 531–535
  - police/police services boards, 518–520
  - powers/duties, 492–495, 509–517
  - provincial boards/commissions exercising municipal authority, 537, 538
  - public library boards, 526–528
  - relationship to municipality, 502–507
  - status, 508
- boundaries**, *see* **corporate boundaries**
- classification**
  - general, 38–43
  - legislation, applicability of, 44–46
- constitutional issues**, 16, 27, 70, 84, 85, 130, 179, 249–308
- corporate boundaries**
  - adjustment of assets/liabilities
    - debts, 237, 238
    - general, 231, 232
    - method, 233
    - public works, 242
    - real property/other assets, 234–236
  - roads, 239, 240
  - school property, 241
  - alteration
    - annexation procedure, 205–208
    - appeals, 204
    - general, 196–199
    - Ontario Municipal Board, powers of, 200–203, 566
    - terms/conditions, 209–212
  - determination
    - boundaries on water, 189–194
    - description of limits, 183, 184
    - general, 176–182
    - municipal surveys, 195
    - right to determine, 185–188
  - effect of
    - assessments/taxes, 224–228
    - effective date, 215
    - existing by-laws, 216–218
    - general, 213, 214
    - jurisdiction of old council, 219, 220

- corporate boundaries (*cont'd*)
- liabilities, 229, 230
  - pending litigation, 230
  - public works in progress, 221
  - school sections/assets, 223
  - streets, title to and jurisdiction over, 222
- disestablishment**, *see* **dissolution**
- dissolution**, 170–174
- duties**
- enforcement of, 488–491
  - exercise of power, in, 447–474
  - general, 486, 487
- estoppel**, 407–413
- incorporation**
- amalgamation, 128–132
  - assets/liabilities, adjustment of
    - assets, 159, 160
    - liabilities, 161–164
    - general, 154–157
    - method, 158
  - attacking incorporation proceedings, 165–169
  - classes of municipalities
    - cities, 114–116
    - confederation of municipalities, 120
    - counties, 121–125
    - general, 99–102
    - municipal districts, 127
    - regions/regional forms, 126
    - rural municipalities, 117, 118
    - towns, 112, 113
    - townships, 106–108
    - unions of townships, 109
  - conditions upon, 133
  - effect of
    - effective date, 139–141
    - existing by-laws, 142–144
    - general, 134–138
    - jurisdiction of old council, 145
    - liabilities, 147, 149
    - officers, 146
    - pending litigation, 148
    - unpaid taxes, 150–153
  - modes of
    - conditions precedent, 95–98
    - general, 86–90
    - general municipal Acts, under, 93, 94
    - special Act/Charter, 91, 92
  - power to create, 81–85
- inhabitants/residents**
- general, 65–67
  - inhabitants, 68–70
  - ratepayers, 79, 80
  - residents, 71–78
- interpretation of municipal statutes**, 6, 9, 10, 35, 72, 73, 92, 298, 358, 359, 414–440, 463, 464
- municipal boards**, *see* **boards/commissions (provincial and local); provincial municipal boards**
- municipal corporation (general)**
- common law corporations, distinguished from, 31
  - Crown, distinguished from, 27–30
  - definition of, 1–10
  - dual aspect, 20–22
  - incidents, 24, 25
  - local self-government, 11–18
  - non-fiduciary nature of, 23
  - public/quasi-public corporations, distinguished from, 36, 37



## INDEX

---

- municipal corporation
  - (general) (*cont'd*)
  - relationship to English boroughs/municipal law, 25
  - voluntary nature of, 19
- municipal statutes**
  - classes
    - agreements, statutes referring to, 436, 437
    - common law rights, statute restricting, 434
    - drainage Acts, 431
    - election Acts, 432
    - expropriation/forfeiture statutes, 433
    - penal statutes, 427
    - privileges, statutes creating, 435
    - public bodies, statutes creating, 426
    - taxing statutes, 428–430
    - validating statutes, 438–440
  - construction
    - general, 414–419
    - general and specific laws, conflict between, 422–424
    - imperative/directory, 425
    - interpretation clauses/words/phrases, 420, 421
- municipal surveys**, 195
- municipality**, *see* **municipal corporation**
- name**, 47–51
- powers**
  - acquiescence/estoppel, 407–413
  - delegation
    - boards/offices, to, 402–404
    - general, 391–401
    - others, to, 405
  - discretionary powers
    - choice of means, 466
    - duty to use care, 467–469
    - general, 463–465
  - exercise
    - conditions of exercise
      - general, 447–449
      - good faith, 452, 453
      - impartiality, 459–461
      - notice, 454, 455
      - prudence/good governance, 462
      - public interest, 450, 451
      - reasonableness, 456–458
    - extent/limits of exercise, 441–443
    - illegal/negligent exercise of authority, 47
    - mode of exercise
      - by-law/resolution, 475–477
      - permits/licences, 481–485
      - prohibition/regulation, 478–480
    - partial exercise, 444, 445
    - vote of council, 446
  - jurisdiction
    - Crown, 374–377
    - English principles of law, 25
    - extra-territorial jurisdiction, 390
    - local authorities (other), 378–380
    - persons/corporations, 373
    - territorial limitations, 381–389
  - mandatory powers/duties
    - action by Attorney-General, 473
    - general, 470
    - mandamus, 471
    - remedy by indictment, 472

- powers (*cont'd*)
  - nature
    - alienation/restriction of powers, 334–339
    - amend/appeal, right to, 332, 333
    - discretionary/mandatory, 326–328
    - general, 321–325
    - plenary character, 329, 330
    - scope/extent of municipal authority
      - doctrine of *ultra vires*, 355–362
      - general, 340–348
      - implied powers, 349–352
      - inherent powers, 353, 354
      - omnibus clauses, 363–370
      - police powers, 371, 372
    - source
      - federal authority
        - aboriginal peoples, relationship to, 266
        - scope, 250–265
      - general, 243–249
      - paramountcy of provincial legislation, 314–320
      - provincial authority
        - business, regulation of, 287
        - courts/boards, 302–308
        - early closing/sunday observance, 283–286
        - general, 267–271
        - licencing, 273–282
        - penalties, 298–300
        - police power/civil rights, 288–297
        - public health, 27
        - taxation, 301
      - statutory grant, conferred by, 309–311
    - transfer, 406
- provincial municipal boards**
  - appeals
    - general, 592–597
    - question of fact, 598–600
    - question of law, 601–603
    - stated case, 604
  - approval of by-laws
    - conditional, 577
    - general, 571–575
    - limited as to time/part, 576
    - money by-laws, 578–580
    - zoning by-laws, 581–583
  - composition, 547, 548
    - general, 539, 540
  - jurisdiction/powers
    - general, 562–565
    - municipal incorporation/boundary alteration, 566
  - public utility rates, 569, 570
  - railways/public utilities, 567
  - telephone systems, 568
  - orders
    - amendment/rescission, 588, 589
    - enforcement, 590, 591
    - general, 584–586
    - time of operation, 587
  - practice/procedure
    - general, 549–559
  - power of individual member, 560
  - quorum, 561
  - status, 541–546
- revocation**, 175
- seal**, 52–55
- surveys**, *see* **municipal surveys**

## INDEX

---

**taxation**, 85, 133, 150–153, 193,  
224–228, 274, 275, 301, 333,  
377, 391, 428–430

**territory**, 56–64

**water, boundaries on**, 85

## Index to Narcotic Control

(All references are to paragraph numbers.)

- “administering”**, 70
- agent of purchaser**, *see*  
aiding/abetting
- aiding/abetting**, *see also* specific offences, e.g., possession for trafficking
- agent for officer, 68
  - general, 23, 181, 183, 184
  - parcel delivery service, 185
  - participation, level of, 182, 186, 187
- “amphetamines”**, 14
- “analogue”**, 10
- attempts**, *see* specific offences, e.g., importing/exporting
- “barbiturates”**, 15
- “cannabis”**, 13
- medical use, 219
- certificate of analysis**
- chain of evidence, 152
  - designation of analysts, 151
  - evidence to the contrary, 151
  - examination of analyst, 156, 167
  - general, 150, 151, 167, 169
  - inference of judge, 153
  - language of, 158, 164
  - notice of intention to use, 157, 159–161, 164, 166, 167
  - other evidence, 165, 168
  - representative sample, testing of, 155
  - service of, 160, 161, 163, 167
  - strict compliance, 154
  - tendering at trial, 162
  - testing methods, 154
- Charter of Rights**, *see also* exclusion of evidence; searches; seizure/restoration/forfeiture
- counsel, right to, 117, 222–224
  - freedom of religion, 218
  - full answer/defence, 172
  - general, 215
  - life, liberty and security, 219–221
  - search/seizure, freedom from, 100, 102, 104, 107
  - trial within reasonable time, 216, 217
- “cocaine”**, 12
- “codeine”**, 11
- compulsion**, 204
- conspiracy**, *see* sentencing (conspiracy); specific offences, e.g., trafficking
- control**, *see* possession
- “controlled substance”**, 10, 95
- counselling**, 50
- cultivation**, *see* production
- de minimis non curat lex**
- general, 188, 189, 192
  - possession offences, 39, 193
  - seized substance all used in testing, 190
  - sentence, effect on, 191
- defences**, *see* aiding/abetting; Charter of Rights; compulsion; de minimis non curat lex; distress; double jeopardy; entrapment; exclusion of evidence; innocent possession; licence; mens rea (absence of); mistake of fact; necessity; searches;

- seizure/restoration/forfeiture; wilful blindness/recklessness
- “**diacetylmorphine**”, 11
- distress**, 214
- dog sniff search**, 100
- “**double doctoring**”, 18, 85
- double jeopardy**
- appeals giving rise to, 202
  - autrefois acquit/convict, 196, 201
  - conspiracy, 196, 197
  - general, 194
  - importing, 201
  - issue estoppel, 201
  - possession for trafficking, 197–199, 201
  - possession of proceeds/trafficking, 337
  - res judicata, 195
  - samples, 200
  - two different drugs in one transaction, 200
- entrapment**
- basis of defence, 208
  - conduct of police, 211
  - general, 205, 206
  - onus on accused, 210
  - procedure for determining, 209
  - random virtue-testing, 206
  - remedy for, 207
- estoppel**, *see* double jeopardy
- evidence**, *see* certificate of analysis; exclusion of evidence; specific offences, e.g., trafficking
- exclusion of evidence**, *see also* Charter of Rights; defences
- condonation of unacceptable conduct, 237–239
  - deprivation of fair hearing, 233–236
- dispute re administration of justice, 228–241
  - effect of exclusion, 240, 241
  - fine, 143
  - FLIR technology, 100
  - forfeiture, 141, 143, 146
  - general principle, 225, 228, 242
  - infringement of right, 226, 227
  - purpose of, 229
- forfeiture**, *see* seizure/restoration/forfeiture
- hash/hash oil**, *see* cannabis
- “**heroin**”, 11
- historical development of**, 1–4
- importing/exporting**, *see also* offences (general); sentencing (importing/exporting)
- acquiescence, effect of, 58
  - attempts, 62
  - conspiracy re, 20
  - continuing offence, as, 53, 54
  - definition of, 52
  - elements of, 51
  - evidence, 59
  - general, 51
  - knowledge, 55–58, 61
  - location of offence, 53
  - purchaser from importer, 58
  - trafficking not included offence, 61
- informations/indictments**
- consent to prefer, 170
  - general, 8, 171, 172
  - informants, 109
  - warrants, 119–127
- innocent possession**, 213

- instruments/literature**, *see also* offences (general); sentencing (instruments/literature)
- counselling cultivation, 50
  - general, 96
- jurisdiction over**
- general, 5, 6
  - informations, 8
  - prosecutions, authority to bring, 7
- Kienapple principle**, *see* double jeopardy
- legislation (general)**
- prohibited activities, 17, 18
  - prohibited substances, 10–16
  - scope of, 9
- licence**, 212
- literature**, *see* instruments/literature; sentencing (instruments/literature)
- “LSD”**, 14
- “magic mushrooms”**, 14
- manufacturing**, *see* production
- marijuana**, *see* cannabis
- mens rea (absence of)**
- mistake of fact, 173–175
  - wilful blindness, 30, 32, 55–57, 176–180
- mistake of fact**, 173–175
- “morphine”**, 11
- necessity**, 214
- offences (general)**, *see also* defences; importing/exporting; instruments/literature; possession; possession for trafficking; proceeds of crime; production; trafficking
- “double doctoring”, 18, 85
  - elements of, 19
  - particularization of drug involved, 20
  - “practitioner”, 18
  - prohibited activities, 17
- “opium poppy”**, 11
- “phenylpropanolamine”**, 15
- physicians**, *see* “double doctoring”; “practitioner”; trafficking
- possession**, *see also* offences (general); sentencing (possession)
- actual possession, 26–28
  - aiding/abetting, 23
  - constructive possession, 26, 37–39
  - continuity of, effect of breaks in, 40
  - “control”, 27, 33, 34, 36, 37, 213
  - cultivation distinguished, 49
  - definition of, 22, 26, 34, 188
  - duration of offence, 27
  - elements of, 21
  - evidence of, 28, 31, 38
  - hybrid offence, as, 24, 25
  - included offence, as, 41
  - information charging, 42, 44
  - innocent possession, 213
  - intent, 27
  - joint possession, 22, 26, 35, 36
  - knowledge re nature of substance, 27, 29–32
  - multiple substances, 43
  - precedents, usefulness of, 46
  - quantity, issues re, 39
  - wilful blindness/recklessness, 30, 32
- possession for trafficking**, *see also* offences (general); sentencing (possession for trafficking)
- aiding/abetting, 23

- general, 91
- hybrid offence, as, 92
- intention, proof of, 65, 93, 94
- personal use, possession for, 65, 93
- “**practitioner**“, 18, 85
- proceeds of crime**, 97, *see also* offences (general); sentencing (proceeds of crime)
- production**, *see also* offences (general); sentencing (production)
  - counselling, 50
  - cultivation, 49
  - general, 47
  - possession distinguished, 49
  - “produce”, 48
  - trafficking by, 77
- “**propylhexedrine**“, 16
- “**psilocybin/psilocin**“, 14
- “**pyrovalerone**“, 16
- recklessness**, *see* wilful blindness/recklessness
- res judicata**, *see* double jeopardy
- “**resin**“, 13
- Ritalin**, 331
- searches**, *see also* exclusion of evidence; seizure/restoration/forfeiture
- searches (general)**, 98, 99
- searches (warrantless people)**
  - conduct of, 112, 118
  - discretion of police, 118
  - general, 111, 118
  - incidental to arrest/search of area, 114, 115, 133
  - reasonable grounds, 111, 113
  - right to counsel, 117, 222
  - strip, 116
- throat hold, 112
- searches (warrantless places)**
  - arrests, searches incident to, 105
  - “authorized by law”, 107, 108
  - conduct of, 106, 110
  - “exigent circumstances”, 102
  - general, 101, 114
  - perimeter searches, 104
  - “place”, 103, 104
  - presumption of unreasonableness, 107
  - reasonable grounds for, 101, 108
- searches (warrants)**
  - amendments, 126
  - bias of justice/judge, 125
  - content of application, 119
  - deceit, obtaining by, 127
  - dog sniff, 100
  - force, use of, 133
  - general, 119
  - informers, protecting, 128
  - naming of officer, 119, 121
  - out-of-province warrants, 132
  - persons on premises, 133
  - premises, identifying, 122
  - reasonable grounds, stating, 120, 123, 124, 126
  - reliability of informant, 120, 123
  - telecommunications, use of, 131
- seizure/restoration/forfeiture**, *see also* searches
  - absconding accused, 142
  - appeals, 142
  - controlled substances, 135, 136
  - disposal order, 138
  - excluding evidence, 141
  - forfeiture orders, 138, 139, 142, 149
  - general, 101, 134, 136
  - notice of proceedings, 145

## INDEX

---

- “offence-related property”, 135
- post-forfeiture applications, 148
- recognizance for returned property, 137
- report/return of seizing officer, 136
- restoration order, 138
- restraint orders (property), 138
- return orders, 147, 149
- transfer of property, setting aside, 144
- “sell“, 63
- sentencing (conspiracy)**
  - cocaine, 323, 324
  - general, 317
  - hashish, 326, 327
  - heroin, 318–320
  - LSD, 325
  - marijuana, 328–330
  - PCP, 321
  - Ritalin, 331
  - speed, 322
  - Talwin, 331
- sentencing (general)**
  - aboriginal offenders, 246
  - change in law, 256
  - codification of considerations, 244
  - conditional sentences, 246
  - discharges, absolute/conditional, 251
  - disparity between co-accused, 252
  - factors governing, 243, 255
  - fines, 248, 250, 281
  - health of accused, 254
  - local conditions, 249
  - mandatory jail terms, 248, 257
  - personal circumstances of accused, 254
  - presumptions, 257
  - programs available while incarcerated, 253
  - serve in community, 247
- sentencing (importing/exporting)**
  - cocaine, 313
  - commercial trafficking, three year minimum controlled substance, 140
  - general, 309–311
  - hashish, 314
  - heroin, 312
  - marijuana, 315
  - seven-year minimum, 310
  - wholesale trafficking, four and one half year minimum, 294
- sentencing (instruments/literature)**, 336
- sentencing (parole eligibility)**, 338
- sentencing (possession)**
  - cocaine, 261
  - general, 258
  - ecstasy, 308, 316
  - hashish, 17, 263, 264
  - heroin, 259
  - LSD, 262
  - marijuana, 17, 265, 266
  - PCP, 260
- sentencing (possession for trafficking)**
  - aggravating factors, onus of proof re, 270
  - cocaine, 273, 274
  - controlled substance, 140
  - general, 267–270
  - hashish, 276
  - heroin, 271
  - importing, effect of element of, 268, 278
  - LSD, 275



- marijuana, 278
  - PCP, 272
  - psilocybin, 277
  - steroids, 267
  - Talwin, 279
- sentencing (proceeds of crime),**  
337
- sentencing (production)**
- ecstasy, 335
  - general, 332
  - marijuana, 333, 334
- sentencing (trafficking)**
- addicts, 285, 286
  - cocaine/crack, 292–297
  - consecutive vs. concurrent, 284
  - controlled substance, 140
  - custodial term required, 282
  - fines, 281
  - general, 280–290, 295
  - hashish, 304–306
  - heroin, 291
  - importing, 290
  - large-scale commercial activity, 286–288
  - LSD, 302
  - marijuana, 307
  - PCP, 298, 299
  - phony sales, 289
  - psilocybin, 303
  - “social” vs. “commercial”, 286, 305
  - speed, 300
- Talwin,** 279, 331
- trafficking,** *see also* offences (general); sentencing (trafficking)
- “administering”, 70
  - agents of officers, liability of, 68
  - aiding/abetting, 23, 68, 181–187
  - appeals re, 86, 87
  - attempts, 82
  - bail, availability of, 88, 89
  - Charter issues, 88, 89
  - commercial enterprise, 67, 74
  - conspiracy, 83, 121, 196, 197, 203
  - definition, 63
  - delivery, by, 68, 74, 75
  - distribution, by, 76
  - elements of, 63, 337
  - evidence re substance/drug, 78, 90
  - general, 63–66
  - “holding out”, 78
  - information, contents of, 66
  - intent, 79, 173–175
  - intermediaries/agents, 68, 69
  - knowledge, 80, 81, 173–175
  - manufacture, by, 77
  - mens rea, 64, 173–180
  - offer to procure, 74
  - offer to purchase not offence, 64
  - personal use, possession for, 65
  - physicians, involving, 18, 84, 85
  - prescriptions, selling, 70
  - profit not necessary, 67
  - question of fact, as, 86
  - reverse onus re detention, 88
  - sale of two or more drugs, 71
  - single sale as, 64, 67
  - transportation, by, 68, 72–74
- wilful blindness/recklessness**
- charge to jury re, 178
  - general, 176, 177, 180
  - importing/exporting, re, 55–57
  - knowledge re substance, 179, 180
  - possession, re, 30, 32

## Index to Negligence

(All references are to paragraph numbers.)

- accident**, *see inevitable accident*
- accountants**
- general, 378–380
  - negligent misrepresentation, 178
  - standard of care, 84
- Act of God**, 288, *see also defences*
- advertisements**, 28
- aggravated negligence**, *see gross negligence*
- allergic reactions**, 254, 256, 260
- ambulances**, 134
- amusement parks**, 76
- animals**, 210, 272, 278
- appeals**, 408, 409
- apportionment**, *see contributory negligence; damage*
- appraisals**, 172, 175
- asbestos products**, 76
- assaults/fights**
- contribution among tortfeasors, 339, 389
  - contributory negligence, 207, 329
  - limitation period, 394, 396
- bad faith**, 90
- bailment**, 37
- banks**, 30, 179, 180
- barges**, 8, 30
- barristers/solicitors**
- causation, 41
  - Crown prosecutors, disclosure by, 77
  - general, 378–380
  - law societies, 239
  - limitation periods, 394
- baseball fields**, 112
- battery**, *see assaults/fights*
- breast implants**, 165, 396
- bridges**, *see highways/streets*
- building contracts**, *see construction contracts*
- building inspections**
- causation, intervening acts, 279
  - duty of care, 150, 239
  - general, 409
- burden of proof**, *see onus/burden of proof*
- burglar alarms**, 10, 154, 294
- bus drivers**, 44
- carpal tunnel syndrome**, 41
- causation**, *see also contributory negligence; elements of negligence; foreseeability; intervening causes; proximate cause/remoteness of damage*
- bailment cases, 37
  - “but for” test, 30, 258
  - carpal tunnel syndrome, 41
  - “causa causans”, 28, 29, 310
  - causa sine qua non, 30
  - cause in fact, 28, 262, 309–313
  - efficient cause, 29
  - explosions, 31
  - fibromyalgia, 30, 31
  - fires, 31, 39, 41
  - general principle, 28, 29, 247
  - hunting/shooting accidents, 39, 40
  - inferences, 31, 41

- medical malpractice, 41
- multiple causes/defendants, 32–37, 121, 336–343
- multiple defendants, single cause, 38–40
- nexus, 29
- non-tortious contributing causes, 36
- onus of proof, 12, 31, 39–41
- operating cause, 29
- pre-existing injuries, effect of, 32, 36
- primary/substantial cause, 29
- pyrolysis, 31
- sexual dysfunction, 41
- sole, effective cause, 29
- substantial factor test, 32
- temporomandibular joint dysfunction, 41
- children, *see also* sexual abuse/assault**
  - child abuse, 195, 211
  - duty to protect, 53, 54, 194, 195, 200–202, 205, 274, 313, 315
  - explosions involving, 319
  - fatal accidents, claims re, 19, 20
  - foetus, 3, 328, 382, 383
  - intervening acts of, 321
  - liability for acts of, 51, 52, 201, 202, 274
  - liability of child personally, 63–67
  - medical treatment, 194
  - standard of care re, 51–54, 201, 203, 274, 313, 315, 317–321, 356
  - taxis, 81, 87
  - teachers/schools, 51, 201, 204, 244
- cigarettes, 404**
- class actions, 164, 169, 390**
- computer malfunctions, 196**
- concurrent liability in tort/contract, *see* contracts, breach of**
- construction contracts, 8, 9, 394, 396**
- contracts, breach of**
  - concurrent liability, 8, 9
  - construction contracts, 9
  - duty of care, scope of, 10
  - exclusion clauses, 10, 179
  - insurance, duty to obtain, 154
  - privity of contract, 10
  - standard of care, contract setting, 11
- contribution/indemnity, *see* contributory negligence; damage; occupier's liability**
- contributory negligence, *see also* causation; damage; proximate cause/remoteness of damage**
  - agent/principal, 360
  - apportionment of damage, 336–346, 388, 389
  - assaults/fights, re, 329, 339, 389
  - cause in fact, 40, 309–312
  - Crown liability, 361, 362
  - definition of, 304
  - degrees of fault, determining, 349–354, 388
  - duty of care, 308, 326, 327, 328
  - effect/nature of (common law), 303, 305, 334, 335
  - effect/nature of (statutory), 303, 336–348, 351, 355
  - elements of, 308–333
  - fatal accident cases, 348, 358
  - foreseeability, 321, 329
  - fraud cases, 343, 346
  - gratuitous passengers, 359
  - helmets, 309, 314

## INDEX

---

- impaired drivers, riding with, 296, 307, 314
  - imputed negligence between parties, 356–360
  - inadvertence/forgetfulness, 316
  - intervening cause, plaintiff's conduct as, 330–332
  - knowledge of non-repair, highways, 107
  - last clear chance, 334, 335, 344, 345
  - life jackets, 309
  - multiple defendants, 336–343
  - negligent misrepresentation, 176, 346
  - pedestrians, 311, 316, 323, 333, 353
  - proximate cause, 304, 329–333
  - rescuers, 325
  - seat-belts/headrests, 309, 312, 313, 355
  - standard of care (children), 317–321
  - standard of care (emergencies), 325
  - standard of care (general), 314–316
  - standard of care (parents), 313, 315, 356
  - standard of care (risk vs. utility), 322–324
  - thefts, 314
  - trust, breach of, 347
  - *volenti non fit injuria* distinguished, 306, 307
  - workers' compensation cases, 348
- corporations**, 386
- credit checks**, 179, 180, 183
- criminal negligence**
- civil action not barred, 6
  - general, 4
  - statutory creation, as, 5
- Crown liability**, *see also* **duty of care (statutory)**
- contributory negligence, 361, 362
  - Crown prosecutors, 77
  - general, 212, 224, 232
- crumbling skull**, *see* **“thin-skull” rule**
- custom**, *see* **standard of care**
- damage**, *see also* **causation; elements of negligence; proximate cause/remoteness of damage; remedies**
- apportionment, 33–36, 336–343, 354, 388, 389
  - element of negligence, as, 26, 27
  - last clear chance doctrine, 334, 335, 344, 345
- dangerous objects, use of**, 76
- defences**, *see also* **contributory negligence; volenti non fit injuria**
- Act of God, 288
  - explanation, 287
  - general, 131
  - illegal/immoral enterprise, injury during, 289–291
  - inevitable accident, 284–287
  - “learned intermediary/ultimate consumer”, 166
  - statutory protection/authorization, 90, 131
- definition**, 24, *see also* **elements of negligence**
- dentists**, 239
- disasters/public safety legislation**, 212
- disclaimers/exclusion clauses**, *see* **contracts, breach of; occupier's liability; sports related injuries; volenti non fit injuria**

- discovery of documents/parties**, 407
- doctors**, *see* **health practitioners; medical malpractice**
- dogs**, 356, 410
- duty of care (general)**, *see also* **elements of negligence; specific situations, e.g., negligent misrepresentation**
- absence of, effect, 147
  - affirmative action, duties of, 193–207, 211, 229–232, 235–238
  - children, re, 53, 54, 194, 195, 200–205, 274, 313, 315, 328
  - control of others, 53, 54, 194, 195, 200–207, 313
  - circumstances of case governing existence of, 149
  - contractual situations, 154, 155
  - *Donoghue v. Stevenson*, 2, 146, 150
  - foreseeability, 151, 153, 165
  - general, 145–156
  - gratuitous undertakings, reliance on, 196, 198
  - highways/streets, re, 97
  - insurance contracts, 154, 155
  - legal vs. moral, 147
  - “neighbour” principle, 2, 146, 150
  - negligent misrepresentation, 150
  - nuisance vs. negligence, 156
  - policy concerns circumscribing, 147, 150, 217, 239
  - question of law, existence of being, 147
  - rescue/aid of others, 78, 134–141, 193–195, 267
  - warning, obligation to give, 148, 163, 164
- duty of care (public body owing private duty)**
- administrative remedy barring, 242
  - bona fide exercise of discretion, 239
  - imposition of, factors determining, 239, 242
  - inspection systems, 98, 110, 124, 126, 241
  - non-delegable duties, 243, 244
  - policy considerations negating, 147, 150, 217, 239
  - public insurers, 245
  - statutory bars to, 239
- duty of care (statutory)**, *see also* **statutory breaches**
- animals, re, 210
  - bars to, 147, 150, 217, 218
  - breach of as evidence of negligence, 222
  - causation, 219
  - children, re, 211
  - Crown agencies, liability of, 212, 224
  - disasters/public safety legislation, 212
  - existence/scope of, 214
  - foreseeability, 221
  - fulfilment of, 220
  - home warranties, 212
  - human rights legislation creating, 226
  - motor vehicles, re, 209, 211, 212, 215, 311
  - municipal by-laws creating, 226
  - occupier’s liability, 365, 367
  - pedestrians, 311
  - penal statutes, under, 225
  - policy considerations negating, 147, 150, 217, 239

## INDEX

---

- private law duty, as evidence of, 213
  - regulatory agencies, non-compliance with orders of, 228
  - statutory vs. private standards, 216
- education, see teachers/school boards**
- electricians, 149, see also fires**
- elements of negligence, 1, 24, 25, see also specific elements, e.g., causation; contributory negligence; damage; duty of care; proximate cause/remoteness of damage; standard of care (reasonable person)**
- elevators, 29**
- emergencies, see also rescuers**
- duty to aid/rescue, 193–195
  - extraordinary risks, 137
  - general, 134, 135, 137, 193
  - gross negligence, 140, 141
  - job creating duty, 194
  - medical aid, 140, 198, 211
  - negligent actor creating emergency, 138, 265
  - statutory protection of rescuers, 136, 193, 269
  - trivial damage, 137
- employment, see vicarious liability**
- escalators, 86, 234**
- evidence, see causation; highways/streets; onus/burden of proof; res ipsa loquitur**
- excavations, 50**
- exclusion clauses, see contracts, breach of; occupier's liability; sports related injuries; volenti non fit injuria**
- explosions**
- children, 319
  - causation, 31
- ex turpi causa, see illegality, as defence**
- fatal accidents**
- adopted children bringing action, 19
  - contributory negligence, 348, 358
  - elements of action, 21
  - estate action distinguished, 14
  - general, 13
  - limitation periods, 392, 394, 399
  - “spouses” bringing action, 15–18
  - statutory basis of, 13
  - unborn child bringing action, 20
  - unconstitutionality 22
- fences, 88**
- fibromyalgia, 30, 31**
- fiduciary duty, breach of, 23, 170, 347**
- firearms, see hunting/shooting accidents**
- fires**
- causation, 31, 39, 41
  - contributory negligence, 304, 309, 325
  - duty of care, 149
  - foreseeability, 149
  - onus of proof, 39
  - post accident evidence, 405
  - product testing, 167
  - standard of care, 11, 50, 75
  - vicarious liability re, 237, 238
- flooding, 7, 156, 239, 255, 288**
- foetus, protection of, 3, 328, 382, 383**

- foreseeability**, *see also*  
**contributory negligence; duty of care; proximate cause/remoteness of damage**
- class of vs. specific individual(s), 153
  - duty of care and, 151, 165
  - general, 151, 165, 250, 251
  - impaired drivers, 153
  - negligent infliction of nervous shock, 153
  - proximate cause/remoteness of damage, 250–255
  - *Rylands v. Fletcher*, 229
  - statutory duties, 221
  - types of injury, 151, 153
- fraud**, 177, 343, 392–394
- grain commissions**, 213
- gratuitous passengers**, 359
- gratuitous undertakings, reliance on**, 196, 198
- gross negligence**
- criminal negligence distinguished, 142
  - definition of, 141, 144
  - emergency medical aid, 140
  - exclusion clauses, 178
  - factors establishing, 143
  - gratuitous passengers, 359
  - highway/streets, re, 139
  - question of fact, as, 143
- health practitioners**, *see also*  
**medical malpractice**
- duty of care (psychiatric harm), 152
  - ex turpi causa, 290
  - limitation periods, 391, 393
  - mental patients, responsibility re, 206
  - sexual abuse by, 189, 290
- helmets**, 309, 314
- hidden defects**, 45
- highways/streets**, *see also* **duty of care; pedestrians; sidewalks; standard of care**
- animals on, 278
  - barriers/railings, 106, 114
  - bridges, 101, 110, 120, 125
  - causation, 121
  - clean-up/repair costs, recovery by Crown, 129
  - contribution/apportionment of damages, 130
  - contributory negligence of users, 107, 119
  - dangerous portions of, 106, 114
  - defences to negligence claims, 131
  - delegation of responsibilities, re, 103, 122
  - duty to repair/maintain, 97, 119, 120, 123, 131, 132
  - effecting repairs, 105, 108, 114, 126
  - falling ice/rocks, 11, 97, 122, 237, 239, 243
  - gross negligence, requirement for, 139
  - indemnification rights, 127, 128
  - inspection systems, adequacy of, 98, 110, 124, 126, 241, 243
  - intent of statute, 108
  - limitation periods, 397, 398, 400
  - maintenance/repair, adequacy of, 99–104
  - Manitoba, no-fault scheme of, 133
  - misfeasance vs. nonfeasance, 115–117
  - notice of non-repair/long disrepair, 104, 109, 124
  - nuisance, 115, 117, 118

## INDEX

---

- obstructions, 98, 120, 122, 124, 126
- overloaded vehicles, 110, 125, 150
- policy decisions, effect of, 97, 111
- potholes, 109
- presumption of negligence, non-repair raising, 109, 113
- private highways, 123
- signs/traffic lights, 98, 106
- subsequent repair not admission, 114
- trees falling on, 97, 239
- volenti non fit injuria, 302
- water on, 97, 109, 131
- winter conditions/sanding, 97, 103, 131, 139, 239
- historical development, see nature of action**
- hockey, see sports related injuries**
- home warranties, 212**
- horses, 157, 292, 293**
- hunting/shooting accidents**
  - ammunition, sale to minor, 356
  - handling/storage, standard of, 76, 409
  - *Lewis v. Cook*, 39, 40
  - parental liability, 274
- illegality/immorality, as defence**
  - causation, 289
  - ex turpi causa, 290, 291
  - general, 289
  - plaintiff and defendant involved in act, 289
- immorality, see illegality/immorality, as defence**
- impaired driving**
  - contributory negligence, 307, 314
  - discovery of documents, 407
  - foreseeability issues, 153
  - nervous shock, infliction of, 153
  - non-commercial hosts, liability of, 201, 207, 237
  - office parties, 237
  - passengers, rights/duties, 296, 307, 314
  - vendors, duty of, 88, 153, 207
  - volenti non fit injuria, 296
- independent contractors, see occupier's liability; vicarious liability**
- inevitable accident, see also defences**
  - causation, 285
  - elements of defence, 285
  - explanation distinguished, 287
  - general, 284
  - standard of care, 286
  - unconsciousness/blackouts, 284, 287
- infants, see children**
- inmates, see prisoners**
- inspections, see building inspections; highways/streets; standard of care (reasonable person)**
- insurance, 154, 155, 196, 198, 239**
- intervening causes, see also causation; foreseeability; proximate cause/remoteness of damage**
  - animals, 272
  - children, acts of, 274, 321
  - criminal acts, 280
  - falls during convalescence, 277
  - human intervention/rescue, 273



## NEGLIGENCE

---

- medical errors, 281
- natural forces, 271, 272, 288
- negligence of another party, 278, 279
- “novus actus interveniens”, 262, 270
- persons exercising rights, 276
- suicide, 282, 283
- “thin-skull” cases, 262, 282
- investments**, 28, 168, 169, 172, 178, 180
- judicial orders, breach of**, 223
- last clear chance doctrine**, 334, 335, 344, 345
- law societies**, 239
- letters of credit**, 171
- life jackets**, 309, 325
- limitation periods**
  - Alberta, 392
  - British Columbia, 393
  - fatal accidents, 392, 394, 399
  - general, 391
  - highways/streets, 397, 398, 400
  - Manitoba, 394
  - medical malpractice, 391, 393
  - Ontario, 395
  - Saskatchewan, 396, 400
  - sexual abuse, 186, 392, 393
  - shipping legislation, 401
  - time, postponement of running of, 391–396
- liquor sales**, 88, 153, 207, 395
- lottery ticket sales**, 239
- manufacturer’s liability**
  - class actions, 390
  - custom, re standard of care, 162
  - dangerous products, 160
  - distribution vs. manufacture, 231
  - general, 93, 159, 164
  - latent defects, 158
  - “learned intermediary/ultimate consumer” defence, 166
  - maintenance manuals, 163
  - onus on manufacturer, 161
  - product labelling, 93
  - product testing/inspection, 167
  - recall letters, 406
  - strict liability, 231
  - warnings, duty re, 163
- medical emergencies, see emergencies**
- medical malpractice, see also health practitioners**
  - causation, proof of, 41
  - child abuse, 195
  - dentists, 239
  - duty of care, 195
  - emergencies, 140, 195
  - ex turpi causa, 290
  - general, 378–380
  - limitation periods, 391, 393
  - psychiatric patients, damage caused by, 206
- mental disability**, 48–50, 58–62, 206, 319
- mental distress**, 179, *see also nervous shock; psychological damage*
- minors, see children**
- motor vehicles, see duty of care (statutory); highways/streets; impaired driving; liquor sales; vicarious liability; volenti non fit injuria**
- nature of action**
  - *Donoghue v. Stevenson*, 2
  - elements of, 1
  - general, 2

## INDEX

---

- “neighbour” principle, 2
- public policy, 3
- negligent misrepresentation**
  - appraisals, 172, 175
  - banks, 179, 180
  - class actions re, 169
  - contributory negligence, 176, 182, 346
  - duty of care, 150, 168, 178
  - exclusion clauses, 179
  - fiduciary duty, 170
  - fraud, 177
  - investments, re, 168, 169, 172, 178, 180
  - letters of credit, 171
  - pension rights, 174
  - requests for proposals/tenders, 173
  - statement requirement, 181
- “neighbour” principle, 2, 146, 150, *see also* **duty of care**
- nervous shock**, 153, 184, *see also* **mental distress; psychological damage**
- novus actus interveniens**, *see* **intervening causes**
- nuisance**
  - causation, 32, 40
  - elements of, 7
  - highway, on, 115, 117, 118
  - water, run-off of, 156
- occupier’s liability**
  - chattels not covered by legislation, 375
  - contribution/indemnity, 212
  - duty of care, 365, 367, 377
  - factors affecting, 374
  - independent contractors, 367
  - invitees, 372
  - landlord and tenant legislation re, 364
  - legislation generally, 227
  - licensees, 372
  - licensor vs. invitor (Manitoba), 371
  - municipalities (Ontario), 370
  - “occupier”, 367, 369
  - pleadings, 402
  - premises subject to legislation, 363, 364
  - sanding/shovelling, 367, 369, 373, 374
  - ships, 376
  - ski hills, 367, 374
  - standard of care, 372, 373
  - swimming pools, 363, 374
  - trespassers, 367, 372
  - volenti non fit injuria, 366, 374
  - warnings/exclusion clauses, 374
- oil tanks**, 167
- onus/burden of proof**, *see also* **res ipsa loquitur**
  - balance of probabilities, 31
  - children, presumptions re, 320
  - custom, re, 87
  - general, 12, 41
  - *Lewis v. Cook*, 39, 40
  - mental disability, re, 62
  - motor vehicle accidents, 209, 212
  - post-accident evidence, 405, 406
  - shifting of, 39–41
- parachutists**, 51, 204
- parents**
  - duty to protect children, 53, 54, 194, 195, 200–202, 205, 274, 313, 315
  - foetus, protection of, 3, 328, 382, 383

- liability re children’s acts, 51, 52, 201, 202, 274
- standard of care of, 51–54, 201, 274, 313, 315, 317–321, 356
- parks/recreation facilities**, 112, 157
- parties**, *see also* **specific situations, e.g., sexual abuse/assault**
  - corporations, 386
  - foetus vs., 3, 382, 383
  - joint tortfeasors, 385, 387–389
  - plaintiffs generally, 381, 384
- partnerships**, 89
- pedestrians**, 311, 316, 323, 333, 353
- pension rights, advice re**, 174
- pesticides**, 163, 407
- pleadings**
  - amendment of, 393, 403, 404
  - occupier’s liability, 402
  - particulars, requirement for, 284, 404
  - sexual abuse, 191
  - volenti non fit injuria, 301
- plumbers**, 85
- police officers/vehicles**
  - failure to warn, 143
  - liability in negligence, 192, 197
  - running red lights, 353
  - self-protection, duty/standard re, 322
  - shooting of suspects, 79, 237, 339
  - speeding, 77
  - supervision of prisoners, 79, 84, 283
  - takedown of suspects, 143
  - vehicle pursuits, 79
- pollution**
  - causation, proof of, 32
  - nuisance, 7
- power lines**, 76
- practice**, *see* **appeals; class actions; discovery of documents/parties; limitation periods; onus/burden of proof; parties; pleadings**
- pre-existing injuries**, *see* **causation**
- pregnant women**, 3, 153, 382, 383
- prisoners**, 79, 84, 206, 213, 275, 283
- prisons**, *see* **police officers/vehicles**
- product liability**, *see* **manufacturer’s liability**
- professional negligence**, *see also* **health practitioners; medical malpractice**
  - accountants, 84, 178
  - barristers/solicitors, 41, 239
  - general, 378–380
- professional regulatory bodies**, 240
- proximate cause/remoteness of damage**, *see also* **causation; contributory negligence; elements of negligence; foreseeability; intervening causes**
  - advertisements, 28
  - “direct consequence” test (Polemis), 248, 249
  - “foreseeability” test (Wagon Mound), 250–255
  - highways/streets, non-repair, 104, 121
  - nature/effect of, 246
  - question of fact, as, 246

## INDEX

---

- “thin-skulled” persons, 74, 75, 256–262
- psychiatrists, see health practitioners**
- psychological damage, 254, 261, 262, see also mental distress; nervous shock**
- public facilities, see parks/recreation facilities**
- public policy, 3, 150, 246, see also highways/streets**
- pyrolysis, 31**
- radioactive material, 239**
- railways, 220, 239, 319, 320, 361**
- real estate agents, 170**
- reasonable person, see standard of care (reasonable person)**
- recreation, see parks/recreation facilities; sports related injuries**
- remedies, 410**
- remoteness, see foreseeability; proximate cause/remoteness of damage**
- requests for proposal, 173**
- res ipsa loquitur, 224, 225, see also onus/burden of proof**
- rescuers, see also emergencies**
  - actual vs. perceived dangers, 266
  - contributory negligence of, 325
  - duty to aid/rescue, 193–195
  - foolhardy rescuers, 137, 267
  - general, 78, 134, 135, 137, 263, 264, 273
  - liability of rescued person, 138, 265
  - property, rescue of, 268
  - statutory protection from liability, 136, 140, 193, 269
- roofing, 11**
- Rylands v. Fletcher, see strict liability**
- schools, see children; teachers/school boards**
- seat-belts/headrests**
  - contributory negligence, 309, 312, 315, 355
  - duty re other people’s children, 194, 205, 313
  - evidence re use of, 312, 409
  - excuse for not using, 50, 309
- sexual abuse/assault**
  - charitable organizations, liability, 185
  - degree of control, relevance, 187
  - employers’ vicarious liability, 185, 187, 235
  - escaped prisoner, by, 275
  - foster children, 188, 383
  - health practitioner/patient, 189, 290
  - knowledge of abusive tendencies, 188
  - limitation periods, 186
  - parent’s liability, 195, 200, 383
  - pleadings, 191
  - priest, by, 187, 237
  - publication issues, 223, 225
  - Salmond test, 185, 235
  - social workers, 190, 199
- sexual dysfunction, 41**
- ships/boats, 199, 227, 309, 362, 376, 401**
- shooting, see hunting/shooting accidents**
- sidewalks, see also highways/streets; occupier’s liability**
  - adjacent property owners, liability of, 94, 97
  - duration of non-repair, 124

## NEGLIGENCE

---

- duty to repair, general, 110
  - holes in, 109
  - inspection, adequacy of, 111
  - limitation periods, 397
  - snow/ice, 120, 139
  - trees, metal plate around, 10
- silicone implants, see breast implants**
- ski hills, see occupier's liability**
- snowmobiles, 67**
- social host, 208**
- social workers, 51, 190, 199**
- sports related injuries, 112, 157, 292, 293**
- standard of care (reasonable person), see also contributory negligence; duty of care; elements of negligence; foreseeability; highways/streets; proximate cause/remoteness of damage; sidewalks; specific situations, e.g., sports-related injuries**
- accidents, 45
  - blame worthiness/moral character, relevance of, 48
  - bus drivers, 44
  - children, liability of, 63–67
  - children, re, 51–54, 81, 87, 194, 201–205, 274, 313–321, 356
  - circumstances governing, 68
  - custom, 82–87, 162
  - dangerous objects, use of, 76
  - emergencies, 78, 134–140, 267, 325
  - errors in judgment, 45
  - evidence of generally, 46, 47, 405
  - expert advice, failure to obtain, 55
  - fires, 50
  - general, 42–47, 68
  - gravity of potential injury, relevance, 75
  - gross negligence, 139–144, 179, 359
  - hidden defects, 45
  - inevitable accident, 285, 286
  - inspection systems, 98, 110, 124, 126, 161, 239, 241, 243, 279
  - intelligence, relevance of, 48–50
  - knowledge of defendant, 50
  - mental disability, effect of, 48–50, 58–62
  - motor vehicles, re children, 51, 53, 54
  - objective standard, as, 46
  - parachutists, 51, 204
  - partnerships, 89
  - physical disability, effect of, 56, 57
  - police activities, re, 77, 79, 84, 143, 237, 283, 322, 339, 353
  - “reasonable person”, 42–44
  - remote possibilities, 69
  - rescuers, 78, 263, 264, 267, 273, 325
  - risk, relevance of, 68–81
  - sensitive persons, 74, 75
  - statutory standards, 51, 88–133, 201, 204, 216
  - third party's, 45
  - utility of conduct, relevance of, 77–80
  - weather conditions, relevance of, 73
  - welders, 50
- statutory breaches, see also duty of care (statutory)**
- compliance with statute, effect, 93
  - general, 91, 92, 311
  - need for breach, 94

---

INDEX

---

- strict liability**
- animals (statutory), 210
  - *Rylands v. Fletcher*, 229–232
- students, see children;**  
**teachers/school boards**
- suicide**, 84, 255, 261, 282, 283
- swimming pools, see occupier’s liability**
- taxis**, 81, 87
- teachers/school boards**
- duty of care, 201, 204, 244
  - duty to educate, 96
  - standard of care, 51, 201, 204, 244
- temporomandibular joint dysfunction**, 41
- tenders**, 173
- theft**, 314
- “thin-skull” rule, see also proximate cause/remoteness of damage**
- allergic reactions, 256, 260
  - cause-in-fact, 258, 262
  - “crumbling skull” distinguished, 257
  - general, 74, 256
  - one-eyed persons, 75
  - pre-existing disposition, 262
  - psychological injuries, 261, 262
  - standard of care, 74, 75
  - subsequent injury caused by initial negligence, 260
  - suicide, 261, 282
- tobacco**, 404
- trees**, 70, 97, 239
- trespass to chattels**, 368
- trespass to the person**, 12
- trust, breach of, see fiduciary duty, breach of**
- ultimate negligence, see last clear chance doctrine**
- unborn children**, 3, 382, 383
- vicarious liability, see also sexual abuse**
- defamation, 237
  - general, 237
  - independent contractors, 237, 238
  - intoxicated employees, 200, 237
  - motor vehicle legislation, 236
  - Salmond test, 185, 235
  - sexual abuse, re, 185, 187, 199, 237
- vis major, see Act of God**
- volenti non fit injuria, see also defences**
- bars to, 302
  - contributory negligence distinguished, 306, 307
  - employees, 299, 300, 302
  - exclusion clauses, 293–295, 300
  - express/implied consent, 293, 296, 301
  - general principle, 292
  - intoxicated persons, 296, 307
  - motor vehicle cases, 296
  - nature/extent of risk, appreciation of, 296, 298
  - occupier’s liability, 366
  - physical vs. legal risk, 297
  - pleading of, 301
  - police officers, 299
  - voluntariness, 299
- water, see flooding; highways/streets**
- weather conditions**, 73
- welders**, 50

## Index to Nuisance

(All references are to paragraph numbers.)

- abatement**
  - limited use of remedy, 69
  - nuisance on public highway, of, 72
  - rules as to, 70, 71
  - statute, under, 93, 94
- action**
  - authorized nuisance, for, 28
  - continuing nuisance, for, limitation period, 82
  - injury from danger on highway, for, 101
  - nuisance as basis of, 5–8, 42–50
  - obstruction of access to property, for, 96
  - private nuisance, for, 59–61
  - public nuisance, for, 62–65
  - Rylands v. Fletcher, rule in, basis of, 5–7
- agricultural operations**, 97
- air pollution**, 98–100
- Attorney General**, 63, 64
- children**, 123
- contractors**, 55, 56
- contributory negligence**, 14, 39
- damages**
  - award of, grounds for, 81, 82
  - continuing actionable nuisance, for, limitation on, 76, 77
  - destruction of property, for, calculation of, 88
  - foreseeability, 7
  - loss of rental income, for, 87
  - permanent depreciation of property, for, 85
  - punitive, award of, 90, 91
  - sale of property, failure as to, for, 86
  - special, award of, 85
- debris**, 104, 122
- district**, *see* **locality**
- easement**, 21, 22
- fences**, 103
- fire hazards**, 104, 122
- floodlighting**, 105
- foreign substance**, 106
- harassing telephone calls**, 107
- highways**, 100, 109–111, 121
- hospitals**, 112
- injunctions**
  - continuing actionable nuisance, for, 76, 77
  - damages coupled with, refusal of, 85
  - discretion as to granting of, 79
  - granting of, limitation on, 74
  - interference of reasonable enjoyment, for, 75
  - interlocutory, granting of, 84
  - preference of, damages, over, 76
  - quia timet, granting of, 84
  - refusal of, grounds for, 78–82
  - staying of operation of, 83
- injury**
  - grounds of action, as, 46, 47
  - property, to, standard applicable, 17
- land**, *see also* **property**
  - flooding of, 113–115
  - injury to, 46–49
  - ruinous structures on, 121, 122

## NUISANCE

---

### **liability**

- adjacent property, injury to, for, 57
- damage to land, excavation, by, for, 102
- employer, of, 54, 55
- nuisance, for, 51, 58
- property in control of another, for, limitation on, 53
- removal of nuisance, for, 52
- subcontractor, of, 56

### **lights, obstruction of, 116**

### **limitation period, 82**

### **locality**

- character of, 15, 17
- standards applicable to, variation in, 16

### **negligence distinguished, 8**

### **noise, 119, 120**

### **nuisance, *see also* private nuisance; public nuisance**

- acquiescence to, effect on liability, 25
- criminal offence, as, 92, 95
- defined, 1, 2
- lawful, as, complaint against, 19
- liability for, 51, 58
- negligence distinguished from, 8
- private, nature of, 2
- right to maintain, prescription by, 26
- what constitutes, 3, 4

### **obstructions**

- access to property, of, 96
- highway, of, 109–111
- navigable water, of, 118
- view, of, 117

### **offence, nuisance as, 95**

### **overhanging trees, 124**

### **plaintiffs**

- onus of proof, 40
- private nuisance action, in, 59–61
- public nuisance action, in, 63–67

### **pollution**

- air, 98, 99, 100
- environmental legislation, 68
- water, 127, 128

### **prescription**

- commencement of period of, 27
- knowledge of, necessity for, 23, 24
- maintenance of nuisance by, 26

### **private nuisance**

- action as to, 59–61
- classes of, 8
- classification, 9
- fence, 103
- public, distinguished from, 12–14
- ruinous wall on adjoining property, 121
- tree, 124
- trees, 124, 125

### **property, *see also* land**

- acquisition of, subsequent to nuisance, effect, 18, 26
- depreciation of, damages for, 85
- destruction of, damages for, 88
- excavation, damages for, 102
- injury to, basis of, 17
- interference with, nuisance, as, 43
- natural use of land, 19
- reasonable use of, what constitutes, 19, 20
- right of access to, obstruction of, 96



## INDEX

---

### **public nuisance**

- abatement of, grounds for, 65
- action as to, 63–67
- classification of, 9
- contributory negligence, 14, 39
- creation of danger adjoining highway, 101
- defined, 11
- fence, 103
- pollution of harbour, 128
- private, distinguished from, 12–14
- ruinous structure adjoining highway, 121

### **remedies, *see also* injunctions**

- abatement as, limitation on, 69–71
- statute, under, 93

### **ruinous structures**

- fire risk, as, 122
- private nuisance, as, 121
- public nuisance, as, 121

### **statutory authority**

- defence, as, 28
- exculpatory provisions, 29
- limitation on, 31
- nuisance, creation of, under, 28
- private rights, effect upon, 33
- public bodies, 28, 29, 35
- reasonable care, as to, 30

### **strict liability, 5–7**

**trees, 124, 125**

**vibration, 119**

**view, loss of, 117**

**water pollution, 127, 128**

## Index to Occupational Health and Safety

(All references are to paragraph numbers.)

- administration, inspection and enforcement**
  - administrative penalties, 89–100
    - Alberta, 90
    - British Columbia, 91–95
      - due diligence exemption, 92
      - grounds for imposing, 91
      - maximum penalty, 92
      - no prosecution on same facts, 95
      - payment, 94
      - review of decision, 93
    - general, 89
    - Manitoba, 96–100
      - appeal to Labour Board, 98
      - charge for offence of failure to comply, 100
      - failure to comply with improvement order, 96
      - payment, 99
      - timing and contents of notice, 97
  - appeals, 66–83
    - Alberta, 71–73
      - further appeal to Queen’s Bench, 72
      - no stay pending appeal, 73
      - Occupational Health and Safety Council, 71
    - British Columbia, 74, 75
      - no review by any court, 75
      - Worker’s Compensation Board, 74
    - federal, 67–70
      - duty of appeals officer, 67
      - no suspension of order pending appeal, 70
      - payment of wages for employee’s attendance, 69
      - power of appeals officer, 68
      - general, 66
      - Manitoba, 76–79
        - appeal in writing to Director, 76
        - appeal of Director’s decision to Labour Board, 77
        - further appeal to Court of Appeal, 78
        - no stay pending appeal, 79
      - Saskatchewan, 80–83
        - appeal in writing to Director, 80
        - appeal of Director’s decision to Adjudicator, 81
        - further appeal to Queen’s Bench, 82
        - no stay pending appeal, 83
    - civil compellability of officers and others, 60
    - confidentiality, 59
    - contravention orders, 62–65
      - affixing copy of work order/notice at workplace, 64
    - stop work order, 62
    - wages/benefits where stop work order in effect, 63
    - written report detailing steps to remedy contravention, 65
  - general administration, 53, 54
    - appointment of directors/inspectors, 53
    - federal-provincial agreements re health and safety officers, 54
  - immunity of officers and others, 61
  - investigative powers and duties, 55–58

## OCCUPATIONAL HEALTH AND SAFETY

---

- additional rights of inspectors, 57
- inspection and removal of anything, 56
- investigation of every workplace/while working death, 58
- right of entry to workplace, 55
- medical examinations, 84–87
  - procedural matters, 87
  - provincial legislation, 84
  - worker's consent, 86
  - workers/former workers, 85
- power to make regulations, 88
- application of legislation**
  - binding on the Crown, 19
  - exemptions, 17, 18
    - British Columbia, 17
    - federal, 18
  - general, 12–15
    - British Columbia, 12
    - federal, 13
    - federal work, undertaking or business, 14, 15
    - Manitoba, 12
  - relationship to other legislation, 20, 21
    - British Columbia, 20
    - federal, 21
    - Manitoba, 20
  - self-employed persons, 16
- duties of parties**
  - duties of contractors, 43, 44
    - additional duties, 44
    - definition, 43
  - duties of directors and officers, 45
  - duties of employer, 23–29
    - additional duties, 25, 29
    - compliance with legislation and regulations, 23
    - federal, 28
    - general duty to ensure health safety and health, 23
    - Manitoba, 26
    - Saskatchewan, 27
    - specific duties, 24
  - duties of owners, 30
  - duties of prime contractors, 41, 42
    - definition, 41
    - general and additional duties, 42
  - duties of self-employed persons, 40
    - duties of supervisors, 31–33
      - British Columbia, 31–33
      - Manitoba, 31, 32
    - duties of suppliers, 46, 47
    - duties of workers/employees, 34–39
      - additional duties, B.C. and federal, 37
      - consult/co-operate with workplace safety and health committees, 36
      - co-operation with others exercising duties, 34–35
      - federal, 39
      - harassment in workplace, 38
      - protect safety/health of self/others, 34
    - general, 22
    - hazardous substances and controlled products, 52
    - multiple functions and obligations, 48–51
      - Alberta, 49
      - British Columbia, 50, 51
      - definition of functions, 48
      - Manitoba, 51

## INDEX

---

### **fatalities and critical incidents**

- investigation reports, 110
- non-interference with incident scene, 109
- notification of incidents, 101–108
  - • Alberta, 104
  - • British Columbia, 105
  - • federal, 103
  - • general, 101–102
  - • Manitoba, 106
  - • Saskatchewan, 107, 108
  - • • dangerous occurrence defined, 108
  - • • every incident that causes/may cause death, 107

### **federal regulation of specific industries**

- coal mining, 191–193
- construction, 189, 190
- oil and gas, 194, 195

### **health and safety representatives and joint committees**

- general, 111
- health and safety committee, 112–125
  - • composition of committee and selection, 119–125
    - • • British Columbia, 122, 125
    - • • federal, 124
    - • • general, 119, 120
    - • • Manitoba, 121, 125
    - • • Saskatchewan, 123, 125
  - • where required, 112–118
    - • • Alberta, 115
    - • • British Columbia, 112
    - • • federal, 116–118
    - • • Manitoba, 112, 113
    - • • Saskatchewan, 114

- health and safety representative, 126–128
  - • appointment process, 127, 128
  - • where required, 126
- powers and duties of committees and representatives, 129, 130

### **legislation**

- definitions, 3–11
  - • employer, 4, 5
  - • occupation, 7
  - • owner, 8, 9
  - • place of employment, 10
  - • supplier, 11
  - • worker, 6
  - • workplace, 10
  - • worksite, 10
- regulations, 2

### **offences, defences, penalties and proceedings**

- defence of due diligence, 183–188
  - • establishing due diligence, 186
  - • onus of proof, 184
  - • reasonable care, 187
  - • statutory defence and Charter, 188
  - • statutory equivalent, 185
- strict liability offences, 183
- imprisonment, 176
- imputed liability, 152–154
  - • officer/director/agent of corporation, 152
  - • Saskatchewan, 154
  - • senior officials/persons exercising managerial/supervisory functions, 153
- injunctive relief, 177–180
  - • Alberta, 180
  - • British Columbia, 179
  - • federal, 178

## OCCUPATIONAL HEALTH AND SAFETY

---

- • general, 177
- limitation periods, 155–158
- • consent of Minister of Labour, 158
- • federal, 157
- • general, 155
- • western jurisdictions, 156
- monetary penalties, 159–175
  - • Alberta, 161–163
  - • British Columbia, 164–166
  - • federal, 160
  - • general, 159
  - • Manitoba, 167–170
  - • Saskatchewan, 171–175
- offences, 150, 151
- sentencing principles, 181, 182
  - • factors re quantum of fines, 181
  - • right of appeal, 182
- protection of workers from reprisals**
  - burden of proof, 148
  - extent of protection, 146, 147
    - • complaint filed with health and safety inspector, 147
    - • discriminatory actions, 146
    - • penalty for reprisal, 149
- right to refuse or to stop work**
  - general, 131–136
    - • belief of danger on reasonable grounds, 132
    - • definition of danger, federal, 133, 134
    - • exemption where employee on ship/aircraft, 135
    - • pregnant or nursing worker, 136
    - • prescribed procedure, 131
    - • refusal procedure, 137–140
      - • contravention order, 140
      - • duty to report circumstances to employer, 138
      - • notifying safety or health officer, 139
      - • two stage investigation, 137
    - workers' rights during refusal, 141–145
      - • assignment of work refused by another, 143
      - • continuing refusal to work until condition remedied, 141
      - • discipline where refusal groundless, 144
      - • economic protection, 142
      - • where protection against reprisal cannot be invoked, 145

## Index to Oil and Gas

(All references are to paragraph numbers.)

- abandonment/reclamation**
  - Alberta, 589–595
  - British Columbia, 596–598
  - Federal, 615–617
  - Manitoba, 599–610
  - Saskatchewan, 611–614
- accountings, see farmout agreements; fiduciary duties; freehold leases; royalties**
- acquisition of Crown interests, see also freehold leases; royalties**
- acquisition of Crown interests (Alberta)**
  - agreements, effect of, 27
  - exclusions, 27
  - leases, 31, 32
  - legislation governing, 26
  - licences, 28, 29
- acquisition of Crown interests (British Columbia)**
  - applications, 34
  - expropriation compensation board, 537
  - fees, 34
  - leases, 34, 38–40, 525
  - legislation governing, 33
  - orphan sites, 533, 596
  - permits, 34–37
- acquisition of Crown interests (federal)**
  - assignment of interests, 81
  - exploration licences, 69, 70
  - “frontier lands”, 67
  - general, 67, 68
  - jurisdiction, departmental, 68
  - legislation governing, 67, 88
  - offshore and other agreements, 82–87
  - production licences, 75–78
  - registration of interests, 80
  - significant discovery licences, 71–74
  - soldier settlement lands, 86
  - veterans’ lands, 87
- acquisition of Crown interests (Manitoba)**
  - exploration reservations, 43–45
  - leases, 46, 47
  - legislation governing, 41
  - public sale of, 42
- acquisition of Crown interests (Saskatchewan)**
  - drilling reservations, 52, 53
  - exploration permits, 50, 51
  - leases, 50, 51, 53–55
  - legislation governing, 48
  - sale of, 49
- apportionment, see royalties (freehold)**
- assignments, see acquisition of Crown interests (federal); royalties (freehold)**
- “at the outlet valve”, 211**
- authorization for expenditure, see operating agreements**
- bankruptcy/insolvency, see operating agreements**
- Blackstock formula, see surface rights compensation**
- builders’ liens, 17**
- capacity of parties, see freehold leases**

- carried interest agreements**, 379, 380, *see also* **freehold leases; operating agreements**
- caveats**, *see* **interests in land; registration of interests**
- coal (Alberta)**, 27
- “commencement”**, 189–191, 328, *see also* **farmout agreements; freehold leases**
- “commercial discovery” (federal)**, 75
- “commercially profitable production”**, 179
- common carriers**, 578, 645, 646
- common processor**, 580
- common purchaser**, 579
- confidential information**, *see also* **fiduciary duties**
- breach of confidence, 412, 413
  - employee misuse of, 412–420
  - fiduciary obligations re, 411
  - independent contractors, use by, 415
- consent to disposition of homestead**
- affidavit/certificate of acknowledgement, 140–145
  - Alberta, 123, 126, 129–135, 137, 138, 140, 144
  - British Columbia, 123, 124, 139
  - estoppel, 146
  - form of, 130–133
  - “homestead”, 134–139
  - Manitoba, 123, 125, 140, 143
  - Ontario, 127, 136
  - Saskatchewan, 123, 126, 128, 137, 140–142
  - where not required, 140–145
- conservation**, 558, 521, *see also* **exploration/development/production**
- consideration**, *see also* **freehold leases**
- bonus consideration, 163
  - condition precedent, as, 164
  - fundamental term, as, 163
  - proof of payment, 166
  - tender of, 165, 167
  - time for paying, 163
  - title, proof of, 164, 165
  - variation of agreement, for, 389
- constitutional jurisdiction**
- exports, 9
  - general, 8
  - offshore minerals, ownership, 11–14
  - pipelines, re, 15–24
  - taxation, 10
- contracts**, *see* **acquisition of Crown interests; carried interest agreements; dower; farmout agreements; fiduciary duties; freehold leases; interference with contractual relations; land agents; natural gas contracts; operating agreements; perpetuities, rule against; pooling clauses/agreements; royalties; royalty trust agreements; specific elements, e.g., consideration; subsurface storage; top leases; variation of agreements**
- costs**, *see* **freehold leases; surface rights compensation**
- curtesy**, *see* **consent to disposition of homestead; freehold leases; “homestead”**
- damages**, *see* **default clauses; farmout agreements; freehold leases; offset well clauses**

- default clauses (general)**, *see also* **freehold leases**
- applicability of, 273
  - damages, 276
  - offset wells, 275
  - shut-in provisions, 274
  - “unless” lease, 273, 274
- default clauses (Ontario)**, *see also* **freehold leases**
- acts of default, 280
  - declaring lease void, 277
  - general, 277, 281
  - jurisdiction of court, 278, 281
  - payment remedying default, 278, 279
  - relief from forfeiture, 280
  - waiver of default, 280
- delay rental**, *see* “**unless**” **clause**
- distress**, 206
- dower**, *see* **consent to disposition of homestead; freehold leases; “homestead”**
- drilling covenants**, *see also* **farmout agreements; freehold leases; surface rights**
- bona fide intention, 189
  - “commencement”, 189–191
  - drilling in progress, effect of, 194, 195
  - farmout agreements, 328, 332, 333
  - general effect of, 189
  - “operations”, 191, 192
  - preparatory acts, 189, 190, 192
  - regulations, effect of, 193
- drilling reservations**, *see* **acquisition of Crown interests (Saskatchewan)**
- energy resources conservation board (procedure)**, 433
- enhanced recovery**, 581
- “**entirety clause**”, 224
- environmental issues**, 558, 618, 619, 620, *see also* **abandonment/reclamation; enhanced recovery; natural gas processing; oil sands**
- “**equipping costs**”, 338
- estoppel**, *see also* **waiver**
- acquiescence, by, 296–299
  - conduct after termination of lease, 295, 299, 301
  - homestead, release of consent, 146, 305
  - operating agreements, under, 374
  - options to renew, 303
  - payments, acceptance of, 304
  - promissory estoppel, 301, 302
  - representation, by, 300
  - validity of lease, representations, 294, 300
  - variation of agreements, 391
- exploration/development/production**
- compensation for injury, 586–588
  - drilling spacing units, 564
  - enhanced recovery schemes, 581
  - general, 558, 521
  - natural gas processing, 584
  - oil sands, 582
  - pooling, 566
  - production regulation, 577–580, 568–576
- exploration licences**, *see* **acquisition of Crown interests (federal)**
- exploration permits**, *see also* **acquisition of Crown interests (Saskatchewan)**



- exploration reservations, see acquisition of Crown interests (Manitoba)**
- export, see import/export**
- farmout agreements, see also freehold leases**
- area of mutual interest, 347–349
  - conversion of interests, 338, 345, 346
  - damages, 329, 332, 333
  - default, 335
  - drilling, covenant to commence, 328
  - drilling, obligations re, 332, 333
  - earning of interest, 334, 335
  - entire agreement clause, 350
  - “farmee’s satisfaction”, 330, 351
  - fiduciary duties, 347–349
  - general, 318–320
  - interpretation of, 320, 323–325, 350
  - letter agreements, 321–327
  - nature of, 318
  - overriding royalty, 336–344
  - participating interests, 345
  - rectification, 326, 327
  - seismic /drilling information, duties re, 329–331
  - transfer of interests, 334, 335
  - unitization agreements, effect of, 352
  - value of interest, 319
  - working interests, 338
- fiduciary duties, see also confidential information**
- conflict of interest, 395, 401
  - corporations, between, 397, 406
  - experience of parties, relevance, 398
  - farmout agreements, re, 347–349
  - fiduciary relationships generally, 392–394
  - information, use of, 411
  - limited partnerships, general partner’s, 401, 408
  - operating agreements, under, 353, 354, 367, 368, 373, 393, 395, 403–406, 407
  - related corporations, 399, 406, 409
  - royalties, re, 208
  - shareholder’s re corporation, 396
  - third parties, liability of, 410
  - trustee purchasing trust property, 400, 402
  - trusts, 394
  - use of joint property, re, 395
- flowlines (British Columbia), 535**
- force majeure, 196, 287, 388**
- forfeiture, see freehold leases**
- fractionization, 22**
- fraud, see registration of interests**
- freehold leases, see also acquisition of Crown interests; carried interest agreements; dower; farmout agreements; fiduciary duties; interference with contractual relations; land agents; natural gas contracts; operating agreements; perpetuities, rule against; pooling clauses/agreements; royalties; royalty trust agreements; specific elements; e.g., consideration; subsurface storage; top leases; variation of agreements**
- accounting for production, 307
  - agreement for sale of, 98
  - alteration of contract, effect, 109
  - authority to grant, 223
  - “C.A.P.L. 88”, 93

## INDEX

---

- capacity of parties, 99, 100, 102, 110–120, 223
- compensatory royalty, 265–267, 272
- conditions precedent, 164
- confirmation of validity, 293
- consent to disposition of homestead, 123–152
- consideration, 163–167
- costs re terminated/invalid lease, recovery of, 308–311
- curtesy, abolition of, 121
- death of grantor, effect, 99, 102, 110–113
- default clauses (general), 273–276
- default clauses (Ontario), 277–281
- defences to contract, 147–162
- depository for payments, 282, 283
- dower, abolition of, 121, 122
- drilling covenants, 181, 189–195
- encumbrances, effect of, 268–270
- entire agreement clause, 284–286
- “entirety clause”, 224
- estate in fee simple, as, 96
- estoppel, 146, 294–305
- evidence, 284–286
- force majeure, 196, 287
- forfeiture, relief from, 184, 280, 290–292
- formation of contract, 103–120
- gas, agreement to supply, 226
- general, 93
- granting clause, 168–171
- habendum clause, 172–179
- historical development of, 93
- “homestead”, 134–139
- implied terms, 288, 289
- interpretation/construction, 284–286
- leased substances, 168, 169, 170
- legal nature of, 94–102, 111, 112
- life tenant granting, 223
- mentally incompetent persons, 115–120
- minors, grants by, 114
- mortgages, 268–270
- non est factum, 150–152
- offer/acceptance, 104–106
- offset well clauses, 251–267, 272, 275
- payment clause, 271
- perpetuities, rule against, 101, 156–162
- personal representative’s powers re, 99, 100, 102, 110–113
- pooling clauses/agreements, 229, 230, 234–238
- production, 173, 174–176, 179, 227
- profit à prendre, as, 94–97, 111
- real property, as lease of, 99–102, 112
- registration of interests, 95, 100
- renewals, 101, 156–162, 198
- rights of entry, 171
- seals, 104, 107–109
- shut-in clauses, 173, 177, 196, 227–233, 274
- “standard” form of, 93, 147
- Statute of Frauds, 103
- surrender clause, 266, 272
- terms generally, required, 147
- “third proviso”, 196, 197
- title, lack of, 148, 149
- title, proof of, 164, 165
- unitization agreements, 239–250, 352

- “unless” clause, 181, 182–189, 231, 273, 274
- waiver, 306
- writing requirements, 103
- “frontier lands” (federal), 67
- “gas”, 1, 2, 6, 168, *see also* **freehold leases; natural gas contracts; natural gas processing; offset well clauses; royalties**
- geophysical operations**, *see* **surface rights**
- gravel**, *see* **sand and gravel**
- habendum clause**, *see also* **freehold leases**
  - “commercially profitable production”, 179
  - general effect, 172
  - “paying quantities”, 177, 178
  - production, 173
  - shut-in wells/payments, 173, 177
- “holiday oil” (British Columbia), 163
- “homestead”, *see also* **consent to disposition of homestead; freehold leases**
  - Alberta, 134, 135, 137, 138
  - British Columbia, 139
  - Ontario, 136
  - Saskatchewan, 137
- import/export**
  - Alberta, 585
  - federal, 652, 653
  - jurisdiction re, 9
  - Saskatchewan, 585
- “incentive oil” (British Columbia), 64
- information**, *see* **confidential information**
- injunctions**, 420, 507
- “insolvency”, 357, *see also* **operating agreements**
- “instrument” (federal), 80
- insurance**, 364
- “interest” (federal), 80
- “interest in solution”, 4
- interests in land**
  - interest in solution as, 4
  - rights of first refusal, 375, 376
  - royalties as, 200–205, 336
  - top leases as, 312
- interference with contractual relations**, 419
- interpretation of lease**, *see* **specific agreements, e.g., freehold leases**
- jurisdiction**, *see* **constitutional jurisdiction**
- land agents**
  - Alberta, 89, 91
  - Manitoba, 90
  - Saskatchewan, 90
- “lease valve”, 338
- leases**, *see* **acquisition of Crown interests; freehold leases; top leases**
- letter agreements**, *see* **farmout agreements**
- licences**, *see* **acquisition of Crown interests; surface rights; well licensing**
- life estate, rights of holder**, 220–223
- mental incompetence**
  - Alberta, 115, 118
  - British Columbia, 115, 117
  - generally, 119
  - Manitoba, 115
  - Ontario, 115

## INDEX

---

- powers of attorney, 120
- Saskatchewan, 115, 116
- minors**, 114
- misrepresentation**, 150, 154, 155
- mortgages**, *see* **freehold leases**
- native persons**, 85
- natural gas contracts**, *see also*  
**freehold leases**; **“gas”**; **offset well clauses**; **royalties**
  - arbitration under, 384, 385
  - discontinuance for non-payment, 383
  - domestic/farm use without charge, 387
  - fees, ascertaining of, 381
  - force majeure clauses, 388
  - minimum take obligations, 382
  - pricing disputes, 384, 385
  - variation of, 386, 390
- natural gas processing**, 580, 584
- “new oil” (British Columbia)**, 64
- non est factum**, 150–152
- offer/acceptance**, *see* **freehold leases**
- offset well clauses**, *see also*  
**freehold leases**
  - compensatory royalty, 265–267, 272
  - damages for breach, 258–264
  - deemed well locations, 252
  - duty re marketing, 253, 254
  - failure to drill, effect, 257, 262, 275
  - natural gas wells, 253
  - nature/purpose of, 251
  - obligation to drill, 257
  - onus to prove drainage, 252
  - time for drilling of, 255
- offshore agreements**
  - Newfoundland and Labrador, 82
  - Northwest Territories, 84
  - Nova Scotia, 83
  - Yukon Territory, 84
- offshore minerals, ownership**
  - British Columbia, 12
  - federal, 11, 13
  - Newfoundland and Labrador, 14
- “oil”**, 2, 3, 6, *see also* **royalties**
- oil sands**, 582, 583
- “old oil” (British Columbia)**, 64
- operating agreements**, *see also*  
**carried interest agreements**;  
**freehold leases**
  - accounting/tracing, 353, 367
  - authorization for expenditure (A.F.E.), 359–363
  - commingling of funds, 353, 367
  - control/management under, 359–363
  - disposition of interests, 375–378
  - fiduciary duties under, 353, 367, 368, 373, 393, 395, 403, 404–406
  - indemnity/liability provisions, 354, 365
  - insolvency, replacement of operator for, 355–358
  - insurance, 364
  - interest on payments, 366
  - operator, 353, 354
  - ownership/disposition of production, 368–370
  - partnerships, as, 371
  - relationship of parties, 353, 354, 367, 368, 371–373
  - waiver/estoppel under, 374
- “operating costs”**, 341

- “operations”, 191, 192, *see also* freehold leases; operating agreements**
- ownership, *see* acquisition of Crown interests; rule of capture; offshore minerals; ownership; subsurface storage**
- participating interest, *see* farmout agreements**
- pattern of dealings, *see* surface rights compensation**
- “paying quantities”, 177, 178**
- “payout”, 338**
- perpetuities, rule against**
- Alberta, 101, 160
  - British Columbia, 160
  - exception to, 101, 156, 157
  - Manitoba, 161
  - nature/effect of, 156
  - Ontario, 162
  - personal contracts excepted, 158, 159
  - right of first refusal, 375
  - Saskatchewan, 313
  - “wait and see” rule, 160, 162
- “petroleum”, 1, 168, 169, 170**
- “plant outlet”, 212**
- pipelines, *see also* surface rights; surface rights compensation**
- pipelines (Alberta)**
- acquisition of interests, 506
  - common carrier, 578
  - compensation of landowner, 508
  - general, 505, 624
  - injunctions, 507
  - legislation governing, 505
- pipelines (British Columbia), 536, 559, 560, 561, 562, 563, 624**
- pipelines (constitutional jurisdiction)**
- builders’ liens, 17
  - bypass pipelines, 23
  - extra vs. intraprovincial, 18–21
  - fractionization facilities, 22
  - general, 15
  - necessary nexus, 19, 21
  - port-to-refinery pipelines, 24
  - storage caverns, 21
- pipelines (federal)**
- apprehension of bias, 649–651
  - certificates of public convenience/necessity, 627–634
  - common carriers, 645, 646
  - compensation of landowner, 546
  - facilities, provision of, 555, 556
  - jurisdiction of NEB, 625, 626
  - liability, 553
  - Mackenzie Gathering System, 547
  - National Energy Board powers, 554–556
  - obligations, 554, 555
  - procedure before board, 647, 648
  - “rate”, 637
  - right of entry, 545
  - “tariff”, 638
  - traffic/tolls/tariffs, 548–552, 635–644
- pipelines (Manitoba), 542, 624**
- pipelines (Saskatchewan), 520, 521, 624**
- pooling clauses/agreements, *see also* freehold leases**
- agreement to execute, 236
  - authority to execute, 238
  - general, 566
  - lands subject to, 237

---

INDEX

---

- notice to lessor, 235
- regulations requiring pooling, 234
- shut-in wells/payments, 229, 230
- powers of attorney, *see* mental incompetence**
- “price received”, 209**
- priority of mineral estate, 421, 422**
- “produced, saved and marketed”, 212, 213**
- “production”, 173, 212, 227, *see also* freehold leases; habendum clause**
- production licences, *see* acquisition of Crown interests (federal)**
- production regulation**
  - allowable rates, 575
  - market demand prorationing, 576
  - production of correlative rights, 577–580
  - spacing units, 572, 574
- profit à prendre, *see* freehold leases**
- “rate”, 637**
- ratio of oil to gas, 2**
- real estate agents (Alberta), 91**
- reclamation, *see* abandonment/reclamation**
- registration of interests, *see also* freehold leases**
- registration of interests (Alberta), 233, 242–244, 314, 315**
- registration of interests (federal), 80, *see also* acquisition of Crown interests**
- registration of transfers (Manitoba), 92**
- right of entry, *see* freehold leases; surface rights; surface rights compensation**
- royalties, *see also* acquisition of Crown interests; farmout agreements; freehold leases; offset well clauses**
  - royalties (Alberta)**
    - natural gas, 56, 57
    - oil, 58, 59
  - royalties (British Columbia)**
    - natural gas, 60
    - oil, 61
    - rates, 62
  - royalties (farmout agreements)**
    - calculation of, 337–343
    - “equipping costs”, 338
    - interest, payment of, 342
    - interest in land, as, 336
    - “lease valve”, 338
    - nature of, 336
    - “operating costs”, 341
    - “payout”, 338
    - payout account, 339–343
    - personal right, as, 336
    - records/accounting, 343
    - release/surrender of interests, 344
    - working interest, conversion into, 338
  - royalties (federal), 79**
  - royalties (freehold), *see also* freehold leases**
    - apportionment, multiple owners/tracts, 224, 225
    - calculation of, 210–215
    - classification of, 199–207
    - consideration for entry, as, 207, 225
    - definition, 199, 207

- distress to recover, 206
- fiduciary duty, lessee's, 208
- interest in land, as, 200–205
- life estate holder's rights, 220–223
- rent, as, 206, 225
- royalty trust agreements, 216–218
- sale of interests, 219
- royalties (Manitoba)**
  - natural gas, 63
  - oil, 64
- royalties (Saskatchewan)**
  - natural gas, 65
  - oil, 66
- royalty trust agreements,** 216–218, 316, *see also* **freehold leases**
- rule of capture,** 5–7
- sand and gravel**
  - Alberta, 427
  - Saskatchewan, 111
- seals,** *see* **freehold leases**
- seismic information,** *see* **farmout agreements; surface rights**
- shut-in clauses,** *see also* **freehold leases; habendum clause**
  - examples/interpretation, 228–232
  - general, 173, 177, 196, 227, 274
  - method of payment, 232
  - onus to establish no market, 227
  - pooled lands, 229, 230
  - third party purchasers, protection of, 233
  - timing of payments under, 227
- “significant discovery” (federal),** 71
- soldier settlement lands,** 86
- spacing units, drilling,** 564, 565, 567, 569, 573
- spacing units, production,** 572, 574, *see also* **production regulation**
- “spudding-in”,** 192
- Statute of Frauds,** 103
- subsurface storage,** 317, 621–623, *see also* **freehold leases**
- supply of natural gas,** *see* **natural gas contracts**
- surface rights,** *see also* **pipelines; surface rights compensation**
- surface rights (Alberta),** *see also* **abandonment/reclamation**
  - compensation, 479
  - geophysical operations, 428, 429
  - hearings before board, 434–443, 483
  - purpose of legislation, 439
  - right of entry, 444–449
  - sand and gravel, 427
  - surface leases, 452
  - surveys, 429
  - well licences, 430–432
- surface rights (federal),** 544, *see also* **abandonment/reclamation**
- surface rights (general),** 171, 421, 422, *see also* **abandonment/reclamation**
- surface rights (Manitoba),** *see also* **abandonment/reclamation**
  - appeals re, 541
  - geophysical operations, 543
  - hearings before board, 601–603
  - natural justice, 539
  - right of entry, 538
  - scope of orders, 540

- surface rights (Saskatchewan),** 510, *see also*  
**abandonment/reclamation**
- surface rights compensation,** *see also* pipelines; **surface rights**
- surface rights compensation (Alberta)**
- adjacent lands, relevance of operations on, 457, 481
  - adverse effect, 457, 480–484, 489
  - appeals, 495–504
  - area agreements, 467–471
  - “Blackstock formula”, 463, 464
  - costs, 500–504
  - Crown paying upon operator’s default, 458
  - damage to land, 485–487
  - entry fees, 453, 454
  - factors governing, 455–457, 460–474, 476–493
  - four heads vs. global approach, 459
  - general, 455–458
  - highest approved use, 461, 474, 475
  - inflation, relevance of, 490
  - isolated transactions, 466, 472
  - lessees, 462
  - loss of use, 476–478
  - mental anguish, 489
  - miscellaneous factors affecting, 488–490
  - party entitled to, 450, 451, 462
  - pattern of dealings, 465–473
  - residual/reversionary value, 491–493
  - review after five years, 494
  - small parcels, 463, 464
  - value of land, 460–473
- surface rights compensation (British Columbia)**
- appeals, 534
  - compulsory entry, loss due to, 527
  - expropriation principles, use of, 528
  - factors governing, 526
  - flowlines, 535
  - hearings, 524
  - jurisdiction, 522
  - mediation procedure, 523
  - pattern of agreements, 532
  - rehearings, 531
  - reversionary/residual value, 529
  - small parcels, 528
  - “value of land”, 530
- surface rights compensation (common law)**
- damage to surface, 423, 424
  - waste, 425, 426
- surface rights compensation (Saskatchewan)**
- abandonment of wellsite, relevance, 516
  - appeals, 518, 519
  - Blackstock formula, 514
  - enforcement of payment, 517
  - errors of law, 509
  - factors governing, 511
  - hearings, 509
  - highest and best use, 513
  - loss of use, 512
  - residual/reversionary value, 515
  - value of land, 512, 513
- surveys,** *see* **surface rights**
- tariffs,** *see* **pipelines (federal)**
- taxation,** 10, 61
- terms,** *see* **specific contracts, e.g., freehold leases**



**“third proviso”**, 196, 197, *see also* **freehold leases**

**tolls**, *see* **pipelines (federal)**

**top leases**, *see also* **freehold leases**

- Alberta, 314, 315
- amendment of existing lease, 314, 315
- caveats, 314, 315
- interest in land, as, 312
- option to acquire, 312
- registration of, 314, 315

**trusts**, *see* **fiduciary duties**

**unconscionable transactions**, 153

**unitization agreements**, *see also* **farmout agreements; freehold leases; pooling clauses/agreements**

- Alberta, 242–246
- British Columbia, 247
- general, 568
- Manitoba, 248
- nature/effect of, 239–241, 352
- Ontario, 250
- registration of (Alberta), 242–244
- Saskatchewan, 249

**“unless” clause**, *see also* **freehold leases**

- delay rent, failure to pay, 182, 184, 231

- delay rent, nature of, 183, 231
- delay rent, refusal to accept, 188
- delay rent, time for paying, 182, 185, 186
- delay rent, waiver of, 187
- depository for payment, 282, 283
- forfeiture, relief from, 184
- general effect, 180, 184, 273, 274
- “or”, 184
- “thereafter”, 186
- “within one year from”, 185

**variation of agreements**

- consideration for, 389
- estoppel, 391
- natural gas contract, 386, 390
- unauthorized, 109

**veterans’ lands**, 87

**waiver**, 306, 374, *see also* **estoppel**

**waste, action for**, 425, 426, *see also* **surface rights compensation**

**well licensing**, *see also* **drilling covenants; surface rights**

- Alberta, 430–432
- general, 570
- Ontario, 571

**working interest**, *see* **farmout agreements**

## Index to Parliament and Legislature

(All references are to paragraph numbers.)

### **bills, private (federal)**

- amendments, 305, 313, 317, 318
- committee stage (House of Commons), 306, 307, 309–314
- committee stage (Senate), 306–308, 310–314
- consideration by second House, 317, 318
- consideration of, 135
- fees, 292–294
- first reading (House of Commons), 301–303
- first reading (Senate), 296–300
- generally, 218, 280, 281
- liability of Parliament, 321
- origin of, 135
- parliamentary agents, 282, 310
- parliamentary rules, publication of, 283
- petitions for, 284–286, 291, 296, 299
- preamble, 312
- notices, publication of, 287–290
- numbering, 295
- referrals, 298–300, 302, 303, 317
- report stage, 315
- Register, 320
- Royal Assent, 5, 318, 319
- second reading (House of Commons), 305
- second reading (Senate), 304
- Sovereign’s consent, 6
- third reading, 316
- voting, 311

### **bills, private (provincial)**

- amendments, 637
- Clerk of the House, 619
- committee stage, 635–640
- fees, 628–630
- first reading, 631, 632
- generally, 578, 617
- notices, publication of, 625, 626
- parliamentary agents, 618
- petitions for, 620–624, 626, 627
- preamble, 639
- Private Bill Register, 643
- referred to committee, 632
- Royal Assent, 642
- rules, publication of, 619
- second reading, 634
- third reading, 641
- voting, 638

### **bills, public (federal), *see also* finance (federal)**

- amendments (House of Commons), 233, 234, 238–242, 250, 253, 255–257, 266, 268–270
- amendments (Senate), 228, 230, 253, 254, 262–264, 267, 269, 270
- Clerk of the Parliaments, 275–277
- closure, 250, 251
- committee stage (House of Commons), 233–247
- committee stage (Senate), 228–232
- consideration by second House, 269–272
- consideration of, 135

bills, public (federal) (*cont'd*)

- first reading (House of Commons), 222, 223
- first reading (Senate), 219, 221
- generally, 218
- government bills, 218, 225
- introduction (House of Commons), 222
- introduction (Senate), 219
- liability of Parliament, 321
- numbering (House of Commons), 225
- numbering (Senate), 220
- online availability, 279
- origin of, 135
- original Acts, 276
- Private Members', 165, 166, 218, 220, 225
- publication of statutes, 276–279
- report stage (House of Commons), 252, 253, 255–259
- report stage (Senate), 252–254
- Royal Assent, 5, 260, 269, 273–275
- royal recommendation, 7, 374–376
- Seal, 277
- second reading, 226, 227
- Sovereign's consent, 6, 260
- Supply, 224, 233, 243, 264, 274
- third reading (House of Commons), 261, 265–268
- third reading (Senate), 261–264
- time allocation (House of Commons), 249, 251
- time allocation (Senate), 248, 251
- Ways and Means, 224, 234

**bills, public (provincial), see also finance (provincial)**

- amendments, 582, 583, 589–591, 594, 602, 604–606, 610
- Clerk of the House, 614, 615
- closure, 600
- committee stage, 586–598
- date of commencement, 614
- first reading, 579, 584
- generally, 578
- Lieutenant Governor, 611–613
- presentation, 579
- Private Members' public bills, 581, 585
- publication of statutes, 615, 616
- reading requirements, 580
- referred to committee, 584
- report stage, 601–607
- Royal Assent, 611–614
- second reading, 582, 583, 586
- third reading, 608–610
- time allocation, 599

**Clerk of the House (provincial legislature)**

- appointment of, 499
- custody of legislation, 615
- duties of, 499
- election of Speaker, 566, 567
- endorsement of legislation, 614
- publication of rules, 619
- Votes and Proceedings, 502

**Clerk of the House of Commons**

- appointment of, 116
- duties of, 117
- mail to and from, 118
- remuneration of, 116
- role of, 115

## INDEX

---

### **Commissioner of Lobbying**

- appointment of, 446
- duties of, 447
- employees, 448
- power to exempt, 460
- registry, 455
- term, 446

### **committees, *see* bills, private (federal); bills, private (provincial); bills, public (federal); bills, public (provincial); House of Commons; Senate; provincial legislatures**

### **conflict of interest, House of Commons**

- confidential disclosure statements, 191
- Conflict of Interest Act, 184
- Conflict of Interest and Ethics Commissioner, 193–196
- Conflict of Interest Code for Members of the House of Commons, 183
- contracts, 190
- obligations, 183
- “family members”, 185
- gifts and other benefits, 189
- private interests, 185–188
- public disclosure summaries, 192
- securities, 190
- sponsored travel, 189

### **conflict of interest, provincial legislatures**

- confidential disclosure statements, 552
- contracts, 551
- “family”, 546
- gifts and other benefits, 550

- Integrity, Conflict of Interest or Ethics Commissioner, 552–557
- legislation, 545
- principles, 544
- private interests, 546–549
- public disclosure summaries, 553

### **conflict of interest, Senate**

- confidential statements, 77
- declarations, effect of, 75
- declarations made under, 74
- Ethics Officer, 38–41, 78
- generally, 73
- gifts and other benefits, 76
- inquiries conducted under, 39–41
- public disclosure summary, 78

### **Conflict of Interest and Ethics Commissioner**

- appointment, 193, 194
- contracts, 196
- control and management, 193
- duties, 195
- employees, 196
- rank, 193
- reappointment, 194
- witnesses, 196

### **delegated legislation (federal)**

- Clerk of the Privy Council, 325
- motions, 329–331
- proposed regulations, 324
- regulations, 323, 325–327
- review, 328
- statutory instruments, 322

### **finance (federal), *see also* bills, public (federal)**

- aid and supply, granting of, 370–373
- allotted days, 349–351, 364–366

finance (federal) (*cont'd*)

- Auditor General, 377, 378
- bills, 367, 368
- budget, 338–341
- committees, 359–363
- Consolidated Revenue Fund, 335
- generally, 332–334
- Governor General's warrants, 369
- Interim Supply, 358
- privilege, 372, 373
- Main Estimates, 352–355, 359–363
- public revenue, 335
- Receiver General, 335
- royal recommendation, 374–376
- Supplementary Estimates, 356, 357
- Supply, 347–368
- taxation bills, 345, 346
- Treasury Board, 353, 355
- Votes, 354, 360, 364, 367
- Ways and Means, 336–346
- Ways and Means motions, 342–346

**finance (provincial), see also bills, public (provincial)**

- Auditor General, 650, 663
- budget, 651, 652
- committees, 655–657, 659, 663
- Consolidated Revenue Fund, 650, 661
- Estimates, 653–658
- generally, 648, 649
- Interim Supply, 658
- Lieutenant Governor's warrants, 661
- public accounts, 663
- public revenue, 650

- royal recommendation, 662
- Supply, 652
- Supply Day, 660
- Votes, 654, 659
- Ways and Means, 651

**Governor General**

- bills, 5–7
- commander-in-chief, 4
- communications with Parliament, 14, 15
- corporation sole, 8
- dissolution, 216
- mail to and from, 10
- Main Estimates, 355
- powers and authorities of, 3
- presence in Parliament, 14
- privileges, granting of, 205
- proclamations issued by, 10, 197
- prorogation, 213
- Royal Assent, 5, 273, 274
- royal recommendation, 7, 374–376
- remuneration of, 10
- Sovereign's consent, 6
- Speech from the Throne, 206, 207
- warrants, 369

**House of Commons, see also bills, private (federal); bills, public (federal); conflict of interest, House of Commons; delegated legislation (federal); finance (federal)**

- adjournment, 148–150, 211
- aids and supplies, granting of, 12
- attendance, 144
- authority of, 11–13
- bells, ringing of, 137, 140

## INDEX

---

- House of Commons (*cont'd*)
- Board of Internal Economy, 100, 106
  - business of, 99–101
  - by-elections, 201
  - Clerk of, 115–118
  - Committee of the Whole, 110–114, 211, 244–247
  - committee publications, 134
  - committees, generally, 168, 169
  - committees, joint, 168, 169
  - committees, legislative, 168, 169, 172–174
  - committees, permanent, 168
  - committees, procedures of, 178–180
  - committees, public proceedings, 174
  - committees, reports from, 181
  - committees, selection of chairs, 170
  - committees, special, 168, 169, 174
  - committees, standing, 168, 169, 171, 174, 182
  - committees, subcommittees, 168
  - committees, voting, 179
  - committees, witnesses, 175–177
  - communications with Senate, 16
  - constituency, 86
  - contesting election, grounds for, 96
  - debate, process of, 139
  - debate, rules of, 142
  - debate, Speaker's role in, 143
  - disqualification of members, 93–96
  - dissolution, 216, 217
  - electoral district, 86
  - emergency debates, 150
  - exclusive privilege, 13
  - general election, 199
  - Government Orders, 158, 159
  - Hansard, 128
  - Journals, 123–127
  - Law Clerk and Parliamentary Counsel, 122
  - Liaison Committee, 101, 168
  - Mace, 120
  - mail to and from, 83
  - membership, 79–81
  - motions, 139
  - non-attendance, effect of, 82
  - Notice Paper, 130
  - oath of allegiance, 200
  - Order in Council, 182
  - Order of Precedence, 161–163, 165
  - Order Paper, 128, 130–132, 152, 159–161, 167
  - petitions, 154–157
  - privileges, 205
  - Private Members' Business, 160–167
  - procedures, cases not provided for, 136
  - procedures, establishment of, 99
  - Projected Order of Business, 132
  - prorogation, 213–215
  - Question Period, 152
  - quorum, 137, 138
  - redistribution of seats, 88–92
  - remuneration of Members, 82–85, 98
  - representation, 86, 87
  - Routine Proceedings, 153
  - Sergeant-at-Arms, 119–121
  - sittings, 145–147, 198
  - Speaker of, 102–109, 203–205, 211, 212
  - Speaker's Parade, 146

House of Commons (*cont'd*)

- Speech from the Throne, 206, 207, 209–211
- Standing Orders, 102, 123, 168, 169, 281, 289, 390, 414
- Statements by Members, 151
- Status of House Business, 133
- summons, 197
- vacancy, 97
- Votes and Proceedings, 124
- voting, 140, 141
- writs, 199

**Integrity, Conflict of Interest or Ethics Commissioner**

- appointment, 554
- confidential disclosure statements, 552
- duties, 556
- employees, 557
- public disclosure summaries, 553
- term, 555
- witnesses, 557

**legislative privilege**

- breaches of, 668, 679
- Charter of Rights and Freedoms, 692
- contempt, 688, 689
- discipline of members, 684, 685
- employees, 690
- exclusion of strangers, 682, 683
- freedom from arrest, 674
- freedom from attendance at court, 675, 676
- freedom of speech, 671–673
- generally, 664–670
- legislative publications, 680, 681
- question of, 691
- review by court, 692

- vacancies, 686, 687

- witnesses, 677–679

**Lieutenant Governor**

- appointment, 463
- corporation sole, 465
- granting of privileges, 568
- remuneration, 464
- review of decisions, 466
- Speech from the Throne, 569
- Royal Assent, 611–613
- warrants, 661

**lobbying (federal)**

- Commissioner of Lobbying, 446–448, 455, 460
- consultant lobbyists, 453
- “designated public office holder”, 459
- generally, 444, 445
- in-house lobbyists, 454
- Lobbying Act, 449, 450, 455
- Lobbyists’ Code of Conduct, 449–452
- prohibited from, 460
- “public office holder”, 458
- registry, 455–457
- returns, filing of, 456

**lobbying (provincial)**

- Broader Public Sector Accountability Act, 2010, 695
- consultant lobbyists, 704, 708
- “designated broader public sector organization”, 695
- documents submitted to registrar, 706
- “former public office holder”, 713
- generally, 693, 694
- in-house lobbyists, 705, 708
- investigations, 699, 700
- liability, 702, 703

## INDEX

---

- lobbying (provincial) (*cont'd*)
- “public office holder”, 712
  - registrar, 696–701, 706
  - registry, 707–711
- mail privileges**
- Clerk of the House of Commons, 118
  - Governor General, 10
  - House of Commons, 83
  - Speaker of the House of Commons, 107
  - Speaker of the Senate, 29
- Parliament of Canada, *see also***  
**bills, private (federal); bills, public (federal); delegated legislation (federal); finance (federal); Governor General; House of Commons; parliamentary privilege; Senate**
- authority of, 11–13
  - consists of, 1
  - Constitution Act, 1867, 2
  - contempt of, 381
  - demise of the Crown, 217
  - dissolution of, 216, 217
  - liability of, 321
  - Library of, 18
  - official languages of, 17
  - Parliamentary Poet Laureate, 19
  - peace, order, and good government, 11
  - prorogation, 213–215
- parliamentary privilege**
- assertion of, 386
  - bills, timing of, 412
  - breaches of, 381, 382
  - budget process, 412
  - Charter of Rights and Freedoms, 443
  - contempt, 438
  - discipline of Members, 432–435
  - employees, 439, 440
  - freedom from arrest, 397–400
  - freedom from attendance at court, 401–403
  - freedom of speech, 388–396
  - freedom to conduct parliamentary business undisturbed, 404–408
  - generally, 379, 380, 385
  - in camera deliberations, 411
  - inquiries, 384, 414, 415
  - judicial notice, 383
  - “Parliament Hill”, use of, 413
  - “proceedings in Parliament”, 391, 395
  - publications, 422–428
  - question of, 441, 442
  - review by court, 443
  - rules of procedure, 409–413
  - strangers, exclusion of, 429–431
  - suspension of, 387
  - vacancies, 436, 437
  - witnesses, examination on oath, 416–421
- Prime Minister**
- appointment of, 3
  - dissolution, 216
  - executive authority, 1
  - prorogation, 213, 215
  - Speech from the Throne, 209, 210
- provincial legislatures, *see also***  
**bills, private (provincial); bills, public (provincial); conflict of interest, provincial legislatures; finance (provincial); legislative privilege**
- adjournment, 524, 573
  - annual reports, 530



## PARLIAMENT AND LEGISLATURE

---

- provincial legislatures (*cont'd*)
- attendance, 521
  - bells, ringing of, 515
  - business of, 488
  - Chair of Committees, 496–498
  - Clerk of the House, 499, 502, 566, 567
  - Committee of the Whole House, 494–498
  - committee publications, 510
  - committees, generally, 535, 572
  - committees, powers of, 537–540
  - committees, procedures of, 541, 542
  - committees, quorum, 536
  - committees, reports from, 543
  - committees, types of, 534
  - committees, voting, 542
  - consists of, 461
  - debate, process of, 513
  - debate, rules of, 519, 520
  - delegated legislation, 645–647
  - demise of Crown, 577
  - Deputy Speaker of the Legislature, 490, 496, 572
  - disqualifications for membership, 475–477
  - dissolution, 576, 577
  - electoral district, 485
  - emergency debates, 525
  - expulsion, 477
  - general election, 562
  - Hansard, 508
  - journals, 502–507
  - legal proceedings, 505–507
  - Legislative Assembly, 467, 477
  - Legislative counsel, 501
  - Legislative Librarian, 559
  - Legislative Library, 558
  - liability of, 644
  - Lieutenant Governor, 463–466, 568, 569
  - Notice Paper, 509
  - oath of allegiance, 563, 564
  - order of precedence, 526
  - Order Paper, 509
  - Orders of the Day, 531, 532
  - petitions, 527–529
  - Private Members' business, 533
  - privileges, 568
  - procedures, cases not provided for, 511
  - prorogation, 574, 575
  - qualifications for membership, 468–470
  - quorum, 512
  - recall, 474
  - remuneration of members, 478–484, 486, 487
  - retirement of members, 486, 487
  - Sergeant-at-Arms, 500
  - sessions, 462, 561
  - sittings, 522, 523, 561
  - Speaker of the Legislature, 489–493, 514, 515, 517, 520, 565–567
  - Speech from the Throne, 569–572
  - Standing Orders, 488, 495, 526, 535
  - summons, 560, 561
  - vacancies, 471–475
  - Votes and Proceedings, 502–504, 518
  - voting, 514–518
  - writs, 472, 473, 562
- remuneration**
- Assistant Deputy Chair of the Committee of the Whole House, 113

## INDEX

---

- remuneration (*cont'd*)
- Clerk of the House of Commons, 116
  - Deputy Chair of the Committee of the Whole House, 113
  - Deputy Speaker of the House, 113
  - Governor General, 10
  - Lieutenant Governor, 464
  - Members of Parliament, 82–85, 98
  - members of provincial legislatures, 478–484, 486, 487
  - Senators, 23, 24
  - Speaker of the House of Commons, 107
  - Speaker of the Legislature, 491
  - Speaker of the Senate, 29
- Senate**, *see also* **bills, private (federal); bills, public (federal); conflict of interest, Senate; delegated legislation (federal)**
- adjournment, 212
  - appointment to, 20
  - authority, 11–13
  - business of, 25, 25
  - Clerk of, 32–34
  - Committee of the Whole, 51, 52, 230
  - committees, budgets and expenses of, 60
  - committees, generally, 49, 50
  - committees, joint, 59
  - committees, legislative, 58
  - committees, procedure of, 66–70
  - committees, special, 58
  - committees, standing, 53–57
  - communications with House of Commons, 16
  - Declaration of Qualification, 21, 200
  - dissolution, 216, 217
  - Ethics Officer, 38–41, 78
  - financial legislation, power to reject, 13
  - Hansard, 128, 129
  - Law Clerk and Parliamentary Counsel, 37
  - leave of absence, 71, 72
  - minutes of proceedings, 47, 48
  - non-attendance, effect of, 23, 71
  - number of Senators, 20
  - oath of allegiance, 200
  - political officers, 28
  - prorogation, 213–215
  - remuneration of Senators, 23, 24
  - retirement of Senators, 22
  - sittings of, 42–46
  - Speaker of, 29–31, 202, 212
  - Speech from the Throne, 206–208
  - suspension of Senators, 71
  - Usher of the Black Rod, 35, 36, 203, 205, 274
  - vacancy, 71
  - voting, 27, 46
- Senate Ethics Officer**
- appointment of, 38
  - duties and functions of, 38
  - inquiries conducted by, 39–41
  - public disclosure summary, 78
- Speaker of the House of Commons**
- address to Governor General, 205
  - criticism of, 109
  - debate or appeal of decisions, 109

## PARLIAMENT AND LEGISLATURE

---

### Speaker of the House of

#### Commons (*cont'd*)

- Deputy Speaker, 108, 211
- duties and powers of, 103–106, 212
- election of, 102, 203, 204
- Mace, 120
- mail to and from, 107
- prorogation, effect of, 215
- remuneration of, 107
- role of, 102–108

#### **Speaker of the Legislature**

- Deputy, 490, 496, 572
- divisions, 514, 515, 517
- duties of, 492, 493
- election of, 565–567

- generally, 489, 490
- remuneration, 491
- suspension of members, 520

#### **Speaker of the Senate**

- appointment of, 29, 202
- duties and powers of, 30, 212
- mail to and from, 29
- remuneration of, 29
- Speaker pro tempore, 31, 230
- voting by, 30

## Index to Parties

(All references are to paragraph numbers.)

- administrator of estate, see**  
**executor of estate**
- agent, see principal and agent**
- amendment of pleadings, see**  
**pleadings, amendment of**
- amicus curiae, 616–622**
- application, timing of, 679–693**
- assignor and assignee**
- chose in action, 723–725, 734–736
  - debt, 720–721
  - equity, 722
  - general, 729–731
  - land, sale of, 726–727
  - lease, 733
  - lien, 728, 732
  - patent, 737
- bankruptcy, 278**
- builders' lien claims, 769**
- class proceedings, see**  
**representative actions**
- contract, parties to, 738–754**
- corporations**
- derivative actions, 224–230
  - dissolution, 236–237
  - extraprovincial corporations, 238–241
  - general, 213–223, 755–768
  - liquidation, 235
  - shareholders, personal action by, 231–232
  - receivership, 233–234
  - restoration, 237
- creditors, see debtors and**  
**creditors**
- Crown**
- agent of, 125–126
  - Attorney General, 111–124
  - federal board, commission, tribunal, 135
  - international organization, 133
  - servant of, 125
  - statutory board, 134
  - statutory body, 127–132
- debtors and creditors, 769–774**
- defendant, addition of**
- Alberta, 540–541
  - British Columbia, 542–544
  - counterclaim, by, 558–565
  - general, 533, 547–557
  - Federal Court, 534–539
  - Manitoba, 545
  - Saskatchewan, 546
- denial of standing, 334**
- determination of parties, 277**
- disability, persons under, see**  
**also infants, mentally**  
**incapacitated persons**
- general, 9
  - representation required, 9–17
- diplomats, 279**
- Doe, John or Mary, use of, 284**
- executor of estate**
- general, 141–170
  - personal claims, 171–174
- foreign judgments, 282**
- fraudulent conveyances, 775–782**
- guarantor, 783–785**
- Indian bands, 256–257**

**infants**

- Alberta, 18
- amicus curiae, 28
- British Columbia, 19, 29–30
- injury in utero, 31
- Manitoba, 19–22
- next friend, 25–27
- representation required, 9–10
- Saskatchewan, 23–24

**injunctive orders, 786–789****insurance policies, actions involving, 790–796****international organization, 280****intervening parties, addition of**

- Alberta, 278
- appeal court, in, 596–605
- Attorney General, 606–615
- British Columbia, 579
- Federal Court, 568, 570–577
- general, 567, 569, 586–595
- Manitoba, 580–583
- Saskatchewan, 584–585
- Supreme Court of Canada, 566

**joinder of parties**

- Alberta, 342–345
- British Columbia, 346–349
- Federal Court, 335–341
- general, 365–379
- Manitoba, 350–354
- misjoinder or non-joinder, 380–385
- Saskatchewan, 355–364

**guardian ad litem, liability of, see next friend, liability of****guardian, appointment and removal, see next friend, appointment and removal****limitation period, intervention of**

- Alberta, 700
- British Columbia, 701–710
- Federal Court, 696–699
- general, 694–695, 716–718
- Manitoba, 711–714
- Saskatchewan, 715

**litigation guardian, appointment and removal, see next friend, appointment and removal****litigation guardian, conduct of, see next friend, conduct of****mentally incapacitated persons**

- Alberta, 33–35
- British Columbia, 36–37
- Manitoba, 38
- presumption of mental competence, 32
- Saskatchewan, 39–41

**missing person, 283****mortgage actions, 797–811****municipal corporations, 136–140****next friend, appointment and removal**

- Alberta, 43–48
- British Columbia, 49
- Federal Court, 42
- general, 53–54
- Manitoba, 50–51
- Saskatchewan, 52

**next friend, conduct of, 55–60****next friend, liability of, 65–67****partnership**

- general, 186–205
- limited, 206–211

**party, addition of, see also plaintiff (addition of), defendants (addition of),**

- party, addition of (*cont'd*)  
**intervening parties (addition of), amicus curiae**
- Alberta, 497–498
  - British Columbia, 499–502
  - Federal Court, 493–496
  - general, 511–515
  - Manitoba, 503–504
  - Saskatchewan, 505–510
  - Supreme Court of Canada, 492
- party, death of**
- Alberta, 653–654
  - British Columbia, 655–660
  - Federal Court, 650–652
  - general, 666–669
  - patents, 812–814
  - Manitoba, 661–663
  - Saskatchewan, 664–665
  - Supreme Court of Canada, 649
- party, definition of, 2–7**
- party, striking out, 670–678**
- party, substitution of**
- general, 623–637
  - misnomer, 638–644
  - non-entity, action by or against, 645–648
- plaintiff, addition of**
- consent required, 527–532
  - general, 516–526
- pleadings, amendment of**
- Alberta, 488
  - British Columbia, 489
  - Federal Court, 486–487
  - general, 484–485
  - Manitoba, 490
  - Saskatchewan, 491
- political parties, 286**
- postmasters, 285**
- principal and agent, 817–824**
- procedural irregularities, effect of, 61–64**
- public interest standing**
- Attorney General, 92–110
  - constitutional cases, 75–78
  - general, 68–91
  - municipalities, actions involving, 85–87, 101–105
  - taxpayer, standing of, 72–74
- replevin action, 770**
- representation orders, persons appointed by**
- class of persons, on behalf of, 182–185
  - deceased, on behalf of, 175–179
  - unascertained persons, on behalf of, 180–181
- representative actions**
- procedure, 287–301
  - purpose, 302
  - requirements, 303–333
- scope of title, 1**
- security force, government-related, 281**
- sole proprietorships, 212**
- sovereign, foreign, see diplomat**
- specific performance, action for, 825–834**
- style of cause, 8**
- substantive law, 719**
- tax, actions involving, 835–841**
- third party procedure**
- Alberta (Rules of Court), 389–390
  - availability of claim, 420–433, 435

## PARTIES

---

- third party procedure (*cont'd*)
  - British Columbia (Rules of Court), 391–393
  - building contract, action involving, 442
  - child maintenance, action involving, 448
  - directions, application for, 458–461
  - Federal Courts Rules, 386–388
  - interpleader, application for, 449
  - jurisdiction, general, 413
  - jurisdiction, Federal Court, 414–419
  - leave to issue third party notice, application for, 450–457
  - limitation periods, 405–412
  - Manitoba (Rules of Court), 394–396
  - mechanic's lien, action involving, 443
  - motor vehicle insurance liability, action involving, 434
  - negligence, action involving, 436–441
  - objectives of, 400–404
  - real property, action involving, 444
  - rights of third parties, 462–465
  - rights of third party insurers, 466–470
  - sale of goods, action involving, 445
  - Saskatchewan (Rules of Court), 397–399
  - setting aside third party notice, 471–483
  - spouse of plaintiff as third party, 447
  - worker's compensation, action involving, 446
- trade marks**, 815–816
- trade unions**
  - capacity, 258–265
  - representative actions, 266–276
- trustee**, *see* **executor of estate**
- unions**, *see* **trade unions**
- unincorporated associations**
  - capacity, 242–244
  - Federal Court, 245–246
  - Manitoba, 247
  - representative actions, 248–255

## Index to Partnership

(All references are to paragraph numbers.)

- abandonment of business or adventure**, 269, 272
- accountants**, 260
- accountings**
- agent, by, 219
  - bonuses and commissions, 212
  - books, examination of, 206, 221
  - competing against firm, 209, 210
  - disclosure, 211, 212
  - dissolution, on, 318–326, 329, 330
  - fiduciary duties, 211–214
  - fraud, 214–216
  - general, 206, 207, 223
  - hidden benefits, 215
  - illegal undertakings, 222
  - interest, 208
  - limitation of actions, 224
  - limited partnerships, 434
  - right to, 217, 220, 318–326, 380
  - scope of, 319
  - setting aside, 330
  - Statute of Frauds and, 36, 101
  - trusts, 214
- actions between partners**, *see also* accountings; actions by or against firms; dissolution; relationship between partners
- advances by partner, 379
  - arbitration, 303
  - barring resort to courts, 376
  - conversion, 120, 377
  - costs, 390
  - exclusion of partner, for, 378
  - former partners, non-competition, 159, 260, 301, 337, 388, 389
  - general, 34
  - in firm name, 374
  - land, ownership of, 242
  - limitation of actions, 224, 378
  - negligence, 375
  - receiver, appointment of, 232, 259, 380–386
  - restrictive covenants, on, 387–389
  - settlement, 218
  - Statute of Frauds, effect of, 97
  - torts, 178
- actions by or against firms**, *see also* authority of partners; liability to third parties; limited partnerships; limited liability partnerships
- admissions, 350, 351
  - allegations of partnership, 345
  - appeals, 373
  - bills of exchange, on, 6, 126
  - default judgment, 361, 365
  - defences, 355, 365
  - discovery, 349, 353
  - doctors, 366
  - evidence, 350–353
  - examination of “partners”, 349
  - execution, 232, 233, 244, 369–372
  - foreign limited partnership, 347
  - form of, 362–368
  - general, 138, 168, 359, 360
  - holding out as partner, 160–166
  - lien claims, 113, 114
  - notice of retirement, 158, 346
  - personal injury of partner, 354
  - privilege, 352
  - releases, 357, 358
  - security for costs, 233



## PARTNERSHIP

---

- set-off, 116, 175, 356
  - settlement of, 188
  - silent partners, 259, 267
  - standing to bring, 347, 348
  - torts, 176–178, 349, 354
- admission to partnership**, *see* relationship between partners
- arbitration**, 303
- assets**, *see* property issues
- assignment for creditors**, 44
- assignment of partnership share**, 253–255, 257
- associations distinguished**, 5
- authority of partners**, *see also* actions between partners; actions by or against firms; dissolution; liability to third parties; property issues
- agreements restricting, 118, 119
  - bankruptcy, assignments in, 117
  - continuation of partnership, 267
  - contracts under seal, 107, 112, 114, 121, 239
  - dissolution, effect of, 115, 267, 297–304
  - evidence of, 108–10
  - execution of deeds/documents, 114, 121
  - fraud and, 105, 116, 128, 174, 214–216
  - general, 103, 119, 125
  - knowledge of third party, 103, 118, 119
  - lien claims, 113, 114
  - limited partnerships, 104, 425, 438
  - managing partners, 188
  - negotiable instruments, 6, 111, 123–131
  - notice to firm, 105
  - partner acting as individual, 106
  - pledging firm's credit, 132–137
  - sale of business, 117
  - sale of property, 120, 237, 239, 245, 249
  - set-off, 116, 175, 356
- bankruptcy**
- authority to make, 117
  - carrying on business, 44
  - dissolution of partnership, 261, 454
  - liability of partners, 150
  - limited partnerships, 434, 454
  - partners as creditors, 296
  - recovery by trustee, 174
- bills of exchange**, 6, 126
- books**, *see* accountings
- building contracts**, 47
- business**
- amalgamations, 52
  - land use as, 23
  - partnership definition, in, 4, 42
  - purchase and sale of goods, 35
- charging orders**, 371
- chattel**, *see* property issues
- children as partners**, 166
- commission-sharing arrangements**, 43
- common law rules, applicability of**, 1, 394
- competing against firm**, 159, 209, 210, 260, 301, 337, 388, 389
- contracts**, *see also* authority of partners; liability to third parties; Statute of Frauds
- building, 47
  - execution of, 114
  - illegal undertakings, 222
  - pre-incorporation, 12

## INDEX

---

- termination by partner's death, 309
- under seal, 107, 112, 114, 121, 239
- conversion**, 120, 377
- co-ownership distinguished**
  - businesses, 23
  - debtor-creditor relationships, 21
  - general, 21, 22, 56
  - land, 23, 25
  - mining leases, 25
- corporations distinguished**, 5, 12, 42
- creation**, *see* formation (evidence of)
- criminal law issues**, *see also* offences
  - firm, conviction of, 180
  - illegal businesses, 222
  - partners as parties to offence, 179
- death of partner**
  - accountings and, 207
  - bequest of profits, 252
  - continuance of partnership after, 185
  - contracts, termination of, 309
  - dissolution on, 261–264, 297, 311–317
  - evidence issues, 197
  - liability to third parties after, 94, 138, 150, 155, 160
  - limited partners, 398, 453, 454
  - negligence actions and, 178
  - notice to creditors, 155
  - property issues, 238, 310, 313
  - receiver, appointment after, 384
- debtor-creditor issues**
  - between partners, 379
  - charging partner's interest, 232
  - execution against firm, 232
  - limited partnerships, 414, 423, 443
  - partnership distinguished, 21
  - releases, 357, 358
  - set-off, 356
- definition**, *see* nature of partnerships
- dissolution**, *see also* accountings; actions between partners; authority of partners; liability to third parties; limited partnerships; property issues; relationship between partners
  - abandonment of project, 269, 272, 289
  - accounting on, 318–326, 329, 330
  - action for, 259, 287
  - agreements concerning, 278–280
  - Alberta, 74
  - arbitration of disputes, 303
  - assignment of partnership share causing, 257
  - authority of partners and, 115
  - British Columbia, 262, 282
  - ceasing of business operations, 298, 300, 311–313
  - competition after, 159, 260, 301
  - completion of project, 268–274, 288, 289
  - continuance after, 266, 267, 315
  - court, by, 280–85
  - damages, 99
  - date of, 269, 272, 286–289, 291
  - death of partner, on, 261–263, 298, 309, 311–317, 321
  - declaration certifying, 293
  - distribution of assets, 339–344
  - duties of partners, 298–300
  - expiration of term, on, 261, 265–267

## PARTNERSHIP

---

- general, 256, 258, 268
  - goodwill of firm, 335–338
  - illegality of business, 277
  - insolvency, on, 261–64
  - just/reasonable cause, 278–280
  - liability to/of third parties, 290, 305–310
  - liquidator's duties/liabilities, 310, 332
  - Manitoba, 86
  - misconduct of partner, for, 234
  - notice of, 151, 152, 154, 157, 266, 269–273, 275, 276, 286, 290, 292, 294–296
  - partnership at will, 185, 259, 264, 266, 273, 274, 286, 287
  - powers of partners during, 115, 298
  - property, effect on, 327–344
  - publication of, 294
  - purchase of assets, by partners, 236
  - registration of, 294
  - remuneration for services involving, 202
  - rights of partners on, 297, 302
  - Statute of Frauds and, 97, 99
  - statutory grounds, 281
  - statutory provisions, applicability of, 256
  - unilateral, 256, 266, 273, 274
  - use of name during, 95
  - withdrawal of partner, 199, 200
- doctors**, 366
- duties of partners**, *see* relationship between partners
- employer-employee relationships**
- general, 8, 189, 203
  - profit-sharing, effect of, 26–28
- equity, applicability of**, 1, 394
- estoppel**, 161, 163
- evidence**, *see* actions by or against firms; authority of partners; dissolution; formation (evidence of)
- examples of partnerships**, *see also* formation (evidence of)
- amalgamations, 52
  - assignment for creditors, 44
  - building contracts, 47
  - business, purchase and operation, 35
  - commission-sharing, 43
  - corporations, 42
  - farming operations, 38–40
  - goods, purchase and sale, 35, 41, 46, 48
  - import/export operations, 41
  - land, sale and purchase, 36, 45
  - miscellaneous, 49
  - prospecting agreements, 37
  - space-sharing arrangements, 51
- executions**, *see also* receivers
- charging orders, 371
  - equitable execution, 372
  - garnishment, 369, 370
  - partner's interest, 232, 368, 371, 372
  - partnership property, 232, 244, 367, 370
  - security for costs and, 233
- existence of**, *see* formation (evidence of)
- expulsion of partners**, *see* relationship between partners
- farming operations**, 38–40, 313
- fiduciary duties**, *see also* relationship between partners
- arising of, 193
  - general partners, 426

## INDEX

---

- joint venturers, 32, 191
- shares, re, 199
- firm names**, *see* names
- formation (evidence of)**, *see also* examples of partnerships
  - agreement to carry on business, 55, 58
  - business, set-up as, 42
  - conditions precedent, 50
  - conduct of parties, 55, 57, 64–69
  - contribution of capital/services, 11
  - control over business, 13
  - corroboration, 57
  - documents, 59
  - estoppel and, 161, 163
  - general, 53, 57, 66
  - holding out, 160–166
  - implied agreements, 55, 57
  - intent, 55
  - oral agreements, 96–101
  - parol evidence, 60, 64, 100
  - “partnership”, use of term, 26, 56
  - question of fact, as, 53, 54
  - sharing of profits, 14–20, 61, 66
  - single transactions, 19
  - Statute of Frauds, 96, 98, 100
  - statutory rules, 20
  - view to profit, 10, 62
  - written agreements, 49, 58, 60–63, 256
- fraud**
  - on firm, 105, 128, 174, 214–216
  - proof of, 216
  - set-off and, 116
- garnishment**, *see* executions
- good faith, duty (British Columbia)**, 182
- goodwill**, *see* property issues
- gross returns, sharing in**, 29, *see also* profits and losses
- guarantees**, 181, 305
- illegal undertakings**, 222, 277
- import/export operations**, 41
- income**, *see* profits and losses
- indemnity rights**, 204, 205
- injunctions**, 95
- insolvency**, *see* bankruptcy
- joint ventures, distinguished**
  - fiduciary duties, 32
  - general, 30, 31
  - isolated transactions, 33
  - profit-sharing, effect of, 34
- land**, *see* property issues
- law partnerships**, 334
- leases**, *see* property issues
- leaving partnership**, *see* liability to third parties; relationship between partners
- legislation (general)**, 1, 256, 393–395
- liability to third parties**, *see also* actions by or against firms; authority of partners; dissolution; limited partnership; specific issues, eg, negotiable instruments
  - apparent membership, 149, 151, 156, 292, 304
  - changes in membership, effect of, 149, 292, 304
  - contracts under seal, 107, 112, 114, 121
  - criminal acts, 179, 180
  - death of partner, effect of, 94, 138, 150, 155, 160
  - dissolution of firm, 305–310
  - guarantees, continuing, 181

## PARTNERSHIP

---

- holding out as partner, 160–163, 165, 166
  - joint liability, 73, 80, 85, 90, 138–143, 168, 359, 360
  - knowledge of third party, 103, 118, 119, 129, 304
  - misuse of funds/property, 171–175
  - money had and received, 111
  - partner acting in individual capacity, 106
  - partners joining, 144–146
  - partners leaving, 73, 80, 85, 90, 139, 140, 144, 147, 149, 151–154, 156–159, 292, 296, 304, 346, 359, 364
  - promissory notes, 111, 123, 127–130, 132
  - sale of goods, 169, 170
  - sale of partnership, 153, 159
  - torts, 176–178
  - unauthorized acts, for, 103, 117–122
  - wrongful acts generally, 167
  - partners, limited liability for, 484–488
  - personal liability, partners, 484–488
  - property, distribution of, 489–492
  - registered office, 470, 478
  - registration, 463, 467–472, 477
  - registration, cancellation of, 497–500
  - registration or renewal (Manitoba), 472
  - winding-up, 489, 493–496
- liens**, 113, 114
- limitation of actions**, 224, 378
- limited liability partnerships**
- cancellation of registration, 497–500
  - certificate or declaration, 467, 468, 471–474, 476
  - certificate or declaration, amendments to, 473, 474
  - common law, 466
  - dissolution, 493–496
  - distribution of property, 489–492
  - equity, 466
  - extra-provincial limited liability partnerships, 475, 477–479, 486, 493, 496–500
  - legal framework, 463–466
  - name of firm, 480–483
  - actions by or against, 347, 444–451
  - addition of partners, 406
  - bankruptcy of, 434
  - binding of firm, 103, 104, 437
  - business of, 391, 432
  - certificates and declarations, 399, 410–412, 418, 441, 449, 452, 459
  - change in nature of business, 432
  - common law and, 394
  - constitution of, 102
  - continuation of, 424, 453
  - contributions, 396, 409, 417–423, 439, 458
  - death of partner, 398, 453, 454
  - dissolution, 421, 452–462
  - equity and, 394
  - extra-provincial partnerships, 401–405
  - fiduciary duties, 438
  - formation and registration, 399, 400
  - general partners, 102, 395, 396, 424–426, 428–432, 437, 442, 453
  - legislation governing, 391–394

## INDEX

---

- liable as general partner, 419, 422, 427, 436
  - liability to third parties, 439–443
  - limited partners, 102, 395–398, 407–409, 414, 419, 420, 422, 427, 428, 433–438, 443
  - loan, 434
  - name of firm, 413–416
  - property of, 397, 429
  - registration (Manitoba), 84
  - registration (Saskatchewan), 91, 92
  - rights and obligations, 424–438
  - special limited partners, 142
  - substitution of partners, 407–409
- losses**, *see* profits and losses
- management**, *see* limited partnerships; relationship between partners
- mental illness, dissolution for**, 283, 424, 453
- mining partnerships**
- dissolution, 271, 288
  - fiduciary duties, 191
  - leases, 25, 63, 246
  - prospecting agreements, 37
  - registration of partnership, 70, 77, 78
- names**
- Alberta, 72, 75
  - asset of firm, as, 95
  - British Columbia, 79, 81
  - death of partners, effect of, 94
  - dissolution and, 95
  - limited partnerships, 413–416
  - Manitoba, 83
  - Saskatchewan, 88, 91
  - winding-up and 95
- nature of partnerships**, *see also* examples of partnerships; formation (evidence of)
- associations distinguished, 5
  - companies distinguished, 5, 12
  - contributions of partners, 11
  - control over business, 13
  - definition of, 4
  - employment by, 8
  - general, 6, 7, 14
  - “person”, as, 6, 7
  - profits and losses, sharing, 14–19
  - scope of, 9
- negotiable instruments**
- bills of exchange, 6, 126
  - cheques, 124
  - fraud, 128
  - general, 125, 131
  - promissory notes, 111, 123, 127–130
- notice to firm**, 105
- offences**, 76, 93
- oil and gas**, 190, 193
- partnership agreements (written)**, 49, 58, 60–63, 256, 278–280, 376
- partnership at will**, 185, 259, 264, 266, 273, 274, 286, 287
- personal property**, *see* property issues
- physicians**, 366
- powers of partners**, *see* authority of partners
- profits and losses**, *see also* dissolution; examples of partnerships; gross returns, sharing in
- bequests concerning, 331
  - death of partner, 197, 252
  - equal sharing, 15, 194, 195, 197

## PARTNERSHIP

---

- execution against, 232, 233
  - general, 9, 194, 195, 339, 340
  - “net” profits, 14
  - payment of losses, 341
  - sharing as evidence of partnership, 16–20, 26–29, 34
  - single transactions, 19, 33
  - unequal sharing, 196
  - view to profit, 10
- promissory notes**, 111, 123, 127–130, 132
- property issues**
- assets vs partnership interest, 230
  - contribution by partner, enforcing, 234
  - conversion, 120, 377
  - death of partner, 238, 309, 311, 314
  - dissolution, after, 327–344
  - execution, 232, 233, 244
  - goodwill, 335–337
  - intention of partners, 226, 228
  - land, 235, 240–243, 245–249
  - leases, 246, 343
  - limited partnerships, 397, 429
  - misconduct, effect of, 234
  - nature of partners’ interests, 2, 95, 229–231
  - ownership, 2
  - partnership capital, 234, 250–252
  - partnership property, constitution of, 226–228
  - purchase on dissolution, 236
  - sale of property, 120, 237, 239, 245, 249
  - use of property, 227, 229
  - valuation, 337
- real property**, *see* property issues
- receivers**, *see also* executions
- death of partner, 384
  - effect of appointment, 259, 380
  - entitlement to appointment, 381, 382
  - partner as, 383, 384
  - partner’s share, of, 232
  - sale of assets, 385
  - standard of care, 386
- registration (Alberta)**
- change in membership, 72
  - declaration in writing, 70–73
  - dissolution, 74
  - liability, effect on, 73
  - names, 72, 75
  - offences respecting, 76
  - residency changes, 72
  - undertakings requiring, 70, 77
- registration (British Columbia)**
- changes in membership, 79
  - declarations, 78–80
  - liability, effect on, 80
  - names, 79, 81
  - undertakings requiring, 78
- registration (Manitoba)**
- change in membership, 86
  - declaration in writing, 82–86
  - dissolution, 86
  - failure to file, 85
  - liability, effect on, 85
  - limited partnerships, 84, 86
  - names, 83
  - renewal, 87
  - term of, 87
  - undertakings governed, 82
- registration (Saskatchewan)**
- cancellation of, 89, 92
  - change in membership, 89
  - exception, 88

## INDEX

---

- liability, effect on, 90
- limited partnerships, 91, 92
- names, 88, 91
- offences involving, 93
- regulation by governing body, 88
- undertakings governed, 88
- relationship between partners**, *see also* actions between partners; authority of partners; dissolution; liability to third parties; limited partnerships; property issues; specific issues, eg. profits and losses
  - admission to partnership, 186, 198
  - assignment of partnership share, 253–255, 257
  - books, examination of, 206
  - confidentiality, 299
  - continuance of partnership, 185
  - employees, hiring, 189
  - expulsion of partners, 186, 198, 260
  - fiduciary duties, 32, 191, 192, 193, 211, 299, 314, 426, 438
  - goodwill of firm, 337
  - indemnity rights, 204, 205
  - information, provision of, 190, 206
  - management of firm, 186–188
  - remuneration, right to, 201–203
  - resolutions, notice of, 184
  - subrogation rights, 225
  - variation of, 183
- resolutions**, 184
- restrictive covenants**, 387–389
- sale/purchase of goods**, 35, 41, 46, 48
- seizure**, *see* executions
- set-off**, 116, 175, 356
- silent partners**, 359, 368
- space-sharing arrangements**, 51
- special limited partners**, 142
- Statute of Frauds**
  - accountings and, 36, 101
  - applicability generally, 98, 248
  - declarations and, 36, 101
  - dissolution of partnership, 97, 99
  - formation of partnership, 96
  - parol evidence and, 99
- subrogation rights**, 225
- sureties**, *see* guarantees
- tax issues**, 230, 333
- termination**, *see* dissolution
- torts**, 176–178, 349, 355
- trading partnerships**, 70, 78, 108, 122, 131, 132
- treasure hunting**, 272
- trusts**, 172, 214, 435
- winding-up**, *see* dissolution
- withdrawal from**, 199
- workers' compensation**, 8
- writing**, *see* Statute of Frauds



## Index to Patents of Invention

(All references are to paragraph numbers.)

- abandonment/reinstatement**, 403, 445–453
- absolute novelty**, *see* novelty
- abuse of exclusive rights (Competition Act)**, *see also* declaration of non-infringement; impeachment of patent; restraining threats of legal action
- common law actions preserved, 954
  - criminal offences under Act, 952
  - damages, action for, 953–956
  - effect on other actions, 957
  - general, 945
  - matters reviewable by Competition Tribunal, 949–951
  - restraint of trade, 946–948
- abuse of exclusive rights (Patent Act)**, *see also* declaration of non-infringement; impeachment of patent; restraining threats of legal action
- abusive acts generally, 905, 916
  - appeals, 942–944
  - assignment of patents, 936
  - compulsory licensing
    - bars to grant, 925
    - conditions affecting importation, 929, 930
    - equality of advantage, 932–934
    - general, 584, 928, 929
    - refusal of licence, 934, 937
    - requiring patentee to prevent infringement, 931
    - terms of licence, factors governing, 932
    - public interest, 924
  - employee (public) rights, 941
  - evidence, 938–940, 943
  - failure to meet demand, 584, 918
  - general, 914, 915
  - licensing abuses, 919–925
  - “patented article”, 917
  - practice/procedure, 938–944
  - prejudicial conditions re purchase/hire/use/licence, 926
  - prejudicing manufacture/use/sale of materials, 927
  - remedies generally, 928
  - revocation of patent, 928, 935–937
- access to documents/privacy**, 405, 406, 433, 443, 444, 465–468
- actions**, *see* infringement
- advertising methods**, 100
- anticipation**, *see* novelty (old act-pre-1989)
- appeals**, *see* infringement (actions generally)
- application for letters patent**, *see also* disclaimer; invention; legislation; novelty; priority; re-examination; reissue; specification/description
- abandonment/reinstatement of, 403, 445–453
  - agents/representatives, 412, 413
  - amendments, 399, 408–411, 430–432, 490
  - appeals, 411, 435–444
  - “applicant”, 366
  - “application”, 164, 165, 366
  - “assignees”, 373
  - atomic energy, 434

- biological material, deposit of, 397
  - caveats protecting, 391–394, 405
  - conditions of grant, 454
  - consideration for grant, 272, 277, 310, 340
  - contents of (general), 395
  - effect of grant, 455, 605, 878
  - employee/employer relationships, 382–390
  - examination of, 399, 408–411, 430–432, 475, 476
  - fees, 399, 450, 470, 469–472, 477–479
  - filing date, 258
  - first to invent vs. first to file, 15, 368–372, 462–464
  - form of, 398
  - general, 365, 457
  - grant of patent, 454–459
  - infants, 374
  - “inventor”, 368, 369
  - “inventorship”, 369
  - joint inventors/applicants, 369, 375–381, 591, 592
  - language of (French/English), 396
  - “legal representatives”, 366, 373, 386
  - maintenance fees (for issued patents), 472, 477–479
  - maintenance fees (for pending applications), 469–472
  - mentally incompetent persons, 374
  - misrepresentation, 297–302, 308, 401, 402
  - “patent”, 366
  - patent rules, 367
  - “patentee”, 366
  - prior art, particulars of, 400
  - privacy/access to documents, 405, 406, 433, 465–468
  - procedure, 395–407
  - prosecution of application, 395–413
  - protest of application, 473, 474
  - registration of rights, 593–598
  - rejection/refusal of, 404, 409, 411, 435–444
  - revocation of patent, 608–610, 935, 936
  - right to make, 365, 368–390
  - rules governing, 397, 398, 440
  - secret applications, 433
  - special applications/patents, 433, 434
  - term/duration of grant, 455, 458, 459
  - time for making/completing, 403, 407
- arts and processes**, *see also* subject-matter of patents
- adding/eliminating steps in old process, 43, 350
  - applying existing process to new materials, 44, 350
  - “art”, 38
  - biochemical/chemical processes, 42, 96
  - general, 39, 40, 265
  - machine vs. process, 41
  - microbiological processes, 103
  - “process”, 38
  - scope of claim, 45, 350
  - “special features”, 45
  - “usefulness”, 39, 44
- assignment/sale of rights**, *see also* devolution of rights; licences (by agreement); medicines (compulsory licensing)
- bills of exchange, 613–615
  - co-owners, by, 530, 592

## INDEX

---

- creation of rights, 106, 531
  - damages, claims for, 534
  - effect of, 534
  - equitable assignments, 534
  - estoppel arising from, 600–605
  - general, 528–530
  - improvement of invention, 532
  - jurisdiction of Federal Court, 533
  - licence distinguished, 535
  - partial interests, 530
  - registration of, 593–598
  - sale of goods legislation, 616
  - scope of assignment, 532
  - specific performance, 534
  - variation/expungement of, 533
  - warranties, 616
- atomic energy**, 434, 980
- bankruptcy**, *see* devolution of rights
- bills of exchange**, 613
- biochemical processes**, *see* arts and processes; compositions of matter
- business systems**, *see* professional skills/business systems
- case law**, *see* legislation
- caveats**, *see* application for letters patent
- cells/modified DNA 74**, *see also* compositions of matter; higher life forms; lower life forms; subject-matter of patents
- chemical processes**, *see* arts and processes; compositions of matter
- claims re use/purpose (construction/interpretation of)**, *see also* specification/description
- action for infringement based on, 658–667
  - agreement of parties re, 354
  - disclaimers, claims as, 360, 361
  - general, 353–355
  - intention of inventor, 35
  - parol evidence, 354
  - prior art, 354
  - purposive construction, 353
  - reference to specification, 356–359
  - technical terms, 358
  - wording of other claims, reference to, 352
- claims re use/purpose (general)**, *see also* specification/description
- essential part of consideration, as, 340
  - general, 340, 341
  - “Jepson” claims, 350
  - language, clarity of, 342, 343
  - purpose of, 340
  - requirement for, 340
  - scope of monopoly claimed, 341, 344–352, 360, 361
  - sound prediction, doctrine of, 255–257, 262, 345
- combinations**, *see also* subject-matter of patents
- collocations/aggregations distinguished, 60
  - common result of elements/parts, 57–60
  - general, 56, 61, 209, 210
  - infringements on, 668–673, 702
  - inventive ingenuity required, 62
  - joint claim as composition and compound, 65
  - “obviousness”, 119
  - omissions from existing combinations, 63
  - “specification” in patent, 64, 350

- Competition Act**, *see* abuse of exclusive rights (Competition Act)
- compositions of matter**, *see also* subject-matter of patents
- “composition of matter”, 48
  - compounds, 52, 53, 237
  - higher life forms, 48
  - new/useful product required, 49, 50, 52
  - new use of known substance, 51, 237, 266
  - resulting from a process, 49
- “**comprising**”, 351
- compulsory licensing**, *see* abuse of exclusive rights (Patent Act); medicines/food (compulsory licensing)
- computer programs**, 91–94, *see also* subject-matter of patents
- consideration for grant**, 272, 277, 310, 340
- conspiracy**, 954
- “**convention**”, 187
- co-ownership/joint ownership**, *see* application for letters patent
- copyright distinguished**, 79, 80, 94
- courts**, *see* jurisdiction of courts
- Crown**
- jurisdiction of court over, 700
  - legislation binding on, 13
  - notice of compliance regulation, 991, 994
  - partial list, 914, 996
  - public servants, inventions by, 941, 976–983
  - right to use patented inventions
    - • compensation for use, 963, 965, 968–975
    - • general, 958–967
    - • practice, 968, 969
- damages**, *see* abuse of exclusive rights (Competition Act); infringement (damages/profits)
- declaration of non-infringement**, *see also* abuse of exclusive rights; impeachment of patent; infringement; restraining threats of legal proceedings
- expiration of patent, effect of, 877
  - general, 869–872
  - jurisdiction of court, 874
  - pleadings, 875
  - security for costs, 872, 873
  - standing to bring, 876
- dedication to public**, *see* abandonment/reinstatement; disclaimer
- description of subject-matter**, *see* specification/description
- devolution of rights**, 528, 529, 588–590, *see also* assignment/sale of rights; licences (by agreement); medicines (compulsory licensing)
- disclaimer**, *see also* application for letters patent; reissue
- assignee filing, 639
  - availability/purpose of, 637, 638
  - damages claims, effect on, 643
  - dedication to public via, 645, 646
  - effect of, 642–646
  - filing of, 641
  - form/contents of, 641
  - general, 637–641
  - jurisdiction of commissioner, 640
  - medicines, re, 645
  - mistake/accident/inadvertence, 637, 639
  - partial disclaimer, 640

## INDEX

---

- discovery**, *see* infringement (actions generally)
- “discovery”**, 75–77, 156, *see also* invention
- DNA**, *see* cells/modified DNA; compositions of matter; higher life forms; lower life forms; subject-matter of patents
- drawings**, *see* claims re use/purpose; specification/description
- employee/employer claims**, *see* abuse of exclusive rights; application for letters patent; Crown
- estoppel/res judicata**, 600–605, 720, 734–736, 818
- evidence**, *see* infringement (evidence)
- execution against patents**, 599
- experimental use, effect of**, 226–233, 648, 732
- first to invent vs. first to file**, *see* legislation
- foods**, 102–104, 568, *see also* subject-matter of patents
- genes**, *see* cells/modified DNA
- good faith**, *see* specification/description
- government**, *see* Crown
- grant**, *see* application for letters patent
- higher life forms**, 95, *see also* cells/modified DNA; compositions of matter; lower life forms; subject-matter of patents
- compositions of matter, 48
  - manufactured articles, 47
- historical development**, *see* legislation
- ideas**, 37, 76, 160, 457, *see also* principles/theorems
- illicit objects**, 81, *see also* subject-matter of patents
- impeachment of patent**, *see also* abuse of exclusive rights; declaration of non-infringement; infringement; restraining threats of legal proceedings
- appeals, 900
  - burden of proof, 896
  - commencement of action, 895
  - counterclaim for infringement, 899
  - default judgment, 898
  - double patenting, 893
  - foods/medicines, 892
  - fraud, 891
  - general, 443, 444, 869–871, 878–882
  - grounds for seeking (general), 881, 882
  - insufficiency of specification, 883–885
  - lack of invention, 888
  - lack of novelty, 889
  - lack of subject-matter, 887
  - lack of utility, 890, 902
  - patentee not inventor, 886
  - practice, 895–900
  - security for costs, 897
  - standing, 881, 894
- improvements**, 54, 55, 67, 112, 120, 123, 350, *see also* invention; subject-matter of patents
- “includes”**, 351
- industrial designs**, 78
- infringement (actions generally)**, *see also* declaration of non-

infringement; impeachment of patent

- appeals, 825–828
- burden/onus of proof, 808–823
- commencement of action, 721
- continuances, 799
- costs, 838, 859–866, 1014
- counterclaims, 957
- defences, 648, 731, 733, 827, 957
- discovery, 782–797
- estoppel/res judicata, 734–736
- inspections, 781, 787
- interlocutory proceedings, 737, 738
- judgments, effect/registration of, 825, 867, 868, 879, 880
- jurisdiction of court (Federal), 701, 703
- jurisdiction of court (provincial), 698–700, 702
- notice of allegations, 723
- parties
  - • defendants, 715–718
  - • plaintiffs, 537, 712–714
- presumption of validity of patent, 811
- privilege, 791
- production of documents, 786, 788, 789, 792–795
- severance of action, 739
- stay of proceedings, 708–711
- time for commencing, 706
- trial by judge/jury, 798
- venue, 704, 705

**infringement (damages/profits)**, *see also* abuse of exclusive rights (Competition Act)

- accounting of profits, 855–857
- compensatory nature of, 841
- costs, 838

- delay in seeking, 835, 836
- discovery to assess, 837, 838
- election of remedy, 833
- employees, liability of, 853
- general, 839, 841
- infringement before grant, effect of, 854
- intentional infringement, 861
- licences, effect on calculation, 845, 846
- measure of, 842–847
- partial infringement, 850–852
- presumption of damage, 839
- price reductions caused by infringer, 849
- proof of damages, 839, 841
- punitive damages, 1014
- sales plaintiff would not have made, 848

**infringement (destruction/delivery up)**, 858

**infringement (evidence)**

- appeal, on, 826
- burden/onus of proof, 808–823
- construction of claims, 829
- continuances, 799
- equitable remedy, 834
- estoppel/res judicata, 818
- experts, 800–805
- first inventor, 812, 813
- foreign proceedings, of, 817, 818
- invention/subject-matter, 814
- models, 824
- novelty, 815, 816
- particulars, 740–746, 806
- prior use, 178, 816
- proof of grant/foreign patents, 807
- reference to patent not product, 36

## INDEX

---

- utility, 819, 820
- validity of patent, 811
- infringement (general)**, *see also* claims re use/purpose
  - aiding/inducing/procuring infringement, 675–678
  - claims filed by patentee, importance of, 653–657
  - claims filed by patentee, interpretation of, 658–667
  - combinations, patents for, 668–673, 675
  - defences, 648, 731, 733
  - definition generally, 658
  - exceptions
    - articles acquired prior to grant, 686, 687
    - regulatory approval, 688–696
    - repair/service of patented device, 682, 683
    - use on foreign aircraft/vehicles/vessels, 684, 685
  - experimentation not constituting, 648
  - import/export of patented goods, 679–681
  - intention of infringing party, 648
  - knowledge of infringing party, 648
  - machines, 652
  - mixed law and fact, as question of, 649
  - processes, patents for, 688
  - reissue of patent, effect of, 697
  - restrictions on sale, breach of, 674
  - rights protected, 647
  - use/possession of patented method/article, 650–652
- infringement (injunctions)**
  - damages, 840
  - interlocutory, 707, 771–780, 1033
  - permanent, 830–832
- infringement (particulars of breach/defences)**
  - affidavit supporting application for, 740
  - ambiguity, allegations re, 768, 823
  - analogous prior use, 760–762
  - breaches of patent (general), 747–750
  - classes of, 746
  - common knowledge alleged, 759
  - first inventor, 750, 753
  - foreign patents, comparison with, 770
  - further particulars, order for, 743
  - general, 740–746, 806
  - insufficiency of claims/specification, 765–767, 821–823
  - motion to strike pleadings, 744, 745
  - novelty, absence of, 756, 757
  - objections to validity of patent (general), 751, 752
  - obviousness/lack of invention, 755
  - prior grant alleged, 758
  - prior knowledge or use, 760–762
  - prior publication, 763, 764
  - purpose of, 740
  - rules governing application for, 741
  - subject-matter, lack of, 754, 770
  - time for seeking, 742
  - utility, lack of, 769
- infringement (pleadings)**
  - absence of utility, 263
  - amendments, 728, 826

- estoppel, 720
  - general, 719
  - notice of allegation, 723
  - service ex juris, 725, 726
  - statement of claim, 721, 722
  - statement of defence, 722
  - striking out, 728–730, 744, 745
  - time limits, 724, 726
- injunctions**, *see* infringement (injunctions)
- inspections**, 781
- invention**, *see also* application for letters patent; discovery; ideas; novelty; utility
- accidental discoveries, 156
  - amount required, 120, 121
  - apprehension of need, relevance of, 144
  - conception distinguished, 160
  - commercial success, relevance of, 145–153
  - common general knowledge, relevance of, 140–143
  - construction of claims/documents/descriptions, 174–176
  - dates relevant to invention, 161–164, 187
  - definition, 35, 37, 75, 92, 105–112, 366
  - improvements, 112, 120, 123
  - “inventor”, 368, 369
  - “inventorship”, 369
  - judicial interpretation, 108–110
  - mechanical skill distinguished, 157, 158
  - novelty vs. invention, 166, 167
  - obviousness (lack of invention), 113–119, 126, 128, 134–136, 139
  - omission, as inventive act, 155
  - prior art, relevance of, 122, 128, 134–143
  - proportion/size/shape/material, alterations in, 159
  - rights conferred by, 106, 531
  - selection, as inventive act, 154
  - simplicity, 121
  - “skilled workman/persons skilled in the art”, 130–132, 138, 303–306, 353
  - standard of, 120–133
  - utility distinguished, 166, 264
- “Jepson” claims**, 350
- joint ownership**, *see* application for letters patent
- jurisdiction of court (federal)**
- declaration of non-infringement, action for, 874
  - infringement actions, 701–703
  - ownership rights, determination of, 533
  - Statute of Monopolies, under, 4
  - variation/expungement of assignments, 533
- jurisdiction of courts (provincial)**
- infringement actions, 698–700
  - Statute of Monopolies, under, 4
- “legal representatives”**, 366, 373, 386
- legislation**, *see also* Patent Cooperation Treaty
- amendments (1987), 14–20, 460–479
  - amendments (1993)
    - • general, 20, 21
    - • medicines, 27–32
    - • NAFTA/WTO, effect of, 33
    - • transitional provisions, 22–26
  - basis for grant of patent, 6, 7
  - case law (British/U.S.), 7, 8



## INDEX

---

- Crown bound by, 13
  - first to invent vs. first to file, 15, 368–372, 462–464
  - general, 1–8
  - historical development, 1–4, 9–13
  - imperial patents, 12
  - intent of, 11
  - medicines, 15, 27–32, 71
  - Patent Cooperation Treaty, 15, 500–527
  - Statute of Monopolies, 1–4
  - territorial limitations on application of, 5
- licences (by agreement)**, *see also* abuse of exclusive rights; assignment/sale of rights; devolution of rights; medicines (compulsory licensing); royalties
- agreement for licence, 536
  - assignment distinguished, 535
  - assignment/sublicense, rights re, 538
  - breach by licensee, 544
  - employer/employee relationships, 559
  - estoppel created by, 602–604
  - evidence of standing, as, 537
  - exclusive licence, 541, 542
  - express licences, 558
  - general, 528, 529
  - general licence, 540
  - implied licences, 536, 558
  - limited licence, 543
  - registration requirements, 536
  - resale of patented articles, 550–553
  - restrictive conditions, 544–557
  - revocation of, 539
  - territorial restrictions on, 547
  - time/duration of licence, 545, 546
  - use(s) of invention covered by assignment, 548, 549, 552
  - warranties, 616
  - writing not required, 536
- “literary work”**, 94
- lower life forms**, 72, 73, *see also* cells/modified DNA; compositions of matter; subject-matter of patents
- machines**, 41, 46, 227, 363, *see also* subject-matter of patents
- manufactured articles**, 47, *see also* subject-matter of patents
- marking of patented articles**
- general, 984, 985
  - patent list, 995
- medical treatments**, 96–98, *see also* subject-matter of patents
- medicines (compulsory licensing)**, *see also* abuse of exclusive rights; assignment/sale of rights; devolution of rights; licences (by agreement); royalties
- general, 15, 21, 27–32, 563–567
  - legislative amendments (1969), 565, 568–580
  - legislative amendments (1987), 567, 585–587
  - legislative amendments (1993), 27–32, 71, 102–104, 560–562
  - patentability generally, 102–104
  - scope of licence, 581–583
- medicines (regulation of)**
- abbreviated new drug submission, 993, 998, 999
  - applicability of regulations, 993
  - compulsory licensing, replacement of, 992
  - “medicine”, 993
  - notice of allegation (of non-infringement), 1000–1010, 1021

## PATENTS OF INVENTION

---

- notice of compliance, 990, 1004, 1016
- onus on patentee, 993
- patent list required, 995–997
- prohibition proceedings
  - costs, 1031
  - cross-examination on affidavit, 1036
  - disclosure, 1024, 1025
  - dismissal, 1019
  - general, 1011–1014
  - injunctions, 1034
  - onus, 1027–1030
  - orders, effect of, 1022
  - parties, 1026
  - pleadings, 1019–1023
  - practice/procedure, 1031–1036
  - protective orders, 1034
  - stay of proceedings, 1032
  - time for commencing, 1015–1018
- register of information, 997
- regulations, purpose of, 992
- micro-organisms**, *see* lower life forms
- misrepresentation**, 297–302, 308, 401, 402
- munitions/weapons**, 976–983
- NAFTA**, *see* legislation
- new uses**, *see* improvements; subject-matter of patents
- novelty, absence of (new act — post 1996)**, *see also* discovery; invention
  - absolute novelty, 15, 16, 240, 461
  - “available to public”, 250, 251
  - conflicting filing/claim dates, 252, 253
  - general, 240–243
  - prior disclosure not originating with applicant, 248, 249
  - prior disclosure originating with applicant
    - breach of confidence, effect of, 247
    - general, 244
    - grace period, 245–247
    - nature of disclosure, 246
  - novelty, absence of (old act — pre 1989)**, *see also* discovery; invention
    - analogous uses, 237–239
    - novelty in part, 235, 236
    - prior description in Canada (anticipation by prior grant/publication)
      - analogous use distinguished, 239
      - combination patents, 209, 210
      - general, 191–198, 250, 251
      - grace period, 199
      - “mosaic of extracts” not permitted, 207, 208
      - “paper anticipation”, 197
      - “printed publication” required, 211–215
      - sufficiency of description, 200–206
    - prior foreign patent, 234
    - prior knowledge/use by others
      - accidental use, 184
      - disclosure/availability to public, 185–188
      - evidence, 178, 816
      - general test, 177
      - missed conflict(s), 189
      - “prior knowledge”, 182, 183
      - same invention already existing, 179–181
    - prior public use/sale in Canada

## INDEX

---

- • disclosure of use/sale, sufficiency of, 223
- • experimental use, 226–233
- • general, 216–221, 250, 251
- • grace period, 222
- • “on sale in Canada”, 231–233
- • onus on attacking party, 219
- • “public”, 224, 225
- • territorial limitation, 218
- novelty, general**, *see also* discovery; invention
  - absolute novelty, 15, 16, 240, 461
  - commercial success, relevance of, 172
  - construction of claims/documents/descriptions, 174–176
  - invention vs. novelty, 166, 167
  - meaning of, 168–170
  - novelty in law and in fact, 133, 171
  - rigorous test for, 173
- obviousness**, *see* invention
- ownership**, *see* application for letters patent
- particulars**, *see* infringement (particulars of)
- “patent”**, 366
- Patent Cooperation Treaty**
  - entering national phase, 516–521
  - fees, 522
  - general, 15, 500–503
  - international application phase, 504–515
  - interpretation/application of, 502
  - national phase, 523–527
  - powers of commissioner, 503
  - purpose of, 500
  - rules/regulations under, 501
  - translation, 527
- patent medicines**, *see* medicines (compulsory licensing)
- patent rules**, 367
- “patented article”**, 917
- patented medicines**, *see* medicines (compulsory licensing); medicines (general)
- “patentee”**, 366
- pharmaceutical patents**, *see* medicines
- plants**, *see* cells/modified DNA; higher life forms; lower life forms
- pleadings**, *see* infringement (pleadings)
- predictions**, *see* sound prediction, doctrine of
- principles/theorems**, *see also* ideas; subject-matter of patents
  - general, 82–84, 273
  - multiple uses of principle, 88
  - new principles, 89, 90
  - scope of protection, 87–89
  - utilization for new/useful result, 84–86
- “prior art”**, 19, 400
- priority**, *see also* application for letters patent
  - assignments, of, 593–598
  - “claim date”, 242
  - conflicting applications, 420–425
  - divisional applications, 426–429
  - first to invent vs. first to file, 15, 368–372, 462–464
  - foreign/convention applications, 414–419
  - general, 15, 16, 20, 242
  - multiple inventions in one application, 426, 427
  - registration, effect of, 594

- supplementary disclosures, 430–432
- privacy**, 405, 406, 433, 465–468
- professional skills/business systems**, 99–101, *see also* subject-matter of patents
- profits**, *see* infringement (damages/profits)
- “public”**, 224, 225
- public servants, rights of**, 941, 976–983
- re-examination**, *see also* application for letters patent
  - amendment of patent, 490
  - appeal from, 496–499
  - certificate after re-examination, effect of, 491–495
  - general, 480
  - new question re patentability
    - • raising of, 485
    - • notice and reply re, 486–489
  - re-examination board, 484
  - request for, 481–483
  - setting aside patent (old act), 441, 443, 444
- registration of rights**, *see* application for letters patent
- reinstatement/restoration**, *see* abandonment/reinstatement
- reissue**, *see also* application for letters patent; disclaimer
  - assignee seeking, 633
  - deliberate acts, effect of, 623
  - effect of reissue, 627–632, 697
  - foreign resident seeking, 636
  - general, 617, 618
  - grounds for, 617, 618, 622–624
  - inadvertence/accident/mistake, effect of, 622–624
- jurisdiction of commissioner, 619, 620
- petition for, form/contents of, 635
- purpose of, 617, 637
- same invention, patent must reissue for, 625, 626
- separate/multiple applications for, 634
- surrender of existing patent, 618, 631
- U.S. decisions, effect of, 621
- remedies**, *see* infringement (damages/profits); infringement (destruction/delivery up); infringement (injunctions)
- res judicata**, *see* estoppel/res judicata
- restraining threats of legal proceedings**, *see also* abuse of exclusive rights; declaration of non-infringement; impeachment of patent
  - common law protection, 904–909
  - general, 902, 903
  - Statute of Monopolies, under, 910–912
  - Trade-marks Act, under, 913
- restraint of trade**, *see* abuse of exclusive rights
- revocation of patent**, 608–610, 935–937
- royalties**
  - action to recover (general), 606, 607
  - compulsory licensing, under, 560, 570, 571, 577–580
  - expiration of patent, effect of, 612
  - fraud/mistake/misrepresentation, as defences, 611

## INDEX

---

- revocation of patent, 608–610
- sales**, *see* assignment/sale of rights
- secrecy**, 405, 406, 433, 465–468
- seeds**, *see* cells/modified DNA; higher life forms; lower life forms
- seizure/sale of patent rights**, 599
- setting aside patent**, *see* re-examination
- “skilled workman/persons skilled in the art”**, *see* invention
- slander of title**, *see* restraining threats of legal proceedings
- sound prediction, doctrine of**, 255–257, 262, 345
- specification/description**, *see also* application for letters patent; claims re use/purpose
  - advantages, of, 315
  - ambiguity, effect of, 309–313
  - combinations, 64, 295
  - commodities/ingredients, 316, 317, 397
  - compositions of matter, 286, 397
  - contents of (general), 279
  - date for assessing sufficiency of, 319
  - definition of, 280
  - disclaimers, 325
  - “disclosure” required (general), 280, 282–284
  - drawings
    - general, 362
    - required as part of specification, 363, 397
    - scale/distances in, 364
  - experimentation as part of description, 290, 291
  - form of, 398
  - general, 277–281, 398, 882–885
  - good faith/misrepresentation, 297–302, 308, 401, 402
  - improvements, specification of, 295
  - intelligibility of, 303–320
  - interpretation/construction of
    - broad vs. strict, 335
    - date of, 326, 327
    - expert evidence, 323, 339
    - general, 321–323
    - impartiality, 328–335
    - language used, 336–339
    - purposive construction, 328
    - reading as a whole, 324, 325
  - latent/implicit purposes, 293
  - machines, 286
  - manufactured articles, 286
  - methods and means of use, 300–302
  - models, 397
  - monopoly claimed, 309
  - name/title of invention, 281
  - “newness”, claims re, 294
  - object of invention, 285
  - processes, 286
  - proportions, 317
  - purpose of, 277, 378, 293
  - size/shape/form, 318
  - “skilled workman/person skilled in the art”, 130–132, 138, 303–306, 353
  - specimens of composition/ingredients, 397
  - sufficiency of, 283, 285–296
  - use of invention, 284
- Statute of Monopolies (Britain)**, 1–4, 34, 910–912
- subject-matter of patents (general)**, *see also* arts and processes; cells/modified DNA; combinations; compositions of

## PATENTS OF INVENTION

---

- matter; computer programs; foods; higher life forms; illicit objects; improvements; lower life forms; machines; manufactured articles; medical treatments; medicines; principles/theorems; professional skills/business systems
- copyright distinguished, 79, 80
  - discoveries, 75–77
  - ideas, 37, 76
  - industrial designs, 78
  - “invention”, 35, 37, 75–77
  - new uses of old subject-matter, 66–71, 85, 86
  - Statute of Monopolies, 34
  - unpatentable matter, 75–80
- theorems**, *see* principles/theorems
- trade libel**, *see* restraining threats of legal proceedings
- unlawful interference with economic interests**, 954
- unpatentable matter**, *see* subject-matter of patents
- utility**, *see also* invention
- amount required, 276
  - commercial success, relevance of, 274, 275
  - definition of, 267–272
  - evidence of, 274, 275
  - general, 254–265
  - invention distinguished, 166, 264
  - new processes, 265
  - new uses, 266
  - overclaiming, 262
  - partial utility, 272
  - pleadings re inutility, 263
  - presumption against, 261
  - principles/theorems, 273
  - production of evidence re, 255
  - sound prediction, doctrine of, 255–257, 262, 345
  - time for determining, 259
- venue**, *see* infringement (actions generally)
- World Trade Organization**, *see* legislation

## Index to Pensions — Private

(All references are to paragraph numbers.)

### administration (Alberta)

- • delegation to agents, 67
- disclosure of information, 88–90
  - • member statements and other information, 88
  - • right of inspection, 89–90
- duty of care, 65–66
- funding and investments, 91–98
  - • contribution holidays, 95
  - • investment of plan assets, 96–97
  - • minimum funding requirements, 91–92
  - • statutory deemed trust, 93–94
  - • valuations, 98
- identity of administrator, 64
- minimum standards, 69–87
  - • benefits, 78–86
    - • • entitlement of vested member on termination, 78
    - • • former member's contributions, 79
    - • • integration of private/government plans, 85
    - • • lump sum payment, 83
    - • • pension partner, 80
    - • • phased retirement benefit, 86
    - • • small pension, 84
    - • • terminal illness or disability, 81
- division of pensions on marriage breakdown, 87
- locking-in and portability, 72–74
  - • membership and eligibility, 69–70
  - • retirement, 75–77
  - • vesting of benefits, 71
- multi-employer and other plans, 108
- payment of plan expenses, 68
- plan amendments and wind-ups, 99–104
  - • discontinuing identifiable part of business operations, 102
  - • entitlement of members under partial termination, 103
  - • restrictions on amendments, 99
- Superintendent refuses to register/cancels registration, 101
- termination, 100
- termination report, 104
- plan reorganizations, 105
- surplus, 106–107

### administration (British Columbia)

- delegation to agents, 14
- disclosure of information, 34–35
- member statements and other information, 34
- right of inspection, 35
- duty of care, 12–13
- funding and investments, 36–43
- contribution holidays, 39–40
- investment of plan assets, 41–42
- minimum funding requirements, 36–37
- statutory deemed trust, 38

## PENSIONS — PRIVATE

---

- administration (British Columbia) (*cont'd*)
  - valuations, 43
  - identity of administrator, 11
  - minimum standards, 16–33
    - benefits, 25–32
      - entitlement of vested member on termination, 25
      - former member's contributions, 26
      - integration of private/government plans, 31
      - member having a spouse, 27
      - phased retirement benefit, 32
      - small pension, 30
      - terminal illness or disability, 28
      - withdrawal as lump sum, 29
    - division of pensions on marriage breakdown, 33
    - locking-in and portability, 19–21
    - membership and eligibility, 16–17
    - retirement, 22–24
    - vesting of benefits, 18
  - multi-employer and other plans, 54
  - payment of plan expenses, 15
  - plan amendments and wind-ups, 44–49
  - declaration by Superintendent of full or partial termination, 47
  - entitlement of members affected by partial termination, 48
  - reductions that adopted plan may not make, 44
    - Superintendent refuses to register or cancels registration, 46
    - termination, 45
    - termination report, 46
  - plan reorganizations, 50
  - surplus, 51–53
- administration (Federal)**
  - delegation to agents, 281
  - disclosure of information, 299–300
    - member statements and other information, 299
    - right of inspection, 300
  - duty of care, 279–280
  - funding and investments, 301–307
    - contribution holidays, 305
    - investment of plan assets, 306
    - minimum funding requirements, 301–303
    - statutory deemed trust, 304
    - valuations, 307
  - identity of administrator, 277–278
  - minimum standards, 283–298
    - benefits, 291–297
      - entitlement of vested member on termination, 291
      - former member's contributions, 292
      - integration of private/government plans, 296
      - mental or physical condition, 294
      - phased retirement benefit, 297
      - small pension, 295



## INDEX

---

- administration (Federal) (*cont'd*)
  - spouse or common law partner, 293
  - division of pensions on marriage breakdown, 298
  - locking-in and portability, 285–287
  - membership and eligibility, 283
  - retirement, 288–290
  - vesting of benefits, 284
  - multi-employer and other plans, 315–316
  - payment of plan expenses, 282
  - plan amendments and wind-ups, 308–311
    - declaration by superintendent revoking plan, 310
    - restrictions on amendments, 308
    - termination in whole, 309
    - wind-up report, 311
  - plan reorganizations, 312
  - surplus, 313–314
- administration (Manitoba)**
  - delegation to agents, 168
  - disclosure of information, 187–188
    - member statements and other information, 187
    - right of inspection, 188
  - duty of care, 166–167
  - funding and investments, 189–196
    - contribution holidays, 192
    - investment of plan assets, 193–195
    - minimum funding requirements, 189–190
    - statutory deemed trust, 191
    - valuations, 196
  - identity of administrator, 164–165
  - minimum standards, 170–186
    - benefits, 179–185
      - entitlement upon termination of membership, 179
      - former member's contributions, 180
      - integration of private/government pensions, 184
      - phased retirement benefit, 185
      - small pension, 183
      - spouse or common law partner, 181
      - terminal illness or disability, 182
    - division of pensions on marriage breakdown, 186
    - locking-in and portability, 173–175
    - membership and eligibility, 170–171
    - retirement, 176–178
    - vesting of benefits, 172
  - multi-employer and other plans, 205
  - payment of plan expenses, 169
  - plan amendments and wind-ups, 197–201
    - restrictions on amendments, 197
    - termination, 198
    - termination in part, 200
    - termination in whole, 199
    - written notice and report, 201
  - plan reorganizations, 202
  - surplus, 203–204
- administration (Ontario)**
  - delegation to agents, 224

## PENSIONS — PRIVATE

---

- administration (Ontario) (*cont'd*)
  - disclosure of information, 244–245
    - member statement and other information, 244
    - right of inspection, 245
  - duty of care, 222–223
  - funding and investments, 246–251
    - contribution holidays, 249
    - investment of plan assets, 250
    - minimum funding requirements, 246
    - statutory deemed trust, 247–248
    - valuations, 251
  - identity of administrator, 221
  - minimum standards, 226–243
    - benefits, 236–242
      - entitlement of vested plan member, 236
      - former member's contributions, 237
      - integration of private/government plans, 242
      - physical or mental disability, 240
      - pre-retirement death benefit, 239
      - small pension, 241
      - spouse, 238
    - division of pensions on marriage breakdown, 243
  - locking-in and portability, 230–232
  - membership and eligibility, 226–227
  - retirement, 233–235
  - vesting of benefits, 228–229
  - multi-employer and other plans, 264
  - payment of plan expenses, 225
  - pension benefits guarantee fund, 263
  - plan amendments and wind-ups, 252–257
    - appointment of administrator, 255
    - determination of amount of member's pension, 257
    - full wind-up, 254
    - restrictions on amendments, 252
    - winding-up, 253
  - wind-up report, 256
  - plan reorganizations, 258
  - surplus, 259–262
- administration (Saskatchewan)**
  - delegation to agents, 124
  - duty of care, 122–123
  - identity of administrator, 120–121
  - minimum standards, 126–136
    - benefits, 132–135
      - condition shortening life expectancy, 133
      - integration of private/government plans, 135
      - small pension, 134
      - spouse of member, 132
    - disclosure of information, 137–139
      - member statements and other information, 137–138
      - right of inspection, 139
    - division of pensions on marriage breakdown, 136
  - funding and investments, 140–144
    - contribution holidays, 142

## INDEX

---

- administration
  - (Saskatchewan) (*cont'd*)
    - investment of plan assets, 143
    - minimum funding requirements, 140
    - statutory deemed trust, 141
    - valuations, 144
    - locking-in and portability, 128–129
    - membership and eligibility, 126
    - multi-employer and other plans, 152
    - plan amendments and winding-ups, 145–148
      - restrictions on amendments, 145
      - Superintendent's refusal/cancellation of registration, 147
      - termination by administrator, 146
      - winding-up report, 148
    - plan reorganizations, 149
    - retirement, 130–131
    - surplus, 150–151
    - vesting of benefits, 127
    - payment of plan expenses, 125
- enforcement (Alberta)**
  - limitation period for prosecutions, 58
  - offences, 57
  - powers of Alberta Superintendent of Pensions, 55–56
- enforcement (British Columbia)**
  - limitation period for prosecutions, 5
  - offences, 4
  - Superintendent of Pensions, powers, 2–3
- enforcement (Federal)**
  - offences, 267
  - penalty, 268
  - superintendent of financial institutions, 265–266
- enforcement (Manitoba)**
  - limitation period for prosecutions, 157
  - offences, 155
  - penalty, 156
  - powers of Superintendent, 153–154
- enforcement (Ontario)**
  - Financial Services Commission, 206
  - Financial Services Tribunal, 209
  - notice of superintendent's intention to make order, 208
  - offences, 210
  - Superintendent of Financial Services, 207
- enforcement (Saskatchewan)**
  - application to court by superintendent, 110
  - offences, 111
  - penalty, 112
  - Superintendent of Pensions, 109
- Income Tax Act**
  - benefits, 325–333
    - deduction credit for certain pension income, 332
    - inclusion in income when received, 326
    - income earned by funds in pension plan, 325
    - other amounts that may be deducted, 330
    - payment out of/under foreign retirement arrangement, 327
    - purchase of interest in annuity contract, 328

Income Tax Act (*cont'd*)

- • tax deferrals by transfers, 329
- • transfers to spousal registered retirement savings plan, 331
- • unused pension credit transferred to spouse, 333
- contributions, 319–324
- • contributions by way of transfers, 324
- • deduction as business expense, 319
- • employer's contributions in respect of defined benefit provisions, 321
- • exemption of employer contributions as taxable benefit, 323
- • money purchase provisions, 322
- • requirements for deduction, 320
- enforcement, 317–318

**jurisdictional issues**

- Alberta, 62–63
- British Columbia, 9–10
- Federal, 274–276
- Manitoba, 162–163
- Ontario, 217–220
- Saskatchewan, 118–119

**registration under Employment Pension Plans Act (Alberta)**

- application for registration of plan, 60
- definition of pension plan, 59
- requirements of plan, 61

**registration under Pension Benefits Act (Manitoba)**

- application form, 159
- certificate of registration, 161
- definition of pension plan, 158
- surplus entitlement, 160

**registration under Pension Benefits Act (Ontario)**

- application for registration, 212
- certificate of registration, 216
- definition of pension plan, 211
- jointly sponsored pension plan, 215
- multi-employer pension plan, 214
- requirements of documents that create/support pension plan, 213

**registration under Pension Benefits Act (Saskatchewan)**

- cancellation, 117
- certificate of registration, 116
- definition of plan, 113
- documents filed by administrator after plan established, 114
- requirements of plan, 115

**registration under the Pension Benefits Standards Act (British Columbia)**

- definition of pension plan, 6
- materials to be filed after pension established, 7
- provisions required in plan, 8

**registration under Pension Benefits Standards Act, 1985 (Federal)**

- certificate of registration, 272
- definition of pension plan, 269
- filing of documents after plan established, 270
- refusal of registration, 273
- surplus, 271

## Index to Pensions — Public

(All references are to paragraph numbers.)

### Canada Pension Plan

- administration by Department of National Revenue, 5
- annual increases in benefits, 13
- application for benefits, 7, 97–101
- application for Social Insurance Number, 11
- benefits, 12, 46–96
  - death benefit, 95, 96
  - disability benefits, 62–78
    - benefit for disabled contributor's child, 72–78
    - disability pension, 62–71
  - general, 46–51
  - retirement pensions, 52–61
    - post-retirement benefits, 59–61
    - retirement pensions, 52–58
  - survivor's benefits, 79–94
    - general, 79
    - orphan's benefits, 90–94
    - survivor's pension, 80–89
  - benefits included in taxable income, 14
- compulsory social insurance scheme, 2
- contributions, 19–37
  - calculation of contributions, 19
  - contributory salary and wages, 22
  - employer contributions, 23
  - employer deductions from employee's earnings, 24
  - farmers/fishermen, 36
  - information return, 27
  - liability of directors, 25
  - offences by employers, 37
  - overpayments, 30
  - persons not required to contribute, 21
  - reassessment of amount payable by employer, 28
  - return of self-employed earnings, 33, 34
  - self-employed persons, 32, 35
  - unpaid contributions, interest and penalties, 29
  - year's basic exemption, 20
- contributions paid into Consolidated Revenue Fund, 4
- coverage, 15–19
  - excepted employment, 17
  - pensionable employment, 16
  - person may treat certain employment as pensionable employment, 18
- credit splitting, 38–45
  - agreement preventing mandatory division of pension credits, 43
  - application, 40
  - deemed application, 45
  - marriage or other relationship breakdown, 38
  - unadjusted pensionable earnings, 39
- discretion to amend or rescind decision, 8
- funding, valuation and investment, 119, 120
- payment, 102–108
- protection of personal information, 109–114
- reciprocal agreements, 3

PENSIONS — PUBLIC

- Canada Pension Plan (*cont'd*)
  - reconsideration and appeals, 121–152
    - contributions, 121–126
    - appeal to minister, 122–124
    - appeal to Tax Court, 125, 126
    - CRA rulings, 121
    - pensions and supplementary benefits, 127–152
    - appeals, 130–150
      - appeals after April 1, 2013, 140–150
        - general, 140–144
        - Social Security Tribunal — Appeal Division, 148–150
        - Social Security Tribunal — General Division, 145–147
      - appeals filed and heard before April 1, 2013, 131–139
        - general, 131
        - Pensions Appeals Board, 135–139
        - review tribunal, 132–134
      - general, 130
      - judicial review, 151, 152
      - reconsideration by minister, 127–129
    - record of earnings, 9
    - responsibility for eligibility inquiries, 6
    - statement of unadjusted pensionable earnings, 10
    - taxation of benefits, 115–118
  - Old Age Security Act**
    - allowances, 193–206
    - application, 197–199
    - eligibility requirements, 194–196
    - general, 193
    - payment, 200–206
    - appeals and reconsiderations, 209–230
      - appeals, 210–228
        - appeals after April 1, 2013, 217–226
          - general, 217–220
          - Social Security Tribunal — Appeal Division, 224–227
          - Social Security Tribunal — General Division, 221–223
        - appeals filed and heard before April 1, 2013, 211–216
          - general, 210
          - Tax Court of Canada, 227, 228
      - judicial review, 229, 230
      - reconsideration by minister, 209
        - general provisions, 153–163
        - agreement with provinces re payment of provincial benefits, 163
      - computation of income, 157
      - division as matrimonial property, 162
      - eligibility requirements, 154
      - exemption from seizure/execution, 161
      - further information/evidence of eligibility, 159
      - improper payments and their return, 158
      - no assignment of benefits, 161
      - relationship status or income, 156

## INDEX

---

- Old Age Security Act (*cont'd*)
  - remedial action by minister for erroneous advice/administrative error, 160
  - residence requirements, 155
  - types of benefits, 153
  - guaranteed income supplement, 177–192
    - application, 179, 180
    - eligibility requirements, 178
    - general, 177
    - payment, 181–192
  - Old Age Security Pension, 164–176
    - application, 172–174
    - eligibility requirements, 167–171
    - general, 164–166
      - full or partial pension, 164
      - pension amount and payment quarter, 165
    - payment, 175, 176
  - penalties for violations, 232–235
  - protection of personal information, 236–241
  - reciprocal agreements, 231
  - taxation of benefits, 207, 208
- provincial and territorial pensions and supplements**
  - Saskatchewan Pension Plan, 242–256
    - contributions, 244–246
    - death benefit, 251–253
    - division of credits, 254
    - funding, valuation, investment and reporting, 255, 256
    - general, 242
    - participation, 243
    - retirement benefit, 247–250
  - senior supplements, 257–310
    - Alberta, 258–269
    - British Columbia, 270–276
      - general, 257
      - Manitoba, 277–286
      - Ontario, 287–300
      - Saskatchewan, 301–310

## Index to Perpetuities and Accumulations

(All references are to paragraph numbers.)

- accumulations, *see also* legacies directed to accumulate**
- Alberta, 107, 108
  - British Columbia, 108
  - Manitoba, 107
  - Ontario, 98–105
  - Saskatchewan, 96, 97, 106
  - Thelluson Act, 96, 97, 106, 107
- adoptions, 22**
- age reduction rule, 23, 63, 88**
- application of rule generally, 28, 45, 46, 83**
- charities and charitable trusts, *see also* trusts**
- application of rule, 37, 38
  - “charitable” bequests, 39
  - examples, 40–42
  - exemptions, 37
  - gift in trust, 40
  - gifts over, 37, 41, 52
  - validity of bequest, 40–42
- class gifts**
- class closing rules, 63, 64, 88
  - common law, 62
  - life in being, 19, 20
- common law rule, *see also* specific dispositions, e.g., contracts; determinable interests, etc.; statutory modifications to rule**
- ascertained persons, 4
  - commencement of interest, 5
  - executory estates, 8
  - general, 3, 5, 6, 8, 9
  - gift of corpus, 7
  - gift of income, 7, 36
  - life in being, 6, 11–14, 24
  - nature of, 1, 2, 26
  - object of, 27
  - origin of, 26
  - partial invalidity, 7
  - perpetuity period, 3, 6, 10–14
  - possibility of timely vesting, 8, 9
  - unborn parties, 11–14
- conditions subsequent**
- common law, 65–67
  - statutory provisions, 68
- contingent interests**
- easements, 48
  - equitable, 47
  - legal, 47
  - profits à prendre, 48
- contracts**
- at common law, 29
  - statutory provisions, 30, 31
- cy-près doctrine, 52, 88**
- determinable interests**
- common law, 49, 50
  - possibility of reverter, 49, 51
  - statutory provisions, 51, 52
- double possibilities, rule against**
- abolition of rule, 95
  - general, 92, 93
  - personal property and, 94
- easements, 30, 31, 33, 34, 48**
- equity, 28**
- estoppel, 89**
- fertility, presumptions as to, 20, 21**
- home ownership savings plan, 45**
- income, gift of, 7, 36**



**interpretation of instruments**

- common law rules, 84–87
- statutory provisions, 88

**leases**, 69, 71, 72

**legacies directed to accumulate**, 78, 79, *see also* accumulations

**life in being**

- common law, 6, 11–14, 24
- statutory, 18–24

**Manitoba, abolition of rule**, 25

**nature of rule**, 1, 2

**oil and gas**, 83

**options**

- general, 30, 34
- leases, 69, 71, 72
- purchase of land, 70
- statutory provisions, 73, 74

**personal estate**

- common law, 32, 33
- statutory provisions, 34, 35

**possibility of reverter**, 49, 51

**powers of appointment**

- general power, 53, 54, 56, 59
- hybrid power, 54
- interpretation of power, 57, 58
- special powers, 54, 55
- statutory provisions, 59
- trusts as, 44

**powers of sale**

- general, 76, 77
- trusts for sale, 60, 61

**practice matters**, 90, 91

**presumptions, fertility**, 20, 21, 88

**profits à prendre**, 30, 31, 33, 34, 48

**restrictive covenants**, 31, 34

**retirement savings plans**, 45, 105

**rights of pre-emption or first refusal**, 30, 34, 35

**rules of construction**, *see* interpretation of instruments

**statutory modifications to rule**, *see also* specific dispositions, e.g., contracts; determinable interests, etc.

- abolition of rule, Manitoba, 25
- adoptions, 22
- age reduction to allow vesting, 23, 63, 88
- class gifts, 19, 20, 63, 64, 88
- exemptions, 45, 46
- invalidity of prior estates, effect, 16
- life in being, 18–24
- Manitoba, abolition of rule, 25
- perpetuity period, 17
- unborn parties, 18–24
- “unborn spouse”, 24
- “wait and see” rule, 15, 63, 88

**Thelluson Act**, *see* accumulations

“**top lease**”, 83

**trusts**, *see also* charities and charitable trusts; powers of sale

- common law, 43
- cy-près doctrine, 52, 88
- gifts over, 37, 41
- gross royalty trusts, 83
- miscellaneous trusts, 81–83
- resulting trusts, 50, 51
- statutory provisions, 44–46
- trusts for sale, 60, 61

**unborn parties**

- common law, 11–14
- statutory modifications, 18–24

“**wait and see**” rule, 15, 63, 88

## Index to Personal Property

(All references are to paragraph numbers.)

- abandonment**, *see* choses in possession
- actions**, *see* assignments; conversion; detinue; replevin
- assignments (book debts)**, *see also* choses in action
- absolute vs. charge, 210
  - creation generally, 66, 209, 226, 227
  - damages, 218
  - equitable assignment, 66
  - future choses in action, 209
  - insurance proceeds, 217
  - intention of parties, 211
  - joint accounts, 216
  - moneys in court, 219
  - partial satisfaction, as, 223
  - partnerships, 222
  - priorities, 195, 205–207, 225
  - registration of, 224
  - rents, 220
  - RRSPs, 215
  - scope, of 212–222, 227
  - specific vs. floating charges, as, 227
- assignments (equitable)**, *see also* choses in action
- absolute vs. partial, 89, 91
  - acceptance by assignee, 59
  - actions on, 58, 90–98
  - authority to make, 70
  - bankruptcy of assignor, effect of, 65
  - book debts, 66
  - building contracts, 87
  - communication to assignee, 69
  - completion by delivery, 63
  - consideration, need for, 58, 59, 80–82
  - defeat by legal estate, 64
  - evidence of, 75, 79
  - execution of, 59
  - general, 58–70
  - indemnity agreements, 68
  - insurance proceeds, 61
  - intention to make, 59, 71, 72
  - nature of, 58, 59, 69, 76–82
  - non-competition bonds, 62
  - notice to debtor, 83–88
  - parties to action on assigned item, 90–98
  - promissory notes, of, 74
  - specification of fund(s), need for, 76–79
  - withdrawal of, 86
  - writing, need for, 71–75
  - written assignment, entitlement to, 62
- assignments (equities governing)**, *see also* choses in action; set-off
- acquiescence, effect of, 168
  - conditional contracts, 157
  - deductions allowed by contract, 170
  - estoppel, 160, 164
  - form of transaction vs. substance, 161
  - future proceeds, assignment of, 171
  - general, 156
  - knowledge of assignee, relevance, 159, 162
  - mortgages, 158
  - ostensible authority, effect of, 160
  - release of equities, 163, 164

## PERSONAL PROPERTY

---

- rescission for misrepresentation, 184, 185
- satisfactory, effect of, 169
- settlement by assignor, 165–171
- statutory assignments, 139
- subsequent assignees' rights, 189
- assignments (general)**, *see also* choses in action
  - “assignment”, 15
  - bills of exchange distinguished, 25–27
  - contracts generally, 32–35, 53
  - covenant in restraint of trade, 47
  - Crown, claims against, 44, 45
  - Crown debts, 57
  - damages, right to, 11, 35, 50
  - enforceability, 19–23
  - future choses in action, 36–43
  - goodwill, of, 47
  - historical development, 14–18
  - indemnity contracts, 30
  - interpretation of, 23, 24
  - legality of assignment, 19–22
  - promissory notes, 48
  - rent, of, 46
  - right to assign/assignability, 14, 28, 29
  - salaries, 54–56
  - subrogation rights, 31
  - torts, rights re, 11, 50–52
  - types of assignments, 18
- assignments (priorities)**, *see also* choses in action
  - assignee vs. judgment creditor, 200–205
  - book debts, 195, 205–207, 225
  - consideration vs. voluntary assignments, 191, 199
  - equitable assignees, between, 191–196
  - garnishment orders, 200–204
  - general, 190
  - income tax claims, 206, 207
  - land, conflicting interests in, 208
  - legal vs. equitable assignees, 197–199
  - notice of assignment, effect generally, 139, 190, 208
  - registration, effect of, 190
  - stop orders, 203
- assignments (statutory)**, *see also* choses in action
  - absoluteness of, requirements re, 114–121
  - actions re, 100, 102–105, 121, 122, 124, 127, 132, 134–137
  - consideration not required, 155
  - debts/choses in action, 108–113
  - effect of, 99–107
  - execution by corporation, 101
  - general, 99
  - government debts (Man.), 125
  - interpleader/payments into court, 154
  - notice to debtor, 127–153
  - pleadings, 102
  - priorities, 139
  - redemption rights, 118, 120
  - trusts, effect of, 119, 121
  - wages (Man.), 126
  - writing requirements, 101, 107, 123–126
- bankruptcy**, 55, 65, 132
- bequests**, 12
- bills of exchange**, 25–27, 181
- book debts**, *see* assignments (book debts)
- building contracts**, 87, 167, 171
- business, sale of**, 47, 62
- causes of action**, *see* assignments (general)

## INDEX

---

- chattel mortgages**, 24, 61, 344–351, 380, 438
- chattels personal**, 7
- chattels real**, 6
- children**, *see* minors
- “choses in action”**, *see also* assignments
- definitions, 8, 9
  - equitable choses, 9
  - examples of, 11, 12, 13, 49
  - future choses, 36, 209
  - general, 7
  - legal choses, 9
  - location of, 10
- choses in possession**, *see also* assignments
- abandonment, 246, 247, 251, 252
  - custody, 238
  - delivery, 237, 243
  - finders’ vs. occupiers’ rights, 248–251
  - general, 7, 228
  - jus tertii, 253
  - ownership vs. possession, 239, 240, 248, 252
  - possession (acquisition), 241
  - possession (actual), 234, 235, 237, 242
  - possession (adverse), 245
  - possession (constructive), 234, 236
  - possession (factual), 230
  - possession (general), 229, 240
  - possession (legal), 231–238, 242
  - possession (loss of), 242–247
  - possession (symbolic), 234, 237, 243
- conditional sales**, 41, 152, 352–356, 438
- contracts**, *see* assignments; building contracts; choses in action; indemnity contracts; personal services contracts
- conversion**, *see also* damages; right to; detinue; replevin; torts
- administrator/executor, involving, 322–325
  - agents, involving, 326–329
  - auctioneers, by, 330
  - bailee, involving, 331–336
  - banks, involving, 337, 338, 339, 340
  - buildings, of, 261
  - carriers, involving, 341–343
  - chattel mortgages, involving, 344–351, 380
  - conditional sale agreements, involving, 352–356
  - copyrights, of, 297
  - creditors/debtors, involving, 357–360
  - criminal prosecution for, 287, 308
  - Crown, involving, 361
  - damages, 275, 289–303, 308
  - debentures, involving, 362
  - defences, 305–313, 432
  - definition of, 254–257
  - demand and refusal, 274–280, 347
  - elements of, 255, 256, 257, 267–282, 311, 351
  - employers and employees, 363
  - evidence, 317–319
  - examples of (miscellaneous), 270, 408–414
  - goodwill, 263
  - identification of goods, 264–266
  - joint tortfeasors, 321, 368, 369
  - jointly owned goods, 370–374

## PERSONAL PROPERTY

---

- judgment for/costs, 309, 320, 321
  - jurisdiction of court, 314
  - knowledge of purchaser/vendor, 267, 271–273, 311, 351, 367
  - lessors/lessees, involving, 375–381
  - licensee’s rights, 382
  - lienholders/pledges, involving, 383–390
  - limitation periods, 432
  - minors, involving, 364–366
  - mistake, effect of, 267, 311
  - money, of, 265
  - mortgages/mortgagees, involving, 375, 391, 392
  - negotiable instruments, of, 265, 273, 312, 338
  - parties entitled to sue (general), 281, 284–286
  - parties liable for (general), 283
  - partnership property, 374
  - pleadings, 315, 316
  - proof of value of goods, 257
  - property subject to, 258–262
  - right to immediate possession, 256, 281, 282
  - sale of goods, involving, 393–395
  - shareholders, involving, 403–405
  - sheriffs and bailiffs, involving, 396–401
  - spouses, involving, 402
  - stockbrokers, involving, 403–405
  - third party rights/liability, 272, 273, 311, 325, 367, 393, 395
  - trees/timber, 258–260, 264
  - trustees, involving, 406, 407
  - uncopyrighted/unpatented knowledge, 262
  - waiver of/recovery of proceeds, 288
  - wrongful act required, 267–270
- copyright**, 8, 262, 297
- covenant in restraint of trade**, 47, 62
- covenant to pay**, 11
- Crown**
- claims against, 44, 45
  - conversion, by, 361
  - debts, 54.1
  - income tax claims, 206, 207
- custody**, *see* choses in possession
- damages, calculation of**, 294, 299
- damages, right to**, 11, 35, 50, 218, *see also* conversion, replevin, torts
- debts**, *see* assignments; book debts
- delivery**, *see* choses in possession
- detinue**, *see also* conversion; damages, right to; replevin; torts
- damages, 423–430
  - defences, 431
  - demand and refusal, 422
  - elements of, 415, 422
  - general, 415–421
  - innocent purchaser’s rights, 421
  - limitation periods, 432
  - parties not liable for, 420
  - pleadings, 419
  - property subject to action for, 418
  - purpose of action for, 416
  - restitution of goods vs. damages, 417, 426
- estoppel**, 160, 164
- evidence**, *see also* conversion
- parol evidence, 75, 79
  - set-off, agreements re, 187
- foreclosure, right to**, 12

## INDEX

---

- fraudulent preferences**, 55, 182
- garnishment**, 200–204
- goodwill**, 47, 263
- historical developments**, 1–3
- income tax**, 45, 206, 207
- indemnity contracts/agreements**, 30, 68
- infants**, *see* minors
- injunctions**, 51
- insurance contracts/proceeds**, 11, 30, 31, 61, 217
- jus tertii**, 253, 306, 421
- leases**
- alteration of, effect, 22
  - conversion by lessor/lessee, 375–381
- lost property**, *see* choses in possession
- minors**
- assignments by, enforceability of, 22
  - conversion involving, 364–366
- mortgages**
- absolute assignment vs. charge, 115
  - conversion actions, 375, 391, 392
  - covenant to pay, liability on, 30
  - equities governing, 158
  - foreclosure rights, 12
  - future advances, 39
- negotiable instruments**, 265, 273, 312, 338
- nuisance**, 51
- ownership**, *see* choses in possession
- parties**, *see* assignments
- partnerships**, 11, 43, 222, 374
- patents**, 262
- personal services contracts**, 53
- “personalty”**
- chattels personal, 7
  - chattels real, 6
  - general, 4, 5
- possession**, *see* choses in possession
- promissory notes**, 48, 74, 436
- rent**, 11, 46, 220
- replevin**, *see also* conversion; damages, right to; detinue; torts
- application for, 444–447
  - costs, 460
  - damages, 461–463
  - distress by landlord, effect, 463
  - duties of sheriff, 447
  - elements of action, 433
  - general, 433–435
  - innocent purchasers, 437
  - jurisdiction of court, 442, 443
  - liens, effect on, 463
  - parties entitled to seek, 440, 441
  - property recoverable, 436–439
  - replevin bond/security, 448–457
  - “replevy”, 433
  - setting aside order for, 458
- restraint of trade**, *see* covenant in restraint of trade
- restrictive covenants**, 11
- RRSPs**, 11, 215
- salaries**
- directors’ liability for, 56
  - fraudulent preferences, 55
  - general, 55
  - public employees/officers, 54
- sale of business**, 47, 62

## PERSONAL PROPERTY

---

**sale of goods**, 11, 24, 296, 311, 393–395

**sale of land**, 34, 104, 110, 133

**set-off**, *see also* assignments (equities governing)

- agreements re, evidence of, 187
- bills of exchange, 181
- equitable set-off, 176, 177, 179, 180, 186, 187, 188
- fraud, effect of, 183
- fraudulent preferences, 182
- general, 172, 173
- mutuality of debts/parties, 174
- part performance of contract, effect of, 178
- statutory set-off, 175

**shares**, 11, 295, 403–405

**stop orders**, 203

**subrogation**, 31

**tax refunds**, 45, 206, 207

**timber/trees**, 258–260, 264, 427

**torts**, *see also* conversion; damages, right to; detinue; replevin

- causes of action generally, 52
- damages, 11, 50
- injunctions, 51
- nuisance, 51

**trademarks**, 8

**wills**, 12, 21

**writing requirements**, *see* assignments

## Index to Planning and Zoning

(All references are to paragraph numbers.)

- actions**, 27, *see also*
- compensation rights**
- aeronautics/airports**, 109, 120
- Agricultural Land Commission (British Columbia)**, 85, 86, 105
- appeals (Alberta)**
  - decisions, timing/reasons for, 80
  - evidence, 81
  - further appeal, 79
  - general, 79
- appeals (Saskatchewan)**, 92
- building codes**, 238, 239, 244, 245
- building inspectors**, 246, 247
- building legislation**
  - Alberta, 238, 239
  - British Columbia, 240
  - Manitoba, 241, 242
  - Saskatchewan, 243
- building permits**
  - appeals/review, 253, 257, 262, 270, 272–279
  - application for, 256, 257, 268, 269
  - authority to require/issue, 251, 252
  - by-law changes, effect of, 261, 266
  - development charges, 266
  - discrimination, 271
  - duty to issue, 264, 266, 269
  - effect/operation of permit, 258–262
  - greenhouses, 255
  - liability of municipality re, 252, 259, 260, 265
  - mandamus to obtain, 272–279
  - mobile homes, 255
  - penalties for breach, 267
  - railways, 254
  - revocation of, 280, 281
  - school authorities, 256
  - stop work orders, 270
  - withholding of, 263
- buildings**
  - repairs/alterations, 248, 249
  - unsafe/ruinous, 245, 250
- by-laws (land titles registration)**, 26
- by-laws (quashing)**
  - bad faith, 21, 23
  - discretion of council, 24, 25
  - discrimination, 21, 22
  - fettering of discretion, 25
  - illegality, 18
  - non-compliance with legislation, 9
  - onus of proof, 21
  - uncertainty, 18–20
- compensation rights**
  - Alberta, 28
  - British Columbia, 30
  - diminution in value, 23
  - general, 23, 27
  - Manitoba, 31, 32
  - Saskatchewan, 28, 29
- common law rights of owners**, 4
- confiscatory effect of regulation**, 5, 146–152
- courts, role of**, 6
- development**, *see* **subdivision control; zoning/development**



**development charges, see  
subdivision control;  
zoning/development**

**definitions**

- abut/abutting, 33, 52
- accessory, 34
- accessory buildings, 34
- addition, 35, 50
- adjacent, 36
- agricultural, 37, 255
- alterations, 38, 50
- animal husbandry, 38
- apartment building, 47
- apartment hotel, 40
- apartment house, 40
- barber shop, 69
- basement, 41
- bed and breakfast, 53
- bedroom, 56
- church, 42
- community centre, 43
- construction, 44
- converted dwelling house, 46
- covered by buildings, 45
- dairy, 51, 74
- department store, 70
- detached dwelling house, 46, 72
- detached house, 46
- drugstore, 69
- duplex, 47
- dwelling, 48, 71, 72
- dwelling unit, 48
- eating and drinking establishment, 49
- enlargement, 50
- erection, 50, 248
- extension, 50
- factory, 51
- family, 72
- front/frontage/fronting, 52
- gas/service station, 69, 74, 163
- home-based business, 53
- intensive livestock facility, 54
- land, 55
- living accommodation, 56
- location, 57
- lot, 58
- machine shop, 69, 74
- mobile home, 59, 255
- owner, 61
- parcel, 62
- parcel of land, 58
- parking lot, 75
- pedestrian walkway, 60
- premises, 204
- private residence, 64
- rear lot line, 65
- reconstruction, 50
- recreation, 66
- repair, 50, 248, 249
- repair shop, 69
- resident/residential, 67
- residential building, 40
- restaurant, 74
- retail store/shop, 70, 74
- roomer, 68
- rooming house, 68
- seasonal dwelling, 71
- semi-detached dwelling, 47
- shop, 69, 74
- shopping centre, 70
- single family dwelling, 72
- sleeping rooms, 56
- store, 69, 74
- strata lot, 58
- structural alterations, 172, 201
- structure, 75, 76
- tenement, 47
- trailer, 59
- triplex, 47

## INDEX

---

- under construction, 206
- zoning/development, 73
- development plans, *see* master plans/schemes**
- direct control districts, 94, 97**
- discrimination, *see* by-laws (quashing); subdivision control; zoning/development**
- enforcement, *see* offences/enforcement**
- environmental issues, 7**
- fairness, *see* hearings (nature/purpose of); zoning/development**
- federal lands, 110**
- good faith, *see* by-laws (quashing); hearings (nature/purpose of); subdivision control; zoning/development**
- hearings (nature/purpose of)**
  - adjournments, 16
  - administrative vs. judicial, 8
  - advertising/re-advertising of, 16
  - disclosure of information by council, 9, 11, 15, 17
  - fairness, 10–12
  - fiduciary duties, 12
  - general, 8, 10
  - good faith, 8, 11
  - improper purpose, 8
  - legislative vs. judicial, 8, 10
  - notice of hearing, 9, 16, 17
  - permitted use, adding to by-law, 9
  - recreational vehicles, 46
  - requirement to hold, 9, 14, 15
  - strict compliance with statute, 9
  - time limits, 15
- hearings (review by court), 6, 13, *see also* subdivision control; zoning/development**
- improper purpose, *see* by-laws (quashing); hearings (nature/purpose of)**
- interests in land, 26**
- leases, 131**
- legislation (general), *see also* subdivision control; zoning/development**
  - Alberta, 77–81
  - British Columbia, 82–86
  - Manitoba, 87–89
  - Saskatchewan, 90–92
- legislation (interpretation), *see also* by-laws; definitions**
  - common law rights, 5
  - common use, 7
  - conflicting legislation, 7
  - general, 4, 7
  - role of court, 6
  - technical definitions, 7
- legislation (nature/purpose of), *see also* by-laws**
  - Alberta, 2
  - confiscatory nature, 5
  - general, 1
  - Manitoba, 3
  - remedial nature of, 5
- levies, *see* subdivision control; zoning/development**
- master plans/schemes**
  - Alberta, 100–102
  - British Columbia, 103–105
  - federal, 109–111
  - general, 98–100
  - Manitoba, 106
  - Saskatchewan, 107, 108

- offences/enforcement**
- contempt of court, 290
  - continuing nature of breach, 285
  - enactment of regulatory plan, effect of, 294
  - fines, limits of, 286
  - general, 282, 286, 289, 292
  - injunctions, 283, 284
  - joint owners, liability of, 288
  - mistake of law, 293
  - powers of court, 289
  - private citizens' rights, 287
  - quasi-criminal, 4
  - right of entry, 291
  - strict liability, 293
- parkland/parks**, 23
- planning areas/regions/districts**
- Alberta, 94
  - British Columbia, 95
  - general, 93
  - Manitoba, 96
  - Saskatchewan, 97
- planning boards**
- Alberta, 77–81
  - British Columbia, 82–86
  - Manitoba, 87–89
  - Saskatchewan, 90–92
- railways**, 254
- reserves**, 130, 132
- restrictive covenants**, 158, 159
- road allowances**, 112
- special planning areas**, 95, 96
- subdivision control**, *see also zoning/development*
- airport lands, 120
  - appeals/reviews, 119, 122, 125–129
  - applications generally, 113
  - approvals, effect of, 119
  - development charges/levies, 132–139
  - discretion of council/approving body, 115, 122–129
  - discrimination, 123, 125
  - fairness/natural justice, 127
  - good faith, 115, 122, 125
  - “interested parties”, 114
  - jurisdiction re, 115, 117, 119, 121
  - land use by-law, compliance with, 118, 119, 121, 124
  - leases, 131
  - negligence, liability of council, 116
  - notice of application, 114
  - old by-laws, effect of, 118
  - purpose of, 112
  - quasi-judicial act, as, 116, 127
  - reserves, 130, 132
  - right to subdivide, 118
  - road allowances, 112, 133
  - statutory powers re, 112
- zoning/development (general)**, *see also subdivision control*
- by-laws, effect of, 142, 155–157
  - confiscatory effect, 5, 146–152
  - Crown, effect on, 156
  - definitions, 73, 140–145
  - description of zones, 154
  - “development”, 140, 141
  - development charges/levies, 266
  - discrimination, 149, 271
  - down-zoning, 157
  - expropriation without indemnity, 149
  - freezes, 148
  - good faith, 148, 149
  - indirect zoning, 153
  - jurisdiction over, 141, 153

## INDEX

---

- liability/damages, 151
  - public use, land designated for, 150
  - restrictive covenants, 158, 159
  - spot-rezoning, 157
  - ultra vires by-laws, 154
  - “use”, 144
  - “zoning”, 145, 163
- zoning/development (legislation — Alberta)**
- appeals/review, 169, 176–183
  - applications, timing of, 164, 165
  - area redevelopment plans, 167
  - breach of by-law, penalties, 166
  - change in by-law, effect of, 170, 171
  - conditions on permits, 173, 174, 184, 185
  - development agreements, 173
  - discretion of approving body, 167, 168, 177
  - fairness/natural justice, 169, 182
  - land use by-laws, generally, 160, 161
  - land use by-laws, subject-matter, 162
  - land use policies, 188
  - levies/charges, 173
  - Lieutenant Governor in council, powers of, 188
  - non-conforming structures, 170, 171
  - permits, need for, 176
  - resource permits/licences, 187
  - rural residences, 186
  - “structural alterations”, 172
  - types of plans governing, 160
  - units per parcel, 175
  - uses, discretionary/permitted, 169
  - water supplies, 186
- zoning/development (legislation — British Columbia)**
- agricultural land, 212
  - board of variance, 208–210
  - change in by-law, effect of, 203, 204
  - conflict between legislation, 200
  - delegation of powers, 191, 198
  - derelict vehicles, 191
  - development charges, 197
  - discretion, fettering of, 193
  - farm animals, 194
  - general, 189, 199
  - golf courses, 194
  - highways, 207
  - jurisdiction of approving body, 189
  - mines/minerals, 196
  - non-conforming use, 201–209
  - official community plans, 211
  - permits generally, 197, 198
  - phased development agreement, 190
  - “premises”, 204
  - reference to court, 192
  - regional district, 211
  - regional plan, 211
  - repairs, 201
  - restaurants, 194
  - structural alterations, 201
  - “under construction”, 206
  - validity of by-laws, 194, 195
  - variances, 208–210
- zoning/development (legislation — Manitoba)**
- by-laws, municipal, 218
  - conditional uses, 224
  - development agreements, 216
  - non-conforming use, 219, 220
  - one dwelling per parcel, 214

## PLANNING AND ZONING

---

- permits, general, 214
- permits, withholding, 214
- variation orders, 220–223
- zoning by-law, adoption of, 213, 215
- zoning by-law, amendment of, 217
- zoning by-law, effect of, 219
- **zoning/development (legislation — Saskatchewan)**
  - agricultural activities, 229
  - appeals, 225, 233, 236
  - development agreements, 225
  - development plans, 227
  - direct control districts, 225
  - discretionary uses, 225
  - district planning commissions, 237
  - general, 225
  - municipal corporations, powers of, 231
  - non-conforming buildings, 232
  - permits, general, 226, 228
  - petitions/plebiscites, 234
  - zoning by-laws, general, 225, 226, 230
  - zoning by-laws, relaxation of, 235

## Index to Pleadings

(All references are to paragraph numbers.)

- absolute privilege attaches to pleadings, 2**
- admissions and denials**
  - duty to admit facts, 121–124
  - • allegations contained in pleadings of other parties, 121
  - • amend/withdrawal, 124
  - • British Columbia, 122
  - • cost consequences, 121
  - • use of notice to admit, 123
  - manner of pleading denial, 127–132
    - • evasion, 129, 130
    - • • general denial followed by specific denials, 130
    - • • struck out on summary application, 129
    - • general, 127, 128
    - • • general denial of each material allegation, 127
    - • • reference to number of paragraph in pleading, 128
    - • specific denials, 131, 132
    - • • action for money demand, 132
    - • • denial of contract, 131
  - rule against general denial, 126
  - silence as denial or admission, 125
- amendment of pleadings (amendment without leave)**
  - Alberta, 220–222
  - • before or after close of pleadings, 221
  - • before pleadings close, 220
  - • leave when amendment raises limitation issue, 222
  - British Columbia, 223, 224
  - • adding/removing/substituting party, 224
  - • with leave or consent, 223
  - • withdrawal of admission, 224
  - • without leave, 223
  - Manitoba, 225, 226
  - • additional money payable after commencement, 226
  - • by requisition before close of pleadings, 225
  - • fact occurring after commencement of action, 226
  - • leave of court, 225
  - Saskatchewan, 227–229
  - • added claim, 229
  - • application to disallow/impose terms, 228
  - • without leave prior to close of pleadings, 227
  - • written consent of all parties, 227
- amendment of pleadings (answer to amended pleading)**
  - Alberta, 256, 257
  - British Columbia, 258
  - Manitoba, 259
  - Saskatchewan, 260
- amendment of pleadings (appeal from allowance or refusal of)**
  - all evidence/all possible issues admitted, 348
  - interference with, 347
  - Supreme Court of Canada, 349
- amendment of pleadings (costs of amendment)**
  - party filing amendment, 262
  - success only by amendment at end of trial, 263

## PLEADINGS

---

- amendment of pleadings (delivery of amended pleading)**
  - Alberta, 250–252
  - substitution of new defendant where claim no longer in force, 252
  - time period within which filed/served, 250, 251
  - British Columbia, 253
  - Manitoba, 254
  - Saskatchewan, 255
- amendment of pleadings (disallowance of amendment), 261**
  - increase in damages, 280
  - injustice, 275
  - separate claim against multiple defendants made joint, 278
  - amendment affecting third persons, 294, 295
  - apportioning liability to another party, 295
  - requested at trial, 294
  - amendment at or after trial, 321–337
    - amendment after judgment, 337
    - at conclusion of trial, 326–336
      - amendment on court's own motion, 333, 334
      - bringing before jury real matter in issue, 334
      - no injustice to either party, 333
    - amendment to accord with evidence, 329–332
      - broadening issues, 329
      - evidence/argument upon issues raised in claim, 331
      - issue not pleaded/no evidence directed, 332
      - substance of claim, 330
  - amendment to conform with verdict, 335, 336
    - damages in excess of amount claimed, 335
    - on appeal, 336
  - general, 326–328
    - evidence available at discovery/prejudice, 328
    - setting up alternative cause of action, 327
    - where allowed, 326
  - general, 321–325
  - effect to defeat nonsuit, 324
  - general rule, 322
- amendment of pleadings (discretion of court)**
  - adding new cause of action, 275–288
    - cause accruing since commencement of action, 281, 282
      - certain circumstances, 281
      - fact arising after commencement in support of pleaded cause of action, 282
    - effect of expiry of limitation period, 283–288
      - Alberta, 286
      - analytical approach, 283
      - British Columbia, 284, 285
      - functional approach, 283
      - particulars of claim, 288
      - Saskatchewan, 287
    - general, 275–280
      - alleging existing fact omitted, 279
      - alternative relief arising from same transaction, 276
      - changing whole form of action, 277
      - economy and convenience, 275

## INDEX

---

- rights of third person affected, 323
- test, 321
- trial would have taken entirely different course, 325
- unreasonable delay, 321
- amendment on appeal, 338–346
- appeal from judge’s ruling on leave to amend, 346
- leave granted on terms, 344
- new cause of action not suggested in court below, 341
- new trial where opportunity for defendant to deal with matter, 343
- no application to amend/give evidence made at trial, 339
- pleadings not setting out necessary facts, 340
- question of fact not raised in court below, 342
- right to relief appearing at trial/ not taken by surprise, 338
- Supreme Court of Canada, 345
- amendment to correct misdescription of party, 305–315
- action brought in personal and not representative capacity, 314
- Alberta, 305
- British Columbia, 306
- John Doe defendant, 309
- Manitoba, 307
- misnomer of corporate plaintiff, 311
- new cause of action not set up/no embarrassment, 308
- reliance on limitation period, 312
- statute requiring action be brought by executor, 315
- substitution of individual plaintiff for corporation, 313
- test for misnomer, 310
- amendment to delete arbitrated issues, 320
- amendment to plead statute, 318, 319
- Statute of Frauds, 319
- technical defences, 318
- amendment to set up fraud, 316, 317
- conflict with original allegations, 317
- stage of proceeding, 316
- amendment to withdraw admission, 296–304
- admissions in pleadings not strictly construed, 303
- British Columbia, 297
- court of its own motion, 304
- inadvertently made and not correct, 298
- issues that should be resolved/no prejudice, 301
- leave of court after close of pleadings, 296
- made before trial, 302
- relating solely to question of law, 299
- unequivocal admission of liability, 300
- general, 264–274
- after conclusion of discovery process, 274
- amendment frivolous, 271
- asserting counterclaim after expiry of time, 268
- challenge to when consented to, 267
- delay in amending, 270
- information obtained during discovery, 273
- mere technicalities, 271



## PLEADINGS

---

- party acting mala fide, 271
- plaintiff's choice not to pursue course of action, 272
- prima facie meritorious claim, 266
- test, 264
- where leave may be granted, 269
- without injustice and necessary to determine issues, 265
- new ground of defence, 289–293
- apportioning liability to another party, 293
- arguable, 290
- defeating claim, 291
- futile, 290
- novus actus interveniens, 292
- test, 289
- amendment of pleadings (Federal Court)**
- amendment with leave, 478–496
- change of capacity in which party sues, 494
- discretion of court, 480–489
  - amendment after judgment setting up new and different case, 489
  - amendment raising arguable defence, 486
  - case management deadline, 483
  - compensation in costs, 480
  - costs where defendant successful on defence raised by amendment, 488
  - disclosure of new cause of action, 482
  - editorial amendments, 483
  - injustice, 480
  - no editing by court, 487
- prejudice/whether necessary for full/fair hearing, 481
- terms, 481
- unnecessary/irrelevant amendment, 485
- withdrawal of admission, 484
- general, 478, 479
  - calculation of period of filing/service, 479
  - during or after hearing, 478
- manner of amending, 495
- misnomer of parties, 490–493
  - expiry of limitation period, 490
  - name of corporate party changed, 493
  - new cause of action, 490
  - new claimant and expiry of limitation period, 491
  - no reasonable doubt as to identity, 490
  - substituting Her Majesty for Minister, 492
- service of amended pleading, 496
- amendment without leave, 474–477
- calculation of date of service, 477
- costs, 475
- limitation period, 476
- no substitution of party, 476
- amendment of pleadings (leave to amend)**
- amendments at trial, 240–242
  - Alberta, 241
  - British Columbia, 242
  - Manitoba, 240
- practice on application, 230–239
  - addition/substitution of party (Alberta), 235, 236

## INDEX

---

- • after pleadings close (Alberta), 233
- • amendment before court in full, 232
- • before or after close of pleadings (Alberta), 234
- • insufficient material in supporting affidavit, 231
- • insufficient particularity, 230
- • not granted ex parte, 239
- • prima facie meritorious, 230
- • Saskatchewan, 237, 238
- amendment of pleadings (manner of amending)**
  - Alberta, 243, 244
  - amendments made at trial, 249
  - British Columbia, 245
  - Manitoba, 246, 247
  - Saskatchewan, 248
- bills of exchange**
  - statement of claim, 166–168
  - • filing of instrument with registrar (Saskatchewan), 168
  - • holder for value in due course, 167
  - • presentment for payment and notice of dishonor, 166
  - Statement of defence, 169
- contents**, 19–24
  - Alberta, 20
  - dates/numbers expressed in figures, 19
  - more than one cause of action or defence, 22
  - paragraphs numbered consecutively, 19
  - separate paragraph for each allegation, 21
  - several defendants joined in action, 23
  - use of and/or improper, 24
- counterclaim**
  - addition of counterclaim after time for pleadings, 152
  - right to counterclaim, 148–151
    - • appointment of receiver, 149
    - • counterclaim by plaintiff against defendant, 151
    - • joinder of co-plaintiff in counterclaim, 150
    - • leave required by statute, 148
  - matters of counterclaim, 144–147
    - • counterclaim against plaintiff and others, 146, 147
      - • • conditions, 146
      - • • grounds of relief, 146
      - • • plaintiff not interested in what is claimed from third party, 147
    - • general, 144, 145
      - • • almost any claim, 144
      - • • where no immediate right to bring action, 145
  - trial of counterclaim, 153–157
    - • Alberta, 153
    - • British Columbia, 153
    - • plaintiff's action stayed/discontinued/dismissed, 157
    - • Saskatchewan, 154, 155
    - • stay of counterclaim, 156
- damages**, 111, 112
  - amendment to set up general damages, 111
  - general, 112
  - no denial necessary, 112
  - special, 112
- delivery of pleadings**
  - close of pleadings, 45–48
    - • Alberta, 45
    - • British Columbia, 46

## PLEADINGS

---

- • Manitoba, 47
- • order allowing amendment, 48
- counterclaim, 37
- defence to counterclaim, 38–42
  - • adding new party, 42
  - • Alberta, 38
  - • British Columbia, 39
  - • Manitoba, 40
  - • Saskatchewan, 41
  - general, 25–27
    - • Alberta, 26
    - • British Columbia, 27
    - • Manitoba and Saskatchewan, 25
  - reply, 35, 36
    - • delivery after expiry of time, 36
    - • time for delivery, 35
  - statement of claim or notice of civil claim, 28
  - statement of defence, 29–34
    - • Alberta, 29
    - • British Columbia, 30
    - • Manitoba, 31, 32
    - • Saskatchewan, 33, 34
  - subsequent pleadings, 43, 44
    - • after judgment entered, 44
    - • rules, 43
- **different version of facts**, 105
- **Federal Court pleadings (content of)**
  - admissions and denials, 452–457
    - • bare denial of agreement, 453
    - • constitution as partnership/association/corporation, 455
    - • denials, 454
    - • facts not admitted deemed denied, 452
    - • proof of right to claim in representative capacity, 455
  - notice to admit, 457
  - third party not defending third party or plaintiff's claim, 456
  - conditions precedent, 447
  - defence of tender, 446
  - documents and conversations, 448
  - facts subsequent to commencement of action, 450
    - general, 432–434
      - • basic facts on which supplicant makes claim, 434
      - • each allegation set out in separate paragraph, 433
      - • specifics for form to be used, 432
    - inconsistent allegations, 449
    - matters to be pleaded specifically, 451
    - points of law, 444, 445
      - • conclusion of law supported by material facts, 445
      - • not accepted as substitute for material facts, 444
    - prayer for relief, 442, 443
      - • amount of general damages, 442
      - • nature of damages claimed, 443
      - • value of property sought to be recovered, 443
      - • whether action simplified action, 443
      - • whether monetary relief exceeds \$50,000, 443
    - set-off and counterclaim, 458–460
      - • appointment of receiver and mutuality, 459
      - • inclusion in defence, 458
      - • jurisdiction to hear both action/counterclaim, 460

- statement of material facts, 435–441
  - • allegation merely defining provision of statute, 440
  - • concise, 435
  - • not to include facts/evidence well known to opponent, 436
  - • not to include evidence, 435
  - • patent infringement action, 437
  - • pleading foreign statute, 439
  - • relief against threatened/apprehended harm, 438
  - • words “is believed”, 441
- Federal Court pleadings (delivery of)**
  - answer or reply, 423, 424
  - close of pleadings, 430, 431
  - counterclaims, 425–427
    - • claim against person not already party, 426
    - • defendant to counterclaim already a party, 427
    - • same document as statement of defence, 425
    - • second style of cause, 425
  - defence, 422
  - general, 420
  - statement of claim, 421
  - subsequent pleadings, 429
  - third party claims, 428
- Federal Court pleadings (form and arrangement)**
  - each allegation set out in separate paragraph, 419
  - English or French, 416
  - heading, 416
  - information and signature of solicitor, 417
  - style of cause, 418
- Federal Court pleadings (general)**
  - Federal Court Rules, 415
  - originating document, 414
  - pleadings, 414
- fraud, 99**
- fraudulent conveyances**
  - allegations of fraud and insolvency, 172, 173
    - • definite and precise, 172
    - • setting aside of transaction as preference where fraud not proved, 173
  - allegations of indebtedness, 171
  - representative capacity of plaintiff, 170
- illegality, 101–104**
  - connection between illegality and cause of action, 101
  - defendant’s own breach of law as defence, 104
  - rule ex turpi causa, 103
  - surrounding circumstances re illegality of contract, 102
- malicious prosecution, 174, 175**
  - essential elements, 174
  - proper form of defence, 175
- matters to be specifically pleaded (other), 113–120**
  - bare allegation of breach of fiduciary duty, 118
  - bare trustee allegation in action involving land, 114
  - defamatory statements, 115
  - defence that assignment of lease invalid, 116
  - plaintiff lacking title re claim for specific performance, 113
  - exclusionary clause, 120
  - statutory provision specifying consent, 119

- ultra vires statute, 117
- misrepresentation**, 100
- particulars (Federal Court)**
  - general, 461–464
  - condition of mind of any person, 461
  - discovery begun but not concluded, 462
  - items making up offer of compensation by Crown, 464
  - misrepresentation/fraud/breach of trust/willful default/undue influence, 461
  - stage of proceedings, 463
  - grounds for order, 467–473
  - considerations, 467, 468
  - denial sufficient to allow plaintiff to understand position, 472
  - evidence/allegations where applicant has onus, 471
  - extent of particulars, 470
  - fishing expedition, 469
  - function of particulars, 467
  - matters which should readily be known, 473
  - order for particulars, 465, 466
  - enlarging time for delivery, 466
  - on motion, 465
- particulars (for purposes of pleading or purposes of trial)**
  - general, 209
  - particulars after close of pleadings, 210
  - postponement until after discovery, 211–214
  - discovery resulting in disclosure, 211
  - facts within knowledge of applicant, 214
  - matter of discretion, 212
- some before discovery and some after, 213
- particulars (practice on application)**
  - affidavit by applicant personally, 190
  - affidavit in support, 189
  - no necessity for demand and refusal (Manitoba), 191
  - putting in of defence, 188
- particulars (refusal of)**
  - delay, 217
  - request in effect for argument/reasoning, 218
  - something material to case, 216
  - unreasonable/embarrassment, 215
- particulars (rules of court)**
  - Alberta, 179
  - British Columbia, 180–184
  - demand in writing, 180
  - demand not operating as stay/extension of time, 183
  - failure to comply with order, 184
  - known at date of pleading, 181
  - stage of litigation, 182
  - Manitoba, 185
  - Saskatchewan, 186, 187
- particulars (sufficiency of particulars delivered)**, 219
- particulars (to be ordered)**
  - general, 192, 193
  - not a substitute for pre-trial discovery, 193
  - reasonable and realistic, 192
  - multiple parties, 198, 199
  - defamatory material, 199
  - defendants affected, 198
  - particulars of evidence, 197

## INDEX

---

- specific matters, 200–208
- • damages, 200–202
  - • • general damages and payment into court, 202
  - • • loss of income, 201
  - • • special damages, 200
- • defamation, 203–205
  - • • Alberta, 204
  - • • British Columbia, 205
  - • • Saskatchewan, 203
- • fraud or misrepresentation, 206–208
  - • • all cases where relied on, 206
  - • • claim of privilege for particulars, 207
  - • • fraud by third person not party to action, 208
- vague or general allegations, 194–196
  - • causes of action based on evidence in defendant's hands, 196
  - • form of statement of nature of case relied on, 195
  - • pleading stating something made known to opposite party, 194
- pleas in confession and avoidance**
  - estoppel, 94
  - general, 92, 93
    - • laches, 92
    - • lack of consideration, 92
    - • non est factum, 92
    - • novation, 92
    - • novus actus interveniens, 92
    - • relief on equitable grounds, 93
    - • revocation of guarantee, 92
    - • ultimate negligence, 93
    - • waiver, 92
  - res judicata, 95
  - status or capacity to sue, 96–98
    - • representative capacity, 96
    - • status of corporation, 97, 98
      - • • deemed to be admitted, 97
      - • • plea of lack of registration of foreign corporation, 98
- prayer for relief**
  - alternative relief, 82–87
    - • claim of rescission implied, 85
    - • defendant cannot bind/restrict plaintiff to one remedy, 86
    - • overlap between pleadings in contract/fiduciary duty, 87
    - • specific performance or rescission or damages, 83, 84
    - • stated separately, 82
  - claim for damages, 79–81
    - • Alberta, 79
    - • amount claimed by several plaintiffs, 80
    - • silence on particular claim, 81
    - • special damages, 80
  - general, 77, 78
    - • inclusion of allegations of fact to support, 77
    - • paragraphs from body of claim struck, 78
    - • state specifically either simply or in alternative, 77
  - general or other relief, 88–90
    - • claim not ancillary to main specific relief, 89
    - • failure to plead treated as admission only re specific relief, 90
    - • not necessary to ask for, 88
- reply and defence to counterclaim**
  - defence to counterclaim, 164, 165

## PLEADINGS

---

- • defendant added by counterclaim, 165
- • denial where no further pleading in answer to counterclaim, 164
- departure from statement of claim, 162, 163
  - • no new and inconsistent claim/fact, 162
  - • plea of fraud, 163
- function of reply, 158
- matters to be pleaded in reply, 159–161
- • reasonable excuse for lack of statutory notice, 161
- • res judicata, 159
- • ultimate negligence, 160
- set-off**
  - costs, 143
  - exceptions, 137–141
    - • action commenced by company in receivership, 140
    - • arising out of same transaction, 138
    - • loss of profits from seller's negligence, 141
    - • purpose of British Columbia rule, 139
    - • unliquidated damages, 137
  - general, 133–136
    - • Alberta, 136
    - • counterclaim, 133
    - • equitable set-off, 135
    - • mutual debts, 133
    - • party claiming unliquidated damages, 133
    - • separate debt against joint claim, 134
    - • where arising, 133
  - existing right of recovery, 142
- setting aside judgment for fraud**
  - discovery since judgment given, 176
  - new evidence, 178
  - perjury, 176, 177
- statement of material facts**
  - alleging notice, 66
  - conditions of mind, 67
  - conditions precedent, 61–65
    - • matters to be pleaded, 64, 65
      - • • assignee suing without joining assignor, 64
      - • • compliance with statutory requirement, 64
      - • • defence that foreign corporation not having status, 64
      - • • plaintiff in occupier's liability action, 65
      - • • vendor suing for balance on purchase of land, 64
  - necessity of pleading, 61–63
    - • • defendant pleading non-performance, 62
    - • • intention to contest performance, 63
    - • • performance of condition precedent, 61
  - documents and conversations, 68, 69
  - effect of, 68
  - precise words of, 68
  - relationship implied from series of, 69
  - facts essential to success, 55, 56
    - • claim looked at as whole to ascertain relief, 55
    - • omission of allegation necessary to success, 56
  - facts presumed by law, 59, 60
    - • general, 59
    - • res ipsa loquitur, 60

## INDEX

---

- general, 49–51
- • assumptions re facts underlying claim, 50
- • issues to be tried clearly defined, 49
- • standing alone without resort to other document, 51
- inconsistent allegations, 70
- jurisdictional averments, 74–76
- • averments ousting jurisdiction, 75, 76
  - • • conditional upon defendant having assets in province, 76
  - • • dismissal or transfer to proper court, 75
  - • • removal from files of court, 75
- • contesting jurisdiction, 74
- matters arising since commencement of action, 71–73
  - • amendment, 72, 73
  - • may plead, 71
  - • pleading of evidence, 52–54
    - • • evidentiary facts, 53
    - • • “informed”, “says”, “believed”, 54
    - • • material facts and not evidence, 52
  - • points of law, 57, 58
    - • • may raise any point of law, 57
    - • • pleading of conclusion of law, 58
  - • urging of at trial, 57
- statutes**
  - limitation statutes and statute of frauds, 110
  - pleading facts, 106, 107
    - • every fact necessary to bring case within statute, 107
    - • liability/relief from liability existing under statute, 106
    - • reference to statute, 108, 109
    - • reference to specific sections (Saskatchewan), 108
    - • regulations/orders in council, 109
    - • specific reference not necessary, 108
- striking out pleadings (abuse of process)**
  - action brought on existing judgment, 401
  - attacking legislation as constitutionally invalid, 398
  - relitigation of issues decided against party in another jurisdiction, 399
  - rules, 397
  - ulterior purpose, 400
- striking out pleadings (appeal from order striking out), 413**
- striking out pleadings (defects in commencing proceedings)**
  - defects in form, 404
  - failure to comply with rules, 404
  - originating document other than one employed, 403
- striking out pleadings (embarrassing pleadings)**
  - general, 385–387
    - • defined, 385
    - • not identical to no cause of action disclosed, 386
    - • statement of defence, 387
  - obscure or ambiguous pleading, 392
  - prolixity and matters of evidence, 388–391
    - • matters of evidence raising collateral issues, 391



## PLEADINGS

---

- • pleadings containing matters of evidence, 390
- • prolixity defined, 388
- • test, 389
- unnecessary averments, 393, 394
- striking out pleadings (Federal Court)**
- abuse of process, 525–528
- • before pleading to statement of claim, 527
- • challenge to constitutional validity of legislation, 526
- • incapable of amendment, 525
- • prior action in provincial court, 528
- departure from previous pleading, 523, 524
- • amendment to previous pleading, 523
- • permit amendment rather than striking out, 524
- general, 497–503
- • before trial and before replying to pleading, 499
- • costs where affidavit argumentative/improper, 502
- • frivolous or vexatious, 498
- • grounds, 497
- • motion without attorning to jurisdiction, 500
- • obvious clerical errors, 501
- • one chance, 503
- • reasonable cause of action, 498
- immaterial or redundant pleadings, 513–515
- • defective/irrelevant/inadequate, 514
- • no useful purpose in striking descriptive phrase, 513
- • surplus statements, 515
- no reasonable cause of action or defence, 504–512
- • appellate intervention, 512
- • disputed or uncertain points of law, 505
- • evidence not admissible, 509
- • evidence where jurisdiction of court contested, 510
- • logical/arguable extension of established law, 506
- • novel plea, 506
- • particulars disclosing reasonable cause of action, 507
- • plain and obvious cases, 504
- • premature, 508, 511
- pleadings tending to prejudice or delay fair trial, 521, 522
- • ambiguous in defining acts of defendant, 521
- • pleading of evidence, 522
- • scandalous, frivolous or vexatious pleadings, 516–520
- • failure to set out facts/prayer for relief within jurisdiction of court, 518
- • incapable of being amended, 516
- • plaintiff potentially benefitting from favorable result, 519
- • prior to filing statement of defence, 517
- • provincial statutes prohibiting vexatious proceedings, 520
- striking out pleadings (frivolous or vexatious pleadings)**
- false plea, 384
- multiple proceedings, 380–383
- • discovery of new evidence, 382
- • judgment obtained by fraud, 383

## INDEX

---

- • purpose which might have been effected in prior action, 380
- • res judicata, 381
- • power of court, 377–379
- • inherent jurisdiction to prevent abuse of process, 377
- • plaintiff having no legal right to bring action, 378
- • strong possibility of successful defence, 379
- striking out pleadings (lack of jurisdiction), 402**
- striking out pleadings (no reasonable cause of action or defence)**
  - • cause of action, 358–373
  - • grounds for striking out, 358–368
    - • • arguable issue, 360
    - • • cause of action defined, 361
    - • • difficult question of general importance, 360
    - • • evidence in support not admissible, 366
    - • • limitation period, 363
    - • • matter only of academic interest, 364
    - • • matters to be considered, 359
    - • • novel cause of action, 365
    - • • offending principles of pleading, 358
    - • • party not likely to succeed at trial, 366
    - • • pleadings demurrable on their face, 358
    - • • prayer for relief not standing alone, 367
    - • • question fit to be tried, 360
    - • • reasonable cause of action, 362
  - • • second statement of claim in same cause, 368
  - • defence, 374–376
  - • defence in law shown, 376
  - • onus on defendant, 375
  - • test, 374
  - • general, 350–357
  - • appellate review of discretionary decision, 353, 356
  - • arguable, difficult or important point of law, 352
  - • cured by amendment, 355
  - • denied where greater probability of injustice results, 354
  - • plea clearly, plainly or obviously bad, 350
  - • test, 351
  - • test re claim alleging Charter violation, 357
- • practice on application, 369–373
  - • extrinsic evidence, 369
  - • facts presumed true, 370
  - • filing and service of statement of defence (Manitoba), 373
  - • special costs in favour of defendant, 372
  - • striking out name of party as defendant, 371
- striking out pleadings (practice on application)**
  - • appeal of order granting leave to amend, 406
  - • application to amend considered before, 407
  - • delay, 405
  - • leave to apply to substitute new pleadings (Alberta), 411
  - • limited to one motion to strike, 408
  - • special costs (British Columbia), 412

## PLEADINGS

---

- summary matter without full trial, 410
- supporting affidavit, 409
- striking out pleadings (scandalous and irrelevant pleadings)**
- irrelevant pleadings are scandalous, 395
- struck out only if embarrassing, 396
- style of cause, 3–18**
- general, 3–5
- appeal by defendant, 5
- names of parties, 3
- plaintiff/defendant or applicant/respondent, 4
- pseudonym, 3
- particular proceedings, 6–18
- businesses and partnerships, 8–12
- liberty to defend individually, 11
- partners, 9
- responding pleading to petition by partnership, 10
- rule in *Foss v. Harbottle*, 12
- sole proprietor, 8
- persons under legal disability, 13–18
- Alberta, 14
- amendment to correct style of cause, 18
- British Columbia, 15
- Manitoba, 16
- Saskatchewan, 17
- special provisions, 13
- representative actions, 6, 7
- British Columbia, 7
- distinguished by style of cause, 6

## Index to Pledges

(All references are to paragraph numbers.)

- acting in good faith (Ontario), 74**
- bailment**
  - bailee for reward, 14, 15
  - pledge as, 1, 3
  - pledge distinguished, 21
- bankers, pledges by, 70**
- bankruptcy of pledgor, 87**
- bills of lading, 7, 8, 26–29**
- buyer in possession, 76, 77**
- contracts, pledge of, 89**
- conversion of goods, *see also*  
sale of pledged property.**
  - damages, 19, 39, 40, 54, 58–62
  - defences, 84
  - failure to demand payment, 38
  - general, 37
  - promissory notes, wrongful surrender, 39
- creation of pledge, 6**
- creditors' rights, 88**
- damages, *see* conversion of goods.**
- debentures, 57**
- definition, 1, 4, 5**
- delivery**
  - actual, 7
  - constructive, 7, 8
  - parting with possession, 10
  - prior to pledge occurring, 9
  - question of fact, 6
  - requirement for, 6
  - third party, by, 7
- equitable pledges, 32**
- estoppel, 79**
- evidence**
  - parol evidence, 33
  - pledgee's negligence, 35
  - title to property, 83, 84
- execution creditors, rights of, 88**
- executors, pledges by, 68**
- factors**
  - legislation, 5, 72
  - pledgees distinguished, 23
- insurance of property, 63**
- interpleader, 64, 65**
- joint debtors, 47**
- lashes**
  - pledgee's, 62
  - pledgor's, 53
- legislation affecting pledges**
  - banking, 24, 25
  - bills of lading, 26–29
  - factors, 5
  - loan companies, 30
  - mercantile law amendment legislation, 26–29
  - pawnbrokers, 90
  - personal property security, 75, 77
  - trust companies, 30
  - warehouse receipts, 26–29
  - winding-up, 4
- liens, distinguished, 17–19**
- loan companies, pledges by, 30**
- masters of ships, pledges by, 71**
- mercantile agents, 73**
- mortgage**
  - pledge as, 4
  - pledge distinguished, 20

## PLEDGES

---

- nature of pledge**, 1–5
- negligence**
  - preservation of property, 14, 15, 34
  - sale of property, 49, 50
- “pawn”**, 1
- “pawnbroker”**, 96
- pawnbroker legislation (Saskatchewan)**, 97, 98, 100
- pawnbrokers (British Columbia and Ontario)**
  - charges, 94
  - definitions, 93
  - duties of, 94, 95
  - duty and standard of care, 14, 15
  - interest rates, 94
  - legislation governing, 90
  - licensing, 94
  - offences and penalties, 95
  - property acceptable, 95
  - redemption periods, 94, 95
  - return of property, 14–16
- pawnbrokers (Manitoba)**, 91
- pawnbrokers, police authority and**, 99
- “pawnbroking”**, 92
- personal property security legislation**, 75, 77
- “pledge”**, 1, 4, 5
- pledgee’s duties and liabilities, *see also* sale of pledged property.**
  - care of property, 14, 15, 34
  - conversion of goods, 19, 37–40
  - demand for payment, 38
  - fiduciary, 50
  - inquiry into pledgor’s title, 80
  - preservation of pledgor’s rights, 36
  - realizing on security, 50
  - repledging security, 44, 45
  - return of personal property, 11, 16, 41–43
- pledgee’s rights, *see also* sale of pledged property.**
  - action for repayment, 31
  - interpleader rights, 64, 65
  - pledge of shares, 66
  - sale of property, general, 2, 12, 13, 17
- pledgor’s rights, *see also* conversion; pledgee’s duties and liabilities; redemption by pledgor.**
  - joint debtors’ rights, 47
  - pledge of shares, 66
  - preservation by pledgee, 36
  - return of property, 11, 16, 41–46, 82–84
- possession**
  - actual, 7
  - constructive, 7, 8
  - delivery required, 6
  - parting with possession, 10
  - prior to pledge occurring, 9
  - question of fact, 6
  - third party, by, 7
- property pledged, *see also* sale of pledged property.**
  - general property interest, 12, 20
  - special property interest, 12, 13, 18, 20, 21
- redemption by pledgor**
  - action by pledgor, 46
  - demand for return, 41
  - general, 11, 41
  - joint debtors’ rights, 47
  - identification of property, 16, 43
  - repledge by pledgee, 44

## INDEX

---

- timing of, 42, 52
- transferred by pledgee, 45
- right in personam, pledge as, 2**
- right in rem, pledge as, 2**
- sale of pledged property, *see***  
***also* conversion of goods.**
  - conduct of sale, 55, 56
  - debentures, 57
  - demand for payment required, 38, 51, 52
  - duty of care, 49, 50
  - pledgee, to, 56
  - ratification by pledgor, 53
  - right of pledgee, 2, 12, 13, 17, 38, 48
  - standard of care, 50
  - time for payment, 52
- seller in possession, 75**
- severance of pledge and loan contracts, 31**
- shares, pledge of, 66, 67, 85, 88**
- ship's master, pledges by, 71**
- subject of pledge, *see* pledged.**
- third party rights, *see***  
**unauthorized dealings.**
- tracing, 85, 86**
- trust companies, pledges by, 30**
- trusts**
  - pledges as, 1
  - pledges distinguished, 22
- unauthorized dealings**
  - buyer in possession, 76, 77
  - duty of pledgee to investigate, 80
  - estoppel against owner, 79
  - legislation governing, general, 72
  - mercantile agents, by, 73
  - ostensible authority, effect, 78
  - recovery by owner, 82, 83
  - seller in possession, 75
  - third party rights generally, 68
  - tracing proceeds, 85, 86
- warehouse receipts, 26–29**
- warranty of title, 81**
- winding-up legislation, 4**

## Index to Police

*(All references are to paragraph numbers.)*

- 911 calls, 12
- action in negligence against police, standard of care, 96
- action in negligence by police, 95
- animal control officer, 3
- arrest, completion of, 37
- arrest, discretionary powers, 40
- arrest, grounds for making, 26, 34
- arrest in civil proceeding, 17
- arrest, informing person of reason for, 36, 87
- arrest, officer's duty to identify self, 39
- arrest, person's rights upon, 38
- arrest, reasonable and probable grounds for, 25, 35
- arrest solely for investigation, 69
- arrest without warrant, 24, 26–30
- assault allegedly by police officer, 91, 92
- assault on peace officer, 82–85
- avoiding arrest, 97
- blood sample, 59
- bodily harm, grievous, 48
- bodily substances, samples taken, 53, 59
- Canadian Charter of Rights and Freedoms, 4, 11, 15, 31, 51, 103
- Canadian Security Intelligence Service, 159–174
  - Charter and, 11
- complaints against police, 5
- confession, 68
- conservation officer, 3
- Constables Protection Act (1750), 106
- Constitution Act, 1867, 4, 5
- contempt of court by police officer, 20
- continuance of the injury or damage defined, 107
- criminal process used to settle civil dispute, 21
- cruel and unusual punishment, 67
- damages for unlawful search and seizure, 61
- damnum sine injuria, 97
- designated policing and law enforcement, 393–399
- detention, lawful, 37
- DNA analysis, 53
- drugs, 63
- dwelling house, entry by warrant, 32
- dwelling house, forcible entry of, 12, 30, 31, 33, 55, 58
- entrapment, 70
- escape, use of force to prevent, 46
- evidence, exclusion of, 59
- evidence, unnecessary use of force, 44
- excessive force, 50
- execution of process by police officer, 19

- exigent circumstances**, 33
- false arrest and imprisonment**, 21, 88, 89
- false identity as obstruction of peace officer**, 77
- fingerprinting**, 52
- jurisdiction and, 10
- firearm, use of**, 47, 49, 63
- force, excessive**, 50, 97
- force, use of**, 41, 43, 46, 47, 49, 54, 120
- forcible entry of dwelling house**, 12
- forest ranger**, 74
- game warden**, 2
- gaming and betting**, 63
- handcuffs, use of**, 45
- highway patrol**, 14
- hot pursuit**, 31
- hybrid offence**, 28
- Identification of Criminals Act (Can.)**, 66
- identification procedures, use of**, 52
- Indian band constable**, 3
- informing person of reason for arrest**, 36
- injured officer, right to bring civil action**, 95
- interrogation**, 65
- lawful custody, escaping**, 28
- liability, and protection from**
- abuse of process, 124
  - negligence, 94–100
  - search warrants, 101–105
  - statutory protection, 106–123
  - trespass to person, 87–93
- liability of police, negligence**, 94, *see also* **Public Authorities Protection Act (Ont.)**
- liquor enforcement officer**, 3
- liquor, search and seizure powers and**, 64
- malicious prosecution**, 21
- mesne process, arrest on**, 23
- military police**, 3, 10
- motor vehicle, seizure of**, 60
- municipal by-law enforcement officer**, 2, 10, 98
- municipal constable, search and seizure powers**, 64, 74, 98
- municipal police**
- Alberta, 207–224, 308–322
  - appointment and authority, 284–286
  - British Columbia, 225–236, 361–374
  - discipline and complaint, 296–307
  - employment and dismissal, 287–295
  - liability for acts of municipal police, 385–388
  - Manitoba, 237–241, 323–343
  - Ontario, 255–283, 375–384
  - police commissions, 389, 390
  - Saskatchewan, 242–244, 344–350
- municipality, liability in costs for police offence or tort**, 108
- negligence, police, standard of care**, 96
- obstruction of peace officer**, 72, 74–77, 79–81
- passive resistance distinguished from obstruction of peace officer**, 76



## INDEX

---

- peace officer, defined, 1**
- person acting as police officer, 7, 9**
- police**
- agent of Attorney General, 15
  - complaints against, 5
  - defined, 1
  - discretionary power, 86
  - duties, 6, 8, 11, 36, 69, 78, 79, 83, 89
  - execution of process, 19
  - jurisdiction over, 4, 28
  - liability in negligence, 94
  - right to bring civil action, 95
  - status as public officer, 99
  - witnesses in police complaint, 13
- police board, liability in costs for police offence or tort, 108, 110**
- Police Services Act (Ont.), 110**
- police village, 400**
- prison guard, 3**
- prosecutor, police constable as, 7, 15**
- provincial police**
- Alberta, 175–180
  - British Columbia, 188–193
  - generally, 174
  - Manitoba, 183–187
  - Ontario, 199–206
  - Saskatchewan, 194–198
- Public Authorities Protection Act (Ont.), 109, 111–114**
- public duty, defined, 116**
- racial profiling, 16**
- radar patrol, limitation of liability and, 115**
- raid, unlawful, 117**
- railway police, 391, 392**
- random spot checks, 11**
- reasonable and probable grounds for arrest, 25, 26**
- restraints on prisoner, extra, 51**
- revolver, use of, 47, 49**
- riot, use of force and, 47**
- Royal Canadian Mounted Police, 74, 93, 122**
- discharge, 151
  - disciplinary proceedings, 135–150
  - duties, 131
  - generally, 125
  - independence from control of executive government, 133
  - jurisdiction, 126
  - labour relations, 153
  - organization, 127
  - pensions, 152
  - powers generally, 128
  - procedure, disciplinary investigation, 134
  - protection from liability, 132
  - public complaints, 154–158
  - trial procedure, unlawful police conduct and, 124
  - writs of assistance, 129, 130
- search and seizure, lawful, 62–64**
- search and seizure, unlawful, 59, 61**
- search of premises, 55**
- search warrant, content of, 56, 102, 103**
- search warrant, defective, 101–103**
- search warrant, general, 101**
- search warrant, powers incidental to use of, 57**

POLICE

---

- search without warrant, 59
- seizure of motor vehicle, 60
- seizure of property, 18, 62, 101
- sheriff's bailiff, 74
- strip search, 51
- suicide, officer's execution of  
duty and prevention of, 83
- taking weapon of peace officer,  
73
- trespasser, police officer as, 22,  
83
- trial procedure, unlawful police  
conduct and, 124
- vehicle stops, random, 11
- warrant, entry of dwelling house,  
32, *see also* search warrant
- wildlife officer, 3

## Index to Practice

(All references are to paragraph numbers.)

### **abuse of process, 8**

#### **action, commencing an**

- notice of civil claim, 21, 29–32
- nullities and irregularities in originating process, 23–25
- prohibition by court, 22
- service of originating notice, 26
- statement of claim, 21, 27,28

#### **affidavit**

- commissioning of oath, 273, 275
- corporate party, 277, 297
- corrections or alterations to, 278
- cross-examination on, 300–308
- duty of lawyer to court, 284
- exhibits to, 279, 281
- federal court, 736–749
- filing of, 285, 286
- form of, 270–272, 274, 298
- information and belief, statements made on, 291–298
- irregularities, 271, 280
- of service, 111
- required by statute, 283
- scandalous material, 299
- service of, Alberta, 287
- service of, British Columbia, 288, 289
- service of, Saskatchewan, 290
- sources of information, 293–295, 297
- supreme Court of Canada, 616–620
- use at trial, 334, 335
- use of, 282
- where deponent unable to read affidavit, 276

#### **appeal books**

- Alberta, 521–525
- British Columbia, 526–530
- Manitoba, 531
- Saskatchewan, 532–535

#### **appeals**

- abandonment, 566, 568–570, 572
- abuse of procedure, 583
- discontinuance, 564, 565
- dismissal for delay, 566, 571, 573
- extension of time, 471–477
- from divorce orders, 464
- hearing, Alberta, 554
- hearing, British Columbia, 555, 556
- hearing, Manitoba, 557
- hearing, Saskatchewan, 558–563
- leave, academic issue, 501
- leave, discretionary order, 512
- leave, extension of time, 505
- leave, grounds, 499–512
- leave, jurisdiction to grant, 497, 498
- leave, non-party, 507, 508
- mootness, 576
- notice of appeal, amendment, 491
- notice of appeal, contents, 490–492
- notice of appeal, service, 493–496
- procedure, 584, 585
- refusal to hear, 513, 514
- rehearing, Alberta, 579, 580

- appeals (*cont'd*)
  - rehearing, British Columbia, 579, 581
  - rehearing, general, 582
  - rehearing, Saskatchewan, 577, 578
  - restoration, 567
  - right, as of, 509, 510
  - stay of operation of injunction, 489
  - stay of proceedings, 478–488
  - summary trial order, 511
  - survival of party's death, 574
  - time for, Alberta, 463–465
  - time for, British Columbia, 466
  - time for, Manitoba, 467
  - time for, Saskatchewan, 468–470
  - vexatious proceedings, 575
- consolidation of actions**, 256–269
- cross-appeals**, 515–520
- demand for notice, Alberta**, 42–46
- depositions**
  - assistance to other jurisdictions, 333
  - by commission, 316–323
  - by consent, 315
  - by court order, 315
  - letters rogatory, 324, 325
  - procedure, 332
  - witness outside of province, 316–323
- discontinuance**
  - defendant has conduct of action, 458
  - effect on subsequent claims, 459, 462
  - notice required, 457
  - when permitted, 454–456
- withdrawal of notice of discontinuance, 460, 461
- examination of witness**, 309
- expiration of originating document**, 38, 39
- facta**
  - Alberta, 536–539
  - British Columbia, 540–543
  - Manitoba, 544–547
  - Saskatchewan, 548–553
  - Supreme Court of Canada, 671–674
- federal courts**
  - actions, rules governing, 867
  - admissions, 875–876
  - affidavit, content, 736–741
  - affidavit, cross-examination on, 744–749, 822, 823
  - affidavit, solicitor's, 742, 743
  - amendments, 730–735
  - appeal book, 914–916
  - appeal, book of authorities, 921
  - appeal, hearing, 919, 920
  - appeal, leave, 932
  - appeal, leave to appeal to Supreme Court of Canada, 933–935
  - appeal, materials in possession of tribunal, 931
  - appeal, memorandum of fact and law, 917, 918
  - appeal, notice of, 904–907
  - appeal, notice of appearance, 911
  - appeal, notice of cross-appeal, 911–913
  - appeal, respondent, 908
  - appeal, rules, 903
  - appeal, service and filing of documents, 909

## INDEX

---

- federal courts (*cont'd*)
  - appeal, stay of proceedings pending, 922–928
  - appeal, variation of judgment, 929–930
  - applications, commencement of, 820
  - applications, hearing, 826, 827
  - applications, records, 824
  - applications, rules governing, 819, 825
  - case management, rules governing, 942
  - case management, specially managed proceedings, 946–948
  - case management, status review, 943–945
  - class proceedings, appeals, 901
  - class proceedings, certification, 886–892
  - class proceedings, discontinuance, 899, 900
  - class proceedings, examination for discovery, 894
  - class proceedings, judgments, 895–897
  - class proceedings, notices, 902
  - class proceedings, opting out and exclusion, 893
  - class proceedings, rules governing, 885
  - class proceedings, settlements, 898
  - commercial arbitrations, 836
  - constitutional question, notice of, 726
  - crown, 816–818
  - definitions, 704
  - detention, 939
  - discontinuance, 807, 808, 812
  - dismissal for delay, 809–811
  - dispute resolution, 949–952
  - documents, confidential material, 750
  - documents, filing of, 729
  - documents, format, 723
  - documents, heading, 724
  - documents, language, 728
  - documents, style of cause, 725
  - examination, oral, 754–757
  - examination, procedure, 751–753
  - examination, written, 758
  - foreign arbitral awards, 837
  - foreign judgments, 837
  - forms, 709
  - gap rule, 706–708
  - interlocutory injunctions, 936, 937
  - interpleader, 941
  - judicial review, procedure, 834
  - materials in possession of tribunal, 828–833
  - memorandum of fact and law, 727
  - motion record, 856–859
  - motions, abandonment of, 866
  - motions, adjournment of, 863–865
  - motions, evidence, 850–855
  - motions, ex parte, 849
  - motions, filing and service, 847, 848
  - motions, hearing date, 846
  - motions in writing, 860–862
  - motions, rules governing, 838–840
  - multiplicity of proceedings, 799–801
  - nonsuit, 813
  - notice of appearance, 821
  - notice of motion, 841–845

## PRACTICE

---

- federal courts (*cont'd*)
  - order for sale of perishable property, 940
  - originating documents, 760
  - payment into court, 802, 803
  - personal service, deemed, 780
  - personal service on corporation, 773, 774
  - personal service on Crown, 778
  - personal service on individual not under legal disability, 770-771
  - personal service on individual under legal disability, 772
  - personal service on partnership, 775
  - personal service on sole proprietorship, 776
  - personal service on unincorporated association, 777
  - personal service, originating documents, 768, 769
  - pleadings, 868, 869
  - practice directions, 710
  - preservation of property, 939
  - questions of general importance, 759
  - questions of law, 870-874
  - receiver, appointment of, 938
  - recess, summer and Christmas, 722
  - references, 804-806
  - references by tribunal, Attorney General of Canada, 835
  - rules, application, 703
  - rules, attacking irregularity, 716
  - rules, interpretation, 705
  - rules, motion to dispense with compliance, 711, 712
  - rules, non-compliance with, 713-715
  - service, by acceptance of party's solicitor, 779
  - service by delivery, 795, 796
  - service by mail or fax, 797, 798
  - service, document not reaching person served, 789
  - service outside Canada, 790-793
  - service, proof of, 784-787
  - service, substitutional, 781
  - service, time for, 782
  - service, validating, 788
  - service, when required, 783, 794
  - severance of issue, 883,884
  - simplified action, 877-882
  - solicitor, removal of, 765-767
  - solicitor representation, 761-764, 910
  - stay of proceedings, 814, 815
  - time, abridgment, 718
  - time, computation of, 717
  - time, extension of, 718-721
- fresh step within proceedings**, 16, 17
- interlocutory applications**, *see also notice of motion*
  - appeals from, 229-236
  - ex parte, 237-244
  - general, 201
  - procedure, Alberta, 202-205
  - procedure, British Columbia, 206-212
  - procedure, Manitoba, 213-219
  - procedure, Saskatchewan, 220-228
- interrogatories**, 326-331
- irregularities**, *see nullities and irregularities*

**joinder**

- amendment of statement of claim, 254
- general, 245–247
- severance of trial, 255
- specific claims, 248–251
- rules of Court, Alberta, 252
- rules of Court, British Columbia, 253
- rules of Court, Manitoba, 252

**joint trials, see consolidation of actions**

**limitation period, effect of expiration on court's discretion to renew, 40**

**nonsuit**

- election by defendant to call no evidence, 423
- multiple defendants, 431
- third party, 432
- when granted, 424–433

**notice of application, Manitoba, see originating application**

**notice of civil claim, British Columbia, 29–32, 34**

**notice of intent to defend, Saskatchewan, 47**

**notice of motion**

- form and content of, Alberta, 192
- form and content of, Manitoba, 196
- form and content of, Saskatchewan, 197, 198
- interlocutory applications, 191
- jurisdiction of judge, 193
- service of, 199, 200
- types of application, British Columbia, 194

- urgent application, British Columbia, 195

**nullities and irregularities**

- affidavits, 271
- application to set aside, 16–18
- distinction between, Manitoba, 15
- effect of non-compliance with rules of court, 14
- non-existent court, originating process issued from, 23
- originating processes, in, 23–25, 30
- remedies for, 19, 20
- service *ex juris* without leave, 175
- service of documents, 131–133

**offers to settle**

- acceptance of, 371–374
- costs, Alberta, 377–381
- costs, British Columbia, 382–387
- costs, discretion of court, 392, 393
- costs, Manitoba, 388, 389
- costs, Saskatchewan, 390, 391
- effect of, 365
- expiry, 366–370
- failure to comply with accepted offer, 375, 376
- general, 356–361
- multiple defendants, 362–364
- revocation, 366–370

**originating application**

- administrative tribunals, governance of, 52
- agreement, interpretation of, 55, 56
- choice of procedure, 49, 50
- declaratory relief, 52–56
- discretion of court, 50

- originating application (*cont'd*)
  - instrument, interpretation of, 53, 54
  - jurisdiction, 57
  - rules governing, 58, 59
  - summary proceedings, 48
  - to determine rights of taxpayer, 51
- originating process, see action, commencing an**
- payment into court**
  - acceptance by plaintiff, 348
  - conditions attached, 343
  - costs on acceptance, 349
  - costs on rejection, 350
  - effect of, 346
  - general, 336–340
  - interest on moneys paid into court, 341
  - notice of, 342–345
  - revocation, 347
  - solicitor's undertaking, 344
- petition, British Columbia, see originating application**
- renewal of origination documents, see service and renewal**
- requisition, British Columbia, see originating application**
- rules of court**
  - Alberta, 2
  - application of, 1–4
  - British Columbia, family law proceedings, 1, 5
  - change to rules by consent of parties, 4
  - date of order, Manitoba, 10
  - federal court, 3
  - force and effect, 11–13
  - general, 1
  - interpretation of, 5–10
  - matters not covered by rules, 5
  - modification of, Saskatchewan, 9
  - non-compliance, when permitted, 6
  - non-compliance with, 6, 14–20
  - *ultra vires*, 13
- service and renewal,**
  - discretion of court, 40, 41
  - notice of civil claim, British Columbia, 34
  - renewal order, notice of, 37
  - statement of claim, Alberta, 33
  - statement of claim, Manitoba, 35
  - statement of claim, Saskatchewan, 36
- service by courier, Saskatchewan, 104**
- service by electronic mail**
  - Alberta, 105
  - British Columbia, 106
  - Manitoba, 107
  - Saskatchewan, 108
- service by facsimile**
  - British Columbia, 101
  - Manitoba, 102
  - Saskatchewan, 103
- service by mail**
  - Alberta, 93, 96, 97
  - British Columbia, 94, 98
  - Manitoba, 95, 99
  - Saskatchewan, 100
- service, dispensing with, see substituted service**
- service *ex juris***
  - Alberta, 151, 152, 164
  - application for leave, 169–176



## INDEX

---

- service *ex juris* (*cont'd*)
  - application to set aside, 184–190
  - business within province, 162
  - circumstances where permitted, 149
  - contract governed by law of province, 158
  - damage sustained in province, 161
  - *forum non conveniens*, 167
  - injunction, 162
  - international convention, in accordance with, 177, 179, 180, 183
  - jurisdiction simpliciter, 165, 167
  - necessary party to proceedings, 154, 156
  - order for, 150
  - persons within province, 154
  - policy issues involving government agencies, 168
  - property within province, 153, 164
  - proving service, 180–181
  - real and substantial connection test, 165, 166
  - rules governing, 177, 178, 182, 183
  - status or capacity of British Columbia resident, 155
  - tax recovery, 163
  - third party claims, Manitoba, 157
  - tort, breach of contract committed within province, 158–160
  - validation order, 179
- service on solicitors**, 90–92
- service, personal**
  - Alberta, 61
  - alternatives to, 60, 90–95
  - British Columbia, 63
  - contract, pursuant to terms of, 89
  - copies of documents served, 64
  - documents not requiring, 96–110
  - federal courts, 768–789
  - on boards, commissions, 86, 87
  - on corporations, 76–79
  - on Indian band, 85
  - on individuals, 65–67
  - on infants, 68–71
  - on mentally disabled persons, 72–75
  - on non-resident businesspersons, 88
  - on partnership, 80–82
  - on sole proprietorship, 83
  - on unincorporated association, 84, 85
  - outside province, 66, 78, *see also service ex juris*
  - Saskatchewan, 62
  - when required, 60
- service, time and proof of**
  - admission of service, 114
  - affidavit of service, contents of, 111
  - Alberta, 112, 116–119
  - application to set aside, 135–138
  - British Columbia, 113, 120–123
  - by lawyer, 134
  - evidence of service, 115
  - holidays, 119, 110
  - irregularities, 131–133
  - Manitoba, 124
  - Saskatchewan, 125–130
- settlement offer**, *see offers to settle*

- statement of Claim, contents of,** 27, 28
- stay of proceedings**
- arbitration proceedings, during, 413–416
  - actions in two jurisdictions, 398–401
  - by act of legislature, 411
  - concurrent actions, 402–406
  - constitutional challenge pending, 417, 418
  - criminal proceedings pending, 394–397
  - non-payment of costs, 407–409
  - proceeding commenced without authority, 412
  - settlement of action, 410
  - when granted, 419–422
- submission, British Columbia,** *see* **originating application**
- substituted service**
- discretion of court, Alberta, 139, 140
  - discretion of court, British Columbia, 141, 144
  - discretion of court, Manitoba, 142
  - discretion of court, Saskatchewan, 143
  - methods of, 145, 146
  - setting aside, 147, 148
- summary proceeding,** 48
- Supreme Court of Canada**
- adjournment of hearing, 590
  - affidavits, cross-examination on, 618–620
  - affidavits, general, 616, 617
  - agents, 599–601
  - amendments, 638
  - book of authorities, 675, 676
  - counsel, change or withdrawal, 598
  - counsel, when representation required, 597
  - cross-appeal, 656–659
  - discontinuance, 682, 683
  - dismissal for failure to file and serve materials, 679–681
  - dismissal for undue delay, 677
  - documents, filing of, 602, 603
  - facta, contents, 671, 672
  - facta, filing and service, 673
  - factum on cross-appeal, 674
  - federal statutes, 586
  - gap rule, 589
  - hearing, 686–689
  - intervenors, 690–692
  - judgment, form, 693
  - judgment, variation of, 694, 695
  - leave to appeal, application for, 625–627
  - leave to appeal, discontinued applications, 636
  - leave to appeal, hearing, 635
  - leave to appeal, materials, 630–634
  - leave to appeal, time, 628, 629
  - motions, 622–624
  - motion to quash, 653–655
  - notice of appeal, 643, 644
  - office hours, registry, 596
  - procedure, general, 639–641
  - record, filing and service, 668
  - record, form, 665–670
  - references, 660–664
  - rehearing, 696–701
  - reversal of judgment, consent to, 637
  - rules, non-compliance with, 588
  - rules, printed materials, 587

## INDEX

---

### Supreme Court of Canada (*cont'd*)

- scheduling, 684, 685
- security, 645–648
- service by e-mail, 609, 610
- service by fax, 607, 608
- service by mail, 606
- service, date of, 612
- service, general, 604
- service, personal, 605
- service, proof of, 615
- service, substitutional, 613, 614
- service through counsel or agent, 611
- stay of execution, 649–652
- style of cause, 621
- time, abridgement of, 594
- time, computation of, 595
- time, extension of, 592, 593
- time for commencement, 642
- time limits, 678
- translation, 591
- vexatious proceedings, 702

### **tender before action, defence of,** 351–355

### **want of prosecution**

- application to dismiss by insurance company, 442
- interlocutory motion, 439
- jurisdiction of court to dismiss action, 436, 440, 441
- justification for delay, 437
- rules, Alberta, 443–446
- rules, British Columbia, 447–449
- rules, Manitoba, 450, 451
- rules, Saskatchewan, 452, 453
- settlement negotiations, 435
- unreasonable delay, 434, 438

### **witness, compelling attendance**

- by court order, 311
- by subpoena, 310, 314
- failure of witness to attend, 312, 313
- order for apprehension, 312

## Index to Prerogative Remedies

(All references are to paragraph numbers.)

- abolition of ancient forms**, 2, 8
- abuse of discretion**, *see also* **judicial review**
  - absolute discretion, 50
  - bad faith, 49, 52
  - bias, 51
  - failure to exercise discretion, 53
  - fettering of discretion, 49
  - fraud, 49, 51
  - general, 49–51
  - irrelevant considerations, 52
- armed forces personnel**, 248
- audi alteram partem**, 22
- bankruptcy matters**, 16
- bias**, *see* **natural justice/fairness**,
- breach of rules of**
- certiorari (civil matters)**, *see also* **judicial review; prohibition**
  - abuse of process, 77
  - affidavit evidence, 102, 103
  - appeals, effect of right of, 78
  - appeals, general, 106, 107
  - availability generally, 56–58
  - characterization of proceedings, 59, 60
  - commercial disputes, 77
  - consolidation of proceedings (federal), 100
  - costs, 109
  - definition, 55
  - delay in seeking, 79, 99
  - discretion of court, 76–80
  - error of law, 8
  - historical development, 55
  - improper motive for seeking, 79
  - judicial vs. administrative decisions, 9
  - jurisdiction of courts, 75
  - limitation periods, 99
  - misconduct of applicant, 79
  - notice of application (service), 101
  - orders for, effect of, 104
  - party applying not aggrieved by decision, 78, 80
  - premature/moot applications, 80
  - privative clauses, 8, 73
  - procedendo, 108
  - procedure for seeking (general), 81, 98
  - public interest standing, 80
  - time periods, enlarging/abridging, 99
- certiorari (criminal matters)**, *see also* **judicial review; prohibition**
  - appeals, effect of right of, 64, 65, 74
  - appeals, general, 105
  - availability generally, 46, 70
  - civil proceedings after grant, bars to, 69
  - costs, 109
  - Criminal Code governing, 61, 70
  - decisions/orders subject to quashing, 70
  - discretion of court, 70
  - judicial notice of proclamations, etc., 68
  - jurisdiction of courts, 75, 97
  - limitation periods, 63, 83–87
  - notice of application (contents), 89–94
  - notice of application (service), 86–88
  - notice of application (return on), 95, 96

- pleas, effect of, 64
  - powers of court hearing motion, 66, 97
  - privative clauses barring, 73, 74
  - procedendo, 108
  - procedure for seeking (general), 81, 82
  - provincial powers re, 62, 63
  - recognizance requirements, 67
  - “record”, 96
  - refusal of application for, 67
  - successful applications, effect of, 66
  - time periods, extension/abridgment, 83
  - warrant of arrest/committal, 18, 67, 69
- Charter of Rights**
- habeas corpus, 185, 193, 205
  - judicial review, 54
  - prohibition, 119
- contracts (government), awarding of, 20**
- corporations, *see quo warranto***
- criminal law, *see certiorari; habeas corpus; judicial review***
- development of remedies, 1–3**
- directors, *see quo warranto***
- disciplinary courts, 16, 17**
- discretion, *see abuse of discretion***
- elections, *see quo warranto***
- error of law on the face of the record, *see also judicial review***
- examples of, 46
  - Federal Court, 48
  - general, 8, 9, 46
  - “record”, 47
- extradition proceedings, 16, 18, 19, 217, 218, 245**
- fairness, *see natural justice/fairness, breach of rules of***
- general, 1–3**
- habeas corpus, *see also judicial review***
- affidavits/evidence, 229
  - alien enemies, rights of, 193
  - appeal, effect of right of, 196, 210, 221
  - appeals/renewed applications (civil), 246
  - appeals/renewed applications (criminal), 242–245
  - armed forces personnel, 248
  - bars to/unavailability of, 192, 199, 202, 203, 211, 212
  - certiorari in aid of, 198
  - Charter of Rights, 185, 193, 205, 209
  - costs, 247
  - custody of children, 196, 213, 214
  - dangerous offenders, 209
  - detention of applicant required, 192
  - discharge of prisoner, 241
  - discretion of court, 221–224
  - extradition matters, 217, 218, 245
  - grounds for (general), 192, 194–199, 222–224
  - historical development, 184–188
  - immigration/deportation, 219
  - jurisdiction (federal/provincial), 200, 247–250
  - mental incompetence, 215, 216
  - nature/purpose of, 189–191
  - place for seeking remedy, 193
  - procedure for seeking, 190, 201, 225–228
  - proceedings for writ of, 189–191

## INDEX

---

- review of detention/warrant (criminal), 204–207, 235–240
- review of sentence, 208–212
- service/return of writ (Ontario), 230–234
- standing to seek, 220
- time for judging validity of detention, 195
- historical development**, 1–3
- human rights commissions**, 11
- immigration/deportation/visas**, 4, 16, 27, 219
- irrelevant considerations**, *see* **abuse of discretion**
- judicial compensation tribunals**, 34
- judicial review**, *see also* **abuse of discretion; certiorari; habeas corpus; jurisdiction, lack/excess of; mandamus; natural justice/fairness, breach of rules of; privative clauses; prohibition; quo warranto**
  - abuse of discretion, 49–53
  - administrative/ministerial/policy decisions, 8, 10, 11, 17
  - availability generally, 9
  - bankruptcy matters, 16
  - Charter of Rights, infringement of, 54
  - consensual/non-statutory tribunals, 9
  - contracts (government), awarding of, 20
  - criminal matters, 2, 46, 74
  - decision-makers subject to, 4–20
  - disciplinary courts, 17
  - error of law on face of record, 8, 9, 46–48
  - extradition proceedings, 16, 18, 19
  - Federal Court of Appeal, 14, 48
  - grounds for, generally, 21
  - human rights commissions, 11
  - immigration/deportation/visas, 4, 16
  - inferior courts, 4, 5
  - inquiries (federal), 16
  - judicial/quasi-judicial decisions, 9, 17
  - jurisdiction, federal/provincial, 5, 12, 15
  - jurisdiction, lack/excess of, 41–45
  - labour relations boards, 11, 16
  - liquor licensing boards, 11
  - mental health review boards, 11
  - motor vehicle registrars, 11
  - native persons, 16
  - natural justice/fairness, breach of rules of, 22–40
  - parole boards, 16
  - patent disputes, 16
  - police commissions/R.C.M.P., 11, 16
  - prison disciplinary boards, 16
  - privative clauses barring, 8
  - procedure for seeking, 2, 8, 13, 15
  - professional associations/bodies, 11
  - provincial court decisions, 11
  - public service commission panels, 11
  - replacement of prerogative writs, 2
  - school boards, 11
  - securities commissions, 11
  - statutory power of decision, 8, 36, 37
  - tribunals subject to (federal), 12–20
  - tribunals subject to (provincial), 6–11

## PREROGATIVE REMEDIES

---

- unemployment insurance, 16
  - university governors, 11
  - zoning boards, 11
- jurisdiction, lack/excess of, *see also* certiorari; judicial review**
- doing indirectly what cannot be done directly, 45
  - evidentiary errors, 44
  - facts underlying jurisdiction, 42
  - functional analysis, 43
  - general, 41
  - preliminary/collateral questions, 43
  - standard of review analysis, 43
  - unreasonable decisions, 44
- labour relations**, 11, 16
- liquor licensing**, 11
- mandamus, *see also* judicial review**
- affidavits/evidence, 163, 164
  - alternative remedies, effect of, 152
  - appeals, 165
  - bars to, 143, 144
  - costs, 166
  - Crown, orders against, 143
  - demand for performance of duty, 141, 149
  - discretion of court, 150–152
  - discretion of party owing duty, 141, 148, 149
  - grounds for (general), 141–144
  - historical development, 137
  - jurisdiction to grant, 154
  - nature/purpose of, 138–140
  - notice of application for (service of), 155–161
  - performance of duty, absence of discretion re, 141, 148
  - performance of duty, clear right to, 141, 145, 146
  - performance of duty demanded/refused, 141, 149
  - performance of duty due/owed, 141, 147
  - procedure for seeking, 153, 154
  - public duty vs. private right, 142
  - standing to seek, 162
- mental incompetence**, 11, 215, 216
- motor vehicle licensing**, 11, 118
- natural justice/fairness (bias, appearance of), *see also* judicial review; natural justice/fairness, breach of rules of**
- actual bias, 24, 29
  - appeals, effect of, 35
  - bias, reasonable apprehension of, 25
  - coercion to forego rights, 27
  - general, 24, 25
  - judicial compensation tribunals, 34
  - judicial proceedings, in, 33
  - ministerial interference as, 26
  - overlapping investigative/adjudicative functions, 28
  - proof of, 30
  - relationship of council member/participant, 31
  - test for, 25
  - waiver of, 32, 51
- natural justice/fairness, breach of rules of, *see also* judicial review**
- audi alteram partem, 22
  - general, 22, 38
  - right to be heard, elements of, 23
  - statutory requirements, 36–40
- native persons**, 16
- parole boards**, 16

## INDEX

---

- patent disputes**, 16
- persona designata**, 5
- planning boards**, *see zoning boards*
- police commissions/R.C.M.P.**, 11, 16, 118
- prerogative writs**, 1, 2
- prisons**, 16, 199, 211, *see also* habeas corpus
- privative clause**, 43
- professional associations/bodies**, 11, 118
- prohibition**, *see also certiorari; judicial review*
- abuse of discretion, 127
  - appeal, effect of right of, 124
  - appeals, 135
  - bars to/unavailability of, 120, 123
  - bias, anticipation of, 127
  - certiorari, relation to, 111, 119
  - costs, 136
  - discretion of court, 120–124, 126
  - effect of order, 134
  - evidence, 132
  - grounds for order, 119
  - historical development, 110, 111
  - interim orders, 121
  - judicial vs. administrative acts, 114
  - misconduct of applicant, 120
  - nature/purpose of, 112–115, 119
  - objecting to lack of jurisdiction, 129, 130
  - premature applications, 125, 128
  - procedure for seeking, 131, 133
  - “record”, 132
  - reviewable decisions (civil), 118
  - reviewable decisions (criminal), 116, 117, 122
  - service of application, effect of, 133
  - standing to seek, 120, 122
  - time for seeking, 125–128
- privative clauses barring**
- criminal matters, 74
  - general, 8, 73
- procedendo**, 108, *see also* certiorari
- procedural fairness**, *see natural justice/fairness, breach of rules of*
- public service commission panels**, 11
- quo warranto**, *see also judicial review*
- abolition of (British Columbia), 169
  - affidavits/evidence, 180–182
  - bars to, 174
  - costs, 183
  - directors, challenging appointment of, 174, 176
  - discretion of court, 172, 173
  - elections, challenging, 170, 176
  - grounds for, 174–177
  - historical development, 167
  - incorporation of company, challenging, 176
  - judges, challenging appointment of, 176
  - jurisdictional issues, 168
  - limitation periods, 179
  - nature/purpose of, 168–170
  - onus of proof, 181
  - parties, 180, 182
  - procedure for seeking, 178
  - standing to seek, 171



PREROGATIVE REMEDIES

---

**school boards**, 11, 118, 175  
**securities commissions**, 11  
**scope of title**, 1–3  
**“statutory power of decision”**, 8,  
36, 37  
**unemployment insurance**, 16  
**university governors**, 11  
**writs**, 1, 2, 55  
**zoning boards**, 11, 118

## Index to Prisons

(All references are to paragraph numbers.)

- aboriginal persons**
- correctional services, provision of, 103
  - long term supervision of, 27–119, 390
  - parole of, 389
  - place of confinement, 103
  - programs for, 179
  - religious rights, 176
  - transfer of, 103
- administrative law, see discipline; rights of prisoners**
- Bill of Rights, 156, see also Charter of Rights**
- businesses, see rights of prisoners**
- cells, see search and seizure**
- Charter of Rights, see also Bill of Rights; rights of prisoners; search and seizure**
- arbitrary detention or imprisonment, 3, 159
  - counsel, right to, 3, 117, 159, 334
  - cruel and unusual treatment, 3, 8, 9, 159
  - discrimination, freedom from, 3, 159
  - double punishment, protection from, 44, 232
  - equality before the law, 3, 159, 167
  - evidence, admissibility, 399
  - freedom of association, 167
  - general, 156
  - habeas corpus, 2, 23, 214
  - minimum sentences, 8, 9, 31
  - parole conditions and, 385
  - preventive detention and, 70
  - reasons for arrest/detention, 3
  - restrictions on cross-examination, parole hearings, 334
  - transfer of prisoners and, 113–117
  - voting, disqualification from, 177
- committal, see reception of prisoners**
- communications, see rights of prisoners**
- conditional release, see also earned remission; pardons; parole; sentencing; statutory release; temporary absence**
- forms of, 282
  - purpose of, 329
- contraband, 170, 199–200, 202, 203, 204**
- CORCAN, 185–188**
- correctional institutions, see types of institutions**
- correspondence, see rights of prisoners**
- dangerous offenders, see preventive detention proceedings**
- death of prisoner, 151, 198**
- delay, see Charter of Rights; reception of prisoners**
- deportation, 416, see also transfer of prisoners (international)**
- discipline (Alberta)**
- conduct punishable, 242
  - disciplinary board, establishment of, 37

- disciplinary unit, confinement to, 244
- employees, powers of, 247
- hearing, 243
- incidents, reporting of, 243
- review by director, 240
- sanctions, 245
- separation of inmate, 246
- discipline (British Columbia)**
  - allegation of breach, 250
  - appeal, 254
  - conduct, rules of, 248
  - correction of breach, 250
  - hearing, procedure, 251
  - notice to inmate, 248
  - reduction/suspension of penalty, 253
  - restraint of inmate, 249
  - sanctions, 252
  - segregation, 255
- discipline (general), see also Charter of Rights; rights of prisoners**
  - double jeopardy and, 232
  - general, 220
  - hearings, 221–227, 235
  - informal resolution, 220
  - judicial review, 223, 235
  - legislation (Alberta), 242–247
  - legislation (British Columbia), 248–255
  - legislation (Manitoba), 256–265
  - legislation (Ontario), 236–241
  - legislation (Saskatchewan), 266–273
  - notice of charge, 221
  - offences, 220
  - right to counsel, 224, 225
  - sanctions and penalties, 220, 228–231, 233–235
  - standard of proof, 227
- discipline (Manitoba)**
  - alternative measures, 259
  - appeal, 264
  - court of law, effect of action in, 258
  - decision, notice of, 261
  - hearings, procedure, 260, 261
  - new evidence, effect of, 263
  - officers, powers of, 265
  - rules and regulations, notice of, 256
  - sanctions, 262
  - segregation, 265
  - standard of proof, 261
  - suspension of penalty, 262
  - youth custody facilities, 257
- discipline (Ontario)**
  - decisions, timing, 237, 238
  - general, 236
  - interview of offender, 237, 238
  - notice of allegations, 237
  - notice of rules, 236
  - penalty, notice of, 238
  - reasons for decision, 238
  - record of case, 238
  - review of decision, 240
  - sanctions, 239, 241
  - segregation, 241
  - superintendent's power, 237
- discipline (Saskatchewan)**
  - appeals, 273
  - director/administrator, powers of, 267
  - discipline panels, establishment of, 269
  - disciplinary rules, purpose of, 267
  - hearings, procedure, 270, 271
  - notice of rules, 268

## INDEX

---

- notice of decision, 272
- offences, classes of, 266
- police, referral to, 270
- sanction, 272
- disposition hearings**, *see* **mental illness**
- duties and liability**, *see also* **transfer of prisoners (Canada); rights of prisoners**
  - bodily injury of inmate, 151
  - criminal acts, 140
  - Crown liability, 153, 192
  - death of inmate, 151, 198
  - duty of care, 145, 146
  - escapee's acts, 155
  - false imprisonment, 142
  - force, use of, 141
  - institutional heads, 143–149
  - investigations, 151, 152
  - limitations on, 141
  - medical services, 154, 191–192, 197
  - staff members, 140, 150
  - torts, 140, 142, 153
- earned remission**, *see also* **conditional release; pardons; parole; statutory release; temporary absence**
  - calculation of, 421–423
  - federal, 420
  - forfeiture of, 424, 425, 426
  - general, 420, 426
  - parole, revocation/termination, effect on, 425
  - regulations, 426
- education**, *see* **rights of prisoners**
- employment issues**, 436
- escape**
  - definition, 280
  - escape from lawful custody, 275
  - facilitating escape, 278, 279
  - indictable offence, as, 275–276, 278, 279
  - injuries incurred during, 281
  - liability for acts of escapees, 155
  - prison breach, 274
  - sentences, 280
  - temporary absence, non-return, 277
  - unlawfully at large, 96, 276
- fairness**, *see* **discipline; rights of prisoners**
- false imprisonment**, 142
- firearms offences**, 31
- habeas corpus**, *see* **Charter of Rights, transfer of prisoners (Canada)**
- health issues**
  - consent to treatment, 194
  - death of prisoner, 198
  - duty to provide care, 191, 192
  - exercise, 196
  - force-feeding, 195
  - general, 191, 193
  - injuries during escape, 281
  - parole and, 299
  - provincial legislation, 197
  - reception of prisoners, 108, 120–122
  - standard of care, 154
  - treatment, court recommendation, 99
  - temporary absence and, 358–360, 364, 368
- hospitals**, *see* **temporary absence; types of institutions**
- indictable offences**, *see also* **pardons**
  - definition, 2
  - disabilities arising from, 442

- escaping custody, 275
  - facilitating escape, 278, 279
  - pardons and, 429, 432
  - prison breach, 274
  - sentencing for, 6
  - unlawfully at large, being, 276
- industry, see rights of prisoners**
- institutional rules, see types of institutions**
- institutions, see types of institutions**
- interim release, see conditional release; earned remission; pardons; parole; statutory release; temporary absence**
- investigations, 151, 152, 211–213**
- judicial review, see discipline; rights of prisoners**
- legislation governing imprisonment**
- Charter of Rights, 3
  - Criminal Code, 4–12
  - general, 1, 11, 82
  - indictable offences, 2
  - provincial offences, 13–16
  - summary offences, 2
  - transfers, international, 123
- living conditions, 139**
- management, see operation and management**
- medical care, see health issues; rights of prisoners**
- mental illness**
- castration and therapy, 100
  - court’s jurisdiction re treatment, 99, 100
  - disposition hearings, 71–78
  - dual status offenders, 75–78
  - institutions, 120–122
- murder, see parole**
- native persons, see aboriginal persons**
- offences, see contraband; indictable offences; legislation governing imprisonment; provincial offences; summary offences**
- ombudspersons, 213**
- operation and management**
- commissioner’s rules, 138
  - inmate complaints, 139
  - institutional rules, 105
  - interview with commissioner, 139
  - regulations re, 136, 137
- pardons, see also conditional release; earned remission; parole; statutory release; temporary absence**
- accomplices giving information, 447
  - application for, 427–430
  - conduct of applicant, 429
  - Criminal Code, effect of, 437
  - effect, 432–435
  - employment law and, 436
  - firearms prohibition order, effect on, 432
  - foreign countries, by, 133, 427
  - foreign offences, for, 427
  - Governor in Council, by, 439–441, 447
  - indictable offences, 429
  - jurisdiction to grant, 428
  - offence after, effect of, 435
  - panels hearing applications, 428
  - prohibition orders, effect on, 432
  - refusal, 431
  - representations to board, 431
  - revocation, 428, 435

## INDEX

---

- royal prerogative of mercy, 437, 438, 446
  - service offences, 428, 430
  - statutory disabilities, relief from, 442–447
  - summary offences, 430
  - timing of application, 429, 430
- parole, *see also conditional release; earned remission; pardons; statutory release; temporary absence***
- accelerated review, 331, 332, 335
  - commission of offence while on, 20
  - conditions on, 384–387, 389, 391, 395
  - day parole, 320–327, 330, 421
  - effect of, 392
  - eligibility, 296–319, 335, 343, 344
  - full parole, 27–116, 291, 297, 328–330, 332
  - general, 283
  - hearings (British Columbia), 347
  - hearings (federal), 331, 333–339
  - hearings (general), 341
  - hearings (Ontario), 343–351
  - murder cases, 303–319
  - national board, 132, 283–295, 396, 399
  - provincial boards, 283, 287–292, 326, 329, 341, 342
  - release of inmate, 332, 340
  - reviews, 327–332, 335
  - sentencing, effect on, 318, 319
  - suspension, termination and revocation (federal), 393–410, 425
  - suspension, termination and revocation (provincial), 398, 411–416
  - transferee from foreign jurisdiction, 128, 132
- penitentiary, *see types of institutions***
- place of confinement, *see sentencing; types of institution***
- preventive detention proceedings, *see also sentencing***
- appeals, 67
  - application for, 54–57
  - Attorney General, consent to application, 65
  - consecutive sentences and, 34
  - dangerous offender, declaration as, 55, 56
  - dangerous offender, remand for assessment, 60
  - hearing without jury, 65
  - long term offender, declaration as, 58, 59
  - notice of hearing, 57, 65
  - presence of accused, 66
  - remand for assessment, 54
  - reports, forwarding to Correctional Service of Canada, 68
  - review of status, 69, 70, 301
  - supervision, 61–64, 386, 388, 390, 397
- prison, *see types of institutions***
- prison breach, *see escape***
- probation, *see sentencing***
- programs, *see rights of prisoners***
- provincial institution, *see types of institutions***
- provincial offences**
- Alberta, 13, 14, 21
  - British Columbia, 13, 14, 21
  - discretion of court, 13
  - general, 1, 11

## PRISONS

---

- Manitoba, 13, 15
- minimum penalties, 13
- sentencing of, 21–27, 38, 39, 45, 53
- Ontario, 13, 16, 21
- Saskatchewan, 12, 14, 21
- **punishment, imprisonment as**, *see* **sentencing**
- **reception of prisoners**, *see also* **transfer of prisoners**
  - delay in, effect, 18
  - general, 102, 104
  - health issues, 108
  - mentally ill/diseased prisoners, 120–122
  - receipt noting prisoner's condition, 81
  - refusal by institution, 108
  - regulations re, 105, 107
  - timing, 106
- **remission of sentence**, *see* **earned remission**
- **rights of prisoners**, *see also* **Bill of Rights; Charter of Rights; discipline; duties and liability; search and seizure**
  - access to courts, 109, 214–219
  - attendance at judicial proceedings, 109
  - assembly and association, 174, 175
  - business, conduct of, 185–188
  - common law, 157, 158
  - correspondence, 161, 170–173
  - decision-making, input, 174
  - dignity, 160
  - exercise, 196
  - fairness, 111, 113–116, 158, 164
  - force-feeding, re, 195
  - general, 156–159, 160
  - grievances, 139, 209–219
  - inmate trust fund, 189–190
  - living conditions, complaints re, 139
  - medical services, 154, 191–196, 281
  - payment, to, 183, 184, 189, 190
  - penitentiary industry (CORCAN), 185–188
  - placement, reasons for, 102
  - programs, 179–184
  - property, 148
  - protection, 145, 146
  - provincial regulations, 169, 173, 210
  - religion, 175, 176
  - status generally, 156
  - transfers, re, 111–119
  - visits, 161–169, 171, 172, 202
  - voting, 177, 178
- **rules**, *see* **types of institutions**
- **search and seizure**, *see also* **Charter of Rights; rights of prisoners**
  - body cavity searches, 205
  - cells, 204
  - contraband, 170, 199–200, 202, 203, 204
  - correspondence, 170
  - exceptional circumstances, 204, 207
  - frisk searches, 201, 202, 203, 205
  - locations searchable, 204, 207
  - methods of, 201, 202
  - notices, re, posting of, 200
  - provincial legislation, 208
  - staff members, 203, 208
  - strip searches, 201, 202, 203, 205
  - urinalysis, 206
  - vehicles, 207

## INDEX

---

- visitors, 202
- sentences**, *see also* **Charter of Rights; conditional release; earned remission; mental illness; parole; preventive detention proceedings; types of institutions; warrants of committal**
  - commencement/resumption, 17, 18, 21–28
  - concurrent, 28, 30, 35–39
  - consecutive, 29, 30, 32–34, 36, 38, 39
  - definition, 91
  - disabilities, statutory, 442–446
  - discretion of court, 5, 7, 13, 21
  - disproportionate, 8
  - escapes, 280
  - firearms offences, 31
  - indictable offences, 6
  - intermittent, 46–53
  - maximum terms, 5, 6
  - minimum terms, 5, 8, 9, 13, 27
  - options available, 4
  - parole, effect of, 20, 318–319
  - place of confinement, 10, 11, 90, 95, 97–99, 101–103, 127
  - pre-trial custody, effect, 25
  - probation, 32, 33, 40, 42, 45, 52
  - provincial offences, 11, 13–16, 21–27, 38, 39, 45, 53
  - reports concerning, 12
  - running of, 17–20, 24, 353, 361
  - service of, institutional rules, 105
  - summary offences, 6
  - suspended, 40, 41, 43, 44
  - term of imprisonment, 5–9
- service offences**, 429, 430, 432
- status of prisoners**, *see* **rights of prisoners**
- statutory release**, *see also* **conditional release; earned remission; pardons; parole; temporary absence**
  - conditions on, 384, 385, 387, 391, 395
  - effect of, 353
  - eligibility, 352
  - provincial boards, jurisdiction, 291
  - provincial prisoners, 354
  - review prior to, 355–357
  - sentence, effect on, 392
  - suspension, termination and revocation (federal), 393–396, 398–409
- summary offences**, 2, 6, 430
- temporary absence**, *see also* **conditional release; earned remission; pardons; parole; statutory release**
  - Alberta, 378
  - British Columbia, 379
  - cancellation of, 361, 363, 366, 370, 371
  - conditions on, 320, 384, 385, 387, 391
  - effect of, 361
  - eligibility generally, 302, 359, 360, 362
  - escorted absence, 364
  - factors in awarding, 358
  - hospitals, from, 367
  - Immigration and Refugee Protection Act orders, 302, 362
  - jurisdiction, national board, 335, 358
  - liability for release, 147
  - Manitoba, 380–381
  - maximum security offenders, 359
  - medical care, for, 360, 364



## PRISONS

---

- Ontario, 374–377
  - provincial (general), 368–373
  - reasons for allowing, giving of, 358
  - Saskatchewan, 382–383
  - sentence, effect on, 361, 392
  - specific personal development programs, 360
  - work release, 365, 366
- term of imprisonment, *see* sentencing**
- transfer of prisoners (Canada), *see also* reception of prisoners; rights of prisoners**
- aboriginal offenders, 103
  - Charter rights, 113–117
  - duties on commissioner, 111
  - duty of fairness, 113–116
  - general, 104, 110, 112
  - governmental agreements re, 119
  - habeus corpus application, 118
  - mentally ill persons, 122
  - notice of, 111, 114
  - provincial legislation, 112
  - regulations re, 104, 111
  - right to be heard, 111
  - submissions by prisoner, 114
  - timing of, 106
- transfer of prisoners (international), *see also* reception of prisoners**
- approval of, 126
  - effect of foreign conviction/sentence, 124
  - from Canada, 134, 135
  - legislation governing, 123, 125, 131
  - pardon by foreign state, 133
  - parole eligibility, 128
  - place of imprisonment, 127
  - regulations re, 135
  - sentence computation and, 129, 130, 131
  - to Canada, 123–133
- trespass, 168**
- trust funds, *see* rights of prisoners**
- types of institutions**
- common jail, 94
  - correctional institutions, 94
  - general, 10, 11, 90
  - hospitals, 93
  - operation and management, 136–139
  - penitentiary, 11, 92, 93
  - place of confinement, 10, 11, 90, 95–103
  - rules of, 10, 105
  - prison, 11, 94
  - provincial institution, 11
- visits, *see* rights of prisoners; search and seizure**
- voting, *see* rights of prisoners**
- warrants of committal, *see also* sentencing**
- amendment, 89
  - effect of, 81
  - formal requirements, 84, 85, 87, 98
  - issuing of, 79, 82, 83, 96
  - “minute of conviction”, 86
  - nature and effect, 80
  - peace officer’s duties, 81
  - replacement of, 88
  - validity, 84, 85, 87–89
- work release, *see* temporary absence**

## Index to Privacy and Freedom of Information

*(All references are to paragraph numbers.)*

- access procedure (freedom of information), see also access to records (freedom of information); bars to disclosure (freedom of information)**
- copies of records, 154, 155
  - copy vs. examination of record, 122
  - description of record sought, 118, 121, 125, 127
  - duty to assist (Manitoba), 123
  - failure to respond to request, 153
  - fees, 118
  - liability for disclosure, 156
  - New Brunswick, 124, 135
  - notice of refusal, 150–153, 156
  - notice to affected parties, 144–149, 156
  - refusal generally, 137–142, 150, 151
  - request in writing, 118–122
  - request to person in charge of public body (Quebec), 119, 126, 131
  - request to records manager (Yukon), 120, 128, 132
  - statutory duty of advice and assistance, 121
  - time for responding, 122, 133–136, 149
  - transfer of request to another institution, 129–133
  - use of disclosed records, 156
- access to records (freedom of information)**
- additional information, provision of, 37
  - general, 34, 39
  - partial disclosure/severance, 36
  - persons entitled to, 35
  - public interest/safety, 38, 44, 57, 80
- appeals, see bars to disclosure (freedom of information); review of decisions**
- bars to disclosure (freedom of information), see also access procedure (freedom of information); access to records (freedom of information)**
- advice to government, 44–47
  - appeals, 39, 77
  - cabinet records, 40–43
  - confidentiality/third-party rights, preservation of, 69–74, 75–77, 143–149
  - defence issues, 65–68
  - economic interests, protection of, 78–86
  - fish/wildlife, protection of, 107, 108, 114
  - foreign entity, 64, 66
  - frivolous/vexatious requests, 34, 138
  - general, 39
  - government relations, preserving, 57–64
  - heritage sites, 114
  - information already/soon to be disclosed, 109–113
  - investigations, 49
  - law enforcement issues, 48–56
  - local government confidences, 115
  - personal information, protection of, 95–106, 143–149
  - repetitive requests, 139, 140
  - safety concerns, 93, 94

- solicitor-client privilege, 88, 89, 90–92
- testing/auditory procedures, 87
- unreasonable interference with operations, 117
- bars to disclosure (personal information)**, *see also* **privacy protection (personal information)**
  - abortion services, 116, 224
  - advice to government, 215, 216
  - benefits, re eligibility for, 221
  - cabinet records, 214
  - confidential government information, 203–205
  - confidentiality/third party rights, 217, 218
  - correctional institution records, 209
  - defence information, 202, 205
  - economic interests, protection of, 218
  - educational institutions and awards, 222
  - general, 170, 202
  - information (soon to be) published, 219
  - international affairs, 203, 205
  - law enforcement, 202, 206, 207
  - medical records, 213
  - privacy of others than applicant, 211, 220
  - prohibited information, 211
  - research/statistical records, 223
  - safety concerns, 210
  - security clearance, 208
  - solicitor-client privilege, 212
- commissioner**, *see* **information and privacy commissioner**
- common law rights**, 12
- definitions**, 5–12
- directory of records**, 18, *see also* **list of institutions**
- exemptions**, *see* **bars to disclosure**
- “government agency” (Manitoba)**, 10
- “government institution” (federal)**, 10
- “head” (of institution)**
  - Alberta, 6, 31, 158
  - British Columbia, 6, 31, 158
  - federal, 5, 32, 33, 58
  - Manitoba, 7
  - New Brunswick, 8
  - Ontario, 5, 31–33
  - Saskatchewan, 9, 31
- information and privacy commissioner**
  - Alberta, 20, 24, 27
  - British Columbia, 20, 24, 27
  - federal, 21, 24, 30, 264
  - Manitoba, 22, 24
  - Northwest Territories, 25
  - Ontario, 20, 28
  - Prince Edward Island, 27
  - Quebec, 23, 26
  - Saskatchewan, 20, 29
- “institution” (Ontario)**, 10
- list of institutions**, 17, *see also* **directory of records**
- “local government body”**, 11
- manuals/guidelines/procedures, availability of**, 31, 32
- ministers, powers/duties of**
  - Alberta, 16
  - British Columbia, 16
  - federal, 13, 14, 17
  - Manitoba, 16
  - Ontario, 15, 17

## INDEX

---

- Quebec, 19
- Saskatchewan, 16
- motor vehicle services**, 267–276
- ombudsman (Manitoba)**, 22
- personal information**, *see* **privacy protection (personal information)**
- privacy protection (personal information)**, *see also* **bars to disclosure (personal information)**
  - access to information re oneself, 192–201
  - accuracy/currency/completeness, 169, 193, 194
  - direct collection from individual, 164–167
  - disclosure, authorized, 170–188
  - disclosure, consent to, 201
  - duration of retention, 169
  - general, 124–162
  - information banks/indexes, 189–191
  - medical/health information, 157, 162
  - obligation to protect, 158
  - “personal information”, 126, 157, 162, 163
  - uses of information, general, 170
  - whistleblowers, protection of, 161
- private sector, collection of personal information**
  - bars to disclosure (exemptions), 244–247
  - generally, 225–232
  - manner of collection, 233–239
  - protection, 241, 242
  - retention, 240
  - right of access by persons to whom information relates, 243
- “public body”**, 11
- public interest/safety**, 38, 44, 57, 76, 80, 93
- purpose of legislation**, 1–4
- records**, *see* **access procedure (freedom of information); access to records (freedom of information)**
- reports of heads of institutions**, 33
- review of decisions**
  - appeal/review from commissioner, 39, 255–259
  - burden of proof, 253
  - compliance with commissioner’s order, 256–258
  - judicial review, 39, 77, 259, 260–266
  - motor vehicle services, re, 267–276
  - notice of request for, 251
  - notice of right to, 150
  - options of commissioner after request, 252
  - order of commissioner, 254, 255
  - right of review, 248, 249
  - written request for, 250

## Index to Professions and Occupations

(All references are to paragraph numbers.)

- admission to practice, *see also* self-government**
- conduct prior to, 28
  - duties of governing body, 11
  - general, 9
  - methods of practice, restricting, 12
  - qualifications of applicants, 10
- codes of ethics, 19**
- competence, *see* liability; negligence; professional misconduct**
- contract, breach of, *see* liability**
- definition of profession, 2**
- discipline, *see also* liability; negligence; professional misconduct; self-government**
- conduct prior to membership, 28
  - construction of powers re, 24
  - general, 24, 25
  - jurisdiction re, 26, 27
  - natural justice, 25
  - Registrar, not acceptable forum, 29
- ethics, 19**
- fiduciary breach, *see* liability**
- incompetence, *see* liability; negligence; professional misconduct**
- jurisdiction, *see* regulation of professions**
- legislation, *see* regulation of professions**
- liability, *see also* discipline; negligence; professional misconduct; self-government**
- contract, breach of, 33
  - fiduciary duty, breach of, 34–36
  - general, 30–32
  - governing bodies, of, 31, 32
  - statutory duty, breach of, 37
- methods of practice, restricting, 12**
- negligence, *see also* discipline; liability; professional misconduct; self-government**
- approved practice, 81–83
  - causation, 73–77, 83
  - concurrent tort/contract liability, 33
  - contributory negligence, 84, 85
  - damage/loss, need for, 74
  - defences, 79–85
  - duty to client, 39–43
  - duty to others, 44–51
  - error of judgment, 55, 80
  - evidentiary standard, 86
  - fiduciary breaches, 35
  - general, 38
  - limitation of actions, 79
  - reliance on others/vicarious liability, 61–71
  - remoteness of damage, 78
  - remuneration affected by, 72
  - standard of care, 43, 52–71
  - statutory breaches as, 37
- professional misconduct, *see also* discipline; liability; negligence; self-government**
- codes of ethics, 19
  - conduct prior to membership, 28
  - incompetence/incapacity, 23
  - general, 17–19
  - private conduct, 21
  - review by law society, 20

## PROFESSIONS AND OCCUPATIONS

---

- rudeness/bad manners, 21
- sexual misconduct, 22
- test for determining, 18
- regulation of professions, *see also* self-government**
  - general, 4
  - methods of practice, restricting, 12
  - provincial power over, 3
  - purpose of, 5
- scope of title, 1**
- self-government, *see also* admission to practice; discipline; professional misconduct; unauthorized practice**
  - liability of governing body, 31, 32
  - methods of practice, restricting, 12
  - powers of governing bodies, 6, 7
  - striking down by-laws/rules, 8
- statutory duty, breach of, *see* liability**
- torts, *see* liability; negligence**
- unauthorized practice, *see also* self-government**
  - effect of on contracts, 16
  - general, 13
  - jurisdiction to enforce, 14
  - non-members, 15
  - purpose of bar against, 13

## Index to Public Authorities and Public Officers

(All references are to paragraph numbers.)

- access to information**, 21–37
- actions**, *see also* **civil liability; criminal liability**
- capacity in civil actions, 3–10, 144
  - forum, 11
  - immunity from prosecution, 12
  - injunctions, 43
  - judicial review, 13
- airports**, 73
- bonding and security**, 99–101
- Charter of Rights**, 14, 15
- civil liability**, *see also* **limitation of actions; protection from liability**
- abuse of power, 166, 167
  - contract, 190–192
  - Crown, vicarious liability of, 189
  - defamation, 182–184
  - false imprisonment, 175–177
  - malfeasance, 164, 165
  - malicious prosecution, 175, 176
  - negligence, 164, 168–174
  - personal liability, 185–188
  - protection from liability, 158–163
  - trespass, 179–181
  - unauthorized acts, 166
- civil servants**, *see* **public officers**
- criminal liability**, *see also* **limitation of actions; protection from liability**
- bribery, 244–252
  - dealing in offices, 264, 265
  - failure to deliver up property, 272
  - false return, 271
  - fraud or breach of trust, 266, 267
  - fraud upon government, 253–258
  - immunity of Crown agents, 12
  - municipal corruption, 259–261
  - permitting prisoner to escape, 274
  - personating public officer, 268–270
  - protection of officers, 243
  - selling or purchasing office, 262, 263
  - wilful misconduct, 273
- damages**, 239
- delegation of authority**, 140, 154–157
- discretion**
- failure to act, 153
  - fettering, 140, 152
  - good faith, 152
  - limits, 151, 152
  - review of exercise, 151
- garnishment and attachment**, 110, 242
- immunity from prosecution**, 12, 243
- injunctions**, 43, 240, 241
- judicial review**
- general, 13, 150
  - ombudsman, 58, 61
- labour relations**, *see* **public officers**
- liability**, *see* **civil liability; criminal liability; protection from liability**

## Index to Public Health and Welfare

(All references are to paragraph numbers.)

- administration, see legislation (administration)**
- ambulance services**
- Alberta, 58
  - Manitoba, 118
  - Saskatchewan, 151, 152
- assistance, see legislation (public welfare-federal); public assistance**
- children**
- communicable diseases, 43
  - foster homes, 17
  - tobacco, 15, 120, 153, 154
- cigarettes, see tobacco**
- communicable diseases (Alberta)**
- children, 43
  - confidentiality, 44
  - death by, dealing with body after, 49
  - epidemics, 46
  - examinations, compulsory, 45
  - immunizations, compulsory, 46
  - investigations, 45
  - isolation/quarantine, 45, 46
  - notification/reporting of, 42–44
  - sexually transmitted diseases, 43, 44
  - treatment of, compulsory, 43, 47–49
- communicable diseases (British Columbia)**
- death from, dealing with body after, 82
  - epidemics, 62
  - isolation/quarantine, 79–81
  - notification/reporting of, 77, 78
  - treatment of, 82
- communicable diseases (Manitoba)**
- death from, dealing with body after, 112
  - investigations re, 95
  - isolation/quarantine, 107
  - notification/reporting of, 105
  - order to prevent, reduce or eliminate threat, 106
  - treatment of, 108–112
- communicable diseases (Saskatchewan)**
- epidemics, 139
  - general, 139
  - reporting requirements, 136, 138
- confidentiality, see privacy issues**
- constitutional issues, see jurisdiction (constitutional)**
- duty to report illness, 137**
- enforcement, see legislation (enforcement)**
- epidemics, see communicable diseases**
- food, handling /sale of**
- Alberta, 57
  - British Columbia, 89, 90
  - Manitoba, 117
  - Saskatchewan, 140, 142, 143, 147–150
- food and drugs, see legislation**
- funding, see legislation (administration)**
- garbage, see sanitation**
- glue, 59**



- inspectors/inspections, see legislation(administration); legislation (enforcement)**
- intoxicating vapours, 59**
- jurisdiction (constitutional)**
- federal, 2, 4, 5
  - provincial, 3
- legislation, see also specific issues, e.g., communicable diseases**
- legislation (administration-Alberta)**
- aliens, rights of, 24
  - chief medical officer, 25, 26
  - community health councils, 30, 32
  - disabling conditions, 22
  - funding of boards/authorities, 34
  - general, 18–20
  - health boards, 31
  - health regions, 27–34
  - inspectors, 35
  - medical officers of health, 33, 35
  - municipal powers, 20
  - official administrator, 32
  - powers of minister, 21–24
  - Public Health Appeal Board, 40
  - regional health authorities, 27–30, 32, 41
- legislation (administration-British Columbia)**
- board of health, local, 63
  - environmental health officer, 66
  - general, 60
  - inquiry into public health issues, 61
  - investigations, 61
  - local government communication with health officer, 67
  - medical health officers, 64, 65
- powers of minister, 60
  - regional health boards, 63
  - regional health plan, 63
  - regulations related to public health, 62
- legislation (administration-Manitoba)**
- central administration, 92–94
  - chief public health officer, 98
  - general, 94
  - health regions, 97
  - medical officers, 93, 99
  - municipal control, 92
  - powers/duties of minister, 92, 95, 96
  - public health nurses, 99
  - regional administration, 97, 99
  - regional health authorities, 97
- legislation (administration-Saskatchewan)**
- central administration, 121–125
  - Crown, binding of, 125
  - district health boards, 123
  - funding, 123
  - local administration, 126–129
  - local authorities, 123, 126, 127, 129
  - municipal councils, 129
  - officers, duties/powers of, 125
  - powers of minister, 121, 122, 124
  - public health officers, 128
  - reports, 127, 136
  - tobacco, 124, 129
- legislation (enforcement-Alberta), see also offences/penalties**
- compliance orders/fines, 39
  - inspectors/inspections, 35, 36, 54
  - medical officers of health, 35
  - orders re closure etc., 36, 37

## INDEX

---

- rules of justice, applicability, 35
- waiver of non-compliance, order re, 38
- legislation (enforcement-British Columbia), *see also* offences/penalties**
  - administrative penalty, 68
  - appeal of orders, 74, 75
  - injunctions, 73
  - inspection of vehicles by health officers, 72
  - inspectors/inspections, 64, 71–73
  - obstruction of inspection, 73
  - offences, defences, 69
  - restraining order, 73
  - reviewing orders, 74–76
  - sentencing and alternative penalties, 69–71
  - warrant authorizing search, 73
- legislation (enforcement-generally), *see also* offences/penalties**
  - general, 6
  - medical officers, authority of, 7, 8
  - procedure, strict compliance, 6
  - seizure/forfeiture, 8
  - strict construction, 11
- legislation (enforcement-Manitoba), *see also* offences/penalties**
  - appeals, 104
  - inspectors/inspections, 95, 99, 101, 102
  - notices/service of orders, 103
  - offences, 100
- legislation (enforcement-Saskatchewan), *see also* offences/penalties**
  - inspectors/inspections, 130
  - notification re hazards, 131
  - order to remedy hazard, 133, 134
  - penalties, 135
  - unsanitary buildings, 132
- legislation (interpretation), 1, 11**
- legislation (public health-federal)**
  - food and drugs, 13
  - general, 12
  - quarantine, 12
  - tobacco, 14, 15
- legislation (public welfare-federal), 16, 17**
- lighter fluid, 59**
- medical health officers, *see also* legislation**
  - Alberta, 33
  - British Columbia, 60
  - duties of, 7
  - judicial exercise of powers, 7
  - Manitoba, 93, 99
  - Saskatchewan, 128
- notifiable disease (Alberta), 26**
- offences/penalties, *see also* legislation (enforcement)**
  - absolute liability, 10
  - criminal law principles, applicability, 9
  - mens rea, 9
  - strict liability, 9, 19
- privacy issues**
  - communicable diseases, 44
  - general, 20
- public assistance (Alberta)**
  - appeal of decisions re, 62
  - application, 167
  - discontinuation of assistance, 169
  - employment and training benefits, 166

- financial administrator, appointment of, 176
  - full and part-time learners, 165
  - general, 155–158
  - handicap benefits, 155, 159, 170–172
  - health benefits eligibility, 164
  - household unit criteria, 163
  - information provided by recipient, 168
  - municipal responsibilities, 156
  - review/recovery of benefits, 157, 161, 162, 173, 174
  - social allowance, 155, 159, 160
  - welfare workers, 158
- public assistance (British Columbia)**
- appeals/reconsideration, 186, 187
  - application for benefits, 185
  - “benefit”, 177
  - change in circumstances, reporting, 182
  - eligibility for benefits, 180–184
  - execution against benefits, 178, 188
  - failure to seek work, 181
  - forms of, 177
  - general, 177–179
  - information sharing, 179
  - offences, 183, 189
  - reconsideration of decision, 190
  - recovery of overpayments, 184
- public assistance (Manitoba)**
- appeals, 197, 200–202
  - applications, 196, 197
  - eligibility, 192–195
  - forms of, 191
  - general, 191
  - review/recovery of benefits, 198, 199
- public assistance (Saskatchewan)**
- appeals, 207–209
  - application for, 205
  - change in circumstances, 206
  - eligibility, 204
  - forms of, 203
  - general, 203
- “public health”, 1**
- public welfare, *see* legislation (public welfare-federal); public assistance**
- quarantine (federal), 12, *see also* specific issues, e.g., communicable diseases**
- recreation areas, *see* sanitation**
- sanitation (Alberta)**
- buildings generally, 54
  - feedlots, 53
  - food, handling sale of, 57
  - fur farms, 53
  - general, 50–53
  - hazardous waste/recyclables, 51
  - nuisances, 50–53
  - piggeries, 53
  - poultry operations, 53
  - recreation areas, 55
  - swimming pools, 56
  - work camps, 52
- sanitation (British Columbia)**
- buildings generally, 85–87
  - food, handling/sale of, 89–91
  - frozen food lockers
  - general, 83, 84
  - health hazards, 83, 84
  - industrial camps, 85
  - inspections, 83
  - personal service establishments, 86
  - pet food, 91

## INDEX

---

- public facilities/places, 87
- recreation areas, 88
- sewer systems, 84
- swimming pools, 88
- water supplies, 90
- sanitation (Manitoba)**
  - food, handling/sale of, 117
  - general, 113, 114
  - nuisances, 113
  - recreation areas, 115, 116
  - swimming pools, 116
  - waste disposal grounds, 114
- sanitation (Saskatchewan)**
  - barbershops, etc., 145
  - buildings generally, 132, 142
  - feedlots, 140
  - food, handling/sale of, 140, 142, 143, 147–150
  - frozen food lockers, 140
  - general, 140, 141
  - hotels, 144
  - nuisances, 140
  - piggeries, 140
  - public eating establishments, 142, 143
  - recreation areas, 146
  - sewers/plumbing, 141
  - slaughterhouses, 140
  - swimming pools, 146
  - waste disposal, 140
  - water supplies, 141
- sexually transmitted diseases, *see* communicable diseases**
- smoking, *see* tobacco**
- solvents, 59**
- swimming pools**
  - Alberta, 56
  - British Columbia, 88
  - Manitoba, 116
  - Saskatchewan, 146
- tobacco**
  - federal, 14, 15
  - Manitoba, 120
  - Saskatchewan, 124, 129, 153, 154
- waste disposal, *see* sanitation**
- water, *see* sanitation**
- welfare, *see* legislation (public welfare-federal); public assistance**
- x-rays, 119**
- young persons, *see* children**

**limitation of actions**

- general statutes, 193, 194
- public officers' legislation, 195–206, 208

**mandatory retirement**, 121–124

**official languages**, 38–40

**ombudsman**

- appointment, 44, 45
- compellability, 63
- confidentiality, 56
- investigation, 46–55
- judicial review, 58, 61
- jurisdiction generally, 19, 62
- protection from liability, 61
- recommendations and reports, 57–60
- review of public authorities, 16–20

**powers and duties**

- conditions precedent, 148
- delegation, 156, 170–173
- directory and mandatory provisions, 147
- discretion, 151–153
- good faith, 72, 145, 146
- judicial review, 150
- necessary and incidental powers, 144
- reasonable care, 149
- restriction by statute, 139
- unauthorized contracts, 141–143

**presumption of regularity**, 138

**protection from liability**

- execution of judicial process, 212
- general, 208–211
- judges and magistrates, 213–217
- law enforcement officers, 218–234, 243

- members of Parliament or legislature, 207
- notice requirements for bringing action, 235–237

**“public authorities”**, 2

**public officers**

- abolition of office, 104, 126
- appointment, 74–96
  - appeals, 95, 96
  - qualifications, 75–81
    - Alberta, 77
    - British Columbia, 78, 79
    - federal, 75, 76
    - Manitoba, 80
    - Saskatchewan, 81
- selection standards, 82–90
  - general, 82–87
  - language requirements, 88–90
- validity of appointment, 91–94
- bonding and security, 99, 100
- compensation, 105–110
- conflict of interest, 137
- definitions, 64–73
- demise of Crown, effect of, 102–104
- discipline, 119
- dismissal, 126–134
- domicile, 98
- lay-offs, 119
- leaves of absence, 115–117
- merit commissioners, 79
- oath of office, 97
- offences, 135, 136
  - Criminal Code, 135
  - public service legislation, 136
- public service staffing tribunal, 96
- resignation, 120
- retirement, 121–125

## INDEX

---

- superannuation, 111
- taxation, 112–114
- salary and income**
  - entitlement to, 105, 107–109
  - garnishment, 110, 242
  - plans, 106
  - superannuation, 111
  - taxation, 112–114
- security for costs**, 238
- specific performance**, 236
- taxation**
  - Crown corporations, 41
  - Crown land, 42
  - public officers, 112–114

## Index to Public Inquiries

(All references are to paragraph numbers.)

- abolition of**, 6
- access to information**, 19, 20
- appeals**, *see* judicial review
- appointment of commissioners**, *see also* establishment of commissions
  - challenging of, 25, 27
  - general, 24
  - special law, under, 26
- bias**, *see* procedural fairness
- Charter of Rights**
  - association, freedom of, 18
  - expression, freedom of, 18, 19
  - fair trial, 20
  - general, 7, 18, 20
  - human rights inquiries, 19
  - impartial tribunal, 18
  - life/liberty/security, 19
  - presumption of innocence, 18
  - procedural fairness, 18
  - public hearing, 18
  - self-incrimination, 14, 18, 21, 22, 68, 70
  - trial without delay, 18
- constitutional competence**
  - contempt, powers re, 16
  - criminal culpability, 14
  - criminal inquiries, 13
  - “double aspect”, 15
  - general, 12
  - injunctions, 17
  - provincial powers, 13
  - RCMP inquiries, 13
  - witnesses, compelling attendance, 16
- contempt by inquiry**, 87
- contempt of inquiry**, *see also* powers
  - general, 16, 83
  - implied power, 85, 86
  - Ontario, 84
  - outside of inquiry, 84–86
  - Quebec, 86
- counsel, commission’s**, 60, 61
- counsel, right to**, *see* procedural fairness
- criminal culpability, findings re**, 10, 14, 29
- criminal inquiries (general)**, 13
- defamation**, 88
- discovery**, *see* evidence
- documents**, *see* evidence; powers; privilege
- Durham Report**, 2
- establishment of commissions**, *see also* appointment of commissioners; powers; terms of reference
  - abolition of, 6
  - constitutional issues, 12–17
  - general, 5, 12
  - statutory provisions (federal), 22, 23
  - statutory provisions (provincial), 22
- evidence**, *see also* contempt of inquiry; powers; privilege; procedural fairness
  - admissibility, discretion re, 62–64
  - Charter considerations, 7, 18
  - discovery, 65
  - gathering of, 18

## PUBLIC INQUIRIES

---

- general, 62–64
  - hearsay, 62, 63
  - subpoenas, 66, 67, 76
  - witnesses, compelling, 5, 16, 21, 34, 66, 76
  - witnesses, credibility of, 64
  - witnesses, examination/cross-examination, 41, 42, 53–55, 60
- fairness**, *see* procedural fairness
- findings**, *see* reports/recommendations
- funding of participants**, 41, 52
- guilt**, *see* criminal culpability, findings re; reports/recommendations
- hearings**, *see* procedural fairness; procedural matters
- historical development**, 1–3
- human rights inquiries**, 11, 19
- in camera proceedings**, *see* procedural fairness; procedural matters
- informants**, *see* privilege
- information gathering inquiries**, 9
- injunctions**, 17, 20, 31, *see also* stay of proceedings/orders
- investigative inquiries**, 9
- judicial review**
- appeal rights barring review, 37
  - Charter grounds, 7
  - costs of, awarding, 39
  - evidentiary grounds, on, 64
  - general, 33
  - immunity, 40, 61
  - jurisdictional error, 33, 90
  - privative clause barring, 33
  - standard of review, 34–36
  - stated case, 32
- jurisdiction**, *see* constitutional competence; powers; terms of reference
- legal character of commissions**
- courts distinguished, 6
  - executive/administrative functions, 6
  - findings, effect of, 10
  - general, 4, 5, 9
  - human rights inquiries, 11
  - independent existence of, 7
  - liability/culpability, determination of, 10
  - regulation of, 6–8
  - types of inquiry, 9, 11
- liability, findings re**, 10, 29
- liability of commissioners**, 22, 32, 39, 88
- McDonald Commission**, 2
- misconduct**, *see* reports/recommendations; terms of reference
- natural justice**, *see* procedural fairness
- nature of**, *see* legal character of commissions
- notice**, *see* procedural fairness
- official secrets**, *see* privilege
- opportunity to be heard**, *see* procedural fairness
- powers**, *see also* constitutional competence; contempt of inquiry; evidence; privilege; terms of reference
- challenging of, 17, 20, 25, 31
  - constitutional restrictions on, 12
  - general, 22
  - production of documents, 5, 32, 72–75, 78



## INDEX

---

- witnesses, compelling, 5, 16, 21, 22, 32
- privilege**, *see also* evidence
  - cabinet secrecy/solidarity, 79, 80
  - Crown rights, 74–76, 78
  - defamation, 88
  - deliberative secrecy, 40
  - documents, destruction of, 69
  - informants, protection of, 14, 82
  - judges, 77
  - Official Secrets Act, 81
  - public interest, 73–78
  - self-incrimination, 14, 18, 21, 22, 68, 70
  - solicitor-client, 40, 61, 71, 72
  - statutory (general), 68
- procedural fairness**, *see also* evidence; powers; privilege
  - bias, 46
  - Charter considerations, 18
  - counsel, right to, 56, 57
  - findings of misconduct, 48–50
  - funding, right to, 41, 52
  - general, 45
  - in camera hearings, 19, 20, 58
  - natural justice, principles of, 45
  - notice, 44, 45, 47–51
  - opportunity to be heard, 44, 45, 47, 51–53
  - rejection of relevant evidence, 64
  - witness, examination/cross-examination, 41, 42, 53–55, 60
- procedural matters**
  - adjournments, 59
  - commission counsel, role of, 60
  - general, 10, 32
  - in camera hearings, 19, 20, 58
  - power to regulate, 8, 32
- rights/duties of participants, 9, 32
- standing to appear, 41–44, 51
- written submissions, 41
- publication of proceedings**, 19, 20, 89
- purpose/object of**, 9, 11
- quo warranto**, 25, 31
- RCMP**, 2, 13
- rebellions, inquiries re**, 2
- regulation of**, *see* legal character of commissions
- reports/recommendations**, *see also* evidence; privilege; publication of proceedings
  - constitutional considerations, 12
  - criminal culpability, findings re, 10, 14, 29
  - drafts, exemption/freedom of information legislation, 91
  - duty to report, 89
  - final report, 90
  - findings, effect/wording of, 10, 14, 28
  - general, 28, 89
  - liability, findings re, 10, 29
  - misconduct, findings re, 28, 48–50
  - publication of, 19, 20, 89
  - quashing of, 38
  - time for making, 7, 90
  - wording/effect of findings, 10, 14, 28
- right to appear**, *see* standing to appear
- Rowell-Sirois Commission**, 2
- royal commissions**, 2, 3, 5
- royal prerogative**, 1, 3, 5

## PUBLIC INQUIRIES

---

**scope of inquiry**, *see* terms of reference

**self-incrimination**, *see* Charter of Rights; privilege

**standing to appear**, *see also* procedural matters

- Alberta, 42, 44, 51
- British Columbia, 44, 51
- counsel, right of, 41
- denial of, 41
- funding to appear, 41
- general, 41, 51, 53
- Northwest Territories, 42, 51
- Ontario, 42, 43, 51
- Prince Edward Island, 44, 51
- written submissions, 41

**status**, *see* legal character of commissions

**stay of proceedings/orders**, 17, 59, *see also* injunctions

**subpoenas**, *see* evidence

**terms of reference**, *see also* establishment of commissions; powers

- alteration of, 6, 7
- challenging of, 31
- criminal/civil liability, 10, 14, 28, 29
- general, 27
- interpretation of, 8, 30
- jurisdiction, exceeding, 27, 30, 31, 90
- misconduct, findings of, 28
- vagueness of, 30

**types of inquiry**

- human rights, 11
- information gathering, 9
- investigative, 9

**United Empire Loyalists**, 2

**witnesses**, *see* evidence; privilege; procedural fairness

## Index to Public Utilities

(All references are to paragraph numbers.)

- accidents**, 124, *see also* **actions;**  
**tort liability**
- actions**, *see also* **contracts;**  
**duties; tort liability**
- accidents, 124
  - collection of rates, 132
  - liability of members, 37
  - rates, re, 132
  - testimony of members/employees, 36
- amalgamation of utilities**, 39,  
133, 178, 181
- annexation, effect of**, 40
- appeals**, *see also* **boards; orders;**  
**procedure**
- Alberta, 41, 84
  - British Columbia, 85
  - court's role/powers, 42, 43, 53,  
87, 88
  - Manitoba, 86
- appraisals**, 51, 52
- approvals**, *see* **duties; franchises;**  
**standards**
- boards**, *see also* **appeals; duties;**  
**electricity; inquiries;**  
**investigations; jurisdiction;**  
**orders; procedure; rates;**  
**regulation; standards**
- boards (Alberta)**
- acting members, 18
  - Alberta Utilities Commission, 38
  - annual report, 19
  - chairman, 16
  - corporations, as, 15
  - decisions of, 17
  - divisions, creating/sittings, 17
  - duties of, 19
  - Energy Resources Conservation Board, 38
  - members, number of, 15
  - remuneration/benefits/expenses,  
19, 31
  - Rural Utilities Act, 20
  - vice-chairman, 18
- boards (British Columbia)**
- chairman, 22
  - commissioners,  
appointment/number, 21
  - decisions, 24
  - direction by Lieutenant  
Governor in Council, 23
  - divisions, creation/sittings, 24
  - duties, 25, 26
  - rates, 61
  - remuneration, 31
  - report, annual, 25
- boards (general)**
- confidentiality, 35
  - conflict of interest, 32–34
  - liability, personal, 37
  - testimony of  
members/employees, 36
- boards (Manitoba)**
- chairman, 28
  - decisions, 29
  - members, number of, 27
  - remuneration, 31
  - report, annual, 30
  - sittings, 29
  - vice-chairman, 28
- boards (Saskatchewan)**, 31
- cable television**, 46, 241, *see also*  
**telegraphs; telephones**

**carriers**

- Alberta, 2
- British Columbia, 100
- Manitoba, 47

**charges, see rates**

**commissions, see boards**

**confidentiality, 35**

**conflict of interest**

- Alberta, 32
- British Columbia, 33
- Manitoba, 34

**constitutional issues, see  
legislation (general);  
telegraphs; telephones**

**contracts, see also franchises;  
telephones (subscribers' rights)**

- criminal breach of, 159
- electricity, supply of (Saskatchewan), 227
- general (Manitoba), 182, 183
- preferential/discriminatory rates (Alberta), 177
- preferential/discriminatory rates (British Columbia), 131, 145
- rates, alteration by board (Alberta), 171
- terms of (Alberta), 175
- unjust charges, disallowance (Manitoba), 146, 147

**costs, see procedure**

**criminal law, see also  
offences/penalties**

- breach of contract, 159
- theft, 158

**CRTC, see telephones (CRTC)**

**definition of public utility**

- Alberta, 2, 3, 39, 91
- British Columbia, 4, 5, 9
- general, 1

- Manitoba, 6, 7

**delay, see procedure**

**discrimination, see duties; rates;  
telephones**

**duties, see also auctions; boards;  
franchises; jurisdiction; rates;  
regulation; standards; tort  
liability**

- accidents, re, 124
- commencing/maintaining service, 106–110
- compliance with law/orders, 121, 122
- discrimination in service, 9, 118–120, 129, 177
- encumbering/disposition of property, 133
- finance, re, 133
- non-interference with public travel, 123
- obligation to supply, 9, 111–116, 117, 229
- orders, obeying of, 121
- public convenience/interest/necessity, 108–110
- rates, re, 128–132
- records/reports, re, 126, 127
- transmission lines/poles, re, 125

**electricity (Alberta)**

- board's powers, 193
- construction/operation, approval of, 194, 195
- discontinuance of operations, 199
- distribution systems, 197–199
- general, 192, 205
- hydro developments, 194, 198, 199
- independent system operator, 200, 201
- liability to pay for, 206

## INDEX

---

- municipal by-laws re electric utility system, 202
- power plants, 195, 198, 199
- purpose of legislation re, 192
- tariffs, preparation and approval, 203, 204
- transmission lines, 196
- electricity (British Columbia)**
  - directors of authority, 208
  - expropriation of land, 210, 211
  - Hydro and Power Authority, creation, 207
  - powers of authority, 209–212
  - regulations, 213
- electricity (Federal)**
- certificate, international powerline**, 235, 236
- license, terms and conditions**, 231, 233
- permit terms and conditions**, 232, 233
- permit to export energy**, 230
- revocation/suspension of license or permit**, 234
- electricity (Manitoba)**
  - board's powers, 214–216
  - collection of accounts, 218
  - expropriation, 217
  - operations, powers re, 217
  - purpose of legislation, 214
  - rates/prices, 219
  - water power legislation, 220
- electricity (Saskatchewan)**
  - collection of accounts, 228
  - entry on land, 226
  - expropriation, 226
  - liability of, 229
  - municipalities, contracts with, 227
  - property, acquiring, 225
  - refusal to transmit or distribute, 224
  - Saskatchewan Power Corporation, purposes/powers, 221–227
  - stabilization of demand, 225
  - standards and rules, transmission and distribution lines, 223
  - water rights, 225
- evidence**, *see also* **procedure**
  - Alberta, 66, 67
  - British Columbia, 68
  - Manitoba, 69
- exemptions**, *see* **regulation**
- expropriation**, *see* **electricity**
- finance**, *see* **duties; franchises; rates**
- franchises (Alberta)**, *see also* **contracts**
  - approval of, 168–170
  - conditions on, 168
  - contracts, board's powers re, 171
  - extraprovincial companies, grants to, 169
  - mandatory terms of, 169, 170
  - rural gas utilities, 172
- franchises (British Columbia)**, *see also* **contracts**
  - approval of, 173
  - cancellation/suspension of, 174
  - conditions on, 173, 177
  - contracts, 175, 177
  - encumbrance/ amalgamation/ disposition, 178
  - municipal property, use by utility, 176
- franchises (general)**, *see also* **contracts**
  - contractual nature of, 185

## PUBLIC UTILITIES

---

- exclusive rights under, 189
- injunctions re operation of, 191
- municipal property, use of, 187, 188, 190, 191
- options to acquire, 186
- revocation/termination of, 190, 191
- **franchises (Manitoba)**, *see also contracts*
  - approval of, 179
  - conditions on, 179
  - contracts, 182, 183
  - encumbrance/ amalgamation/ disposition, 181
  - general, 183
  - municipal franchises, 180
  - municipal property, use by utility, 183
  - rates, control of, 182
- **franchises (Saskatchewan)**, 184, *see also contracts*
- **gas utilities**, *see also franchises (Alberta); rates (Alberta); tort liability*
- **gas utilities (Alberta)**
  - confidentiality of records, 259
  - conflict between Alberta Utilities Commission Act and Public Utilities Act, 272
  - customer, definition, 252
  - delivery to customer, 254
  - gas, definition, 239
  - gas distribution service, definition, 252
  - gas distribution system, definition, 252
  - gas pipeline, definition, 240
  - gas services, definition, 252
  - gas utility, definition, 241
  - gas utility entering into municipality, 248
  - gas utility pipeline, definition, 243
  - Gas Utilities Act, 238, 244
  - Investigation and report of supply and cost with municipality, 265, 266
  - jurisdiction of Alberta Utilities Commission, general, 238, 245, 249, 271
  - obligations of municipality operating gas utility, 267
  - obligations of owner of gas utility, 260
  - offences, 269
  - owner of gas utility, definition, 242
  - privilege or franchise, 268
  - prices, rates, tolls, charges, 246, 247, 250, 261, 263
  - regulations, 253
  - restrictions on issuing forms of indebtedness, 251
  - review of affairs, earnings and accounts of gas utility, 262, 264
  - service standards re billing services, 255, 256
  - settlement of complaints, 257, 258
- **gas utilities (British Columbia)**
  - authority to enter/use land for constructing/maintaining works, 279
  - British Columbia Utilities Commission, 273
  - gas, definition, 276
  - gas utility, definition, 277
  - expropriation, 278
  - powers of gas utility, 276, 277
  - regulations, 274
- **gas utilities (Manitoba)**
  - Crown, 286
  - distribution, definition, 282

## INDEX

---

- gas, definition, 281
- offences, 287
- powers of Board re availability of gas, 284, 285
- Public Utilities Board, 280
- Regulations, 283
- hearings, *see* appeals; inquiries; procedure**
- highways, *see* telephones (poles/lines)**
- inquiries, *see also* boards; investigations; rates**
  - Alberta, 54, 56
  - British Columbia, 55, 56
  - Manitoba, 57
- invasion of privacy, *see* criminal law**
- investigations, *see also* boards; inquiries; rates**
  - accidents, of, 124
  - Alberta, 50, 65
  - British Columbia, 51
  - Manitoba, 52, 53, 146
- jurisdiction (Alberta), *see also* boards; regulation; telephones**
  - administrative vs. judicial function, 42
  - amalgamation of utilities, 39, 133
  - annexation, re, 40
  - appeals re rates/charges/tolls, 40, 41
  - appeals to Court of Appeal, 43
  - general, 38, 90, 92, 93, 95
  - “owners” subject to, 3, 39
  - receivership, effect of, 3, 94
  - sources of, 38
- jurisdiction (British Columbia), *see also* boards; regulation; telephones**
  - amalgamations, 133, 178
  - cable systems, 46
  - carriers, re, 100
  - classes of service, re, 98
  - general, 44, 45, 68, 96
  - operations, re, 97, 99
  - receivership, effect of, 101
  - sources of, 44, 45
- jurisdiction (Manitoba), *see also* boards; regulation; telephones**
  - amalgamations, 133
  - carriers, re, 47
  - court, powers of, 49
  - general, 47–49, 53, 102, 105
  - receivership, effect of, 104
  - scope of, 103
  - source of, 47, 48
- legislation (general), *see also* electricity; telegraphs; telephones**
  - federal, 12–14
  - general, 10
  - provincial, 10, 11
- liens, 77, *see also* orders**
- merger, *see* amalgamation of utilities**
- notice, 70, 71, *see also* procedure**
- obligation to supply**
  - Alberta, 111, 112, 115
  - British Columbia, 113
  - general, 9, 116
  - Manitoba, 114, 115
  - railways, 115
  - Saskatchewan, 229

**offences/penalties, see also criminal law; tort liability**

- Alberta, 155
- British Columbia, 156, 157
- general, 154
- Manitoba, 157

**oil and gas, see also pipelines**

- Alberta, 2
- British Columbia, 5, 100
- Manitoba, 6, 7

**orders, see also appeals; boards; procedure**

- Alberta, 59, 72, 76, 77, 79, 95
- British Columbia, 59, 77–79
- enforcement of, 76–79, 121
- final, 59, 73
- interim, 59
- liens, 77
- Manitoba, 59, 74, 76, 77, 79
- offences for contraventions, 154–159
- power to make, 59
- rescission of, 60, 75
- review/rehearing/variation, 75
- service of, 80, 81

**owner, see definition of public utility**

**pipelines, see also oil and gas**

- Alberta, 2, 8
- general, 8
- Manitoba, 6, 7

**powers, see boards; duties; franchises; inquiries; investigations; jurisdiction; orders; procedure; rates; regulation; standards**

**price/terms of purchase, 40, see also rates**

**procedure, see also appeals; boards; orders**

- costs, 82, 83
- evidence, 66–69
- general (Alberta), 66
- notice re proceedings, 70, 71
- service of orders, etc., 80, 81
- undue delay, 87

**public**

**convenience/interest/necessity, see duties**

**“public utility”, see definitions of public utility**

**rates, see also duties; electricity; franchises; price/terms of purchase; standards; telegraphs; telephones**

**rates (Alberta)**

- accounts, keeping/review of, 65, 139
- appeals/challenges, 41, 140
- collection of, 132
- control generally, 61, 93, 134, 151–153
- gas utilities, rural, 140
- increases, 137
- investigations, re, 50, 65
- just/reasonable rates, 50, 65, 116, 129, 135–137, 151–153
- reviews, 139
- schedules of, filing/approval, 128, 138
- setting/calculating, 135–137

**rates (British Columbia)**

- classes of service, 141
- collection of, 132, 145
- contracts, 145
- control generally, 61, 141, 142, 151–153
- discriminatory/ preferential rates, 177



## INDEX

---

- duty of commission in setting, 26
- fairness/ reasonableness, 62, 116, 129–131, 141, 151–153, 177
- increases, 144
- schedules of, 128, 143, 144
- rates (Manitoba)**
  - collection of, 132
  - control generally, 61, 147, 151–153, 182
  - fairness/ reasonableness, 116, 129, 146–149, 151–153
  - increases, 149
  - investigations, 52, 53, 146
  - schedules of, filing, 128
- rates (Saskatchewan), 150–153**
- railways**
  - cessation of operations, 115
  - legislation applying to (Manitoba), 7
- receivers, *see* jurisdiction**
- regulation (Alberta), *see also* boards; jurisdiction**
  - exemption from legislation, 91
  - general, 90, 92, 93, 95
  - purpose of, 89
  - receivership, effect of, 3, 94
- regulation (British Columbia), *see also* boards; jurisdiction**
  - carriers, declaration of person as, 100
  - classes of service, 98
  - general, 44, 45, 68, 96
  - operations, of, 97
  - purpose of, 89
  - receivership, effect of, 101
  - scope of, 99
- regulation (Manitoba), *see also* boards; jurisdiction**
  - general, 47–49, 53, 102, 105
  - operations, 102, 103
  - purpose of, 89
  - receivership, effect of, 104
  - scope of, 102, 103
- scope of title**
  - federal powers, 12–14
  - general, 10
  - provincial powers, 10, 11
- service, *see* duties; obligation to supply; procedure; rates; standards; telephones**
- sewage systems (Manitoba), 6**
- standards, *see also* boards; duties; rates**
- standards**
  - classes of service (British Columbia), 98
  - commencing/ maintaining service, 106–110
  - extension of service, 9, 93
  - investigations re (Alberta), 50
  - setting of, 58
- statutes, *see* legislation (general)**
- supply, *see* duties; obligation to supply; standards; telephones**
- telecommunications, *see* cable television; telegraphs; telephones**
- telegraphs, *see also* criminal law; electricity; telephones**
  - lines/poles etc., 125
- telephones, *see also* actions; contracts; criminal law; duties; electricity; telegraphs; tort liability**
- telephones (Alberta)**
  - general, 2
- telephones (British Columbia)**
  - general, 4

## PUBLIC UTILITIES

---

- telephones (Manitoba)**, 6
- telephones (poles/lines)**
  - general, 125
- television**, 46
- tolls**, *see* **electricity; rates; telegraphs; telephones**
- tort liability**, *see also* **actions; duties; telegraphs; telephones**
  - British Columbia, 161, 212
  - escapes of commodities, 163, 164–166
  - gas, 164–166
  - Manitoba, 162
  - negligent operations, 160, 164–166
  - operations, notice re change in, 167
  - Saskatchewan, 229

## Index to Radio and Television

*(All references are to paragraph numbers.)*

- aboriginal broadcasting**, 151
- actions**
  - breach of copyright, 123, 125
  - CBC
    - • immunity from action, scope of, 128, 143
    - • legal capacity, 111
  - defamation/libel, 127–142
  - divulgence of radio-based telephone communication, 32
  - general, 148
  - injunctions, 144
  - private broadcasters, 144
  - publication ban, 145
- advertising**
  - CBC, 106
  - CRTC regulation, 46, 101
  - radio, 83
  - television, 1, 89, 149
- broadcasting**
  - control of system, 43
  - definition, 8, 9
  - French language, 42, 44
  - offences, 27
  - purpose and policies of system, 40, 42, 43
  - regulatory policy, 44
  - right to receive programs from foreign broadcasters, 30
- broadcasting policy**, 42–45, 150, 151
- broadcasting undertaking**
  - definition, 10
  - offences, 27
  - ownership and control, 43
    - programming, 42
    - requirement for broadcasting certificate, 12
- cable**
  - classes of licence, 94
  - fees, 98, 99
  - licensing, 73
  - programming requirements, 94–97
  - regulation of, 93, 98, 99
  - transmission lines, 100
- Canada-United States Free Trade Agreement**, 67
- Canadian Broadcasting Corporation (“CBC”)**
  - Canadian programming, 103
  - establishment and organization, 105
  - financing, 106
  - immunity from action, scope of, 128, 143
  - legal capacity, 111
  - licence, 68
  - mandate, 109, 110
  - powers, 111, 112
  - programming requirements, 109
  - reservation of channels or frequencies, 66
  - services, 107, 108
  - simulcast programs, 85
- Canadian content**
  - CBC, 103, 109
  - general, 42
  - radio, 84, 102
  - television, 91, 102–104

**Canadian Radio-Television and Telecommunications Commission (“CRTC”)**

- Cabinet review of decisions, 53–55
- complaints/representations, 75
- decisions
  - • Cabinet review, 53–55
  - • judicial review, 56–63
  - • publication, 51
- establishment, 35
- government directives, 64–67, 150
- head office, 38
- hearings, 54, 71–79
- inquiries, 50
- judicial review
  - • CRTC standing, 58
  - • general, 56, 59–63
  - • leave, 56
- mandate, 39
- meetings, 38
- member qualifications, 37, 38
- nature, 40, 41
- offices, 38
- organization, 36
- origin, 35
- panels, 77
- policies, 42–45, 64, 65, 151
- powers and responsibilities
  - • censorship, 48, 127
  - • compliance orders, 50, 71
  - • employment equity, 39
  - • fee schedules, 46
  - • general, 4, 44, 46–49
  - • inquiries, 50
  - • levy, 47
  - • prescribing classes of broadcasting licences, 46
  - • regulations, 46, 51

- public notices, 51, 52, 65, 66, 74
- quorum, 38
- reconsideration of decisions, 53–56
- regulation of broadcast signal content, 101–104
- regulation of cable fees, 98
- regulatory jurisdiction, 39, 80, 87, 98–100, 123, 148
- rehearing, 53–56
- reports of proceedings, 51, 52
- review of decisions, 53–63

**copyright**, 33, 127

**Charter of Rights and Freedoms**, 30, 56, 90, 147, 149

**copyright**

- breach of copyright, action, 123, 125
- collective agreements, effect of, 122
- collective societies, tariffs, 120
- definitions, 113, 124
- retransmission, 117
- rights of copyright owner, 113, 118, 119, 121, 124
- royalties, 116, 117, 120
- telecommunication to public, nature of, 114–117
- wireless transmission of ringtones, 126

**defamation/libel**

- apology, effect of, 141
- burden of proof, 129
- CBC, action against, 128
- damages, 141, 142
- defences, 129, 139, 141
- internet publications, 138
- licensee responsibility for broadcast, 127, 128
- malice/negligence, effect of, 141, 142

## INDEX

---

- nature of action, 127, 129, 130, 140
- television, considerations, 130, 137
- time limits/notice requirements, 131–136
- definitions**
  - “broadcasting”, 8, 9
  - “broadcasting undertaking”, 10
  - “distribution undertaking”, 11
  - “encrypted”, 8
  - general, 6
  - “programming undertaking”, 12
  - “radio”, 7
  - “radiocommunication”, 7
  - “subscription programming signal”, 29
  - “telecommunication”, 113
  - “telecommunications”, 13
- Department of Canadian Heritage**
  - establishment, 16
  - powers, duties and functions of minister, 17, 65, 66
- Department of Industry**
  - establishment, 14
  - powers, duties and functions of minister, 15, 18
- “direct to home” (DTH) broadcasters**, 9
- “distribution undertaking”**, 11, 49, 93
- educational broadcasting**, 3, 42, 66, 94, 150
- “encrypted”**, 8
- Federal Court of Appeal, judicial review of CRTC decisions**
  - CRTC standing, 58
  - general, 56, 60–64
  - leave, 56
- free trade**, 67
- freedom of speech**, 125, 147, 149
- French language broadcasting**, 42, 44, 97, 107, 109
- Governor in Council**
  - CRTC directions, 38, 39, 64–67, 150
  - radiocommunications regulations, 19
- judicial review, CRTC decisions**
  - CRTC standing, 58
  - general, 56, 60–64, 72
  - leave, 57
- legislative jurisdiction**
  - federal, 1, 3, 150
  - municipal, 5
  - provincial, 1–4
- libel**, *see* **defamation/libel**
- licensing**
  - broadcasting licences
    - amendment of, 52, 53, 64, 66, 69–71
    - application for, 52, 70, 71, 73
    - broadcasting certificate, requirement for, 70
    - Cabinet review, 53–55
    - change in control of licensee, 70
    - classes of licences, 46
    - complaints/representations to CRTC, 75
    - conditions, 68, 69, 102, 104
    - CRTC panels, 77
    - hearings, 71–79
    - issuance of, 48, 51, 52, 62, 64, 66, 68, 71
    - judicial review, 56–63, 72
    - notices, 74
    - offences, 27
    - performance objectives, 71

## RADIO AND TELEVISION

---

- • permanent broadcast licence, 71
- • regulation by CRTC, 46–49, 128, 151
- • renewal of, 48, 51, 52, 61–64, 66, 69, 71, 73, 76, 128
- • suspension/revocation of, 48, 51, 64, 69, 71
- • term, 68
- radio licences
  - • change in control of undertaking, 86
  - • competitive bidding, 18
  - • conditions, 24
  - • discretion of minister, 24
  - • exceptions to licence requirements, 22
  - • expiry, 24
  - • offences, 25–29
  - • radio operator certificate, 23
  - • requirement, 20
  - • services which may be authorized, 21
  - • suspension/revocation, 18
- Minister of Industry**, 15, 18, 24
- municipal jurisdiction**, 5
- network broadcasting**
  - radio, 85
  - television, 87, 92
- offences**
  - contravening/failing to comply with regulations/orders, 25–27
  - decoding encrypted subscription programming messages, 26, 28, 29
  - fraudulently using telecommunication facility/obtaining service, 34
  - installing, operating or possessing radio apparatus, 26
  - interception/divulging of radio-based telephone communication, 31, 33
  - interception/divulging of radiocommunication, 31
  - interfering with/obstructing radiocommunications, 26, 28
  - penalties, 146
  - sending false or fraudulent distress message, 26, 28
  - unlicensed broadcasting undertaking, 27
- opinion surveys**, 90
- pay television**, 87, 95, 102
- political broadcasts**
  - general, 42, 101
  - radio, 83
  - television, 89, 90
- program content**, 42, 89–91
- program log/record**, 88
- programming**
  - cable, 94–97
  - CBC, 109
  - general policy, 42
  - Governor General directives, 66
  - radio, 80, 82–84
  - requirements, 42, 49
  - television, 89–91
- “programming undertaking”**, 12
- provincial jurisdiction**, 1–3
- public interest programming**, 94
- public notices**, 51, 52, 74
- publication ban**, 145
- “radio”**, 7
- radio broadcasting**
  - Canadian content, 84, 102
  - CRTC jurisdiction, 80, 81
  - financial disclosure, 86

## INDEX

---

- management agreement, 85
- network broadcasting, 85
- performance records, 81
- program content, 80–84
- prohibited broadcasting, 82
- regulations, 80, 83
- simulcast programs, 85
- radio operator certificates**, 23
- radio-based telephone communications**
  - civil action, 32
  - offence, 31
- Radio-Canada International**, 108
- radiocommunication**
  - apparatus
    - • distributing, importing, leasing, manufacturing, selling, 20
    - • offences in relation to, 26
  - civil action, 32
  - copyright, 124
  - definitions, 7, 124
  - licences/authorizations
    - • competitive bidding, 18
    - • conditions, 24
    - • discretion of minister, 18, 24
    - • exceptions to licence requirements, 22
    - • expiry, 24
    - • requirement, 20
    - • services which may be authorized, 21
    - • suspension/revocation, 18
  - Minister of Industry
    - • powers and responsibility, 18, 24
  - offences
    - • contravening/failing to comply with regulations/orders, 25–27
    - • decoding encrypted subscription programming messages, 26, 28, 29
    - • fraudulently using telecommunication facility/obtaining service, 34
    - • installing, operating or possessing radio apparatus, 26
    - • interception/divulging radio-based telephone communication, 31, 33
    - • interception/divulging of radiocommunication, 31
    - • interference with/obstruction of radio communications, 26, 28
    - • radio authorizations, 18
    - • radio operator certificate, 23
    - • regulations, 19
    - • sending false or fraudulent distress message, 26, 28
    - • services, 21
    - • technical standards and requirements, 18, 20
- regulations**
  - cable, 93–99
  - Canadian content, 84, 91
  - CRTC powers, 47, 51
  - offences, 25
  - pay television networks, 87
  - radio, 19, 80, 83, 84
  - speciality services television networks, 87
  - television broadcasting stations, 87, 91
- reporting requirements**, 88
- specialty services television**, 87, 102
- “subscription programming signal”**, 29
- technical standards and requirements**, 18, 20

## RADIO AND TELEVISION

---

**“telecommunications”**, 13

**television broadcasting**

- cable
- • classes of licence, 94
- • fees, 98, 99
- • licensing, 73
- • programming requirements, 94–97
- • regulation of, 93, 98, 99
- • transmission lines, 100

- Canadian content/programming, 91, 102–104
- educational broadcasting, 3, 94, 150
- network broadcasting, 92

**transfers of ownership/control**, 88



## Index to Railways

(All references are to paragraph numbers.)

- accidents (general)**, *see also* actions; animals; fires; limitation of liability; occupiers' liability; trespass
- defences, 61
  - duty re operation methods, 62
  - employee torts, 116
  - footboards, re, 61
  - good railway practice, 61
  - headlights, adequacy, 61
  - investigations re, 49
  - non-repair as cause, 159
  - normal operations, resulting from, 62
  - snow, re, 61
  - switches, locks on, 61
- accidents (highway crossings)**, *see also* actions; highway crossings; occupiers' liability
- cuttings, 107
  - defences, 108
  - duty of care, 103, 125, 159–161
  - duty of highway user, 111–113, 115
  - examination of employees, 32
  - handcars, 114
  - horses, frightening, 115
  - illegal use of highway, 108
  - obstructions to view, 106, 107, 113
  - reversing trains, 104, 105
  - speed, excessive, 109, 110
- accidents (private crossings)**, *see also* actions; construction/maintenance
- alarm, duty to sound, 118
  - general, 117, 118
  - interference with crossing, 119
- accidents (stations, at)**, *see also* actions; carriage of passengers; limitation of liability; occupiers' liability; trespass
- access to stations, 120, 122
  - bridges, 120
  - changing trains, 123
  - doors, 123
  - persons owed duty, 121
  - speeding trains, 123
  - stairs, 120, 123
- accounting systems**, 211
- actions**, *see also* accidents; animals; carriage of goods; carriage of passengers; fires; limitation of liability; occupiers' liability; safety; trespass.
- class actions, 33
  - examination of railway employees, 32
  - jurisdiction re, provincial, 19
  - non-provision of facilities, re, 46
- air pollution**, 17
- animals**
- duty re, 138
  - fencing, 137–142
  - frightening of horses, 115
  - regulations re, 137
  - trespassing on track, 138
- arbitration**, 39, 176, 183
- assessment**, *see* taxation
- baggage**, *see* carriage of passengers
- bankruptcy/insolvency**, 194–198
- bridges**, 167
- builders' liens**, 20

- Canadian Transportation Agency**
- annual report of, 51
  - arbitration of disputes, 39
  - bankruptcy/insolvency, effect of, 197, 198
  - disabled persons, transport of, 50
  - duty of, 28, 33
  - enforcement of orders, 29, 35
  - evidence, rules of, 31
  - historical origin of, 27
  - jurisdiction of, 25, 27–30
  - Minister of Transport, powers of, 52–54, 213, 214
  - navigable waters, 47
  - objects of, 49
  - orders of, appeal/review of, 30, 36–38
  - orders/regulations of, general, 29, 35
  - policy directions, issuing of, 34
  - powers of, 29
  - practice/procedure of, 31–34, 38
  - provision of facilities, duty re, 33
  - purpose of, 28
  - quasi-judicial nature of, 28
  - safety issues, 48, 49
  - traffic facilities, 43–46
- carriage of goods**, *see also* carriage of passengers; limitation of liability; tariffs/rates
- arbitration re, 39
  - bills of lading, fraud re, 75
  - “carrier”, 66
  - confidential contracts, 44, 175, 182
  - connecting carriers, liability re, 70, 71
  - conversion, action for, 71
  - damages, 84, 85, 148, 149
  - defences, 65, 67, 69
  - delay, 66, 69, 148
  - express cars, use of, 74
  - improper packing, 68
  - inherent vice, 65
  - insurer, status as, 64
  - liability generally, 63–67, 71
  - negligence generally, 71
  - onus re damage, 65
  - onus re non-delivery, 65
  - open cars, use of, 72, 73
  - privity of contract, 71, 151
  - regulations re loss/damage/delay, 66
  - special equipment, agreement to provide, 72
  - stoppage in transitu, 77–79
  - third party rights, 151
  - warehouseman, liability as, 80–82
  - wrongful delivery, 76
- carriage of passengers**, *see also* accidents (stations, at); carriage of goods; limitation of liability; occupiers’ liability; trespass.
- accommodation, suitability/sufficiency, 93
  - baggage, liability for, 98–100
  - boarding and alighting (moving trains), 90–92
  - boarding and alighting (stopped trains), 89
  - detention of trains, 96
  - disabled persons, 50
  - duty of care, 86
  - ejection of passengers, 101, 102
  - liability generally, 63, 64
  - licensees, 88
  - limitation of liability, 86
  - negligence generally, 86
  - “passenger”, 87, 88

## INDEX

---

- sleeping cars, 97
- stops, 96
- theft, liability for, 97
- tickets, 95
- timetables, as part of contract, 94
- trespassers, 88, 127–129
- cattle**, *see* animals
- certificate of fitness**, *see also* equipment; railway companies
  - cancellation/suspension, 57
  - general, 3
  - insurance, 55, 57
  - variation of, 56
- children**, *see* occupiers' liability
- common carriers**, *see* carriage of goods; carriage of passengers
- commuter trains**, 13
- constitutional issues**, *see* jurisdiction (federal); jurisdiction (provincial)
- construction/maintenance**, *see also* certificate of fitness; railway companies; traffic facilities
  - approval of, 152, 153
  - bridges, 167
  - builders' liens, 20
  - costs, apportionment of, 154
  - drainage, 168, 169
  - highway/utility crossings, 10–12, 155–161
  - jurisdiction re, 9
  - legislation generally, 166
  - location of line, 152
  - private crossings, 162–165
  - “proposed railway works”, 154
- crossings**, *see* construction/maintenance; highway crossings
- damages**, *see* carriage of goods; limitation of liability
- definitions**, *see* specific terms, e.g., “railway”
- disabled persons**, 50
- discontinuance/transferring of lines**
  - advertising re, 171
  - agreement not reached, 173, 174
  - good faith negotiations, 172
  - sale to government, 173, 174
  - three-year plans, 170
- drainage**, 168, 169
- emergencies**, 213, 214
- employees**, *see* accidents (general); occupiers' liability
- environmental law**, *see* specific issues, e.g., air pollution
- equipment**
  - footboards, 61
  - headlights, 61
  - legislation re, 60
  - ordinary operations, 62
  - switches, 61
- farm crossings**, *see* accidents (private crossings); construction/maintenance
- federal-provincial agreements**, 212
- fencing**, *see* animals
- fires**, 17
- freight rates**, *see* tariffs/rates
- general matters**, 1
- goods**, *see* carriage of goods
- grade protection**, *see* highway crossings
- grain transportation**, *see also* tariffs/rates
  - general, 184, 186

## RAILWAYS

---

- “prescribed railway company”, 185
  - revenue, limitations on, 186
  - tariffs, 185
- handcars**, 114
- horses**, *see* animals
- highway crossings**, *see also* accidents (highway crossings); accidents (private crossings); construction/ maintenance
- crossing protection, 11, 12
  - jurisdiction re, 10
- human rights**, 22
- insolvency**, 194–198
- inspections**, *see* offences/enforcement; safety
- interprovincial/intraprovincial railways**, *see* jurisdiction; provincial railway companies
- interswitching**, 187, 188
- investigations**, *see* safety
- joint track usage**, *see* running rights/joint track usage
- jurisdiction (federal)**, *see also* jurisdiction (provincial)
- commuter trains, 13
  - crossing protection, 11, 12
  - federal-provincial agreements, 212
  - general, 5–8
  - highway crossings, 10, 11
  - inter/intraprovincial lines, 13
  - lands, taking of, 8
  - liability, limitation of, 14
  - paramountcy, 7
  - property and civil rights, 6
  - railway works, 9
  - “through traffic”, 8
- jurisdiction (provincial)**, *see also* jurisdiction (federal)
- air pollution, 17
  - builders’ liens, 20
  - civil actions, re, 19
  - federal railways, registration of, 16
  - federal-provincial agreements, 212
  - fires, 17
  - general, 5–7, 15–19
  - human rights, 22
  - land, title to, 23
  - municipal powers, 26
  - non-railway enterprises, 25
  - nuisance, 17
  - paramountcy, 7
  - property and civil rights, 6
  - taxation, 18
  - workers’ compensation, 21
- land issues**
- adverse possession, 23
  - entry on, clearing destructions, 106
  - interests in land, 24
  - mineral rights, 23
  - mortmain, 23
  - planning/zoning, 23
  - prescriptive rights, 23
- legislation, applicability of**, 3, 4, 8, 197, 198, *see also* Canadian Transportation Agency
- level crossings**, *see* highway crossings
- limitation of liability**, *see also* accidents; actions; animals; carriage of goods; carriage of passengers; occupiers’ liability; trespass.
- consequential loss, 148
  - contracting out, 86, 144

## INDEX

---

- damages, 148, 149
- fundamental breach, effect of, 147
- general, 144
- interpretation of clauses, 146, 148
- legislation re, 14
- limitation periods, 150
- notice re, 145
- regulations re, 67
- third party beneficiaries, 151
- livestock**, *see* animals
- location**, *see* construction/maintenance
- mineral rights**, 23
- Minister of Transport**, 52–54, 213, 214
- mortgages**, 192, 193
- municipal powers**, *see also* jurisdiction (federal); jurisdiction (provincial)
  - delegation by province, 26
  - planning/zoning, 23
- navigable waters**, 47, 166
- negligence**, *see* accidents; actions; animals; carriage of goods; carriage of passengers; fires; limitation of liability; occupiers' liability; safety; trespass.
- occupiers' liability**, *see also* accidents (stations, at); actions, carriage of passengers; limitation of liability
  - children, 130–134
  - employees, 135, 136
  - invitees/licensees, 124–126
  - trespassers, 88, 127–129
- offences/enforcement**
  - emergencies, 213, 214
  - enforcement officers, 202
  - entry/inspection, 202
  - false/misleading statements, 204
  - limitation of actions, 210
  - obstruction, 204
  - penalties, 205
  - proceedings, 209
  - railway constables, 203
  - “violations”, 206–209
- operation of railways**, *see* accidents; animals; carriage of goods; carriage of passengers; certificate of fitness; discontinuance/transferring of lines; equipment; limitation of liability; occupiers' liability; railway companies; traffic facilities.
- paramountcy**, *see* jurisdiction
- passengers**, *see* carriage of passengers
- planning and zoning**, 23
- property and civil rights**, *see* jurisdiction (provincial)
- quarries**, 2
- “railway”**, 2
- railway companies**, *see also* certificate of fitness; equipment; jurisdiction
  - compensation of injured parties by, 59
  - construction, powers re, 58
  - definition of, 3
  - duty re operations, 62
  - powers of, 58, 59
  - “prescribed railway company”, 185
  - restoration of land, 59
- railway works**, *see* construction/maintenance; traffic/facilities
- rates**, *see* tariffs/rates

## RAILWAYS

---

- receivers**, *see* insolvency
- rivers**, *see* navigable waters
- “road crossing”**, 155
- roads**, *see* highway crossings
- running rights/joint track usage**, 189–191
- safety**, 48, 49, *see also* accidents; animals; fires
- scope of title**, 1
- security instruments**, 192, 193
- “Special Act”**, 3
- statutes**, *see* legislation, applicability of
- stoppage in transitu**, *see also* carriage of goods
- definition of, 78
  - interpleader, 78
  - liability, effect on, 77
  - loss of right, 79
  - notice of, 78
- “street railways”**, 2
- tariffs/rates**, *see also* grain transportation
- arbitration re, 39, 40–42, 176, 183
  - competitive line rate, 183
  - confidential contracts, 44, 175, 182
  - filing of publication, 177, 178
  - general, 175, 176
  - joint tariffs, 181
  - lien for, 180
  - rebates, 175
  - recovery of charges, 179, 180
- taxation**
- buildings, exemption of, 201
  - general, 199
  - municipal powers, 199
  - provincial powers, 18, 199
  - “railway lands”, 200
  - “roadway”, 199
  - “superstructure”, 199
- “through traffic”**, 8
- tickets**, 95
- timetables**, 94
- traffic agreements**, *see* grain transportation; interswitching; running rights/joint track usage
- traffic facilities**
- action for non-provision, 46
  - adequacy of, 43, 45
  - carriage contracts, 44, 45
  - discontinuance of, 43
  - duty to provide, 43, 45, 46
  - rolling stock, shipper providing, 44
- “tramways”**, 2
- trespass**, 88, 127–129, *see also* occupiers’ liability
- “utility crossing”**, 155, *see also* construction/maintenance
- “utility line”**, 155
- violations**, *see* offences/enforcement
- warehouseman**, *see* carriage of goods
- workers’ compensation**, 21

## Index to Real Property

(All references are to paragraph numbers.)

- accounting, action for**, 258–260,  
*see also* **partition**
- adverse possession**, *see*  
**prescriptive rights**
- agreements for sale**, *see*  
**conveyances (execution);**  
**conveyances (general); interests**  
**in land (general); subdivision**  
**plans (registration —**  
**Saskatchewan)**
- air space**, *see also* **interests in**  
**land (general)**
- British Columbia, 19
  - general, 5, 9
  - right to light, 9
  - rights of landowner, 6, 9
  - trespass, on, 7
- alienation, restrictions on**, *see*  
**repugnancy**
- “appurtenant”**, 66
- assurance funds**, *see also*  
**registration**
- assurance funds (Alberta)**
- action against generally, 517
  - General Revenue Fund, 520
  - grounds for claims, 517, 522
  - homestead, loss of, 504
  - laches, 523
  - limitation period, 518, 523
  - mineral claims, 521
  - parties to action, 519
- assurance funds (British**  
**Columbia)**
- actions against generally, 524
  - bars to recovery, 526, 511, 512
  - grounds for recovery, 510, 524,  
525
  - parties to action, 524, 525
- assurance funds (Manitoba)**
- actions against generally, 527
  - bars to recovery, 529–531, 534
  - damages recoverable, 532
  - grounds for recovery, 527, 528
  - parties to action, 527, 528
  - purpose of fund, 533
- assurance funds (Saskatchewan)**
- actions against generally,  
535–537
  - grounds for recovery, 535
  - parties to action, 538
  - payment, 539
- bankruptcy**, 222, 226
- best efforts**, *see* **conditions**  
**precedent/subsequent**
- building plans**, 499
- building schemes**, *see also*  
**restrictive covenants**
- British Columbia, 552, 563, 596
  - discharge of unreasonable  
restrictions, 577
  - general, 586, 588
  - proof of, 537
  - registration (British Columbia),  
563
  - registration (general), 561
  - registration (Saskatchewan), 447,  
562
  - variation of, 598
- buildings**, 28, 29, *see also*  
**fixtures**
- caveats**, *see* **registrars;**  
**registration**
- commercial enterprises**, 600, 603
- conditional estates (general)**, *see*  
*also* **conditions**

**precedent/subsequent; interests in land (general); remainders**

- defeasible interests, 130, 132, 133
- determinable interests, 131–133
- impossibility, effect of, 147
- perpetuities, 133
- possibility of reverter, 132
- public policy, contravention of, 140–143
- repugnancy, 135–139
- right of re-entry, 132
- uncertainty, effect of, 144–146
- void conditions, effect generally, 149
- waiver of condition, 129, 148

**conditions precedent/subsequent, see also conditional estates (general); interests in land (general); remainders**

- best efforts to complete, 123–129
- defeasible interests, 130, 132, 133
- definition/nature of, 113–119
- determinable interests, 131–133
- early vesting, preference for, 118, 145, 152
- intention to create, 114
- possession of land, effect on, 119
- remainder, subject to, 117
- “subject to”, 126
- true conditions precedent, 120–122
- uncertainty, effect of, 144–146
- void conditions, effect generally, 149
- waiver of, 129, 148

**consideration, see conveyances (execution)**

**conveyances (execution), see also covenants; merger; registration; restrictive covenants**

- alteration of, 315
- consideration for, 317–320, 367
- delivery of, 310–314
- effect of execution, 297
- effective date of, 305, 313
- estoppel, 318, 322–324
- “executed”, 296
- form of, 315, 316
- knowledge of grantee, relevance, 312, 321
- mineral title held by Crown in Saskatchewan, 298
- seals, requirement for, 301, 306–309
- signing of, 301–304
- Statute of Frauds, 299
- writing, requirement for, 299

**conveyances (general), see also covenants; merger; registration; restrictive covenants**

- aliens, to, 280
- common law, at, 261–264
- death of transferee, 275
- “deed”, 263
- easements, 266, 285
- effective date of, 305
- “grant”, 285
- habendum, 286
- names of parties, 276–278, 378
- operative clauses of, 285–288
- parties to, 275–280
- recitals, 281–284
- reservations/exceptions, 287
- statutory schemes, 265–274
- “transfer” of land, 265, 268–270, 285
- words of limitation, 42, 43, 264, 288



INDEX

- coparcenary**, 198, 247, *see also* **joint tenancy; tenancy in common**
- covenants**, *see also* **conveyances (general); merger; restrictive covenants**
- common law, 289–293
  - delay in performing, 292
  - houses under construction, 293
  - implied by statute, 294, 295
  - personal covenants, 289
  - running with the land, 289–291
- curtesy**, *see* **dower/curtesy**
- deed**, 263, *see also* **conveyances**
- defeasible interests**, *see* **conditional estates (general); conditions precedent/subsequent**
- determinable interests**, *see* **conditional estates (general)**
- doctrine of estates**, 1, *see also* **interests in land (general); tenure**
- doctrine of tenures**, *see* **interests in land (general); tenure**
- dower/curtesy**, 62, *see also* **homesteads; interests in land (general)**
- easements**, 266, 285
- ejectment**, *see* **possession, recovery of**
- encroachment on remainder**, *see* **life estates**
- errors**, *see* **assurance funds; registration**
- escheat**, 3, 31
- estates**, *see* **doctrine of estates; interests in land (general); tenure**
- estoppel**
- ejectment, as bar to, 658
  - execution of conveyance, re, 318
  - “feeding the estoppel”, 322–324
  - homestead, redistribution of, 82
  - recitals raising, 281–283
- “executed”**, 296, *see also* **conveyances (execution)**
- fee simple**, *see also* **interests in land (general)**
- common law, creation at, 32, 33
  - general, 31
  - modern rule, 34, 35
  - Shelley’s case, rule in, 36, 37, 154
  - testamentary creation, 33
- fee tail**, 38, 39, *see also* **interests in land (general)**
- fiduciary duties**, *see* **joint tenancy; life estates; powers of appointment; tenancy in common**
- fixtures**, *see also* **interests in land (general)**
- agreements re characterization, 26, 27
  - buildings as, 28, 29
  - constructive annexation, 25
  - degree/purpose of annexation, 24
  - general, 23
  - intention, relevance of, 24, 26
  - mobile homes, 29
  - presumptions, 24
  - spare parts/tools, 25
  - tenant’s rights/duties re, 30
- forgery**, *see* **registration (forgery)**
- fraud**, *see* **possession, recovery of; registration (fraud)**
- free and common socage (general)**, 2, *see also* **interests in land (general); tenure**
- gift over**, *see* **life estates**
- “grant”**, 285

**hereditaments**, *see* “land”

**homesteads**, *see also*

**dower/curtesy; interests in land (general)**

**homesteads (Alberta)**

- assurance fund, claims against, 522
- consent to disposition, 76–81
- court order disposing of consent requirement, 88–89
- definition, 64, 65, 71
- disposition, 72
- estoppel, 82
- general, 63, 64
- legislation negating consent requirement, 84–85
- life estate of spouse, 100
- “owner”, 65
- partition orders, effect of, 79, 248
- purpose of, 63, 64
- release of, 82
- release of dower rights, 93–96
- relief from compensation fund, 106
- third party purchasers, protection of, 103
- wrongful disposition, 78, 80–82, 105

**homesteads (British Columbia)**

- consent to disposition, 76–77
- court order disposing with consent requirement, 88, 90
- definition, 70, 71
- disposition, 73
- estoppel, 82
- general, 63, 64
- life estate, 102
- purpose of, 63, 64
- release of, 82
- release of dower rights, 93, 97

- wrongful disposition, 78, 80–82

**homesteads (Manitoba)**

- “appurtenant”, 66
- consent to disposition, 83
- court order disposing with consent requirement, 88, 97
- definition, 66, 67
- disposition, 74
- estoppel, 82
- general, 63, 64
- legislation negating consent requirement, 84, 87
- life estate of spouse, 100
- “owner”, 68
- partition and sale, 104
- purpose of, 63, 64
- release of, 82
- release of dower rights, 93, 98
- relief from compensation fund, 106
- third party purchasers, protection of, 103
- wrongful disposition, 78, 80–82, 105

**homesteads (Saskatchewan)**

- consent to disposition, 76–77
- court order disposing with consent requirement, 88, 92
- definition, 69, 71
- disposition, 75
- estoppel, 82
- general, 63, 64
- legislation negating consent requirement, 84, 86
- life estate of spouse, 101
- purpose of, 63, 64
- release of dower rights, 93, 99
- relief from compensation fund, 106
- third party purchasers, protection of, 103

## INDEX

---

- wrongful disposition, 78, 80–82, 105
- impossibility**, 147
- “instrument”**
  - Alberta, 329
  - British Columbia, 330
  - Manitoba, 331
  - Saskatchewan, 332
- insurance**, *see* **life estates**
- interests in land (general)**, *see also* **conditional estates (general); conditions precedent/subsequent; conveyances; dower/curtesy; fee simple; fee tail; fixtures; homesteads; joint tenancy, life estates; mineral rights; partition; perpetuities; possession, recovery of; powers of appointment; remainders; restrictive covenants; Statute of Uses; tenancy in common**
  - agreements for sale as, 121
  - air space, 5–7, 9, 19
  - easements, 266
  - “land”, 4
  - subsurface rights, 10, 19
  - tenure, 1–3
  - unregistered instruments, 320
- intestate succession**, 3, 31
- joint tenancy (general)**, *see also* **interests in land (general); tenancy in common**
  - controlling words re creation of, 239
  - corporations as joint tenants, 210
  - creation (common law), 204–208, 239
  - creation (statutory), 209–211
  - Crown barred from, 208
  - duties between co-tenants, 202, 203
  - four unities, requirement for, 204
  - intention of parties, statement of (statutory), 209
  - legal vs. equitable titles, 199
  - presumption against, 197
  - registration of title, 200
  - survivorship, right of, 206, 216, 217
  - tenancy by entireties, 198, 211
  - types of tenancies, 198
  - unity of interest, 204
  - unity of possession, 204
  - unity of time, 204
  - unity of title, 204
- joint tenancy (severance/extinguishment)**, *see also* **interests in land (general); tenancy in common**
  - acts of severance, 212, 215
  - agreements to sever, 212
  - Alberta, 223
  - alienation of interest, 215, 216, 219
  - bankruptcy of co-tenant, 222, 226
  - common law, at, 212–222
  - consent of co-tenants, requirement for, 223, 225, 226
  - course of dealing, by, 212, 213
  - execution/seizure, by, 223, 230–232
  - four unities, destruction of, 215
  - general, 212
  - lease of interest, effect of, 217, 227, 228
  - Manitoba, 223
  - marriage separation, by, 220
  - modern rules, 223–226
  - mortgage, by, 229
  - murder of co-tenant, by, 221

- onus of establishing, 214
- partition actions, by, 218, 224
- registration of transfers, 223
- seizure, effect of, 223
- unilateral declaration, by, 215
- “land”, 4, 333**
- leases, see joint tenancy (severance/extinguishment); registration (leases)**
- liens, see registration (general)**
- life estates, see also homesteads; interests in land (general)**
  - control/management of property, 57
  - creation of, 41–49
  - duration of, 40
  - encroachment on remainder, 48
  - encumbrances, payment of, 61
  - fiduciary duties, tenant’s, 50, 59
  - general, 40
  - gifts over, effect of, 47
  - improvements by life tenant, 52, 56
  - insuring property, 59
  - leases, by life tenant, 51
  - mortgages, rights/duties re, 51, 61
  - nature of, 40
  - power of appointment re remainder, 49
  - pur autre vie, 40
  - pur sa vie, 40
  - repairs, life tenant’s duty re, 54, 59, 60
  - repugnancy, 46, 47
  - sale of property, 51
  - taxes, liability for, 58
  - tenant’s rights/liabilities, 50–61
  - testamentary creation, 43–49
  - words of conveyance, sufficiency of, 42
  - words of limitation, 42–49
- life in being, see perpetuities**
- light, right to, 9, see also air space; interests in land (general)**
- lis pendens, see registration (judgments/writs etc.)**
- lost modern grant, doctrine of, 389**
- merger, see also conveyances; covenants; restrictive covenants**
  - abolition of common law rule, 327
  - contract into transfer, 328
  - general, 326, 327
- messuages, see “land”**
- mineral rights, see also assurance funds; interests in land (general); subsurface rights**
  - access from surface, 12, 14, 18
  - actions re, 16, 22
  - Alberta, 15, 16–18, 521
  - British Columbia, 14, 19, 20
  - chattels, as, 14
  - Crown rights, 11, 20
  - general, 11
  - interest in land, as, 11, 14
  - Manitoba, 15
  - options to purchase, 14
  - reservation of, 11, 13, 20
  - Saskatchewan, 21, 22, 538
  - severance from surface ownership, 12, 13
  - subdivision of land, effect of, 636
- mobile homes, 29, see also fixtures**
- mortgages, see joint tenancy (severance/extinguishment); life**

- estates; registration; tenancy in common**
- “neighbourhood”, 578
- “nuisance”, 604
- partition, *see also* joint tenancy; tenancy in common**
- accounting, action for, 258–260
  - discretion to refuse, 249–251, 257
  - homesteads (Alberta), of, 79, 248
  - homesteads (Manitoba), of, 104
  - joint tenancy, effect on, 218, 224
  - jurisdiction to order, 247
  - parties entitled to, 247, 252, 253
  - planning legislation, effect of, 257
  - sale of property, 254–256
- party walls, 246, *see also* tenancy in common**
- perpetuities, *see also* interests in land (general); remainders**
- perpetuities (Alberta/British Columbia)**
- applicability of rule against, 167–170
  - leases, options to renew, 169
  - “life in being”, 166
  - options to purchase land, 170
  - possibility of reverter, 167, 168
  - right of re-entry, 167
  - wait and see rule, 165
- perpetuities (common law)**
- defeasible interests, 133
  - determinable interests, 133
  - general nature/operation of, 159, 160
  - leases, options to renew, 163
  - “life in being”, 159, 162
  - options to purchase land, 164
  - restrictive covenants, 599
  - time for determining vesting, 180
- perpetuities (Manitoba), 171**
- perpetuities (Saskatchewan), 172, 174**
- planning law, *see* subdivision plans (registration)**
- possession, recovery of, *see also* interests in land (general)**
- damages, 644
  - estoppel, 658
  - evidence of ownership, 646
  - fraud, 649, 651, 654
  - grantee of Crown, by, 659
  - grounds for, 649, 651, 652, 654
  - misdescription of land, 649, 652, 654
  - nature of action, 643–646
  - parties entitled to, 647–659
  - parties subject to ejectment, 650
  - prior possession, effect of, 647, 656, 657
- possibility of reverter, *see* conditional estates (general); perpetuities**
- powers of appointment, *see also* interests in land (general)**
- benefits to appointee, 192
  - British Columbia, 195, 196
  - by deed, execution of, 182
  - by will, execution of, 180–182
  - conditional/contingent appointments, 194
  - conflict of interest, 189, 192
  - death of appointee, 193
  - defective execution of, 187
  - definition of, 175
  - delegation of, 178

- exercise of, effect, 186
  - exercise of, evidence re, 185
  - failure to exercise, 183, 184, 193
  - fraudulent execution of, 191
  - general powers, 176–178
  - good faith, exercise in, 191
  - intention of testator, 190
  - life estate, re remainder, 49
  - Manitoba, 195
  - removal of appointee, 189
  - special powers, 176–178
  - statutory, 195, 196
  - strict compliance with terms/formalities, 179
  - vesting of property prior to exercise, 183
  - void executions, 188, 191, 195, 196
- prescriptive rights**
- abolition of, 389, 483, 657
  - Alberta, 486
  - ameliorating waste, 56
  - British Columbia, 389, 483
  - light, right to, 9
  - Manitoba, 485, 657
  - Saskatchewan, 389, 485
- priorities, *see* registration (priorities)**
- “private dwelling house/residence”, 601, 602, 604**
- public policy, contravening of**
- general, 140
  - marriage, restraint of, 142, 143
  - morality clauses, 143
  - parental rights, infringing, 141
  - religion, issues re, 141, 143
- quit claim deeds, 424, *see also* registration**
- registrars, *see also* registration**
- registrars (duties)**
- books/records, production of, 346–349
  - duty to register title, 361
  - general, 336
  - judicial responsibility re registrations, 360
  - numbering/dating of instruments, 353
  - record keeping (Alberta), 337–339
  - record keeping (British Columbia), 340, 341
  - record keeping (Manitoba), 342
  - record keeping (Saskatchewan), 343
  - refusal of registration, 360
  - “registrar”, 334
  - searches/abstracts, 350–352
- registrars (liability), 372–374**
- registrars (powers — British Columbia)**
- administering oaths, 354
  - documents, compelling production, 354
  - errors, correcting, 354
  - evidence, taking, 354
  - witnesses, summoning, 354
- registrars (powers — general)**
- agent, acting as, 372
  - bringing land into registration system, 362
  - business transactions, 372
  - cancellation of registration, 364
  - consideration, requiring disclosure of, 367
  - court orders, registration of, 369
  - errors, correction of, 361, 363
  - exemption from execution, re, 370

## INDEX

---

- identity of parties, re, 276–278, 365, 366, 378
- ownership, investigation of, 362
- partial discharges, 371
- proof of identity, requiring, 365
- refusal to register, 360, 365–368
- registrars (powers — Manitoba)**
  - caveats, registering, 355
  - copies of documents, issuing, 357
  - documents, compelling production, 356
  - refusal to register, 512
  - size/number of lots transferred, limiting, 358
  - witnesses, summoning, 356
- registrars (powers — Saskatchewan)**
  - refusal to register, 359
- registration, *see also* assurance funds; conveyances; registrars; subdivision plans (registration)**
- registration (forgery), 496, 497**
- registration (fraud)**
  - acts of fraud, 492
  - Alberta, 491–493
  - bona fide purchasers/mortgagees, 491, 495
  - British Columbia, 493
  - knowledge of purchaser, 492, 495
  - Manitoba, 493
  - notice of unregistered interests, 493, 495
  - Saskatchewan, 493, 494
- registration (general)**
  - address for notice, 378
  - bars to (Alberta), 325
  - bars to (British Columbia), 511
  - bars to (general), 513
  - bars to (Manitoba), 512
  - “daily record” (Manitoba), 342
  - date of, relevance, 305, 313
  - dating/numbering of instruments, 353
  - description of land, 378
  - effect of, 377, 382
  - elements constituting, 380, 381, 383
  - equitable interests, 500, 501
  - equitable mortgages, 379
  - errors, correction of (British Columbia), 354
  - errors, correction of (general), 361
  - failure to register, effect, 488–490, 498
  - fees of registrars, 514–516
  - “instrument” (Alberta), 329
  - “instrument” (British Columbia), 330
  - “instrument” (Manitoba), 331
  - “instrument” (Saskatchewan), 332
  - “instrument record” (Saskatchewan), 343
  - “interest register” (Saskatchewan), 344
  - investigation of titles, 375
  - “land”, 4, 333
  - liens, 504
  - lost modern grant, doctrine of, 389
  - names of parties, 276–278, 378
  - notice of instrument, registration providing, 483–487
  - originals vs. copies, 316
  - “ownership register” (Saskatchewan), 343
  - proof of execution of instrument, 464, 465, 467
  - “register” (Alberta), 337

- registrable conveyance, right to demand, 377–379
- “registrar”, 334
- “registration” (Alberta), 335
- right to, 320
- sales pursuant to execution, 502, 503
- unauthorized instruments, bars to, 511–513
- “writ registry”, 345
- **registration (instruments — Alberta)**
  - adverse claims, filing/adjudication of, 387
  - bringing land under system, 391, 392
  - cancellation of old title, 398
  - caveats generally, 393, 406, 407
  - conclusiveness of title, 400
  - corporations, by, 403
  - declarations required, 404
  - effect of, 400
  - fraud, 402
  - general, 390, 395, 396, 399, 464
  - lands covered by certificate, 397, 405
  - mortgage, discharge of, 385
  - necessity for, 399
  - proof of identity, 401
  - rejection by registrar, 394, 403, 405
  - title issued subject to other interests, 386
  - withdrawal of application, 388
- **registration (instruments — British Columbia)**
  - applications in prescribed form, 412
  - competing charges, 417, 421, 425
  - conclusiveness of title, 409
  - corporations, charges created by, 396
  - declarations required, 412
  - description of land, 413
  - effective date, 418
  - endorsement by registrar, 418
  - fraud, 410
  - general, 384, 408, 416, 421, 423, 464
  - limitation on lands included in application, 415
  - order of court compelling, 420
  - original documents required, 411
  - production of documents, 419
  - quit claim deeds, 424
  - registration of void instrument, 422
  - rejection by registrar, 413, 426
  - size of interest, 414
  - withdrawal of application, 388
- **registration (instruments — Manitoba)**
  - bring land under system, 428, 430, 433–435
  - competing claims, 432
  - disclaimers, effect of, 429
  - general, 427, 464
  - lands included in application, 434
  - rejection by registrar, 431, 433, 482, 512
  - withdrawal of application, 388, 433
- **registration (instruments — Saskatchewan)**
  - absolute transfer of title, 445
  - affidavit declaring value of title issued, 443
  - applications generally, 382, 437, 442, 449
  - building schemes, 447



## INDEX

---

- cancellation of old title, 444
  - confirmation or verification of registration, 441
  - death of person following execution of instrument, 448
  - duplicate certificate, cancelling of, 440
  - general, 436, 440–445, 464
  - new title, 444
  - notice respecting registration, 441
  - rejection by registrar, 438, 439
  - removal of caveat, leave of court, 446
- registration (judgments/writs etc.)**
- Alberta, 451, 452
  - British Columbia, 453–456
  - Manitoba, 457–460
  - Saskatchewan, 461–463, 503
- registration (leases)**
- Alberta, 505
  - British Columbia, 506, 507
  - Crown, from, 498
  - general, 498
  - Manitoba, 508
  - Saskatchewan, 509, 510
- registration (priorities)**
- Alberta, 471, 472
  - British Columbia, 475
  - caveats, 474
  - exceptions, 468
  - farm foreclosures, 473
  - general, 468, 475
  - judgments, 450
  - Manitoba, 469, 470, 474
  - mortgages, 472
  - notice of other interests, relevance, 476–478
  - notice of trust, 479–482
  - Saskatchewan, 469, 473
- remainders, *see also* conditional estates (general); conditions precedent/subsequent; interests in land (general); life estates; perpetuities**
- cutting short prior estate, 156
  - early vesting, preference for, 118, 145, 152
  - equitable interests, 158
  - fee simple grant, after, 157
  - gap in seisin, 155
  - inter vivos transfer rules, 155–157
  - legal contingent remainders, 155
  - legal executory interests, 158
  - vested vs. contingent, 117, 118, 145, 150–154
- repugnancy, *see also* conditional estates (general); life estates**
- alienation, restrictions on, 135–139
  - general, 134
  - life estates vs. absolute gifts, 46, 47
- reservations/exceptions, *see* conveyances (general); mineral rights**
- restrictive covenants, *see also* interests in land (general)**
- ambiguity, resolving of, 542, 593, 594
  - annexation to lands, 546, 554, 555, 584, 586
  - caveating of, 543, 554, 582, 583
  - chiropractor's office, 603
  - commercial uses, 600, 603
  - construction/interpretation of, 542, 593, 594
  - creation (building schemes), 551, 552

- creation (common law), 543–550, 555, 585
  - creation (statutory), 553, 555
  - discharge/modification (Alberta), 568–571, 595
  - discharge/modification (British Columbia), 532, 572–578, 596–598
  - discharge/modification (general), 566, 567
  - discharge/modification (Manitoba), 579, 580
  - discharge/modification (Saskatchewan), 581–585
  - discriminatory covenants barred, 565
  - dominant tenement required, 544, 546, 585
  - elements required, 546, 549, 555
  - enforcement, 586–592, 597, 600
  - examples of uses, 600–604
  - hair salons, 603
  - injunctions, 597, 600
  - interest in land, as, 541, 582
  - mortuary/crematorium, 600
  - nature/effect of, 540–544, 546–548, 555, 585
  - negative nature of, 546, 555
  - “neighbourhood”, 578
  - notice of, 540, 554, 558, 589, 591
  - “nuisance”, 604
  - “one house per lot”, 594
  - perpetuities, rule against, 599
  - personal covenants distinguished, 543, 546–548, 585
  - “private dwelling house”, 601, 602, 604
  - registration (building schemes), 447, 561–564
  - registration (general), 554–560
  - running with land, 541, 546, 557, 584, 592
  - seal not required, 545
  - servient tenement, 546
  - “single family dwelling”, 602
  - single owner of two parcels, creation by, 550
  - “storage, manufacture and processing”, 600
  - subdivision, effect of registration, 559
  - writing requirements, 541
- reversion, *see* conditional estates (general); conditions precedent/subsequent**
- reversion to Crown, 3, 31**
- right of re-entry, *see* conditional estates (general); conditions precedent/subsequent**
- running with the land, *see* covenants; restrictive covenants**
- seals, *see* conveyances (execution)**
- Shelley’s case, rule in, 36, 37, 154, *see also* fee simple**
- signatures, *see* conveyances (execution); subdivision plans (registration)**
- “single family dwelling”, 602**
- socage (general), 2, *see also* interests in land (general); tenure**
- Statute of Uses, *see also* interests in land (general)**
- active duties imposed on trustee, 110
  - avoidance of, 108–110
  - corporations, effect on, 109
  - exhaustion of, 111
  - general rule, common law, 107
  - leaseholds not affected by, 108
  - superseding by modern statutes, 112

---

INDEX

---

- trusts, modern, 112
- “use upon a use”, 111
- “storage, manufacture and processing”, 600**
- subdivision plans (registration),**  
*see registration*
- subdivision plans (registration — Alberta)**
  - declarations required, 610
  - discrepancies, explanation of, 609
  - failure to register, 638, 639
  - general, 605
  - mines/minerals, 636
  - plan of survey, 609
  - refusal of, 610
  - signing of, 608
  - titles to land, 631, 633
- subdivision plans (registration — British Columbia)**
  - appeals, 596, 615, 619
  - applications generally, 617
  - approval, submission for, 614, 615, 617, 619
  - description of parcels/land, 611, 612
  - examination fee, 614
  - failure to register, 640
  - form/content of, 612, 614, 617
  - general, 605
  - highways/roads, 612–614
  - mines/minerals, 636
  - purpose of, restrictions re, 606
  - rejection of, 616, 632
  - rural areas, 614
  - signing of, 618
  - survey, 612
  - tax certificates, 614
  - title of plan, 612
  - titles to land, 632, 634
- subdivision plans (registration — general)**
  - applications generally, 605
  - clerical errors, 630
  - failure to register, effect, 638–640
  - municipal powers re, 607
  - plan of survey, 605
  - unregistered restrictive covenant, effect on, 559
- subdivision plans (registration — Manitoba)**
  - cancellation of prior plans, 621
  - deductions to Crown, 618
  - form/content of, 622
  - general, 605, 620
  - inclusion of further lands, 621
  - surveys, 623
  - titles to land, 634
- subdivision plans (registration — Saskatchewan)**
  - agreements for sale contingent on, 629
  - application to have titles registered, 624, 625, 627
  - approval, 624
  - dedications to Crown, 634, 635
  - development plans, harmonization with, 628
  - failure to have title issued, 642
  - general, 605, 624, 626
  - mortgaged lands, 627
  - rejection of, 628
  - renewing eligibility of parcels to be titled, 637
  - sale of parcel where no title existing, 641
  - signing of, 626, 627
  - titles to land, 634, 635

- subsurface rights**, 10, 19, *see also interests in land (general); mineral rights*
- “subject to”, 126
- surveys**, *see subdivision plans (registration)*
- survivorship**, *see joint tenancy (general)*
- taxes**, *see life estates*
- tenancy by the entireties**, 198, 211, *see also joint tenancy; tenancy in common*
- tenancy in common**, *see also interests in land (general); joint tenancy; partition*
- characteristics of, 233, 234
  - controlling words re creation of, 239
  - creation of, 235–239
  - death of co-tenant, 234
  - dissolution of, 245
  - duties between co-tenants, 203, 240–244
  - express act creating, 235
  - failed joint tenancy creating, 235
  - fiduciary duties, 203, 242
  - legal vs. equitable titles, 199
  - mortgages, effect of, 238
  - operation of law creating, 235
  - partnership assets, for, 238
  - party walls, 246
  - presumption in favour of, 197, 236, 238
  - purchase in unequal shares creating, 238
  - registration of title, 200
  - statutory presumption creating, 235
  - tenancy by entireties, 198, 211
  - types of tenancies, 198
  - unity of possession, requirement for, 233
- tenements**, *see “land”*
- tenure**, *see also doctrine of estates; interests in land (general)*
- effect of doctrine of, 1
  - escheat, 3
  - estates, doctrine of, 1
  - modern view of, 3
  - reversion to Crown, 3
  - socage, free and common, 2
- transfer of land**, *see conveyances*
- trespass**, 7, 644–646, *see also possession, recovery of*
- trusts**, *see life estates; registration (priorities); Statute of Uses*
- uncertainty**, *see conditional estates (general); conditions precedent/subsequent*
- uses**, *see Statute of Uses*
- wait and see rule**, *see perpetuities (Alberta/British Columbia)*
- waiver**, 129, 148
- waste**, *see also life estates*
- ameliorating, 52, 56
  - equitable, 52, 55
  - mortgagor’s duty, 54
  - nature/purpose of doctrine, 52
  - permissive, 52–54
  - repairs, duty to make, 54, 59, 60
  - voluntary, 52, 53

## Index to Receivers

(All references are to paragraph numbers.)

- accounts, see also expenses/remuneration**
- complaints re receiver's conduct, 251
  - costs of passing, 275
  - onus, to prove reasonableness, 276
  - payment of, 221
  - purpose of, 272
  - representation at passing of, 274
  - time for reporting, 273
- actions (against receiver)**
- collateral attacks barred, 231
  - costs of, 241–246
  - expenses, re, 238
  - general, 236
  - leave of court, 223–233
  - negligence, 229, 235, 240
  - officers of receivers personally, 237
  - statutory protection against, 204
  - title to land, re, 230
  - wrongful dismissal, 234
- actions (by receiver)**
- against debtor, 219
  - bankruptcy proceedings, 214
  - conversion, 222
  - costs, 244
  - court approval for, 213
  - debts due to estate, for, 216–219
  - debts due to receiver, for, 220, 221
  - discontinuance of, 215
  - general, 210, 211, 249
  - landlord/tenant, 212
- agent, receiver as, 7, 27**
- appointment (by court), see also discharge/removal of receiver; equitable execution; security**
- appeal pending, where, 48, 49
  - appeal/setting aside of, 43
  - appointment available under instrument, where, 8, 44, 103
  - cases warranting appointment, 62–96
  - confirmation of private appointment, 8, 44, 103
  - conflict of interest, 56
  - Crown, against, 42
  - ex parte applications, 45–47, 107
  - examination of defendant, 41
  - executors/trustees, replacement of, 64–71
  - Federal Court, 50–52
  - foreign appointments, recognition of, 53
  - general, 5, 6, 34–44
  - grounds for, general, 34, 35, 61
  - interlocutory order for, 34, 35
  - misconduct by applicant, 36
  - native persons, 51
  - officer of court, 21–26
  - persons who may be appointed, 54–60
  - procedure, 37–40
  - refusal, grounds for, 97–104
  - security, giving/perfection of, 24
  - subsequent applications, 40
  - terms/conditions of, 34
- appointment (by instrument), see also discharge/removal of receiver; equitable execution; security**
- agent for appointing party, as, 27

## RECEIVERS

---

- confirmation by court, 8, 44, 103
- general, 5, 6, 142
- appointment (effect of)**, *see also* **duties/powers of receiver; liability of receiver**
  - actions, starting of, 120
  - contempt proceedings, 29, 124, 135
  - corporate powers, exercise of, 119, 120
  - creditors' rights, 4, 26, 32, 33, 122–126
  - equitable execution, 126
  - garnishment, 125
  - general, 117–121, 137
  - leasehold property, 129
  - notice of appointment, 118, 122
  - partnership assets, 123, 124
  - payment into court, 126
  - possession of receiver, 131–138
  - priorities, 122, 123, 126
  - rents/profits, right to, 117
  - replevin proceedings, 136
  - sale of seized property, 134
  - set-off, 121
  - solicitor-client privilege, 176, 177
  - title to/possession of property, 127–130
- appointment (orders)**, *see also* **equitable execution; security**
  - ex parte orders, 108
  - form of order, 10
  - powers of receiver, 139
  - prior encumbrancers, effect on, 106
  - property subject to order, 107
- attachment of receiver**, 32, 33
- bankruptcy/insolvency**, *see also* **executors/trustees (replacement of)**
  - adjudication of claims, 239
  - commencement of proceedings, 214
  - directions of court, seeking, 203
  - duty of honesty/good faith, 202
  - effect on shareholders/directors, 152
  - interim receivers, 91, 92, 206
  - mortgagee's rights on, 89
  - notice/report to Superintendent/others, 200, 204
  - receiver assigning debtor into, 143, 144
  - removal of receiver, 209
  - secured creditors' rights, 205
  - statement, preparation of, 201
- bonds**, *see* **security (giving/perfection of)**
- books/documents, access to**, 247
- contempt of court**, 29, 124, 135
- contracts**, *see* **duties/powers of receiver**
- creditors' rights**, *see also* **appointment (effect of); equitable execution; mortgagees (protection of)**
  - attachment of receiver, 32, 33
  - chattel lessees, 157
  - equality among creditors, 4
  - expenses/remuneration of receiver, 261–264
  - impartiality of receiver, 26
  - partnership assets, 123, 124
  - priorities, 122, 156, 261–264
- Crown, orders against**, 42
- damages**, *see* **liability of receiver**
- directions of court, seeking**, 22

## INDEX

---

- discharge/removal of receiver**, *see also* **accounts**
- bankrupt seeking, 209
  - discretion of court, 250
  - generally, 253
  - impartiality, lack of, 208
  - interim receivers, 252
  - misconduct, 165
  - mortgagee seeking, 132, 149
  - notice of application for, 248, 249
  - onus on applicant, 207
  - PPSA, powers under, 250
- distress**, *see* **duties/powers of receiver**
- duties/powers of receiver**, *see also* **actions; bankruptcy/insolvency; liability of receiver**
- agent of appointing party, as, 7, 142
  - agents, appointment by receiver, 146
  - books/documents, access to, 247
  - borrowing by receiver, 145
  - collection/discharge of debts, 140
  - common law, at, 139
  - contracts of debtor (employment), 158, 159
  - contracts of debtor (general), 154–157
  - distress for rent, 174, 175
  - fiduciary, as, 161
  - general, 3, 7, 139–152
  - instrument setting out, 139
  - leases/subleases, 150
  - order setting out, 139
  - preservation of assets, 141
  - sale of assets, 160–164, 166–173, 180, 197
  - solicitor-client privilege, 176, 177
  - trust deeds, 147
- effect of**, *see* **appointment (effect of)**
- employment contracts**, 158, 159, 234
- equitable execution**, *see also* **appointment; creditors' rights**
- Alberta, 12
  - assets subject to, 13, 17
  - distribution of proceeds, 126
  - evidence on application for, 15
  - general, 10
  - grounds for, 10, 11
  - jurisdiction of court, 19
  - procedure, 14
  - refusal of, 13, 16–19
- executors/trustees (replacement of)**
- absence from jurisdiction, 70, 71
  - duties of receiver, 153
  - general, 64, 65
  - injunctions, 65
  - insolvency/impecuniosity, 66, 69
  - misconduct/breach of duty, 67, 68
  - right to be heard, 64
  - waste, 68
- expenses/remuneration**, *see also* **accounts**
- advances before accounts passed, 260
  - estate matters, 266
  - general, 242, 245, 254, 269, 271
  - lien for, 266, 267
  - partnerships, liability of, 265
  - priority of, 241, 245, 261–264, 271
  - rate/scale of, 255–258

## RECEIVERS

---

- reduction/disallowance of, 259, 270
  - secured creditors' rights, 261–264
  - taxation of, 242
  - trust assets, claim on, 268
- fees, see expenses/remuneration**
- garnishment, see appointment (effect of)**
- indemnity, see liability of receiver**
- infants/children, 90**
- injunctions, 77, 79, 167**
- interim receivers, 91, 92, 188, 206, 221, 252**
- jurisdiction of court, 19, 30**
- liability of receiver, see also actions; bankruptcy/insolvency; duties/powers of receiver**
- contracts, re, 185–188
  - conversion, 182
  - duty of care, 161, 183
  - environmental damage, 151, 190, 198, 199
  - failure to pay out funds, 195
  - indemnity rights, 181, 184–186, 188
  - misconduct, 67, 68, 165, 191–199
  - mixing of funds, 192
  - punitive/exemplary damages, 193
  - sale of assets, 180, 197
  - standard of care, 178–180
  - taxes, for, 189
  - tort generally, 181, 183
  - trespass, 182
  - unauthorized investments, 196
  - unauthorized payments, 194
- managers, see receiver-manager**
- mortgagees (protection of), see also appointment (effect of); creditors' rights**
- arrears, 83
  - bankruptcy, effect of, 89
  - collection of rents, 85
  - deterioration in value, 83
  - discharge of receiver, 132
  - discretion of court, 86, 100
  - possession, action for, 132
  - protection/preservation of property, 82
  - Rice orders, 251
  - sale of property, 164
  - second mortgagee's rights, 84, 88, 133, 148, 149
- native persons, 51**
- nature of receivership**
- agent of appointing party, 27
  - appointment generally, 5
  - cross-examination of receiver, 25
  - directions of court, seeking, 22
  - duties generally, 3
  - equality among creditors, 4
  - general, 1
  - interference with receiver, 28–31
  - object of appointment, 2
  - officer of court, 21–26
  - security, giving/perfection of, 24
  - trustee for all, 23
- negligence, see actions; liability of receiver**
- objects, see nature of receivership**
- orders, see appointment (orders)**
- partnerships (grounds for receivership), see also appointment**
- death of partner, 79



## INDEX

---

- dissolution/winding up of partnership, 75–78, 80
- exclusion of partner, 72, 73
- general, 80
- injunctions, 77, 79
- protection of creditors, 81, 123, 124
- specified events justifying, 73
- remuneration of receiver, 265
- risk to partnership assets, 74
- sale of assets, 168, 169
- pension benefits**, 20
- powers**, *see* **duties/powers of receiver; liability of receiver**
- priorities**, *see* **appointment (effect of); creditors' rights**
- privilege**, 176, 177
- property rights**, *see* **appointment (effect of); creditors' rights**
- railways**, 93–96
- receiver-manager**, 9, 44, 52, 119
- refusal**, *see* **appointment (by court)**
- removal**, *see* **discharge/removal of receiver**
- remuneration**, *see* **expenses/remuneration**
- rents/profits**, *see* **appointment (effect of)**
- replevin**, 136
- sale of assets**, *see* **duties/powers of receiver**
- securities issuers**, 96
- security (giving/perfection of)**, *see also* **appointment**
  - affidavit of justification, 113
  - death of surety, 114
  - discretion of court, 112, 113
  - dispensing with, 112
  - foreign sureties, 115, 116
  - forms of, 113
  - general, 24
  - necessity for, 24, 109, 110
  - persons entitled to provide, 111
- set-off**, 121
- status of receiver**, *see* **appointment; nature of receivership**
- trustees**, *see* **bankruptcy/insolvency; executors/trustees, replacement of**
- wills/estates**, *see* **executors/trustees, replacement of**
- wrongful dismissal**, *see* **actions (against receiver); employment contracts**

## Index to References and Inquiries

(All references are to paragraph numbers.)

- accountings, see also procedure; reports and certificates; scope of reference**
- affidavits verifying, 130
  - allowances, 132
  - assistance from accountant, 136
  - availability, 4, 8, 13, 14, 16, 21, 32
  - books of account, as evidence, 152
  - certificate of accounts, 215
  - delays, rectifying, 129, 154
  - directions of court, 128, 130, 131, 143, 152
  - examination of parties, 94, 114
  - jurisdiction/powers, 66, 93, 96
  - mortgages, re, 68
  - order for, 127, 128
  - partnerships, 69, 136, 186, 189
  - scope generally, 177, 178
  - statement of account, 153
  - vouchers, production of, 131, 152
  - waiver of, 185
- administrator pendente lite, 101**
- appeals**
- Alberta, 219, 220
  - British Columbia, 221, 222, 224–228
  - damage assessments, 234, 241
  - discretion of trial judge, re, 242, 243, 245
  - estoppel and, 240
  - Federal Court, 197, 207, 235–239
  - interlocutory matters, 241
  - Manitoba, 229–232
  - rescinded orders, of, 242
  - Saskatchewan, 233, 234
  - Supreme Court of Canada, to, 241
  - time for, extending, 246, 247
- arbitration, 1, 2**
- availability, see also scope of reference**
- Alberta, 4, 5, 38
  - British Columbia, 7–11, 39, 42, 244
  - compelling reasons for, 28
  - consent of parties, 28
  - damages, calculation of, 27, 28, 45, 54
  - discretion of judge, 26, 31, 216
  - evidence, sufficiency of, 36, 37, 59
  - Federal Court, 21–25, 47–50
  - general rule, 26, 29
  - judgment before, 31, 32
  - Manitoba, 13, 14, 43, 44
  - master’s discretion, 30
  - material facts disputed, 33, 34
  - mixed fact/law, 35, 56
  - purpose of reference, 26
  - Saskatchewan, 16–20, 45, 46, 54, 151
- awards, 126, see also reports and certificates**
- bankruptcy, 1**
- certificates, see reports and certificates**
- committeeships, 13**
- constitutional law issues, 84, 85, 86**
- constitutional references, 1**

## REFERENCES AND INQUIRIES

---

- costs**
- calculation of (British Columbia), 250
  - conduct of parties, effect of, 249
  - Federal Court, 251, 252
  - result of proceedings, relevance, 248
  - taxation of, 178
- courts, *see* jurisdiction; procedure**
- criminal proceedings, 7**
- crops, loss of, 20**
- damages, *see also* appeals; reports and certificates; scope of reference**
- crops, loss of, 20
  - evidence, 36, 37
  - Federal Court, 24
  - general, 27, 28, 45, 54, 70–72
  - inspections, 110, 218
  - liability for, 72
  - sale of land, 19
- defences, 65**
- discovery, *see* parties**
- documents, production of, *see* procedure**
- English procedure, 2, 3**
- estates, 98, 101**
- evidence, *see also* appeals**
- books of account as, 152
  - conflict in, effect of, 59
  - damages, re, 36, 37
  - further evidence, taking of, 121, 213, 216
  - hearing of, 120, 135, 138, 147
  - legislation re, 6, 12, 15
  - master, before, 117, 119
  - recording of, 122
  - refusal to hear, 120, 135, 144
  - rulings on, challenging, 206
  - viva voce, 117–119
  - witnesses, 122, 123, 125, 139, 149
- examinations, *see* parties**
- family law issues, 84, 193, 219, 225**
- general matters**
- English procedure, 2, 3
  - jurisdiction, inherent, 2
  - nature of reference, 9
  - scope of title, 1
- guardianship issues, 13**
- insolvency, 1**
- inspections**
- absence of parties, in, 218
  - accountings, 114
  - Alberta, 111, 133
  - British Columbia, 112
  - damage assessments, 110
  - Manitoba, 113
- judgments, setting aside, 77, *see also* appeals; awards; reports and certificates**
- jurisdiction, *see also* master in chambers, jurisdiction/powers; procedure**
- English procedure, 2, 3
  - general, 4, 5, 7, 9, 10, 41
  - inherent, 2
  - trials, before referee, 5
  - variation of order for reference, 50
- land, *see* sale of land; title to land**
- liens, 107**
- maintenance, *see* family law issues**

## INDEX

---

- master in chambers, jurisdiction/powers**
- Alberta, 76, 77, 117
  - British Columbia, 78–80, 82, 119
  - evidence before, 117–119
  - general, 18, 30, 53
  - judge acting as, 43, 53
  - opinion of court, seeking, 40, 44
  - ordering of reference, 38, 39
  - stays of proceedings, 76
- mortgages**
- accountings, 68
  - actions (Manitoba), 88
- nature of reference**, 9, 41, *see also scope of reference; trials distinguished*
- orders for**, *see availability*
- parties**
- adding of, 89, 108
  - examinations of, 94, 115, 116, 119
  - representation (Manitoba), 90
- partition and sale**, *see sale of property, court ordered*
- partnerships**, 69, 136, 186, 189
- patent infringements**, 24
- pleadings, amendment**, 91, 127
- practice**, *see procedure*
- procedure**, *see also accountings; appeals; awards; costs; evidence; inspections; judgments, setting aside; jurisdiction; parties; pleadings, amendment reports; stay of proceedings; trials distinguished; and specific jurisdictions*
- awards, 126
  - directions of court, 128
  - English, 2, 3
  - failure to make findings, 187
  - proceedings arising from reference, 124
  - reference as procedural matter, 9, 41
  - swearing of witnesses, 123
- procedure (Alberta)**
- adjournments, 133
  - delays, rectifying, 129
  - directions of court, 130
  - evidence, hearing of, 137
  - general, 134
- procedure (British Columbia)**
- directions of court, 143
  - general, 137, 144
  - hearing of evidence, 138, 144
  - opinion of court, seeking, 140
  - production of documents, 139
  - referral to court, 141, 142
  - subpoena, 139
- procedure (Federal Court)**
- appeal, 236, 237(Supp.)
  - general, 156
  - hearings, notice of, 104
  - referral of issues, 181
- procedure (Manitoba)**
- accountings, 93, 96
  - adding parties, 89
  - administrator pendente lite, 101
  - carriage of action, 92, 146
  - confirmation, effect of, 171
  - confirmation, motion to oppose, 170
  - estates, involving, 98
  - examinations, 94, 149
  - directions re, 87, 145, 147, 148
  - general, 93, 95, 97, 148
  - hearing by judge, 150

## REFERENCES AND INQUIRIES

---

- interim report, 173
- motion for confirmation, 169
- motion opposing confirmation, 168
- pleadings, amendment, 91
- production of documents, 94
- reference for conduct of sale, 172
- representation of parties, 90
- sale of property, 99
- stays of proceedings, 99
- trusts, involving, 98
- witnesses, 149
- procedure (Saskatchewan)**
  - application for reference, 151
  - delays, rectifying, 154
  - directions of court, 152
  - reference arising from prior reference, 155
- production of documents, *see* procedure**
- public inquiries, 1**
- purpose of reference, 26**
- receivers, 13**
- referees**
  - appointment, 7, 8, 51–55, 123, 192
  - powers (Alberta), 76, 77, 111
  - powers (British Columbia), 78–84, 112
  - powers (Federal Court), 103–106, 115, 116
  - powers (general), 5, 10, 17, 66, 67, 107–122, 125
  - powers (Manitoba), 87–102, 113
- reports and certificates, *see also* appeals; awards**
  - Alberta, 157–159, 182, 201
  - British Columbia, 160–163, 193, 194, 201, 224
- confirmation of, 188–201
- failure to make findings, 187
- Federal Court, 21, 180, 181, 197, 198–200, 201, 207, 235–239
- Manitoba, 102, 164–167, 184, 196, 201, 206, 229
- partnerships, dissolution, 186, 189
- referring back of, 208–212
- reopening of, 213–215
- Saskatchewan, 174–179, 183, 201, 233
- setting aside, 216–218
- variation, 201–207
- waiver, noting of, 185
- sale of land, 19, 46, 75**
- sale of property, court ordered, 91–99, 118**
- scope of reference, *see also* accountings; damages; nature of reference; trials distinguished**
  - adjudicating parties' rights, 65
  - conflicting evidence barring, 59
  - damages/apportionment of profits, 58, 73, 74
  - defences, striking, 65
  - general, 60, 62, 63, 64
  - issues not pleaded, 61
  - issues of law, 57, 60
  - liability issues, 65, 72
  - mixed fact/law, 10, 35, 56
  - title to land, 75
- scope of title, 1**
- solicitor's lien, 107**
- “special referee” (British Columbia), 7, 8, 40**
- stay of proceedings**
  - Alberta, 27, 129

## INDEX

---

- British Columbia, 223
- Federal Court, 25
- Manitoba, 100, 231
- title to land**, 75, 190
- trademarks**, 24
- trials distinguished**
  - general, 60, 63, 64
  - postponement pending reference, 25
  - referee, by, 5, 10, 63
- trusts**, 98
- witnesses**, *see* **evidence**

## Index to Religious Institutions

(All references are to paragraph numbers.)

- abortion**, 75, 76, 243
- actions**, *see also* **property (use and ownership)**
- clergy, by, 144
  - deed, setting aside, 153
  - discrimination, 376–379
  - ejectment, 131, 153, 157, 207, 218
  - general, 153
  - incorporated organizations, by, 201
  - judgments, enforcement, 153
  - laches, 131
  - land, involving, 158
  - members, by, 159, 296
  - negligence, 155
  - promissory notes, 157
  - striking out, 299
  - subscription, recovery of, 153
  - trust, breach of, 201
  - trustees, against, 153–157, 201
  - trustees, by, 157, 158, 177, 205, 208
  - vicarious liability, 119, 120, 121
- adultery**, 71, *see also* **bigamy**
- Anglican Church**
- church wardens, 133–139
  - ejectment, action for, 131
  - election of rector, 127
  - general, 126, 298
  - incumbents, 127, 129, 131
  - legal status, 126
  - property of, 131–133
  - remuneration of clergy, 130
  - right of presentation, 127–129
- animals, injuring of**, 79, 80
- assault**, 359
- assembly**, *see* **Charter and Bill of Rights; unlawful assembly**
- battery**, 359
- bestiality**, 73
- betting**, *see* **gaming**
- bigamy**, *see also* **adultery; polygamy; procuring feigned marriage**
- admissions, 60
  - defences, 54, 62–66
  - “form of marriage”, 55
  - general, 53
  - indictable offence, 53, 66
  - outside Canada, 53, 55
  - proof of, 56–61, 63, 66
  - sentencing, 66
- bishops**
- appointment, 140
  - bishopric, endowment of, 142
  - powers, 141
- blasphemy**, 50–52
- blood transfusions**, 353, 354, 358, 359, 361
- burial grounds**, *see* **cemeteries**
- by-laws**, 161, 185
- cemeteries**, 169, 181, 183, 210, 231
- certiorari**, 125, 288
- charitable contributions**, *see* **taxation (income); wills and trusts**
- Charter and Bill of Rights**, *see also* **constitutional issues; education; Sunday observance**
- abortion, 243
  - anti-Semitic statements, 32

## RELIGIOUS INSTITUTIONS

---

- assembly, 5, 6, 94–96
  - association, 5, 6
  - belief, 5, 6, 32, 305, 336, 369
  - conscience, 5, 6, 304
  - custody and access, 349, 352
  - denominational schools, 18, 21, 304, 306, 309, 324, 325
  - divorce, 346
  - equality, 5, 312, 324, 340, 352, 371
  - expression, 5, 6, 32, 48, 305, 336, 369
  - general, 3, 5, 6, 33
  - interpretation, 11
  - legal status of religious organizations, 116
  - life, liberty and security, 5, 338, 370
  - limitations, 5, 13, 18, 32
  - military issues, 242
  - multicultural heritage, 5
  - opinion, 5, 6, 32, 305, 336, 369
  - privilege and, 110
  - private meetings, 94
  - private schools, 338, 340
  - public schools, 328, 329, 333, 334, 336
  - Sunday observance, 18, 33, 366, 368
  - supremacy of God, 5, 6
  - taxation and, 234, 242, 243
  - thought, 5, 6, 32, 305, 336, 369
  - trial in reasonable time, 365
  - worship, disturbing, 48
- childbirth, neglect in**, 76
- children, protection of**, 17, 353–356, 360, 361
- “church”**, 114
- church union**
- general, 275, 285
  - property allocations, 284
  - property rights on, 281, 282, 285
  - property transfers, 283
  - voting, 276–280
- citizenship requirements**, 99
- clergy**, *see also Anglican Church*
- actions by, 144
  - contracts, 143
  - discipline of, 289–291, 297–301
  - religious orders, 299–301
- common pause days**, *see Sunday observance*
- congregational meetings**, *see meetings*
- congregational records**, *see records*
- conscientious objectors**, *see military service*
- constitutional issues**, *see also Charter and Bill of Rights; parliamentary sovereignty; specific issues e.g., temperance*
- criminal law, 4
  - education, 4
  - freedom of religion, 5
  - human rights legislation, 6
  - interpretation of legislation, 10–13
  - marriage and divorce, 4
  - parliamentary sovereignty, 2, 3
  - pith and substance, 10
  - reasonable limits on rights, 5
  - supremacy of God, 5, 6
  - validity of legislation, 7, 8
- contracts**
- church committees, liability, 139
  - church wardens, liability, 135
  - execution, 143, 158, 188
  - membership and, 264, 300



## INDEX

---

- pews, rights to, 220
  - trustees, liability, 152
  - trustees, powers, 172
  - unincorporated congregations, 201
  - validity, 143, 158, 188, 300
- courts (civil), jurisdiction**
- certiorari, 125
  - damages awards, 125
  - discipline (internal), 286–288
  - foreign societies, 124
  - general, 122, 265, 286–288
  - injunctions, 125
  - internal tribunals, over, 122
  - interpretation of church rules, 118
  - intervention, situations justifying, 123
  - natural justice, 123
  - offences, 123
  - prohibition, 125
  - property/civil rights issues, 123
  - review of church decisions, 123
  - sale of land, 215
  - ultra vires acts, 123
- criminal law (general), *see also* criminal procedure; specific subjects e.g., blasphemy**
- committal for trial, 40
  - federal power, 4, 15, 33
  - general, 34
  - identification doctrine, 90
  - jury proceedings, 40
  - legal process, 39
  - municipal by-laws and, 9
  - non-judicial days, 40, 41
  - preliminary inquiries, 40
  - sentencing considerations, 91
- criminal procedure**
- privilege, 89
  - search warrants, 88
  - seizures, 89
- custody and access, *see* marriage and divorce**
- damages awards, 125, 288, 296, 378, 379**
- denominational schools, *see also* education**
- abolition, 23, 306, 314
  - Alberta, 303, 304
  - beneficial legislation and, 21, 22, 303, 310
  - British Columbia, 305
  - budgets, 305
  - Charter, effect of, 29
  - conferring new rights on, 21, 309
  - discrimination permitted, 21, 309
  - exemption from religious exercises, 315
  - federal jurisdiction, 19
  - formation, 306
  - general, 4, 5, 20–22
  - grants and taxation, 22, 26, 29, 235
  - labour laws and, 23, 308, 316, 327
  - language of instruction, 21, 24, 27, 303, 309, 311
  - Manitoba, 306
  - New Brunswick, 307
  - Newfoundland and Labrador, 308
  - non-denominational aspects of, 20, 23, 27, 304, 314
  - Ontario, 309–314
  - provincial jurisdiction, 19
  - Quebec, 315
  - remedies protecting, 28, 306
  - restrictions on, 23
  - Saskatchewan, 316

## RELIGIOUS INSTITUTIONS

---

- school board representation, 303
  - scope of protection, 20–22
  - separate schools, formation, 317, 318
  - students, acceptance of, 26, 315, 322, 323
  - taxation, 235, 319, 320
  - teachers, lifestyles of, 30, 314, 324–327
  - trustees, 22, 24, 25, 311
  - zoning by-laws, 314, 321
- desecration**, 91
- discrimination**, *see* **Charter and Bill of Rights**; **employment law**
- discipline (internal)**
- clergy, 289–291, 297
  - jurisdiction of court, 286–288
  - laity, 292–297
  - religious orders, 299–301
  - remedies against, 125, 288
- dissolution**, 176, 225
- divorce**, *see* **marriage and divorce**
- duty to preserve life**, 77, *see also* **“right to die”**; **suicide**
- Easter Monday**, 41
- education**, *see also* **denominational schools**
- constitutional provisions generally, 302, 303
  - denominational schools, 4, 5, 19–30, 235, 303–327
  - funding, 303, 313
  - kirpan, wearing of, 97, 332, 335
  - private religious schools, 21, 304, 332, 337–341
  - public schools, 20, 31, 97, 328–336
  - Sunday schools, 343
  - taxation, 235, 319, 320
- ejectment**, 131, 153, 157, 207, 218
- employment law**, *see also* **education**; **Sunday observance**
- accommodation of holy days, 372, 373
  - alcohol, abstention from, 374
  - derogatory remarks, 376
  - discrimination actions, 376–379
  - dress codes, 375
  - employer liability, 378, 379
  - lifestyle, relevance, 374
  - Quebec law, 372
  - safety equipment, 375
  - unemployment insurance, 372
  - union dues, 377
  - union liability, 378
- English law**, 2, 3
- euthanasia**, *see* **duty to preserve life**; **“right to die”**; **suicide**
- evidence**, *see* **oaths**; **privilege, clergy/parishioner**; **search warrants**; **specific subjects e.g., bigamy**
- family law**, *see* **marriage and divorce**
- fortune telling**, 82, 83
- freedom of speech**, *see* **constitutional issues**; **Charter and Bill of Rights**
- fundraising activities**, 93
- gaming**, 84
- genocide, promotion of**, 85, *see also* **hate messages/propaganda**
- gifts**, *see* **wills and trusts**
- God, supremacy of**, 5, 6
- hate messages/propaganda**
- anti-Semitic statements, 32
  - false news, 32
  - genocide, 85

## INDEX

---

- human rights legislation and, 87
  - telecommunications, involving, 87
  - wilful promotion, 32, 86
- health**, *see* **medical treatment**
- human rights legislation**, *see* **constitutional issues; hate messages/propaganda**
- hunting**, 367
- immigration**, *see* **citizenship requirements**
- incarceration**, *see* **prisoners' rights**
- incest**, 72
- incumbents**, 127, 129, 131, 163
- infanticide**, 76
- infants**, *see* **children, protection of; marriage and divorce**
- injunctions**, 125, 288, 296, 365
- kirpan, wearing of**, 97, 332, 335, 375
- labour law**, *see* **education; employment law; Sunday observance**
- lashes**, 131
- leases**, *see* **property (use and ownership)**
- legislation**, *see* **constitutional issues; property (use and ownership); religious organizations (general); trustees and officers; specific issues e.g., temperance**
- liens**, 223
- literature, distribution of**, 92
- Lord's Day Act**, *see* **Sunday observance**
- lotteries**, *see* **gaming**
- mandamus**, 347
- marriage and divorce**, *see also* **bigamy; polygamy; procuring feigned marriage; unlawful solemnization of marriage**
- child protection, 77, 353–356, 360, 361
  - custody and access, 77, 348–357, 360, 361
  - federal jurisdiction, 4
  - foster parents, 357
  - freedom of religion and, 346
  - fundamental principle, 348
  - grounds for divorce, cruelty as, 345
  - general, 4, 344
  - mandamus to compel proceedings, 347
  - non-parents, 357
  - provincial jurisdiction, 4
  - religious practices, relevance, 349
  - religious upbringing, 348, 350
  - rights of non-custodial parents, 350–352
- medical treatment**
- battery actions, 359
  - blood transfusions, 353, 354, 358, 359, 361
  - child protection and, 77, 353, 354, 360, 361
  - general, 358
  - Sikhs, of, 375
- meetings**, *see also* **Charter and Bill of Rights; obstructing worship; private meetings; unlawful assembly**
- calling of, 145, 161, 164, 174
  - incumbent, selection of, 163
  - resolutions, 174
  - validity, 161, 162
- members**
- discipline of, 292–297

## RELIGIOUS INSTITUTIONS

---

- liability of, 153, 201
- list of, 187
- status in organization, 264
- military service**, 99
- mortgages**, *see* **property (use and ownership)**
- mortmain**, 246, *see also* **wills and trusts**
- municipal by-laws**
  - building codes, 23, 314
  - common pause days, 364, 368
  - education, affecting, 23
  - fortune telling, 83
  - local improvements, 230
  - noise, 96
  - residency restrictions, 9
  - Sunday observance, 17
  - zoning, 244, 314, 321, 339
- negligence**, 202
- oaths**
  - affirmation in lieu of, 100, 107, 108
  - basis of, 101, 102
  - common law, 100, 101, 103
  - false statements under, 109
  - form of, 103–106
  - perjury and, 104, 105
  - swearing on Bible, 103
- obstructing worship**
  - “assemblage of persons”, 44
  - Charter and, 48
  - common law, 43, 45
  - examples, 45–47
  - general, 43
  - indictable offence, 43
  - summary offence, 44, 49
- offences**, *see* **criminal law (general); specific offences e.g., obstructing worship**
- parliamentary sovereignty**, *see also* **constitutional issues**
  - Charter restrictions, 3
  - federal jurisdiction, 3, 4, 8
  - general, 2
  - provincial jurisdiction, 2–4, 8
  - separation of church and state, 2
- pension benefits**, 245
- pews, letting of**, 205, 220, 221
- polygamy**, 68, 69, *see also* **adultery; bigamy; procuring feigned marriage**
- priests**, *see* **clergy**
- prisoners’ rights**, 98
- private meetings**, 94, *see also* **unlawful assembly**
- privilege, clergy/parishioner**, 89, 110–112
- procuring feigned marriage**, 67, *see also* **bigamy; polygamy**
- prohibition**, 125, 288
- property (offences against)**, 90, 146
- property (use and ownership)**, *see also* **church union; wills and trusts**
  - Alberta, 175, 179–189, 195–197, 199
  - Anglican Church, 131–133
  - bequests of, 207–211
  - British Columbia, 179–181, 190, 192, 195, 197, 199
  - church, 281–284
  - desecration, 91
  - disposition generally, 132, 150, 164, 212–216
  - disputes, 122, 265–274
  - expelled members, 295, 301
  - general, 118, 167, 208
  - leases, 172, 183, 197, 218–221

## INDEX

---

- liens against, 223
  - Manitoba, 179–181, 191, 192, 195–197, 199
  - mischief involving, 91
  - mortgages, 172, 183, 186, 188, 199, 222–224
  - Ontario, 168–173, 175–178
  - Saskatchewan, 179–181, 193–199
  - trespass, 146
- provincial jurisdiction, *see also* education**
- fund raising, 93
  - general, 2–4, 33
  - literature, distribution of, 92
  - Remembrance Day, 38
  - Sunday observance, 8, 19, 36–38, 363–371
- publication bans, 297**
- records**
- access to, 165, 166
  - custody of, 165
  - privilege, 112
  - search warrants, 88, 112
- religious orders, 299–301**
- religious organizations (general), *see also* Anglican Church; courts (civil), jurisdiction; discipline (internal); specific subjects e.g., trustees and officers**
- actions involving, 153–159
  - “church”, 114
  - constitutions, changes in, 225, 226
  - dissolution, 176, 225
  - general, 113
  - incorporation by private/special Act, 178
  - legal status, 116–118, 126
  - legislation concerning, construction, 115
  - names of, 175, 186
  - Ontario, 168
  - voluntary associations, as, 264
  - winding up, 189
- Remembrance Day, 38**
- “right to die”, 78, *see also* duty to preserve life; suicide**
- sale of land, 217**
- schools, *see* education**
- scope of title, 1**
- Scots law, 2**
- search warrants, 88, 112**
- sedition, 92, 95**
- seminaries, 232, 233**
- services, seating at, 160, 205, 220, 221**
- Sikh religion, 97, 332, 335, 375**
- solicitation, *see* literature, distribution of**
- statutes, *see* constitutional issues; specific subjects e.g., Sunday observance**
- suicide, 74, *see also* duty to preserve life; “right to die”**
- Sunday observance, *see also* employment law**
- common pause days, 363–366, 368–371
  - criminal law and, 16, 18, 35–38, 362
  - feast days, 36
  - federal/provincial jurisdiction, 8, 10, 16–18, 35, 37, 38, 362
  - general, 10, 16
  - historical, 16, 362
  - hunting, 367
  - interpretation of legislation, 12, 13

## RELIGIOUS INSTITUTIONS

---

- Lord's Day Act, 8, 10, 12, 16, 366
- municipal by-laws and, 17, 364, 368
- post-Charter developments, 18, 363–371
- Remembrance Day, 38
- sports, 37
- taxation (income), 236–243**
  - business operations, 238–240
  - charitable donations, 236–240
  - military expenditures, 242
  - schools, 237
  - support payments, 241
- taxation (municipal), exemptions**
  - cemeteries, 231
  - Charter, effect of, 234
  - construction of, 228
  - general, 227
  - local improvements, 230
  - onus of proof, 228
  - rented property, 229
  - schools, 235
  - seminaries, 232, 233
- teachers, see education**
- temperance**
  - criminal law and, 15
  - federal legislation, 14, 15
  - general, 14
  - provincial legislation, 14, 15
- trespass, 146**
- trustees and officers**
  - actions involving, 153–159, 198, 201
  - Alberta, 182–184, 187
  - appointment and tenure, 169, 182
  - British Columbia, 190
  - confirmation of, 43
  - duties and powers, 148, 160, 169–173, 205
  - election of, 145–147
  - holding land, 200, 203
  - legal status, 149
  - legislation governing, 148–151
  - Manitoba, 191
  - nomination of, 146
  - Ontario, 169–173
  - personal liability, 152, 157, 224
  - qualifications, 146, 206
  - sale of property by, 150
  - Saskatchewan, 179, 193, 194, 197, 198
  - services, seating at, 160
  - successors, 204
- trusts, see wills and trusts**
- union of churches, see church union**
- United Church, 275, see also church union**
- unlawful assembly, 42, see also Charter and Bill of Rights; private meetings**
- unlawful solemnization of marriage, 70**
- wills and trusts**
  - beneficial purposes generally, 258
  - bequests, examples, 207–211, 247–258
  - church union, 282
  - cy-près, 261–263
  - discriminatory bequests, 263
  - general religious purposes, 247–253
  - inter vivos gifts, 246
  - interpretation, 142, 248
  - onus, 248

## INDEX

---

- specific religious purposes, 254–256
  - uncertainty, 259, 260
  - void bequests, 251, 252
- witchcraft**, 81, *see also* **Criminal Law (Offences.)**
- zoning**, 244

## Index to Restitution

(All references are to paragraph numbers.)

- accounting, see breach of confidence; breach of fiduciary duty**
- agency, see ineffective contracts (agency transactions)**
- agency of necessity, see emergency services**
- bona fides purchasers, see defences**
- breach of confidence, see also breach of fiduciary duty; constructive trusts**
- accounting, 466
  - communication “in confidence”, 455, 456
  - “confidential” information, 451–454
  - constructive trust, 468, 469, 564
  - contractual terms concerning, 462
  - damages, 467
  - detriment to owner of information, 458
  - employment relationships, 449, 471
  - fiduciary breaches, 461
  - general, 448–450
  - injunctions, 465
  - onus on user of information, 457
  - public interest defence, 470, 471
  - recipes, 454
  - recipient of information, duty of, 459
  - remedies, 458, 460–469
  - test for determining, 450
- breach of fiduciary duty, see also breach of confidence; constructive trusts**
- accounting, 408, 433
  - “actual knowledge”, 443
  - banks, 416
  - bars to creating fiduciary duty, 419
  - bribes/secret commissions, 435–438
  - characteristics of fiduciary relationship, 413
  - commercial parties, 414, 416, 461
  - confidential information, misuse of, 430–434
  - constructive trust remedy, 431, 442–447, 564
  - damages generally, 410, 432
  - directors/officers, 426–428
  - elections, 438
  - examples of fiduciary relationships (general), 411–419
  - fiduciary selling own property to trust, 424
  - general, 408–410
  - good faith, effect of, 429
  - joint venturers, 415
  - leases, 425
  - professional advisors, 416
  - rights of party in breach, 434
  - statutory duties, 417
  - third party liability, 439–447
  - tracing, 435, 440
  - trust property, purchase by fiduciary, 420–423
  - trustee de son tort, 441
- bribes, see breach of fiduciary duty**
- burials, 230–232**
- change of position, see also defences**



- coercion, *see* compulsory discharge of another's liability; contribution; duress; unconscionability; undue influence**
- commissions, *see* ineffective contracts (agency transactions)**
- compulsory discharge of another's liability (recovery for), *see also* coercion; subrogation**
- compellability of plaintiff, 184–187, 191
  - discharge of liability required, 192–194
  - extension of doctrine, 195
  - general, 181–183
  - misconduct by plaintiff, 190, 191, 195
  - voluntary payments, 184–187
- confidential information, *see* breach of confidence; breach of fiduciary duty**
- constructive trusts, *see also* proprietary remedies; specific situations, e.g., breach of fiduciary duty; tracing; unjust enrichment**
- appropriateness of remedy, 552–563, 566, 567
  - availability of other remedies, relevance of, 566, 567
  - bankruptcy cases, 562, 563
  - breach of confidence/fiduciary duty, 564
  - conditions supporting declaration of (unjust enrichment), 517
  - conditions supporting declaration of (wrongful conduct), 516
  - creation of property interests by, 513, 514
  - creditors, protection of general, 560, 561
  - duress, benefits obtained by, 125
  - family cases, 552, 553, 555–559
  - fiduciary relationship not required, 511
  - general, 1, 6, 18, 509–517, 566
  - legal title to property not required, 512
  - quantifying property interest/damages, 568
  - remedial constructive trusts, 585
  - timing of creation of, 519, 520
  - tracing, 569–589
  - unjust enrichment, 518–553
  - vendors, unpaid, 562
  - wrongful conduct generally, 565
- contracts, *see* ineffective contracts**
- contribution, *see also* coercion**
- equitable, 196–199
  - statutory, 200–207
- criminal acts, offender not to profit from**
- general, 472–474
  - indirect benefits, 479
  - insurance proceeds, 475
  - survivorship claims, 477
  - wills/estates, 476
- defences**
- bona fide purchasers, 569, 575, 577, 578, 595, 596
  - change of position, 30, 592–594
  - estoppel, 24–29, 55, 590, 591
  - statutory, 597
- drunkenness, *see* ineffective contracts (lack of capacity)**
- duress, *see also* coercion**
- abuse of public/governmental position, 94–98, 100–104
  - breach of contract, threat to commit, 105–112

- causation, 121–124
- defences, 126
- duress of goods, 88–93
- economic duress (general), 113–120
- legal proceedings, improper, 80–87
- personal threats, 75–79
- practical compulsion, 124
- remedies, 125
- tax payments, 99
- voluntariness/protest, 104
- election, *see* tracing; waiver of tort**
- emergency services**
  - agency of necessity, 210–216
  - burials, 230–232
  - discharge of debt/private duty, 188–194, 229
  - discharge of public duty, 230–232
  - general, 208, 209
  - gratuitous acts, 219, 221, 227
  - maritime salvage, 209
  - officious interveners, 223, 218, 227, 228, 232
  - necessities supplied to incompetent parties, 220–223
  - preservation of life/health, 217–219
  - preservation of property, 224–228
  - rescuers, 219
  - trespass, 229
- estoppel, *see also* defences**
  - defence, as, 590, 591
  - land, improvements to, 55
  - mistake of fact, money paid under, 24–29
- fiduciary breaches, *see* breach of confidence; breach of fiduciary duty; mistake (money paid-mistake of law)**
- following, *see* tracing**
- fraud, *see* mistake (money paid-mistake of law)**
- frustration, *see* ineffective contracts**
- general**
  - categories of restitution, 5
  - constructive trust, 1, 6
  - contract law distinguished, 2
  - unjust enrichment, 1, 3
- gifts, 14**
- improvements, *see* mistake (services provided under)**
- ineffective contracts, *see also* duress**
- ineffective contracts (agency transactions)**
  - general, 385, 386
  - principal at fault, 387, 388
  - third party at fault, 389–392
- ineffective contracts (anticipated contracts)**
  - general, 374, 375
  - recovery re goods/services supplied, 377–384
  - recovery of money paid, 376
- ineffective contracts (breached contracts)**
  - benefits obtained by breaching party, giving up of, 338
  - quantum meruit claims (innocent party, by), 343–346
  - recovery of money paid (guilty party, by), 347–352
  - recovery of money paid (innocent party, by), 340–342
  - sale of goods, 359
  - sale of land, 339

## RESTITUTION

---

- setoff, 360
- substantial performance/entire and divisible contracts, 353–358
- ineffective contracts (formal invalidity/Statute of Frauds)**
  - constructive trust, imposition of, 256
  - general, 246
  - improvements to land, 251, 252
  - money paid, 247, 248
  - property transfers, 255
  - services rendered, 249–254
- ineffective contracts (frustration)**
  - common law, 361–363
  - statutory, 364–373
- ineffective contracts (general)**
  - goods/services, recovery of, 235
  - gratuitous interveners, 237
  - knowledge/request by defendant, 235, 236
  - incontrovertible benefits, 236
  - money, recovery of, 234
  - officious interveners, 237
  - result of, 233
  - subrogation, 506
  - valid contracts, effect of, 238
- ineffective contracts (illegality)**
  - exceptions allowing enforcement, 264–291
  - general, 257, 292, 293
  - illegal method of performance, 263
  - money paid, 258
  - principals and agents, 294–296
  - property transfers, 259
  - repentance before performance, 284–288
  - services rendered, 260
  - validity of contract, determining, 261–263
- ineffective contracts (lack of authority)**
  - money paid, 239
  - services rendered, 240
  - subrogation, 504
- ineffective contracts (lack of capacity)**
  - land, sale of, 503
  - mental incompetence/drunkenness, 297–303, 502, 503
  - minors, 304–328, 503
  - subrogation rights, 500–506
  - ultra vires contracts, 329–337, 505
- ineffective contracts (mistake/uncertainty)**
  - general, 74, 241
  - goods/services supplied, 243–246
  - money paid, 242
- ineffective contracts (services provided in expectation of future benefit)**
  - constructive trust vs. quantum meruit, 399
  - expectation of plaintiff, relevance of, 396
  - general, 393
  - natural love/affection, effect of, 396, 398
  - request for/acceptance of services, 394–397
- inequality of bargaining power, see unconscionability**
- land, see duress; estoppel; ineffective contracts (breached contracts); ineffective contracts (lack of capacity); mistake (land transferred under); mistake (services provided under)**

## INDEX

---

- loan transactions**
  - illegal contracts generally, 281, 282
  - illegal interest rates, 278
  - minors, with, 314, 323, 325
  - tracing, 529
  - unconscionability, 177–179
  - ultra vires contracts, 330–337
- maritime salvage**, 209
- mental incompetence**, *see*  
**ineffective contracts (lack of capacity)**
- minors**, *see* **ineffective contracts (lack of capacity); loan transactions**
- mistake (chattels transferred under)**, 72
- mistake (contracts formed under)**, 74, 241–245
- mistake (land transferred under)**, 73
- mistake (money paid-mistake of fact)**
  - agents, mistakes by, 16
  - agents, payments made to, 31
  - causation, 15
  - change of position, 30
  - defences, 19–32
  - discharge liability, payments made to, 20–23
  - estoppel, 24–29
  - forged cheques, 32
  - general, 8
  - gifts, 14
  - honesty of mistake, 8
  - kinds of mistake, 9–14
  - legal liability to pay, mistake re, 10–12
  - moral obligation to pay, mistake re, 8, 13
  - negligence, effect of, 17
  - payer/payee, mistake between, 8, 12
  - proprietary claim created by, 18
  - voluntary payments, 19
  - waiver of inquiry, effect of, 19
- mistake (money paid-mistake of law)**
  - absence of enrichment, 37
  - causation, 36
  - characterizing mistake as fact/law, 35, 45–47
  - defences, 50–52
  - fiduciary breaches, 43
  - fraud, 43
  - general, 33–40, 44
  - payments to/by officer of court, 48
  - settlements of honest claims, 39
  - submission to honest claim, requirement re, 41–43
  - tax payments, 38
  - trustees/personal representatives, payments by, 49
- mistake (services provided under)**
  - discharge of another's duty, 71
  - general, 53, 54
  - improvements to chattels, 70
  - improvements to land (equitable relief), 55–61
  - improvements to land (statutory relief), 62–69
- nature of restitution**, 1–7
- necessaries**, *see* **emergency services**
- proprietary remedies (general)**, 18, 508, *see also* **constructive trusts; tracing; unjust enrichment**
- public utilities**, 97

- remedies, see constructive trusts; duress; proprietary remedies; specific situations, e.g., breach of confidence; tracing; unconscionability; unjust enrichment**
- rescuers, see emergency services**
- sale of land, see land**
- salvage, 209**
- subrogation, see also compulsory discharge of another's liability (recovery for)**
- creditors of trust business, 491, 492
  - discretion of court, 481
  - general, 479–486, 507
  - insurance relationships, 490
  - ineffective contracts, 500–506
  - leases, 483
  - loan transactions, 494–499
  - mental incompetence, effect of, 502
  - minors, 502, 503
  - mortgages/charges, rights of person paying off, 494–499
  - officious parties, denying relief to, 484
  - principles for granting/denying, 480
  - relationships giving rise to right to (general), 487, 493, 507
  - sureties' rights, 484, 488, 489
- tax payments, see duress; mistake**
- torts, see waiver of tort**
- tracing, see also constructive trusts**
- bona fide purchasers, protection of, 569, 575, 577, 588
  - constructive knowledge of recipient, 586
  - election by claimant, 570, 579
  - family cases, 573
  - fiduciary relationship not required, 573
  - first in first out rule, 583
  - following distinguished, 570
  - general, 569, 571, 575, 586
  - identifiability of trust property, 573
  - law vs. equity, 572, 574
  - loan cases, 589
  - loss of right, 587, 588
  - mixed funds/substitutions of property, 578, 580–584
  - money in the bank, 571
  - remedial constructive trusts, 585
  - trustee mixing/misappropriating property, 576, 577, 580–584
- trusts, see breach of fiduciary duty; constructive trusts**
- ultra vires, see ineffective contracts (lack of capacity)**
- unconscionability (equitable), see also coercion**
- elements/proof of, 163
  - examples of, 172
  - general, 162, 168, 169
  - independent legal advice, 170
  - inequality of bargaining power, 165–167
  - knowledge/conduct of stronger party, 163, 171
  - remedies, 173–176
  - undue influence distinguished, 164
- unconscionability (statutory), see also coercion**
- loan transactions, 177–179
  - unfair trade practices, 180

## INDEX

---

- undue influence**, *see also coercion*
- affirmation of transaction, 159
  - agent/principal, 146
  - banks/customers, 147
  - commercial relationships, 147
  - creditor/debtor, 146
  - delay in claiming, 160
  - dentist/patient, 140
  - doctor/patient, 140
  - family members, 139, 143–145
  - friends, between, 136
  - general, 127–131
  - impossibility of rectifying, 161
  - independent legal advice, 149, 150
  - “influence”, 128
  - lawyer/client, 141
  - managers/entertainers, 146
  - neighbours, 146
  - nursing homes/patients, 146
  - presumption of (general), 130, 132–134, 142
  - presumption of (rebuttal), 148–151
  - proof of (no presumption), 152
  - relationships generally, 135–138
  - religious figures/spiritual advisers, 142
  - rescission, bars to, 158–161
  - small gifts/transfers, 151
  - spouses, 145
  - test for determining, 128
  - third parties, rights/liabilities of, 153–158
  - unconscionability distinguished, 164
- unfair trade practices**, 180
- unjust enrichment**, *see also constructive trusts; proprietary remedies; tracing*
- assignment of debts, 535
  - “benefit”, 521–528, 530
  - deprivation of plaintiff, 531–535
  - elements of, 4
  - general, 1–4, 518–520, 530
  - governments, 529
  - insurance claims, 534
  - juristic reason for enrichment/deprivation, 30, 536–553, 555–559, 592–594
  - landlord/tenant, 532
  - mortgagees, 524
  - options, 525
  - spouses/cohabitants, 552, 553
- waiver of tort**
- advantages of action, 406
  - constructive trusts/tracing, 407
  - election of remedy, 403
  - general, 400–403
  - limitation periods, 406
  - measure of defendant’s benefit, 404, 405
- wrongful acts**, *see breach of confidence; breach of fiduciary duty; criminal acts; waiver of tort*

## Index to Sale of Goods

(All references are to paragraph numbers.)

- “acceptance”**, 24, *see also*  
**contracts (performance)**
- “action”**, 2
- actions**, *see* **contracts (remedies for breach); unpaid seller’s rights**
- “agreement to sell”**, 21
- agricultural implements/products**, 9, 61, 101, 102
- ascertained goods**, *see* **“specific goods”**
- auctions**, 98
- bankrupt**, *see* **“insolvent”**;  
**unpaid seller’s rights**
- bills of lading**
- definition, 6
  - legislation re, 212
- breach of contract**, *see* **contracts (remedies for breach); unpaid seller’s rights**
- “buyer”**, 3
- buyer’s lien**, 100, *see also*  
**unpaid seller’s rights**
- common law, applicability of**, 1, 99
- competition, legislation re**, 214
- conditions**, *see* **contracts (conditions/warranties)**
- consumer protection legislation, Alberta**, 106–118
- advertisements, 115
  - assignment of agreement, 113
  - cancellation of consumer transactions, 110
  - direct sales contracts, 117, 119–122
  - general, 106
  - liability, jointly and severally, 113
  - negative option practices, 118
  - oral evidence, 112
  - remedies, 111, 116
  - unfair practices, 108, 109
- consumer protection legislation, British Columbia**, 123–139
- deceptive act or practice, 124–129
    - • burden of proof, 126
    - • definition, 124
    - • timing, 125
  - unconscionable act or practice, 128, 129
  - direct sales, 130–135
    - • copy of contract, 132
    - • credit agreement, 135
    - • definition, 130
    - • down payment in excess of prescribed amount, 132
    - • notice of cancellation, 133
    - • required information, 131
    - • trade-in allowance, 134
  - future performance agreement, 130, 136–139
    - • notice of cancellation, 137
    - • refund, 138
    - • return of goods, 139
  - general, 123
- consumer protection legislation, Manitoba**, 140–150
- direct sellers, 146–150
    - • cancellation, 148
    - • deliberate destruction or consumption of goods, 150

## SALE OF GOODS

---

- • prohibition against premiums, 147
- • refund, 149
- statutory warranties on retail sales, 140–145
- consumer protection legislation, Ontario, 151–168**
  - consumer rights and warranties, 151–153
  - direct agreements, 167, 168
  - future performance agreements, 162–166
  - unfair practices, 156–161
    - • false, misleading or deceptive representation, 156
    - • re-negotiating terms, 158
    - • rescission and remedies, 159–161
    - • unconscionable representation, 157
- consumer protection legislation, Saskatchewan, 169–209**
  - consumer products warranties, 185–204
    - • consumer, 185
    - • consumer product, 186
    - • damages for personal injuries, 202
      - • deemed warranties, 187
      - • exemplary damages, 201
      - • express warranty, 191, 192
      - • in addition to any other rights, 186
      - • jurisdiction, 203
      - • lack of privity of contract, 200
      - • mandatory health or safety standards, 204
      - • manufacturer, 198
      - • provisions voiding agreement, 190
      - • retail seller, 193–197, 199
  - second-hand, substandard or inferior products, 188, 189
  - future performance contracts, 207–209
    - • cancellation, 207, 208
    - • offences, 209
  - marketplace practices, 169–184
    - • actions by director, 173, 179
    - • agreement to contrary, waiver or release, 180
    - • compliance agreements and orders, 175
    - • court action and appeal, 172, 182
    - • court orders, 174, 183
    - • ex parte orders, 176
    - • general impression and reasonableness of actions, 170
    - • mediation, 178
    - • offences and penalties, 177
    - • parol or extrinsic evidence, 184
    - • rights of heirs and assignees, 181
    - • unfair practices, 169, 171
  - unsolicited goods, 205, 206
- “**contract of sale**”, 4
- contracts (conditions/warranties), see also (quality/fitness)**
  - conditions/warranties distinguished, 31
  - general, 94
  - impossibility, effect of, 31
  - “month”, 30
  - quality/fitness, re, 12, 34–45
  - sales by description, 33
  - sales by sample, 33, 46
  - severance, 31
  - time, of payment, 30
  - time, of the essence, 30
  - time, reasonable, 96



## INDEX

---

- waiver of, 31
- “warranty”, 16
- contracts (formation)**
  - absolute vs. conditional contracts, 21
  - “agreement to sell”, 21
  - capacity to buy/sell, 22
  - “contract of sale”, 4, 21
  - contracts over \$50, 24
  - corporations, 23
  - formalities, 23
  - general, 23
  - implied contracts, 23, 94
  - part owners, between, 21
  - perishing of goods, 26, 27
  - present sale of future goods, 25
  - price, determination of, 28, 29
  - specific goods, 15, 26, 27
  - subject matter, 25
  - writing, requirement for, 23, 24
- contracts (performance)**
  - acceptance of goods, 24, 74, 75, 89
  - “delivery”, 6
  - delivery, by installments, 70
  - delivery, failure to make, 90
  - delivery, failure to take, 77, 89
  - delivery, generally, 68
  - delivery, mixture of goods, 69
  - delivery, to carrier, 71
  - delivery, to distant location, 72
  - delivery, wrong quantity, 69
  - duties re delivery/acceptance/payment, 66–68, 89, 90, 94, 97
  - examination of goods, buyer’s, 73
  - rejection/return of goods, 76
- contracts (remedies for breach), see also unpaid seller’s rights**
  - acceptance of goods, effect of, 31
  - action for non-delivery, 90, 97
  - action for price (seller’s), 88, 97
  - actions generally, 97
  - breach of condition, 31
  - breach of warranty, 31, 92
  - contracts over \$50, 24
  - damages for non-acceptance (seller’s), 89
  - interest, recovery of, 93
  - rescission, 88
  - special damages, 93
  - specific goods, where property in passed, 31
  - specific performance, 91
- criminal offences**, 215
- “**crops**”, 10, *see also grain*
- damages, see contracts (remedies for breach)**
- definitions**
  - acceptance, 24
  - action, 2
  - agreement to sell, 21
  - bill of lading, 7
  - buyer, 3
  - contract of sale, 4, 21
  - crops, 10
  - deliverable state, 19
  - delivery, 6
  - dock warrant, 7
  - document of title to goods, 7
  - emblements, 10
  - fault, 8
  - future goods, 9
  - goods, 10
  - in good faith, 17
  - in transit, 84

- insolvent, 18
- mercantile agent, 63
- month, 30
- necessities, 22
- possession, 20
- property, 11
- quality of goods, 12
- sale, 13
- seller, 14, 78
- specific goods, 15
- unpaid seller, 78
- warranty, 16
- “**deliverable state**”, 18
- “**delivery**”, 6, *see also* **contracts (performance)**
- description**, *see* **contracts (conditions/warranties); sale by description; sale by sample**
- “**dock warrant**”, 7
- “**document of title to goods**”, 7
- “**emblems**”, 10
- factors**, *see* **legislation**
- “**fault**”, 8
- fitness for purpose**, *see* **quality/fitness**
- formation of contract**, *see* **contracts (formation)**
- free trade legislation**, 216
- “**future goods**”, 9
- “**good faith**”, 17
- “**goods**”, 5, 10
- grain**, 61, *see also* “**crops**”
- impossibility**, 31
- “**insolvent**”, 18, *see also* **unpaid seller’s rights**
- intention**, *see* **property/risk (transfer of)**
- interest**, 93
- interprovincial trade**, 213
- legislation**, *see also* **definitions**  
**consumer protection legislation, Alberta, consumer protection legislation, British Columbia, consumer protection legislation, Manitoba, consumer protection legislation, Ontario, consumer protection legislation, Saskatchewan**
  - agricultural implements, re, 102
  - agricultural products, re, 101
  - common law, effect of, 1, 99
  - factors legislation, re, 59, 104
  - federal legislation 210–216
    - • Agreement on Internal Trade Implementation Act, 213
    - • Bills of Lading Act, 211
    - • Competition Act, 214
    - • Consumer Packaging and Labelling Act, 211
    - • Criminal Code, 215
    - • International Sale of Goods Contracts Convention Act, 210
    - • NAFTA, 216
  - interpretation of terms, 1, 17–20
  - rights/duties/liability, effect on, 94, 97
  - United Nations conventions, 103, 210
  - warehouse receipts, re, 105
- liens**, *see* **buyer’s lien; unpaid seller’s rights**
- “**mercantile agent**”, 63
- “**month**”, 30
- “**necessaries**”, 22
- packaging/labelling**, 211
- performance**, *see* **contracts (performance)**

## INDEX

---

- personal property security**, *see*  
**title (transfer of)**
- “**possession**”, 20
- price**, 28, 29
- property**, 11
- property/risk (transfer of)**, *see also*  
**contracts**; **title (transfer of)**
- bailee, liability as, 56
  - delivery, effect of delay in, 56
  - delivery to distant place, where, 72
  - intention (specific/ascertained goods), 48–55
  - • rules for ascertaining intention, 49–54
  - • timing, 48
  - “property”, 11
  - reservation of right of disposal, 55
  - risk transferred with property, 56
  - unascertained goods, sales of, 47
- quality/fitness**, *see also* **contracts (conditions/warranties)**
- assignment of statutory implied warranty, 37
  - breach of warranty vs. breach of condition, 43
  - description, sales by, 38
  - durability, 43
  - express warranty or condition, 42
  - general, 34
  - legislation, effect of, 34
  - merchantable quality, 39, 40
  - patent/trade name goods, 35
  - privity of contract, 45
  - “quality of goods”, 12
  - reliance on seller’s skill or judgment, 35
  - unfit product, 36
  - usage of trade, 41
- remedies**, *see* **contracts (remedies for breach)**; **unpaid seller’s rights**
- risk**, *see* **property/risk (transfer of)**
- “**sale**”, 13
- sale by description**, 33, 49
- sale by sample**, 46
- “**seller**”, 14, 78
- “**specific goods**”, 15, *see also*  
**contracts (formation)**;  
**property/risk (transfer of)**
- specific performance**, *see*  
**contracts (remedies for breach)**
- statutes**, *see* **legislation**
- stolen goods**, 65, *see also* **title (transfer of)**
- stoppage in transit**, *see also*  
**unpaid seller’s rights**
- effect of, 87
  - exercise of right to, 85, 86
  - general, 18, 83
  - “in transit”, 84
  - resale of goods, effect of, 86
- terms**, *see* **contracts**
- title (transfer of)**, *see also*  
**property/risk (transfer of)**
- general, 57–59
  - grain, 61, 62
  - PPSA, 63
  - seller remaining in possession, 63, 64
  - seller with voidable title, 60
  - stolen goods 65
- unascertained goods**, *see*  
**property/risk (transfer of)**;  
“**specific goods**”

## SALE OF GOODS

---

**unpaid seller's rights, *see also*  
contracts (remedies for breach)**

- contracts over \$50, 24
- exercising right of stoppage, 85
- general, 79
- insolvency, on, 18, 80, 83
- lien rights, 80–82, 86, 87
- partial delivery, where existing, 81
- re-sale by buyer or seller, 86
- rescission of contract, 87
- “seller”, 14, 78

- seller in possession, where, 80–82
- stoppage in transit, 18, 83–85
- “unpaid seller”, 78

**waiver, *see* contracts  
(conditions/warranties)**

**warehouse receipts, 105**

**warranties, *see* contracts  
(conditions/warranties)**

**“warranty”, 16**

## Index To Secured Transactions In Personal Property

(All references are to paragraph numbers.)

- acceleration clauses**, 190
- accounts financier**, 98, 104
- accounts receivable**, 98, 104
- advances, future**, *see* **future advances**
- after-acquired property**, 21
  - attachment and, 28–32
  - purchase-money security interest and, 32
- after-acquired property clause**, 29–30
- agreements over real and personal property**, 271
- agricultural collateral**, 37, 38
- animals and livestock**, 37
- antecedent debts or liabilities**, 27
- application of secured transaction legislation generally**, 1
- artisans' security interest**, 149
- assignments**, 4, 8, 71, 188
  - collateral, assignment of, 236, 237
- attachment**
  - after-acquired property and, 28–32
  - agricultural collateral, 37, 38
  - assignees and, 27
  - consignees and, 27
  - defined, 25
  - elements, 26
  - floating charges, 35, 36
  - future advances, 34
  - perfection, 40–49
    - proceeds, of, 74, 75
    - returned goods, 33
    - security entitlements, 39
    - “value”, 27
- automatic perfection**, 41, 165
- bailee-held goods**, 43
- Bank Act, “special security” provisions**, 13, 14, 148, 153
- Bankruptcy and Insolvency Act**, 141–142, 266
- bill of lading**, 15
- bona fide purchaser for value**, 253, 256
- Canada Pension Plan**, 142
- Canada Shipping Act**, 14
- Civil Enforcement Act (Alberta)**, 131
- chattel paper**, 275
  - in conjunction with sale of accounts, 12
  - purchase-money security interest and, 101
  - purchaser of secured chattel paper, 115
  - secured party in possession, 175
  - special rules of priority and, 111–112
- cheques**, 72
- collateral**, *see also* **attachment**
  - agricultural, 37, 38
  - brought in from foreign jurisdiction, 172
  - in possession of debtor or debtor's agent, 19, 47

- collateral, disposition of**
  - assignment of collateral, 236, 237
  - authorized dispositions, after default, 238–240
  - authorized dispositions, during course of security agreement, 234–237, 270
  - unauthorized dispositions, 241–251, *see also* unauthorized dispositions
- collateral, proceeds from, 72, 82, 114**
  - actions giving rise to proceeds, 79
  - Alberta legislation, 81
  - attachment of, 74, 75
  - British Columbia legislation, 81
  - contractual right to, 73
  - defined, 72
  - Manitoba legislation, 80
  - perfection of proceeds, 76, 77
  - priority of claims, 83–85
  - Saskatchewan legislation, 81
  - when proceeds perfected, 78–82
- collateral, use of, 182, 183**
- commingled goods, 127–130**
- conflict of laws**
  - debtor, location of, 159
  - equipment or inventory used in more than one jurisdiction, 156–159
  - foreign-registered ship, 163
  - generally, 155
  - minerals, 161
  - residual choice of law, 164
  - security interests in other collateral, 160–164
- consensual transactions, 2**
- consignments, 4**
- constitutional issues, 16**
- constructive notice, 53**
- consumer goods as collateral, 198, 199, 230, 251, 272**
- continued perfection, 165**
- contract of annuity, 8**
- corporate securities, 5, 23**
- Creditor Assistance Act (British Columbia), 138**
- creditor’s representative, 139, 140, 141, 143**
- Creditors’ Relief Act (Saskatchewan), 138**
- crops, 21, 37, 38**
  - after-acquired property and, 31
  - agricultural collateral, 37
  - special priority rules and, 118–121
- Crown property, 11**
- crystallizing event, 36**
- debtor, defined, 260**
- debtor, rights independent of default**
  - custody of collateral, 219
  - obtaining registry discharge, 216–218
  - preservation of collateral, 219
  - right to information, 220
  - secured party’s duty, right to enforce, 221
  - transfer of collateral, 215
  - use of collateral, 214
- debtor, rights upon default**
  - accounting from sale of collateral, 231
  - notice, 222, 223
  - redemption and reinstatement, 226–230

## INDEX

---

- right to enforce secured party's duties by action, 232, 233
- right to force sale, 224, 225
- default, duties of secured party**
  - care for collateral, obligation to, 213
  - commercial reasonableness, 209–211
  - notice of disposition, obligation, 212
  - preservation of collateral, 213
- default, remedies for**
  - acceleration clauses and, 190
  - debtor's rights, *see* debtor, rights under default
  - defined, 189
  - prohibitions on transfer, 191
  - right to disposition of collateral, 203–207, 233, 238–240
  - right to possession, 193–198
  - right to retain collateral, 199–202
  - rights, generally, 192
  - security agreement, 267
- defective registration, curing, 54**
  - Alberta legislation, 56
  - Manitoba legislation, 55
- deposit accounts, 72**
- description of property, adequacy of, 21**
- disposition of collateral, *see* collateral, disposition of**
- effect of registration, 59**
- Employment Insurance Act, 142**
- enforcement of secured party's duties, 221**
- equipment as collateral, 273**
- equitable subordination, 94**
- excluded transactions, 7–16**
- Executions Act (Manitoba), 131**
- extension of time to register financing statement, 70**
- failure to reperfect, 170**
- Family Relations Act (British Columbia), 208**
- farm products, 37, 38**
- federal chattel security legislation, priorities and, 147–148**
- financing agreement/statement**
  - contents, 22
  - registration, 22, 47
- financing change statement, 61–63**
- fixtures, 122, 123, 196**
  - special priority rules and, 124–126
- floating charges, 6, *see also* attachment; security interest**
  - as security interest, 35, 36
- foreclosure for default under security agreement, 269, *see also* unauthorized dispositions**
- foreclosure on land and chattels, 211**
- foreclosure without compliance, 252–258**
- foreign-registered ship, 163**
- forestry licence, 224**
- formalities, compliance with, 17**
- future advances**
  - attachment and, 34
  - special priority rules and, 131
- futures accounts, 68**
- goods**
  - agricultural collateral, 37

- unauthorized disposition of, 249–251
- guarantors, suits against**, 260
- Income Tax Act**, 142
- injunctions**, 261
- insurance policy**, 8
- intangibles**, 275
  - choice of law rule and, 157–159
  - unauthorized disposition of, 242
- inter partes rights**, 17
- inventory**, 84, 85, 156, 157, 235, 251
  - purchase-money security interest in, 99, 101
- investment property, priority rules**, 133
- investment property, security interest**, 162
- land titles office registration**, 123
- lapse of original registration, effect of**, 61–63
- leases**, 4
  - coal lease, 10
  - natural gas lease, 10
  - realty interests, 9, 10
- licences**, 21
- liens**, 7, 23, 206
  - non-possessory lien, 151
  - possessory lien, 11, 150
- maintenance, preservation or repair of collateral**, 34
- Manufactured Home Act (British Columbia)**, 131
- minerals**, 161
- mistake in financing statement**, 57
- mobile assets**, 158, 165, 166
- mobile homes**, 197
- money**, 72
- natural gas lease**, 10
- negotiable instruments/non-negotiable instruments**, 102, 116
  - unauthorized dispositions, 243–248
- non-consensual transactions**, 2
- non-possessory liens**, 151
- non-possessory security interests**, 21
- notification to debtor on default**
  - generally, 200–202
  - sale of collateral, 203–207
- overriding interests, unperfected security interests and**, 135
- pawnbroker**, 11
- perfection**
  - defined, 40, 41
  - unperfected collateral from another jurisdiction, 171
- perfection by control**, 64–66
- perfection by delivery**, 67
- perfection by possession**, 45–47
- perfection by registration**, 22, 50–63
- perfection, continuity of**, 69–71
- perfection of proceeds**, 76–82
- perfection of security accounts and futures accounts**, 68
- Personal Property Security Act, 1987 (Manitoba)**, 55, 58
- Personal Property Security Act, 1993 (Saskatchewan)**, 1
- Personal Property Security Act, 2000 (Alberta)**, 1, 56
- pledgor**, 11



## INDEX

---

- possessory liens**, 11, 150
- possessory security interest**, 18
- priorities, act and non-act interests**
  - federal chattel security law, 147, 148
  - provincial security interests, 149–154
- priority**, 86, 87
  - commingled goods, 127–130
  - crops, 118–121
  - fixtures, 122–126
  - future advances, 131
  - investment property, 133
  - priority rules, general, 89–94
  - purchase money rules, 95–98
  - purchase money security interest in inventory, 99–104
  - purchase money security interest in non-inventory, 105–108
  - returned or repossessed goods, 109–112
  - right of certain purchasers, 113–117
  - subrogation agreements, 132
- priority of claims**, 83–85, *see also* priority
  - conflicts among priority rules, 173
  - general priority rule, 88–93
  - generally, 86, 87
  - priority rules, 85
  - purchase-money rules, 95–108
- priority rights, unperfected security interests**
  - priority rights, 134
  - subordination of, collateral taken, legal process, 136–138
  - subordination of, dispute with creditor's representative, 139–143
  - subordination of, overriding interests, 135
  - subordination of, purchase money security interest, saving provision, 144
  - subordination to interests of transferee, 145, 146
- priority rules**
  - conflicts among rules, 173
- proceeds from collateral**, 72, 82, 114
  - actions giving rise to proceeds, 79
  - Alberta legislation, 81
  - attachment of, 74, 75
  - British Columbia legislation, 81
  - contractual right to, 73
  - defined, 72
  - Manitoba legislation, 80
  - perfection of proceeds, 76, 77
  - priority of claims, 83–85
  - Saskatchewan legislation, 81
  - when proceeds perfected, 78–82
- provincial security interests and priorities, generally**, 154
- public sale of collateral**, 203
- purchase-money security interest**, 7
  - after-acquired property and, 32
  - commingled goods and, 128
  - defined, 95
  - fixtures special priority rules v. purchase-money security interest, 126
  - grace period for registration, 144
  - inventory, 99, 101
  - multiple interests in one collateral, 98
  - non-inventory collateral or intangibles, 105–108
  - notice, 99, 100

- priority rules and, 95–108
- subordination of purchase-money security interest, 102, 103
- purchaser of goods, rights of**, 113–117
  - subsequent purchaser, 117
- realty interests**, 9, 10
- receivers, appointment of**, 262–265, 268
- redemption of collateral by debtor**
  - generally, 226, 276
  - effective redemption, 227–230
- registration**
  - defective registration, curing, 54–58
  - duration, 59–61
  - effect, 59–61
  - lapse of without renewal, 62, 63
  - perfection, 50, 51
  - time, 59–61
- registration system**, 52, 53
  - discharge, 216–218
  - duration of registration, 59
  - effect of, 59
  - inexact match, 57
- remedies for default, *see* default, remedies for**
- remedies, secured party, *see* secured party remedies**
- rent payments on land**, 10
- reperfection**, 167, 169
  - failure to reperfect, 170
- residual rule, priorities**, 83
- returned goods**, 33
  - special priority rules and, 109–111
- sale of accounts**, 1
- sale of collateral, *see* collateral, disposition of**
- secured party in possession of collateral**
  - default, acceleration clauses and, 190
  - default and prohibited transfer, 191
  - default, defined, 189
  - default, rights on, 192–207
  - duty of care, 174–176
  - duty to provide statement of accounts, 185–188
  - increases in value of collateral, 180
  - keeping collateral identifiable, 181
  - liability of secured party, 184
  - loss or damage, risk, 179
  - right to disposition of collateral, 203–207, 233, 238–240
  - right to expenses, 177, 178
  - right to possession, 193–198
  - right to retain collateral, 199–202
  - security agreement, 267
  - statement of accounts, duty to provide, 185–188
  - use of collateral, 182, 183
- secured party remedies**
  - agreements, real and personal property, 271
  - appointment of receivers, 262–265
  - bankruptcy proposals, 266
  - consumer goods, 272
  - court receiver, application to appoint, 268
  - disposition of collateral, 270
  - equipment, 273
  - foreclosure, 269

## INDEX

---

- goods covered by documents, 274
- injunctions, 261
- intangibles, collection of, 275
- redemption and reinstatement, rights of, 276
- rights and remedies in security agreement, 267
- suit on the debt, 259
- suits against guarantors, 260
- secured transaction legislation, generally, 1**
- securities, 245, 275**
- security accounts, perfection of, 68**
- security agreement, *see also* security interest**
  - contents of, 22
  - delivery to debtor, 20
  - formal requirements, generally, 17
  - formal requirements, non-possessory security interests, 21
  - formal requirements, possessory security interests, 18–20
  - future advances, 34
  - oral agreement, 20
  - proceeds from collateral, contractual right to, 73
  - writing requirement, 20
- security entitlements, attachment to, 39**
- security interests, *see also* security agreement**
  - after-acquired property, 28–32
  - agricultural collateral, 37, 38
  - attachment, 25
  - corporate, 23
  - defined, 3
  - floating charges, 35, 36
  - future advances, 34
  - investment property, 65, 66, 133, 162
  - non-possessory interests, requirements, 21
  - possessory interests, requirements, 18–20
  - requirements, generally, 17
  - returned goods, attachment, 33
- security interests, out-of-province**
  - collateral, from foreign jurisdiction, 172
  - collateral, unperfected, brought into province, 171
  - perfection, automatic, 165, 166
  - reperfecton, 167–169
  - reperfecton, failure to, 170
- security interests, unperfected, priority rights**
  - priority rights, 134
  - subordination of, collateral taken, legal process, 136–138
  - subordination of, dispute with creditor's representative, 139–143
  - subordination of, overriding interests, 135
  - subordination of, purchase money security interest, saving provision, 144
  - subordination to interests of transferee, 145, 146
- seizure or repossession of collateral, 18, 46**
- special priority rules**
  - purchase-money security interest, 95–108
  - returned or repossessed goods, 109–111
  - transfer of chattel paper and, 111–112

## SECURED TRANSACTIONS IN PERSONAL PROPERTY

---

- spelling error in financing statement, Manitoba legislation,** 58
- spousal rights, default and,** 208
- statute of Parliament dealing with third party rights,** 13
- statutory requirements regarding financing agreements,** 24
- subordinate security interests, discharge of,** 254
- subordination agreements,** 132
- suit on the debt,** 259
- Summary Convictions Act (Manitoba),** 7, 152
- temporary perfection,** 42–44
- title documents as collateral,** 274
- trust indentures/receipts,** 6
- trustee in bankruptcy,** 139–142
- unauthorized dispositions**
  - chattel paper, 246–248
  - debtor’s rights against purchaser, 257
  - deficiency claim by secured party, 258
  - defined, 241
  - foreclosure without compliance, 252, 253
  - goods, 249–251
  - instruments, 243–245
  - intangibles, 242
  - Manitoba legislation, 255
  - negotiable documents of title, 243–245
  - non-negotiable documents of title, 246–248
  - non-negotiable instruments, 246–248
  - sale without compliance, 254–258
- United States Uniform Commercial Code,** 1
- unlimited period of effectiveness of registration,** 60
- unperfected security interests**
  - collateral taken under legal process, 136–138
  - generally, 134
  - overriding interests and, 135
  - subordination of, 135
  - subordination to transferee, 145–146
- value,** 27
- wage assignments,** 8

## Index to Securities and Stock Exchanges

*(All references are to paragraph numbers.)*

- actions**
  - by broker, 343–345
  - by client, 336–340
  - discovery against broker, 341
  - limitation of actions, 342
- broker’s rights and duties as agent**
  - discretion to disregard instructions, 292–294
  - duties arising from fiduciary relationship, 295–298
  - duty to account, 300
  - duty to follow instructions, 289–291
  - duty to give notice of trade, 286–288
  - duty to purchase, 283–285
  - entitlement to commission only, 299
  - general, 282
  - margin transactions, 301, 302
  - rights and duties enlarged by contract, 305
  - selling out customer, 303, 304
- broker’s rights and duties as creditor**
  - broker’s lien, 307–309
  - claim not confined to margin, 306
- broker’s rights and duties as pledge**
  - borrowing shares, 323
  - general, 310
  - obligation to deliver shares on demand, 311, 312
  - position of new pledge, 321
  - rightful use of pledged stock, 313
  - short selling, 322
  - wrongful repledge of stock, 319, 320
  - wrongful sale of stock, 314–318
- civil liability for secondary market disclosure, 181–186**
- civil liability offences under Securities Acts**
  - contracts where one party having special interest, 173–180
    - dealer having interest in trade, 176, 177
    - insider trading, 173–175
    - limitation periods, 179, 180
    - rescission rights for mutual funds contracts, 178
  - failure to provide copy of offering document, 171
  - misrepresentation in prospectus/documents, 159–168
  - misrepresentation in takeover bid/issuer bid circular, 169, 170
  - trades in contravention of Act, 172
- conditions of registration**
  - bonding and insurance, 73
  - capital, 72
  - compliance and business records, 76
  - contingency fund participation, 74
  - general, 71
  - know your client rule, 77, 78
  - proficiency requirements, 81
  - report by auditor, 75
  - segregation of funds and securities, 79
  - statements of account and portfolio, 80

- customer's rights and duties (broker insolvent/bankruptcy),** 329–335
- customer's rights and duties (broker solvent)**
  - customer to indemnify broker, 327
  - ownership of shares, 324
  - profits belonging to customer, 325, 326
  - unauthorized transactions, 328
- derivatives**
  - approval of contracts, 269
  - exchange-traded derivatives in Canada, 255–261
  - general, 249–254
  - investigations, 262, 263
  - offences and penalties, 273, 274
  - registration for trading, 268
  - registration on exchange or clearing house, 264, 265
  - review of decision of exchange or clearing house, 266, 267
  - trading, 270–272
- disclosure (continuous)**
  - filing reports, 124
  - financial statement, 115–117
  - general, 113, 114
  - insider reports, 122, 123
  - proxies and information circulars, 118–121
- disclosure (timely)**
  - confidential disclosure, 132
  - general, 125
  - material change defined, 126, 127
  - material fact defined, 131
  - reporting requirements, 128–130
- enforcement,** 133, 134
- exemption from prospectus requirements,** 107–112
- exemptions from registration,** 87, 88
- framework of securities regulation**
  - administration, 8, 9
  - legislation, 6, 7
  - related regulations, 11
  - self-regulation, 10
- grant of registration,** 82
- interjurisdictional cooperation,** 187–190
- investigations**
  - appointment of investigator, 40, 41
  - conduct of investigation, 42–51
  - general, 35–39
  - powers of investigators, 42–46
  - report of investigator, 52, 53
- misrepresentation**
  - cease trading orders, 150–153
  - compliance orders, 146–149
  - knowledge of misrepresentation, 137, 138
  - limitation periods, 156–158
  - meaning, 135, 136
  - order that exemptions do not apply, 154
  - penalties, 139–143
  - public policy orders, 155
  - trading in securities without registration/prospectus, 145
  - warrant issued in another province, 144
- offences under Criminal Code**
  - broker reducing stock by selling on own account, 225
  - false prospectus, 226–232

## INDEX

---

- fraud affecting public market, 201–215
- fraudulent manipulation of stock exchange transactions, 191–198
- gaming in stocks or merchandise, 216–224
- theft, 199, 200
- prospectus requirements**, 89–106
- purposes of securities regulation**, 2–3
- relationship between broker and client**
  - broker as agent, 279
  - broker as creditor, 280
  - broker as pledge, 281
  - general, 275
  - margin transactions, 276–278
  - • broker’s and customer’s undertakings, 277, 278
  - • general, 276
- reviews and appeals of decisions**, 54–61
- registration requirements**
  - distribution, 63–65
  - general, 62
- securities commissions**
  - appointment of receiver manager, 28–31
  - audit, 27
  - conduct of hearings, 20–26
  - extraprovincial operation, 34
  - general, 12, 13
  - order to produce records, 32, 33
  - registrations and control of sale of securities, 14–19
- stock exchanges in Canada**
  - alternative trading system, 247, 248
  - Canadian National Stock Exchange, 239–241
  - general, 237
  - requirements of the Securities Acts, 234–238
  - review of Stock Exchange decisions, 245, 246
  - Toronto Stock Exchange, 239–241
  - TSX Venture Exchange, 244
- surrender of registration**, 86
- suspension, restriction or termination of registration**, 83–85
- timely disclosure**, 125–132
- types of securities regulation**, 4, 5
- who must register**
  - adviser, 68, 69
  - dealer, 67
  - general, 66
  - representative, 70

## Index to Sentencing

(All references are to paragraph numbers.)

- abandonment, see child abandonment**
- abduction/hostage taking, 409, 410, see also kidnapping/forcible confinement**
- aboriginal offenders, 1–13, 49, 53, 866, 867**
- abuse/breach of trust**
- bank managers/employees, 105, 107
  - children, protection of, 111
  - deterrence, general, 43, 105
  - doctors, 110
  - employer-employee relationships, 44, 106, 442
  - general, 105, 115
  - intent to repay, 130
  - judges/court officers, 108
  - lawyers, 108
  - loss of reputation, relevance of, 199
  - police personnel, 109
  - spouses, 112
  - “tariff” sentencing, 20
  - taxi drivers, 113
  - theft, 442, 448, 449
  - violence, absence of, 114
  - welfare officers, 105
- accessories, 506, see also attempts; counselling**
- accomplices, see accessories; consistency/disparity; multiple perpetrators**
- administration of law/justice, see breach of recognizance; bribery/corruption; contempt; escapes; failure to appear; obstructing justice; obstructing officer; perjury; public mischief**
- advertising, see trade offences**
- aeronautics regulations, 463**
- age, 68, see also mental disability; young offenders**
- aggravating/mitigating factors (general), 2, 83, 298, 797, 804, see also abuse/breach of trust; age; change in law/policy; Charter violations; civil liability/administrative penalties; compassionate grounds; co-operation with police; deportation; defence, conduct of; entrapment/enticing; family of offender, effect on; financial difficulty; foreign criminal liability; forfeiture of property; good behaviour; guilty pleas; ignorance of law; intoxication; jury recommendations; loss of employment/licence; loss of reputation; mental disability; mistake of law; motive; multiple perpetrators; nationality/cultural background; necessity; physical disability/health; planned offences not executed, relevance of; planning/method used; police/prosecutorial misconduct; prevalence of offence; prior/subsequent offences; provocation; public reaction/submissions; reformation; remission/parole possibilities; remorse; restitution/compensation (voluntary); safety of offender; scale of operation; sentence prior to successful appeal; sex**



- of offender; single enterprise/multiple charges; specific offences, e.g., sexual assault; station in life; test cases; time, passage of; treatment, refusal of; uncharged offences, relevance of; untried offences, relevance of; victim's circumstances; violence, use of; work record; young offenders
- aircraft, *see* hijacking/endangering aircraft
- alcoholism, *see* intoxication; physical disability/health
- alternative measures, *see also* types of sentence
  - availability of, 743, 744
  - definition, 742
  - effect of, 746
  - evidence obtained as result of, 745
  - records relating to, use of, 747–753
- ammunition, *see* firearms
- anal intercourse, 399–341
- appeals (general), 786, 848
- appeals (indictable offences)
  - achieving trial judge's purpose, 877
  - acquittal, overturning, 908
  - after sentence served, 886, 887
  - Crown bargains/impropriety, effect of, 882–884
  - Crown, by, 869, 870
  - delay by Crown, 880
  - fines, size of, 881
  - guidelines, fixing ranges for categories of offences, 6
  - incorrect but effective sentences, 885
  - information before court, 889–896
  - jurisdiction over, 868
  - leave applications, 871–873, 886
  - new evidence on, 878, 879, 892–895
  - powers of court on, 902–912
  - remitting to trial judge, 911, 915
  - right of offender to appeal, 869
  - right of offender to be present, 897–901
  - role of appeal court, 874–876
  - running of sentence, 909
  - Supreme Court of Canada, to, 913–915
  - “technical” amendments, 877
  - time served, relevance of, 910
  - totality principle, relevance of, 888
- appeals (summary conviction)
  - Court of Appeal, to, 922
  - general, 868, 869, 916
  - increasing sentence on, 919
  - remitting to lower court, 917
  - role of court, 918, 919
  - trial de novo, by, 920, 921
- armed forces, *see* mutiny
- armed robbery, *see also* robbery
  - general deterrence and, 43
  - “tariff” sentencing, 19
  - young offenders, 67
- arson, *see also* mischief
  - fraud, insurance, 504
  - general, 499
  - mentally disturbed offenders, 502
  - negligence of owner, 500
  - possession of arson materials, 501
  - range of sentences, 503

## INDEX

---

- assault, *see also* choking, etc., in furtherance of offence; criminal harassment; poisoning/drugging; uttering threats**
- assault (aggravated)**
- moderate cases, 393
  - planned/premeditated cases, 395
  - serious cases, 394
- assault (bodily harm/weapon)**
- aggravating factors, 391
  - domestic situations, 390
  - general, 389
  - prison guard, on, 389
  - terrorizing/confining victim, 392
- assault (child), *see also* sexual assault**
- bodily harm/weapon involved, 391
  - denunciation and, 51, 147
  - general deterrence and, 43, 47, 147
  - parent/person in control of child, 111, 388
  - spouse's duty to prevent, 47, 371
- assault (general)**
- first offenders, 384
  - general, 383
  - seriousness of, judging, 385
  - sporting events, during, 386
- assault (peace officer), 400–402**
- assault (spousal), *see also* manslaughter; murder (attempted); sexual assault**
- bodily harm/weapon involved, 390
  - breach of trust, as, 112, 387
  - denunciation and, 53
  - forgiveness by victim, 144
  - general deterrence and, 43, 53
  - starting point, 387
- attempts, 506, 507, *see also* counselling; murder**
- bail**
- conflict with probation order, 721
  - offence committed while on, 77, 551
- bank managers/employees, 105, 107**
- bar employees, 147**
- betting/bookmaking, *see* gambling offences**
- bodily harm, *see* specific offences, e.g., criminal negligence**
- bodily samples for forensic DNA analysis, 787–795**
- bombs, *see* explosives/explosions**
- breach of recognizance, 307, *see also* escapes**
- breaking and entering, *see also* robbery; theft**
- commercial premises, 469
  - dwelling-houses, 467, 468
  - general, 466
  - possession of housebreaking tools, 470
  - to steal a firearm, 275
- bribery/corruption, *see also* administration of law/justice**
- general, 296
  - influence peddling, 297
  - judicial officer, 296, 297
  - mitigating factors, 298
  - politicians, 296, 297
- broadcasting regulations, 463**
- burglary, *see* breaking and entering; robbery; theft**

- change in law/policy**, 153, 192
- Charter violations, effect of**, 15, 91, 182, *see also* **dangerous offenders; sentencing hearings**
- child abandonment**, 411
- child abduction**, 410
- child abuse**, *see* **assault (child); sexual assault (child)**
- child pornography**, 344–358
- choking, etc., in furtherance of offence**, 398
- civil liability/administrative penalties**, 193–195
- co-accused**, *see* **consistency/disparity**
- combines**, *see* **trade offences**
- commencement of sentence**, *see* **running of sentence**
- community service**, *see* **suspended sentence/probation**
- compassionate grounds**, 118, 122, 125
- competition**, *see* **trade offences**
- computer offences**, 450
- concurrent sentences**, *see* **consecutive/concurrent sentences**
- conditional sentences**, *see also* **types of sentence**
- appeal court, 632
  - blended custodial and conditional sentences, 616
  - breaches of, 639–645
  - change of conditions, 637
  - danger to community, 618
  - default in payment of fines, 615
  - discretionary conditions, 635
  - copy/explanation to offender, 636
  - failure of, 620
  - firearms prohibition, 633
  - general, 9, 612–614, 619, 622–624, 626, 627, 631
  - imprisonment for subsequent offence, 646
  - offender on parole, 621
  - prescribed conditions, 634
  - pre-sentence custody, 625
  - public safety, 628–630
  - transfer/territorial considerations, 638
  - where inadequate, 617
- consecutive/concurrent sentences**, *see also* **types of sentence**
- adult/youth offences, 475
  - bail, offences while on, 551
  - commencement of, 538
  - conditional sentence, offence while on, 538
  - connection between offences, 543
  - consecutive sentence, where not applied, 545
  - conspiracies, 552
  - deterrence, 544
  - escapes, 553
  - firearms offences, 554
  - flight, 545
  - general, 8, 538–542
  - indeterminate sentence, offence during, 557
  - offences during flight, 550
  - offender serving life, 555
  - possession offences, 556
  - “same court at same sittings”, 539
  - “single criminal enterprise”, 542
  - totality principle, 546–549
  - “under sentence”, 540

## INDEX

---

- Upper limit on cumulative sentences, 541
- considerations on sentencing**, *see* **aggravating/mitigating factors (general)**
- consistency/disparity**, *see also* **“tariff” sentencing; uniformity**
  - appeal, as ground of, 36, 37
  - different offences charged, 33
  - exceptions, 31–35
  - general, 28, 36, 37
  - “intermediate recidivist”, 27
  - joint offenders, 29
  - leniency, 28, 37
  - ringleaders, 35
  - roles of joint offenders, 32
  - sentencing in different jurisdictions, 30
  - severity, 37
  - sex as ground for, 31
  - totality principle, 34
- conspiracies**, 509–511, 552, *see also* **trade offences**
- contempt**, *see also* **administration of law/justice**
  - appeals, 287
  - civil, 235
  - contacting juror, 293
  - fighting, 290
  - fines for, 672
  - general, 287, 290
  - in face of court, 288–291
  - lawyer not appearing, 289
  - premeditated, 290
  - publication ban, breach of, 292
  - refusal to testify, 291
  - scandalizing court, 294
- contracts with Crown, barring of**, 927
- contradictory evidence**, *see* **perjury**
- co-operation with police**, 168, 169
- corporations**, *see* **specific matters, e.g., trade offences**
- counselling**, 508
- counterfeiting**, 490, 491
- credit card offences**, 451, 452
- criminal harassment**, 396, *see also* **assault**
- criminal negligence (bodily harm)**, *see also* **driving offences**
  - driving incidents, 376, 377
  - firearm involved, 376
  - general, 376
- criminal negligence (death)**, *see also* **driving offences**
  - driving incidents, 374, 375, 377
  - firearm involved, 373
  - general, 373
- criminal organization**, 512–514
- criminal record**, *see* **prior/subsequent offences**
- culture**, *see* **nationality/cultural background**
- custody, time in**, *see* **time, passage of**
- customs offences**, *see also* **tax offences**
  - forfeiture of property, 444
  - miscellaneous, 442
  - possession of smuggled goods, 443
- dangerous offenders**, *see also* **habitual offenders; mental disability; types of sentence**
  - application for declaration as, 567–574, 588

- consecutive sentencing, 557
  - constitutional issues, 590–595
  - evidence on application, 580–587
  - hearing of application, 588, 589
  - indeterminate sentence, 63, 566, 569
  - “individualized” sentencing, 24
  - long term offenders, 575–579, 583
  - “other evil”, 573
  - “pattern of repetitive behaviour”, 572
  - “preventive detention”, 574
  - psychiatric examination, 585
  - res judicata, 589
  - reviews, 566
- defence, conduct of**, 176
- delay**, *see time, passage of*
- denunciation**, 1, 50–52, 152, *see also purposes of sentencing*
- deportation**, 200, 201, 734
- depression**, *see mental disability*
- deterrence**, *see also purposes of sentencing*
- aboriginal offenders, 49
  - breach of trust, 44
  - common offences, 46
  - conditional discharges, 48
  - fundamental principle of sentencing, 40
  - general, 1, 5, 41, 43, 152
  - offences requiring general deterrence, 43–47
  - probation and, 48
  - public reaction and, 211
  - specific deterrence, 41, 42
  - “tariff” sentencing and, 22
  - terrorist acts, 45
- disabilities**, 926, 927, *see also types of sentence*
- disability**, *see mental disability; physical disability/health*
- discharges**, *see also types of sentence*
- appeal by Crown, 739, 740, 786
  - appeal court granting, 907
  - appeal of finding of guilt, 738, 786
  - availability, 724–728, 729
  - “best interests of accused”, 724, 730–734
  - Court of Appeal, by, 737
  - deportation, effect on, 201
  - deterrence and, 48
  - duty of court to consider, 727
  - effect of, 73, 726
  - “finding of guilt”, 726
  - “offence”, 725
  - probation orders and, 681, 685, 741
  - “public interest”, 724, 730, 735, 736
  - revocation of, 741
  - statutory preconditions to, 724–727
  - suitable cases for, 728
- discretion**
- fettering of, 7
  - general, 14
- disparity**, *see consistency/disparity*
- disturbance, causing**, 357
- diversion programs**, 75, *see also types of sentence*
- doctors**, 110
- “**double doctoring**”, 421

## INDEX

---

- driving offences, *see also***  
**criminal negligence**
- dangerous driving, 413, 414
  - driving over, 425–429
  - driving while disqualified, 434, 440
  - failing to remain at accident scene, 412
  - failure/refusal to provide breath sample, 430–432
  - flight, 415, 416
  - general deterrence, 43
  - impaired driving, 420–424
  - prohibition order, 435–439
  - street racing, 417–419
  - unauthorized use/disclosure of bodily substance/coordination tests, 433
  - victim's conduct, relevance, 145
- drug dependency, *see***  
**intoxication; physical disability/health**
- drug offences (cultivation)**
- marijuana, 412
  - opium poppies, 412
- drug offences (general)**
- categories of offences, 411
  - “double doctoring”, 421
  - food and drugs legislation, 409
  - narcotic control legislation, 409
  - “tariff” sentencing, 410
- drug offences (importing), 412, 434**
- drug offences (literature/paraphernalia), 435**
- drug offences (possession)**
- cocaine, 418, 425
  - general, 410–412
  - heroin, 418, 422
  - LSD, 416
  - “magic mushrooms”, 417
  - marijuana/hashish, 410, 418, 429
  - morphine, 418
  - PCP, 418, 432
  - prescription drugs, 420
- drug offences (trafficking)**
- cocaine, 418, 425–428
  - commercial operations, 413, 414
  - controlled drugs, 411
  - fake substances, 419
  - first offenders, 71, 422, 429
  - general deterrence and, 43
  - general principles, 411
  - greed/profit motive, 129
  - heroin, 418, 422–424
  - joint ventures, 127
  - LSD, 416
  - “magic mushrooms”, 417
  - marijuana/hashish, 429–431
  - morphine, 418
  - PCP, 418, 432, 433
  - prescription drugs, 420
  - rehabilitation/treatment, 104, 413, 423, 430
  - restricted drugs, 411
  - social trafficking, 413
  - “speed”, 415
  - victim's circumstances, 139
- drugging, *see* poisoning/drugging**
- drunk driving, *see* driving offences**
- drunkenness, *see* intoxication**
- duels, 235, *see also* unlawful assemblies**
- elderly offenders, *see* age**
- electronic monitoring, *see* suspended sentence/probation**
- employer/employee relationship, 106, 733**

- entrapment/enticing**, 177
- environmental protection**, 462
- escape**, 303–305, 553, *see also* **administration of law/justice**
- espionage**, *see* **treason**
- evidence**, *see* **appeals (indictable offences); sentencing hearings**
- exemplary sentencing**, 62–65, 147, 208
- explosives/explosions**, 242, 243, 505, *see also* **arson**
- extortion**, 465, *see also* **robbery**
- extradition**, 167
- factors on sentencing**, *see* **aggravating/mitigating factors (general)**
- failing to appear**, 306, *see also* **escapes**
- false pretences**, *see* **fraud**
- family of offender, effect on**, 206–209
- financial difficulty**, 125
- fines**, *see also* **types of sentence**
- ability to pay, 648, 665–669
  - amount generally, 664, 677, 881
  - appeals, 881
  - appropriateness of, 647–649
  - availability to court, 651
  - collection/enforcement, 652, 654–657
  - compensatory aspect, 672
  - concurrent fines, 669
  - contempt cases, 672
  - corporations, 670, 677–680, 687
  - “deemed” days in default of payment, 652
  - fine option programs, 660
  - general principles, 647–650
  - imprisonment for default, 538
  - offender’s status, relevance, 648
  - orders for, 653
  - payment, 658, 676
  - probation and, 686, 687
  - purpose of, 647, 650, 670–672
  - quantum of, 209
  - remission of, 925
  - removal of profits, as purpose, 670, 671
  - serious offences, for, 648
  - sexual assault, for, 648
  - summary offences, 664
  - time to pay, 657, 667, 673–675, 864
  - victim surcharge, 661–663
  - warrant of committal, 657–659
- firearms**, *see also* **criminal negligence; weapons**
- accidental shootings, 261, 263
  - ammunition, 263
  - careless use/storage of, 263
  - consecutive/concurrent sentencing, 554
  - discharge of, 357
  - discharge with intent, 382
  - export and import offences, 281, 282
  - lost, destroyed or defaced weapons, 283–286
  - pointing of, 260–262
  - trafficking offences, 277–280
  - use during offence, 257–259
- firearms (prohibition orders)**, *see also* **types of sentence**
- appeals, 786, 779
  - application for, 777, 829
  - conditional sentencing and, 633
  - discretion of court, 781
  - evidence on application, 780
  - exceptional circumstances, 781

## INDEX

---

- mandatory, 777, 778
- notice to accused, 829
- optional, 667, 669
- possession while under prohibition order, 782
- violent offences, 667, 777
- first offenders**, 70, 71, 74, 533, 534, 684
- fixed platforms, seizing**, 240
- forcible confinement**, *see* kidnapping/forcible confinement
- forcible entry/detainer**, 202, *see also* unlawful assemblies
- foreign criminal liability**, 198
- forfeiture**, *see also* types of sentence
  - conveyances, of, 757, 760
  - enforcement of, 654, 656
  - fine equal to value of property, 756
  - gambling offences, 759
  - general, 196, 754
  - ownership of property, relevance of, 760
  - proceeds of crime, 755
  - remissions, 925
  - strict application of provisions, 758
- forgery**, *see also* counterfeiting; credit card offences; fraud
  - citizenship documents, 489
  - credit cards, 451
  - general, 473
  - manufacturing documents, 484
  - passports, 488
  - testamentary instruments, 485
- fraud**, *see also* counterfeiting; forgery
  - commercial fraud, 476–479
  - credit card, 451
  - false pretences, 473
  - general, 71, 473
  - insider trading, 482
  - insurance, 483, 504
  - “paperhanging”, 474, 475
  - passport/citizenship, 488, 489
  - personation, 473
  - public market, 473, 480, 481
  - public welfare, 43, 473, 486, 487
- gambling offences**, 354, 356, 759
- “gap principle”**, 85
- “gating”**, 180
- good behaviour**, 150, 172, 175
- guilty pleas**, 183, 184
- guns**, *see* firearms
- habitual offenders**, 64, 81, *see also* dangerous offenders
- harassment**, *see* criminal harassment
- health**, *see* mental disability; physical disability/health
- hearings**, *see* appeals; sentencing hearings
- hijacking/endangering aircraft**, 239, 241
- home invasions**, *see* robbery
- hospital orders**, *see* treatment programs/orders
- hostage taking**, *see* abduction/hostage taking
- hybrid offence**, 17
- ignorance of law**, 186
- impaired driving**, *see* driving offences
- imposition of sentence, timing of**, 18



- imprisonment (general)**, *see also*  
**types of sentence**
- appeal, powers on, 537
  - first offenders, 533
  - general, 532
  - place of, 535
  - probation after, 686
  - reasons/recommendations, 536
  - “settled” inmates, 537
  - young offenders, 533
- incest**, *see also* **sexual assault; sexual interference/touching**
- father/daughter, 334
  - general, 333
  - intermittent sentence for, 610
  - siblings, between, 335
- indecent act**, *see* **obscene performances/literature**
- indeterminate sentence**, *see*  
**dangerous offenders**
- “individualized” sentencing**, *see also*  
**consistency/disparity; “tariff” sentencing**
- dangerous offenders, 24
  - drug users, 24
  - general, 1, 24
  - mentally disabled offenders, 26
  - young offenders, 25
- infanticide**, 362, *see also*  
**manslaughter; murder**
- intermittent sentences**, *see also*  
**types of sentences**
- appropriateness of, 609–611
  - committal to jail, 606
  - consecutive sentences, 601
  - consecutive service of, 607
  - eligibility for, 600–603
  - form of, 604–608
  - probation and, 603, 688
  - straight time, combined with, 603, 607
  - time for serving, setting of, 604
  - “90 days”, 601, 602
- intoxication**
- criminal negligence causing death, 374
  - general, 123, 124
  - manslaughter cases, 364, 369, 370
- joint offenders**, *see*  
**consistency/disparity**
- judges/court officers**, 108
- “jump principle”**, 87, 88
- jury recommendations**, 185
- kidnapping/forcible confinement**,  
 403–405, *see also*  
**abduction/hostage taking**
- knives**, *see* **weapons**
- lawyers**, 108, 289
- leniency**, 28, 37
- life imprisonment**, *see also* **types of sentence**
- general, 558
  - homicide, 559
  - homicide during other offence, 372
  - offence committed while serving, 555
  - parole ineligibility, 559–565
  - running of, 190
- loan sharking**, *see* **extortion**
- long term offenders**, *see*  
**dangerous offenders**
- “lookouts”**, 32
- loss of employment/licence**, 202,  
 203
- loss of reputation**, 199

## INDEX

---

- lottery schemes**, 355
- mandatory minimum sentences**, 16
- manslaughter**, *see also* **criminal negligence causing death; infanticide; murder**
- children, 371
  - domestic situations, 365–367, 370
  - during other offence, 372
  - firearm used, 363
  - general, 363, 364, 370
  - intoxication, effect of, 364, 369, 370
  - provocation, effect of, 366–368
- mental disability**, *see also* **physical disability/health**
- alcoholism, 103
  - depression, 92
  - drug dependency, 104
  - general, 26, 89, 90
  - mental handicap, 97
  - pedophilia, 100, 330
  - personality disorders, 95, 96, 119
  - post-traumatic stress disorder, 93
  - psychopaths, 95
  - psychosis, 94
  - schizophrenia, 98
  - senility/dementia, 99
  - sociopaths, 95
- minimum/maximum sentence**, 14, 58, 61, 532, *see also* **types of sentence**
- mischief**, *see also* **arson; public mischief**
- cultural property, 495
  - destruction, serious, 496
  - endangering life, 492
  - prison disturbances, 498
  - property, to, 493
  - religious property, 494
  - vandalism, petty, 497
- mistake of law**, 186
- mitigating factors**, *see* **aggravating/mitigating factors (general)**
- “money laundering”**, 531
- “mooning”**, 349
- motive**
- general, 122
  - greed/profit, 129, 137
  - intent to repay, 130
  - political purposes, 133
  - racism, 131
  - religion, 132
  - retaliatory violence by group, 122
  - terrorism, 45, 133
- “mugging”**, *see* **robbery**
- multiple perpetrators**, 127, 128, 318
- murder**, 361, 906, *see also* **infanticide; manslaughter; parole**
- murder (attempted)**
- arguments/ disputes, during, 381
  - general, 378
  - planned executions, 379
  - police officers, of, 379
  - robberies, etc., during, 379
  - spouses, involving, 380
- mutiny**, *see also* **sedition; treason**
- assisting/harboursing deserter, 227
  - general, 226, 228
  - R.C.M.P., desertion from, 227

- nationality/cultural background**, 116, 204, 205
- Native offenders**, 8, 116, 204, 205, 866
- necessity**, 126
- negligence**, *see* **criminal negligence**
- noxious substance, administering**, 397
- “objective” sentencing**, 1
- objectives**, *see* **purpose of sentencing**
- obscene performances/literature**, 342, 343
- obstructing justice**, 302, *see also* **administration of law/justice**
- obstructing officer**, 299, *see also* **administration of law/justice**
- old age**, *see* **age**
- Organization, sentencing of**, 3
- “paperhanging”**, *see* **fraud**
- pardons**, 74, 923, 924, *see also* **types of sentence**
- Parliament, intimidating**, *see* **treason**
- parole**, *see also* **prior/subsequent offences; remissions; types of sentence**
- court’s power to delay, 596–599
  - faint hope clause, 565
  - ineligibility, 559–565, 596, 599, 869
  - jury recommendations, 559, 560
  - murder/homicide, 558–565, 906
  - offences while on, 78
  - possibility of, relevance of, 187–190
  - young offenders, 561
- passports**, *see* **fraud**
- pedophilia**, *see* **mental disability**
- perjury**, 300, 301, *see also* **administration of law/justice**
- personality disorders**, *see* **mental disability**
- personation**, *see* **fraud**
- petty offenders**, 64
- physical disability/health**, *see also* **mental disability**
- alcoholism, 103
  - drug dependency, 104
  - general, 101, 148
- piracy**, 237, 238
- planned offences not executed, relevance of**, 217
- planning/method used**, 134, 135
- plea bargaining**, *see* **sentencing hearings**
- poisoning/drugging**, 397, 398
- police personnel**, 109, 147
- police/prosecutorial misconduct**
- Charter violations, 182
  - delays, 178–180
  - entrapment/enticing, 177
  - mistreatment of accused, 181
- policy, use of**, 7
- political crimes**, 45, 133
- pornography**, *see* **child pornography; obscene performances/literature**
- possession of stolen property**
- general, 472, 556
  - property over \$5,000, 471
  - property under \$5,000, 471
- post-traumatic stress disorder**, *see* **mental disability**
- precedents**, *see* **“tariff” sentencing**

## INDEX

---

- prevalence of offence**, 46, 136
- prior/subsequent offences**, *see also* **sentencing hearings**
- bail, offence committed while on, 77
  - conviction of subsequent offence, 86
  - discharge (past), effect of, 73
  - diversion programs, 75
  - first offenders, 70, 71
  - “gap principle”, 84, 85
  - general, 69, 171
  - “jump principle”, 87, 88
  - matters under appeal, 76
  - offence charged but conviction not yet entered, 79, 80
  - pardons, effect of, 74
  - parole, offence committed while on, 78, 189
  - petty offenders, repeat, 64
  - planned/lengthy activities, 71
  - type of past offences, 81–84
  - youth offences, 72
- prison breach**, *see* **escapes**
- probation**, *see* **discharges; fines; imprisonment; intermittent sentence; suspended sentence/probation; types of sentence**
- procedure**, *see* **appeals; sentencing hearings**
- Proceeds of crime**, 531, 755
- proportionality**, 2
- prostitution**
- bawdy house, 359
  - communicating re, 358
  - pimping, 359, 360
  - young persons, 359, 360
- “protection”**, *see* **extortion**
- protection of public**, 1, 38, 54, *see also* **purposes of sentencing**
- provocation**, 146, 185
- psychopaths**, *see* **mental disability**
- public mischief**, 299, *see also* **administration of law/justice; mischief**
- public reaction/submissions**, 210, 211
- punishment**, 1, 39, *see also* **purposes of sentencing**
- purposes of sentencing**, *see also* **aboriginal offenders; denunciation; deterrence; protection of public; punishment; rehabilitation; reparation**
- aggravating circumstances, 2
  - consecutive sentence, 8
  - discretion, fettering of, 7
  - discretion, general, 14
  - generally, 1
  - “objective” sentencing, 1
  - policy, use of, 7
  - proportionality, 2
  - protection of public, 1
  - reasonableness, 8
  - “standard” sentence, 7
  - “subjective” sentencing, 1
  - timing of sentencing, 18
  - uniformity, 4, 7
- pyramid schemes**, *see* **trade offences**
- quantum of sentence**, *see* **specific offences, e.g., treason**
- R.C.M.P., desertion from**, 227
- range of sentences**, 61–65, *see also* **“tariff” sentencing**
- reasonableness principle**, 8

- recidivism**, *see* **prior/subsequent offences**
- record**, *see* **prior/subsequent offences**
- reformation**, 150, 172, 175
- regulatory offences**, 463
- rehabilitation**, 1, 55, 56, *see also* **purposes of sentencing; treatment programs/orders**
- remissions**, *see also* **parole; prior/subsequent offences; types of sentence**
- general, 925
  - possibility of relevance of, 187–190
- remorse**, 174, 183
- reparation**, 1, *see also* **purposes of sentencing**
- resistance, overcoming**, 398
- restitution/compensation orders**, *see also* **types of sentence**
- amount of, 765–768
  - appeals, 774, 786
  - availability, 762
  - capacity to satisfy order, 771
  - civil proceedings, effect of, 769, 773
  - constitutionality, 765
  - effect on sentence, 769
  - enforcement of, 764, 773
  - general, 762
  - good faith property transfers, 763
  - incidental damages, 761
  - order forfeiting bail money, 761
  - probation, as condition of, 707
  - restrictions on use, 765, 770, 772
  - revocation/variation, 774
  - staying of, 774
- restitution/compensation, voluntary**, 170
- restoration of property**, 775, 776, *see also* **types of sentence**
- restraint of trade**, *see* **trade offences**
- retribution**, *see* **punishment**
- ringleaders**, 35, 127
- riots**, 230, *see also* **unlawful assemblies**
- robbery**, *see also* **armed robbery; breaking and entering; extortion; theft**
- all-night businesses, 458
  - banks/jewellery stores, 455, 456
  - convenience stores, 457
  - drug rip-offs, 464
  - firearm stolen, 276
  - firearm used, 453
  - general, 453, 454
  - home invasions/burglary, 460
  - “muggings”, 461–463
  - pharmacies, 459
  - taxis, 458
  - violence, use of, 395, 460, 461
- running of sentence**
- appeals, effect of, 909
  - conditional sentence, 538, 646
  - default on fine, 540
  - fixed sentence, 190
  - general, 538
  - life sentence, 190
  - treatment orders, effect of, 536
  - warrant for committal (default on fine), 657
- safety of offender**, 204, 536
- scale of operation**, 137, 138
- schizophrenia**, *see* **mental disability**

## INDEX

---

- sedition**, 229, *see also* **mutiny; treason**
- senility**, *see* **mental disability**
- sentence prior to successful appeal**, 212
- sentencing circles**, 866
- sentencing hearings**, *see also* **appeals**
- adjournments, 837, 854, 855
  - compelling of testimony, 796, 797
  - confessions/statements, 797, 815, 822
  - counsel, right to, 849, 853
  - court requesting further evidence, 796
  - Crown submissions, 840
  - defence submissions, 739
  - delay/postponement of, 854, 855
  - evidence generally, 796–805, 821, 822
  - facts, finding of, 796–806
  - functus officio, 859–864
  - guilty plea, after, 803
  - increased penalty due to prior convictions, 828–836
  - information charging offence, 808
  - multiple offences, 863
  - non-communication order, 857
  - notice of intention to seek increased penalty, 828–838
  - offences/charges to be considered, 798, 805
  - offenders' right to be present/heard, 802, 821, 849–853
  - plea bargaining/joint submissions, 842–847
  - prior convictions, 813, 814, 823–838
  - reasons for sentence, 806, 856
  - records of earlier proceedings, use of, 807, 808
  - reports, miscellaneous, 821, 822, 856
  - reports, pre-sentence, 802, 809–820, 856
  - sentencing circles, 866–867
  - speculative matters, 804
  - submissions generally, 796
  - terms of sentence, 806
  - victim's submissions, 141, 142, 841
  - void/illegal sentences, correction of, 861
  - warrants of committal, 864, 865
  - witnesses, 796, 797
- severity**, 37
- sex offender**
- consistency/disparity principle, 31
  - female offenders, 206
  - general, 206
- Sex Offender Information Registration Act**, 350–353
- sexual assault (children)**, *see also* **dangerous offenders; incest**
- aggravating factors, 315–320
  - general, 51, 147
  - male, upon, 337, 338, 341
  - mitigating factors, 314, 321
  - parent, by, 313, 319
  - pedophiles, 100
  - persons in position of trust, 111, 135, 320
  - violence, effect of, 114, 135, 322
- sexual assault (general)**, *see also* **dangerous offenders; incest**
- age of victim, 324

- aggravated sexual assault, 310, 323
- aggravating factors, 315–320
- anal intercourse, 339
- causing bodily harm, 309, 322, 325
- character of victim, 324
- consequences for victim, 140
- degrees of, 308–312
- effect on victim, 325
- fine as punishment, 648
- gang rape, 318
- general deterrence and, 43
- male, upon, 336–338, 340
- maximum sentences, 308
- mitigating factors, 314, 321
- multiple perpetrators, 127
- “tariff” sentencing, 19
- with threats/weapon, 309, 317, 322
- sexual exploitation**, 331, 332
- sexual interference/touching (children)**, *see also incest; prostitution*
  - general, 326
  - pedophiles, 330
  - precedents, use of, 327
  - severity of case, 328
  - sexual assault, relationship to, 327, 329
- sexual offences, prohibitions**, 783–785
- ships**, *see fixed platforms, seizing; piracy*
- shootings**, *see firearms*
- single enterprise/multiple charges**, 197
- “standard” sentence**, 7, *see also “tariff” sentencing*
- station in life**, 120
- stocks/shares**, *see fraud*
- “streaking”**, 349
- “subjective” sentencing**, 1
- suspended sentence/probation**, *see also types of sentence*
  - abstaining from alcohol/drugs, 690, 701, 702
  - appearance in court, 689
  - associating with undesirables, 708
  - availability of, 681, 684
  - breach of probation, 720–723
  - change of address, name or employment, 689
  - community service, 690, 704
  - conditions of probation, 689–695
  - conditions, optional, 697
  - conditions, statutory, 696
  - curfews, 706
  - deterrence and, 48
  - driving prohibitions, 709
  - electronic monitoring, 710, 711
  - good behaviour/keep peace, 689, 696
  - orders, 712–721, 907
  - organization, probation order, 698
  - purpose of, 682
  - remaining in jurisdiction, 690, 699, 700
  - reporting to probation officer, 690
  - residency restrictions, 700
  - restitution, 707
  - supporting dependants, 690, 703
  - suspension of sentencing, effect of, 683
  - treatment programs, participation in, 690, 705
  - weapons prohibitions, 690

## INDEX

---

- “tariff” sentencing**, *see also* consistency/disparity; “individualized” sentencing
- Appellate guidelines, ranges for categories of offences, 23
  - armed robbery, commercial, 19
  - breach of trust, 20
  - deterrence (general) and, 22
  - discretion, fettering of, 7, 14
  - general, 1, 4, 21, 57, 171
  - minor offences, 21, 64
  - policy, use of, 7
  - precedents, use of, 4
  - range of sentences, 61–65
  - sexual assault, 19
  - “standard” sentence, 7
  - statutory maximum, 58–61
  - “trafficking” offences, 19
  - uniformity principle, 4, 7, 23
- tax offences**, *see also* customs offences
- evasion, 194, 446
  - fines, 446, 447
  - miscellaneous, 445
  - totality principle, 447
- taxi drivers**, 113, 147, 458
- terrorism, acts of**, 45, 133, 244–256
- test cases**, 191
- theft**, *see also* breaking and entering; possession of stolen property; robbery
- breach of trust, 442, 448, 449
  - general, 442, 446, 447
  - incorrigible offenders, 442, 447
  - minor thefts, 442
  - motor vehicles, involving, 444, 445
  - over \$5,000, 441
  - shoplifting, 442, 443
  - under \$5,000, 441
- time, passage of**
- arrest, before, 150
  - custody, pending appeal, 166
  - custody, pending extradition, 167
  - custody, pending trial, 154–165
  - delay in arresting/charging, 178–180
  - deterrence/denunciation, effect on, 152
  - trial/appeal process, 148–152
- totality principle**
- appeals, relevance on, 888
  - consistency/disparity and, 34
  - firearms offences, 259
  - general, 547, 549
  - tax offences, fines for, 447
- trade offences**
- competition legislation orders, 515–517
  - conspiracies/combines, 518–521, 680
  - fines for, 680
  - miscellaneous offences, 528
  - misleading advertising, 522–524
  - price maintenance, 525
  - pyramid schemes, 526, 527
  - telemarketing, 529
- trafficking**, *see* drug offences (trafficking)
- trafficking in persons**, 406–408
- travel agents**, 115
- treason**, *see also* mutiny; sedition
- attempting government overthrow, 220
  - conspiracy, 220
  - enemy alien, assisting, 222
  - espionage, 220



- high treason, 219
- Parliament, intimidating, 223
- sabotage, 224
- Sovereign, alarming, 221
- treatment programs/orders**, *see also* **types of sentence**
- bars to/ineligibility, 534
- basis for, 531
- consent to, 533, 535
- duration of, 531
- expiration of, 535
- general, 65, 536
- location, specified, 532
- probation and, 690, 705
- running of sentence, 536
- transfer of offender, 535
- treatment, refusal of**, 173
- trust**, *see* **abuse/breach of trust**
- types of sentence**, *see* **alternative measures; conditional sentences; consecutive/concurrent sentences; dangerous offenders; disabilities; discharges; diversion programs; fines; firearms (prohibition orders); first offenders; forfeiture; imprisonment (general); “individualized” sentencing; intermittent sentences; life imprisonment; minimum/maximum sentence; pardons; parole; purposes of sentencing; remissions; restitution/compensation orders; restoration of property; running of sentence; suspended sentence/probation; “tariff” sentencing; totality principle; treatment programs/orders**
- uncharged offences, relevance of**, 215, 216, 218, *see also* **sentencing hearings**
- uniformity**, 4, 5, 7, *see also* **consistency/disparity; “tariff” sentencing**
- unlawful assemblies**, *see also* **duels, forcible entry/detainer; riots**
  - failure to disperse, 232
  - general, 231
  - orders barring, 234
  - suppression by officer, 233
- unlawfully at large**, *see* **escapes**
- untried offences, relevance of**, 213, 214, 218, *see also* **sentencing hearings**
- uttering threats**, 399
- vacating of office**, 926
- vandalism**, *see* **mischief**
- victim’s circumstances**
  - character of victim, 324
  - consequences for victim, 140
  - forgiveness by victim, 142
  - impact statements, 141–143, 841
  - involvement in criminal act, 139, 464
  - provocation, 146, 185
  - role in offence, 145
  - “victim”, 142
  - vulnerable parties, 139, 147, 391
- violence, use of**, 135, 395, 599, 667, 777
- warrants of committal**, 864, 865
- weapons**, *see also* **firearms**
  - concealed weapon, possession of, 268
  - knives, 266
  - possession for dangerous purpose, 264–274

## INDEX

---

- possession while prohibited, 226
- prohibited weapon, possession of, 269
- restricted weapons, 223–225
- welfare officers**, 105
- wiretapping**, 530
- work record**, 121
- “worst cases”**, *see* **maximum sentences**
- young offenders**, *see also* **age**
  - armed robbery, 67
  - deterrence of, 42, 66
  - first adult conviction, 66
  - first/second degree murder, 561
  - general, 66
  - imprisonment generally, 533, 534
  - “individualized” sentencing of, 25, 66
  - pre-sentence reports, 811, 813
  - probation and, 684
  - property-related offences, 66
  - rehabilitation of, 56, 66

## Index to Sheriffs and Bailiffs

(All references are to paragraph numbers.)

- agency issues**
  - accounting by agent, 50
  - charges of agent, reasonableness, 106
  - existence of agency, 50, 59
  - extrajudicial seizures, 59
  - illegal acts of agent, liability for, 128, 129, 130, 131
  - unauthorized acts of sheriff, 28
- appointment (bailiffs)**
  - Alberta, 1–3, 71, 130
  - British Columbia, 1, 3, 120, 131
  - Manitoba, 1, 3, 118
  - Saskatchewan, 1, 4, 124
- appointment (deputies)**
  - Alberta, 1, 2
  - British Columbia, 1, 3, 120
  - Manitoba, 1, 5
  - Saskatchewan, 1, 4, 124
- appointment (miscellaneous officers)**
  - Alberta, 1, 2, 123
  - British Columbia, 1, 3, 120
  - Manitoba, 3, 121, 122
  - Saskatchewan, 3
- appointment (sheriffs)**
  - Alberta, 1, 2, 71, 130
  - British Columbia, 1
  - dismissal of, 6, 19, 20
  - jurisdiction of, 5
  - Manitoba, 1
  - oaths, 4
  - resignation, 20
  - Saskatchewan, 1, 4
  - successors, 19
  - termination of, 6, 19, 20, 130
  - validity, 4
- assault**, 128
- bailee's undertaking**, 35, 36
- bankruptcy issues**
  - assignment, effect of, 48, 51, 105
  - land titles issues, 111
  - liability for fees, 105
  - priorities, 48, 51
  - winding-up, 105
- books of sheriff**, *see also* returns
  - cash record, 16
  - examination of, 17, 20
  - executions, 16
  - general, 16
  - process books, 16
  - property of Crown, as, 18
  - termination of appointment, after, 19
- charges**, *see* fees and charges; poundage; taxation
- chattel mortgages**, 39, 126
- collection agents**, 129, 131
- conversion of goods**, 64, 89, 91
- costs**, *see* fees and charges; poundage; taxation
- “court official”**, 17
- court sittings**, 122, 123
- Crown**
  - property vesting in, 8, 17, 74
  - sheriffs books, 18
- damages**, *see* liability
- dismissal of**, *see* appointment (sheriffs)
- distress**, *see* landlord and tenant

**distribution of moneys by**, 45, 46, 49, 72

**duties (general)**, *see also* specific headings, e.g., service of documents

- accounting, 50
- code of conduct, 12
- extrajudicial matters, 13
- office hours, 15
- statutes governing, 10–12

**execution**, *see* seizure

**federal courts marshal**, 109

**fees and charges**

- acts barring recovery of, 112
- agreements concerning, 110
- bankruptcy and insolvency, effect of, 105, 111
- costs of legal proceedings, 108
- costs of seizure, 97–101, 113
- federal court marshalls, 109
- general, 97–101
- liability for overcharging, 99
- motion for recovery, 113
- municipal liability for, 104
- parties responsible for, 103, 104, 113, 114
- possession money, 110
- poundage, entitlement to, 117–119
- reasonableness of, proof of, 106
- recovery by sheriff, 105, 107, 113, 114
- scale applicable, 109
- service of documents, 104, 114, 120
- solicitor's liability for, 114, 115
- statutory limits on, 99, 102
- taxation of, 116

**firing of**, *see* appointment (sheriffs)

**fraudulent preferences**, 58

**garnishment**, 45, 69, 72

**indemnification of sheriff**, 60, 61

**interpleader**

- availability, 57–59
- costs of, 108
- extrajudicial seizures, 59
- fraudulent preference claimed, 58
- general, 57–59
- marshalling, 58

**jurisdiction of**, 5

**land titles issues**, 111

**landlord and tenant**, *see also* seizure

- distress, 125, 132, 133–135
- writ of possession, 30, 51

**liability**

- acting without authorization, 71, 130, 131
- action over by sheriff, 92
- bailiff's acts, for, 3, 50, 73, 127–130, 131, 132–135
- charging excess fees, 99
- conversion of goods, 64, 89, 91
- damages, 90–92, 96
- failure to make return, 55, 56
- failure to seize goods, 23, 79, 84, 85, 96
- limitation periods, 71, 77
- misconduct, 93–96
- moneys held by sheriff, 8, 18, 74–77, 79
- negligence, 63, 73, 77–86, 88, 127
- sale of seized goods, conduct of, 62–66, 81
- security covering, 7–9, 93
- statutory protection from, 24, 70

## INDEX

---

- wrongful seizure and sale, 24, 87–92, 128, 129, 133–135
- licensing requirements (bailiffs)**, 126, 129, 130
- limitation periods**, 71, 77
- marshalling**, 58
- misconduct**, *see* liability
- money, possession by sheriff**, 8, 18, 74–77, 79
- negligence**
  - bailiff's, 73, 88, 127
  - failure to seize, 79, 84, 85
  - general, 73, 80, 82, 83
  - limitation periods, 77
  - replevin proceedings, 86
  - sale of property, 63
  - searches for execution, 78
- oaths, taking of**, 4
- offences**, 71, 130, 131
  - authorization, acting without, 130
  - impersonating sheriff / bailiff, 130, 131
- “office”**, 15
- office hours**, 15
- possession**, *see* writ of possession
- possession of property by**, 8, 18, 19, 74
- poundage**, 117–119, *see also* fees and charges; taxation
- records**, *see* books of sheriff
- removal of**, *see* appointment (sheriffs)
- replevin**, 67, 68, 86
- resignation**, *see* appointment (sheriffs)
- returns**
  - amendment of, 53
  - binding nature of, 53
  - falsity of, 94
  - general, 52
  - inspection of, 17
  - irregularity of, 53, 54
  - mistake in, 53
  - nulla bona, 54
  - regulations governing, 55
  - time for, 55, 56
- sales by sheriffs**, *see also* replevin; returns; seizure
  - appraisals, 63, 81
  - conversion of goods, 64
  - costs of, 112
  - directions of court, 29
  - duties generally, 62
  - execution after, 28
  - fraudulent sales, 63
  - general, 24
  - inventory of goods, 63, 81
  - liability issues, 24, 62–66, 70
  - negligence, 63, 77–86
  - objection to, 43
  - proceeds, distribution, 45, 46, 49, 72
  - purchase by sheriff, 65, 66
  - purchaser's remedies, 64
  - surplus moneys, 49
- searches for execution by**, 78
- security, sheriff posting**
  - British Columbia, 7
  - discharge of security, 9
  - liability of security, 9
  - Manitoba, 7, 8, 93
  - Saskatchewan, 8
- seizure**, *see also* fees and charges; garnishment; jurisdiction; landlord and tenant; replevin; returns; sales by sheriff; writ of execution.
  - abandonment of, 41

## SHERIFFS AND BAILIFFS

---

- agency issues, 13, 27, 50, 59, 106, 128
  - bailee's undertaking, 35, 36
  - bankruptcy assignments, effect of, 48, 51
  - before judgment, 69
  - bond by debtor, 37
  - chattel mortgage, under, 39, 126
  - costs of, 97–101
  - delivery up by debtor, 36, 37
  - directions of court, 29, 32
  - exempt goods, 36, 40
  - extrajudicial seizures, 13, 59
  - force, use of, 30, 32, 134
  - identifying seized goods, 33
  - illegality of, 126, 128, 129, 132, 135
  - indemnification of sheriff, 60, 61
  - interpleader, 57–59, 108
  - land, 5
  - money, of, 48
  - notice, lack of, 25
    - • effect, 25
    - • procedure, 25
  - notice of objection, 25, 47
  - objection to, 25, 43
  - payment by debtor prior to, 46
  - permission from court, 38
  - possession of goods, taking, 35, 37, 41, 42
  - sale by debtor/bailee after, 36
  - sufficiency of goods, 28, 132
  - surplus after sale, 49
  - third parties and, 38
  - trespass, effect of, 112, 129, 133–135
  - validity of, 33–35, 112, 126
  - writ of execution, 14, 23–27, 29, 31, 32, 87–92
    - writ of possession, under, 30
- service of documents**
- costs of, 104, 114, 120
  - general duty, 21, 22, 44
  - judgment summons, 14
  - order of committal, 14
  - private matters, in, 22
  - process of court, 21
  - writ of execution, 14
- taxation**, 116, *see also* fees and charges; poundage
- term of office**, 6
- territorial jurisdiction**, *see* jurisdiction
- time limitations**
- extension of, 15
  - limitation periods, 71, 78
- trespass**, 112, 129, 133–135
- validity of acts by**, 4
- winding-up**, *see* bankruptcy issues
- writ of execution**, *see also* seizure
- addressing of, 23
  - duty to execute, 23, 26, 27
  - entry of premises, 32
  - liability for sale under, 24, 87–92
  - manner of execution, 29, 32
  - refused to execute, 27
  - search of debtor under, 31
  - service of, 14
- writ of possession**
- bankruptcy, priority of, 51
  - execution of, 30

## Index to Shipping

(All references are to paragraph numbers)

- accidents, investigation of**, 129
- actions**, *see* **Athens Convention; Canadian maritime law; Hague-Visby Rules; loss/damage of goods; wrongful interference**
- Arctic navigation**, 121
- Athens Convention**
- action under, 150, 151
  - application of, 130, 135–139
  - exemptions from, 132–134
  - liability for, 141–143
  - monetary limitation, 145
  - presumption of fault/neglect, 144
- bill of lading**, *see* **carriage (bill of lading, under); Hague-Visby Rules**
- boat rental operators**, 72
- Canadian maritime law**
- application of, 15–17
  - determination of, 6
  - conventions given effect by regulations, 10–14
  - conventions given effect by statute, 9
  - general, 1–3
  - legislation, 7, 8
  - matters outside of, 5
  - matters within, 4
- carriage (bill of lading, under)**, *see also* **damages; duties (carriers of goods under bill of lading or modified contract); Hague-Visby Rules**
- bill of lading, issuance of, 189
  - bills of lading, types of, 180
  - general, 179
  - waybill, distinguished from, 181
- carriage (charter-parties)**, *see also* **duties (carriers of goods under bill of lading or modified contract); damages**
- demurrage, 198–200
  - deviation, 177
  - hire, payment of, 197
  - liability of shipowner, 174, 175
  - time charter-party, 167
  - undertakings, 176
  - voyage charter-party, 168–172
- carriage (goods not under bill of lading or modified contract)**, *see also* **duties (carriers of goods not under bill of lading or modified contract)**
- applicable law, determination of, 208
  - common carriers, 156, 158, 160
  - common law, 155, 159
  - private carriers, 157
  - general statutory duty, 161, 162
  - towage, distinguished from, 209
- carriage (passengers)**, *see* **Athens Convention; guided excursion operators; liability (shipowners); passenger security; recreational boating schools**
- claims**, *see* **Athens Convention; Canadian maritime law; Hague-Visby Rules; loss/damage of goods**
- conventions**, *see* **international conventions**

- crewing**, *see also* **duties (authorized representatives); duties (masters)**
- certification, 76, 77
  - crewing agents, 87
  - death/injury, compensation for, 94, 95
  - general, 75
  - revocation, 78–80
  - wages, 96
  - working conditions, 90–93
  - wrongful dismissal, 97
- damage of goods**, *see* **loss/damage of goods**
- damages**
- Athens Convention, 143, 151
  - charter-parties, 178, 198–200
- discipline (on board)**, 83, 104, 105
- duties (authorized representatives)**, 22, 70, 81–84, 101, 103, 127
- duties (carriers of goods not under bill of lading or modified contract)**, 156–158
- duties (carriers of goods under bill of lading or modified contract)**, 156, 187–189
- duties (crew members)**, 83, 99, 101–103, 108, 127, 128
- duties (crewing agents)**, 87
- duties (masters)**, 30, 85, 86, 107, 122–128
- duties (passengers)**, 100, 101, 103
- duties (shipbuilders/repairers)**, 21
- duties (shipowners)**, 127, 128, 175, 176
- duties (tug operators)**
- contractual modification of, 218, 219
  - equipment/crew, 211
  - exercising discretion, 215
  - inspection of vessel, 213
  - obeying instructions of controlling vessel, 215
  - sufficiency of tug, 212
- ferries**, *see* **Athens Convention; duties (passengers); guided excursion operators; liability (shipowners); passenger security**
- freight**
- dead freight, 205
  - freight prepaid, 204
  - general, 201
  - obligation to pay, 202
  - recovery of freight overpaid, 203
- guided excursion operators**, 73
- Hague-Visby Rules**, *see also* **carriage (bills of lading, under); duties (carriers of goods under bill of lading or modified contract)**
- application of, 155, 162, 182–185
  - due diligence, 188
  - loading/discharging, 187
  - shipowner liability, 190, 191
  - “tackle to tackle”, 186
- hull construction/equipment**, 109–115
- international conventions**, 9–12
- International Safety Management Code**, *see* **safety management code**



## INDEX

---

### **liability (carriers/charterers)**

- burden of proof, 196
- error in navigation, 192
- limitation, 201

### **liability (shipowners), *see also* damages**

- Athens Convention, 141–144
- chartered ship, 174, 175
- common law, 130, 131
- error in navigation, 192
- exemptions from, 132–134
- Hague-Visby Rules, 190, 191
- limitation periods, 148, 149
- monetary limitation, 145–147, 194
- non-disclosure of dangerous goods, 193
- statutory, 135–139, 140

### **liability (tug operators)**

- controlling vessel, determination of, 214
- failing to have management/operations systems, 213
- general presumption, 214
- insurance clauses, 219
- third parties, liability to, 220

### **licencing, *see* regulation/recording/licencing**

### **limitation periods, 148, 149, 191**

### **loading/discharging, 116, 187**

### **loss/damage of goods**

- burden of proof, 196
- error in navigation, 192
- notice, 190
- standing, 206
- where proceedings may be commenced, 207

### **marine hazards/casualties**

- aircraft assistance, 125
- compliance with search and seizure, 126
- distress signal, answering of, 124
- reporting of accidents, 127, 128
- vessel assistance, 123

### **maritime law, *see* Canadian maritime law**

### **mortgages of ships**

- cancellation of registration, 61
- equitable charges, 62, 67
- foreign mortgages, 63
- general, 55, 57–59
- interpretation of, 65, 66
- power of sale, 64
- priorities, 68
- promissory notes, 56
- reporting of damaged/malfunctioning navigation aids, 122
- transfer, 60

### **ownership of ships, *see* title/ownership of ships**

### **passenger security, 152, 153**

### **passenger vessels, *see* Athens Convention; duties (passengers); guided excursion operators; liability (shipowners); passenger security; recreational boating schools**

### **pleasure craft, 98**

### **recreational boating schools, 154**

### **regulation/ recording/ licencing**

- application for, 39–41
- certificates of registry, 46
- fees, 47
- general, 31

## SHIPPING

---

- regulation/ recording/  
licencing (*cont'd*)
- recording, 36
  - registration, 32–35
  - small commercial vessels, 37
  - small pleasure craft, 38
  - suspension/ cancellation/  
reinstatement, 44, 45
  - transfer of ownership, 42, 43
- safety**, *see* **duties (authorized representatives); duties (crew members); duties (masters); Hague-Visby Rules; loading/discharging; passenger security; safety management code; voyage conduct**
- safety management code**, 71, 106
- ship management**
- authorized representatives, 69–70
  - boat rental operators, 72
  - guided excursion operators, 73
  - safety management code, 71, 106
  - white water rafting, 74
- shipbuilding/repair**, *see also* **duties (authorized representatives); duties (shipbuilders/repairers)**
- compliance review, 23
  - contracts, 24–27
- shipping (general)**, 1, 2
- ships (general)**
- definition of, 18–20
  - national character of, 30
- stowaways**, 105
- third parties, action for contribution against**, 191
- title/ownership of ships**
- general, 48
  - judicial sales, 51
  - purchase, 28
  - sale under execution, 52–54
  - transmission of interest, 50
  - voluntary sale, 49
  - wrongful interference with agreement of sale, 29
- towage/tugs**, *see also* **duties (tug operators); liability (tug operators)**
- carriage of goods, distinguished from, 209, 210
  - commencement/completion of services, 217
- treaties**, *see* **international conventions**
- voyage conduct**
- Arctic navigation, 121
  - clearances, 120
  - electronic systems/radios, 117, 119
  - fire/safety drills, 118
- wages**, 96
- white water rafting**, 74
- wrongful interference**, 29

## Index to Specific Performance

*(All references are to paragraph numbers)*

- agents and principals**, 199–203, 204
- assignments, effect of**, 215
- building contracts**, 183
- child custody agreements**, 188
- conditions precedent to relief**
  - existing contract, 18
  - generally, 20, 21, 23, 27, 152, 158
  - new time for closing, 25, 26
  - obtaining permit, 19
  - tender, 22, 24
- costs**, 213
- Crown**, 207
- damages as alternative relief**
  - action for rescission, 45, 49
  - election of remedy, 46–49
  - part payment of price, 50
  - plaintiff not ready, willing and able, 51
- damages in lieu of specific performance**
  - abatement of purchase price, 40
  - appeal, 41
  - date of breach, 43
  - legislation, 36
  - measure of damages, 43
  - mitigation, 37
  - plaintiff not ready, willing and able, 39
  - sale of land, 43
  - sale of shares, 44
  - specific performance impossible, 38, 42
- decree, effect of**, 214
- discretion**
  - abandonment of contract, 10
  - conduct, 5, 7, 8
  - disregarding contract, 9
  - exculpatory clause, 14
  - generally, 4, 12
  - on-going relationship, 184
  - quality and fairness, 13
  - ready and willing to perform, 6
  - substance of contract, 11
  - waiver of condition, 15, 16
- easements**, 185, 186
- employment agreements**, 189
- executors and administrators**, 206
- forfeiture, relief from**, 173
- grounds for refusal**, *see also* Statute of Frauds
  - absence of mutuality, 76–80
  - absence or inadequacy of consideration, 58
  - breach of trust, 148
  - contract requiring supervision, 95–99, 101–103
  - damages adequate as remedy, 53–57
  - default or delay, 126–136
  - fraud, 116, 117
  - hardship, 93, 94
  - illegal contract, 59
  - incapacity to perform, 104–107
  - laches, 137–144
  - lack of title, 108–115
  - misrepresentation, 118–121
  - mistake, 122–125
  - non est factum, 85

## SPECIFIC PERFORMANCE

---

- prejudice to third persons, 145–147
- rule against perpetuities, 150
- ultra vires corporate act, 149
- vagueness and uncertainty, 81–89
- want of equity, 90–92
- injunction in aid**, 52
- insolvent party**, 208, 209
- judgments, effect of**, 215
- jurisdiction**
  - damages as inadequate remedy, 2
  - land, 2, 3
  - superior courts, 1
- leases**, 184
- mobility clause, child custody**, 188
- non-competition clauses**, 189
- personal services contract**, 187
- pleadings**, 210–212
- rectification**, 17, 60, 73–75
- revival of contract** 43
- sale of goods**, 171, 172
- sale of land**
  - abatement, 162–170
  - assignee of purchaser, 195
  - conditions precedent, effect of, 152, 158
  - damages, 43, 154
  - double sales, 159
  - estoppel of owner, 198
  - extension of time, 156–158
  - foreclosure with right to redeem, 153
  - foreign land, 161
  - mining claim, 160
  - non est factum, 85
  - right of first refusal, 155
  - specific performance with compensation, 162–170
  - subpurchasers, 197
  - subsequent purchasers, 196
  - trustees, 205
  - uniqueness, 2, 43
  - waiver, 151
- shares**, 173, 174–182
- Statute of Frauds**
  - alternative methods of performance, 63
  - description of land, 62
  - generally, 60, 64
  - parol variation of contract, 72
  - part performance, 65–71
  - rectification, 17, 60, 73–75
  - variation of agreement, 61
- time of the essence**
  - common law, 29
  - equity, 29, 30
  - expiry of closing date, 34
  - generally, 32, 33
  - legislation, 30
  - meaning, 28
  - option agreement, 35
  - waiver, 30, 31
- trusts**, 194
- trustees**, 205
- wills**
  - agreement not to revoke, 190
  - contract to bequeath, 191
  - contract to devise, 193
  - joint will, 192

## Index to Sports

*(All references are to paragraph numbers.)*

### **association rules and procedures: litigation**

- general, 42–45
    - principles of review, 43, 44
    - private associations, 42
    - types of dispute and decision, 45
  - rules and decisions, 46–54
    - discipline, 51
    - doping control, 52–54
      - ban from high performance competition, 52
      - policy founded on doping free sport, 53
    - eligibility: duration, 49
    - eligibility: residence and transfer, 46–48
      - injunctions granted, 48
      - reasonable and orderly eligibility requirements, 47
      - structured amateur sports associations, 46
  - team selection and nomination, 50
- ### **civil liability for sports injuries**
- civil assaults, 126–130
    - assaults between spectators/spectators and officials, 129
    - excessive force in mutual combat, 127
    - implied consent in contact sports, 126
    - liability of professional team for security personnel, 130
    - non contact sports, 129
    - trespass to the person, 128
  - damages, 154, 155
    - exclusion of liability, 152
    - general, 125
    - negligence, 138–151
      - operators, 141–142
      - others, 148–151
        - parents, 151
        - professional team, 149
        - suppliers and manufacturers of sport equipment, 150
      - unincorporated club, 148
    - players, 138–140
      - assume necessary risks reasonably incidental to sport, 138
      - liability of participant to spectators, 140
      - skiers, 138
      - test of liability in context of vigorous contact sports (British Columbia), 139
    - schools and instructors, 143–147
      - basis of liability, 143
      - coaches/instructors in commercial/recreational programs, 147
      - exclusion of liability (Saskatchewan, Manitoba), 144
      - statutory duties of care and control, 143
      - supervision in manner of careful or prudent parent, 145
      - supraparental expertise of professional standard in conducting specialized and hazardous activities, 146

## SPORTS

---

- civil liability for sports injuries (*cont'd*)
    - nuisance, 153
    - occupiers' liability, 131–137
      - common law occupiers' liability (Saskatchewan), 137
      - legislation, 131–134
        - British Columbia, Alberta, Manitoba, 132
        - limited liability of landowners re snowmobilers, 133
        - Ontario, 131
        - recreational trail, 134
      - statutory liability, 135, 136
        - injuries to participants, 135
        - injuries to spectators, 136
  - criminal liability**
    - criminal assaults, 118–122
      - basic assault, 118
      - consent of victim, 119
      - evidence of film/videotape of incident, 122
      - limits of implied consent, 120
      - stick swinging duel, 121
    - general, 115–117
      - death in course of illegal combat, 117
      - manslaughter, 116
      - offence against person or against public order, 115
      - unlawful act cannot be made legal by rules of game, 117
    - sentencing, 123
    - sexual offences in sports contexts, 124
  - equality rights and discrimination**
    - general, 29, 30
    - application of Charter, 29
  - jurisdiction of human rights commissions, 30
  - prohibited discrimination: cases and policies, 31–41
    - aboriginal peoples, 36
    - age, 35
    - disability, 34
    - language, 39
    - nationality, 38
    - race and colour, 37
    - religion, 40
    - sex, 31–33
      - girls participation in minor hockey, 32, 33
      - use of services/facilities restricted to one sex on grounds of public decency, 31
  - sexual orientation and transgender status, 41
- national and international sports organizations — alternative dispute resolution**
- Court of Arbitration for Sport, 89, 90
    - Canadian cases, 90
    - general, 89
    - decisions, 66–75
      - carding and funding, 72, 73
      - discipline, 74
      - eligibility, 66
      - general selection and selection of athletes for teams, 67–71
        - deference to expert selection committees, 69
        - remedy, 71
        - selection of athletes, 68
        - successful selection disputes, 70
        - team selection disputes, 67
  - other cases, 75

## INDEX

---

- national and international sports organizations — alternative dispute resolution (*cont'd*)
  - doping control, 76–88
    - Canadian anti-doping program, 79–80
    - doping cases, 85–88
      - additional violations, 88
      - exceptional circumstances to eliminate/reduce ineligibility, 87
      - prohibited substance, 85
      - specific substance or specified stimulant, 86
    - procedural rules for arbitration, 81–84
      - appeal, 83
      - domestic hearing, 82
      - international events or athletes, 84
      - specific procedural rules of Canadian Sport Dispute Resolution Code, 81
    - World Anti-Doping Code, 76–78
      - anti-doping violations, 77
      - sanctions, 78
    - Sport Dispute Resolution Centre of Canada, 55–65
    - Canadian Sport Dispute Resolution Code, 57–65
      - application of human rights legislation, 64
      - arbitrations, 57, 62
      - costs of proceedings, 65
      - dispute resolution procedure, 58
      - exhaustion of internal procedures of national sport organization, 61
      - not court of competent jurisdiction for enforcing Charter, 64
    - participation by affected party and intervenor, 60
    - resolution facilitator, 59
    - scope of panel's review, 63
    - sports related dispute, 61
    - waiver of right to request remedies from court, 62
  - legislation and operations, 55, 56
- professional sports**
  - Competition Act, 94–98
  - agreements and combinations in professional sports, 94
  - agreements relating to granting/operation of franchise, 95
  - determining whether arrangement unreasonable, 97
  - indictable offences, 96
  - labour relations and players' associations, 99–102
  - coexistence of individual service contracts with collective bargaining, 99
  - individual service contracts, 99
  - provincial labour laws apply to local operations of U.S.-based teams, 100
  - ownership, financing and management of teams, 91, 92
  - ownership of trophies, 114
  - promotion and protection of personality, 113
  - service contact, 103–112
    - contract negotiation and duties of agents, 112
    - general, 103–111
      - damages, 111
      - injunctions, 110
      - obligation of exclusive service, 106

## SPORTS

---

- professional sports (*cont'd*)
  - ordinary rules of contract law, 103
  - standard player contract, 104
  - team not exercising option of renewal, 109
  - terms of standard player contract, 105
  - wilful refusal of service, 108
  - sports broadcasting, 93
- statutory regulation**
  - general, 1–12
  - funding of sports, fitness and recreation programs, 8–12
    - legislation in western provinces, 8
    - Olympic trade-marks, 12
    - Ontario, 9
    - tax credits and exemptions under Income Tax Act, 10
    - tobacco-related brand element in promotion, 11
  - jurisdiction, 1
  - Physical Activity and Sport Act, 2–7
    - financial assistance, 5
    - objectives of government policy, 2
    - powers of minister, 4
    - regulations, 6
    - Sport Dispute Resolution Centre, 7
    - statement of sport policy principles, 3
  - regulation of sports, 13–28
    - boating, 21–23
    - commercial river rafting, 23
    - Criminal Code offences, 21
    - standards for operation of small vessels, 22
  - combat sports, 14, 15
  - consumer protection, 25–28
    - Manitoba, 26
    - professional development service (Ontario), 25
    - ticket speculation, 27, 28
  - horse racing, 16–20
    - administration of drugs, 16
    - betting, 16
    - Charter, 19
    - disciplinary and licence suspension powers, 18
    - provincial racing commissions, 17
    - standard equipment for riders under 18, 20
  - illegal animal sports, 13
  - swimming, 24



## Index to Statutes

(All references are to paragraph numbers.)

- aboriginal rights**, 209
- absurdity/inconsistency/repugnancy, avoiding**
- adding/deleting words, 96–98
  - bilingual statutes, 88–91
  - context, 95
  - errors, correcting, 99, 100
  - general, 41, 74, 82, 85, 86
  - general vs. special Acts, 354–361
  - object of Act, 94, 95
  - penal statutes, 91
  - reconciliation of sections, 84, 87
  - repeal, implied, 348–353
  - specific overruling general, 92
  - words of qualification, effect of, 93
- adding/deleting words**, 96–98, 195, 268
- affidavits (prescribed)**, 39
- agreements**, *see* schedules/agreements
- alimony actions**, 329
- amendments**
- general, 382–385
  - limitation periods, 391, 392
  - repeal of Act, effect of, 373
  - repeal of amendment, effect of, 374, 389
  - retroactivity/retrospectivity, 386–390
- “an”**, 188
- Bank Act**, 116
- Bankruptcy and Insolvency Act**, 116
- bilingual versions of statutes**, *see also* language rights
- absurdity/inconsistency (repugnancy, avoiding), 88–91
  - Charter of Rights, 239
  - contextual approach, 66, 67, 121
  - Manitoba, 70, 175
  - penal statutes, 68, 91
  - shared meaning, where governing, 69
- Bill of Rights**, 47, 48
- British statutes, as interpretative aids**, 129, 395
- builders’ liens**, 328
- by-laws**, 366
- capitals**, *see* punctuation/capitals
- causes of action**, *see* new causes of action; new rights/remedies
- change in language/arrangement**, 198–201
- change in law**, 202
- Charter of Rights**, *see also* constitutional enactments; human rights statutes
- bilingual versions, effect of, 239
  - evidence on Charter issues, 141
  - inapplicability to private disputes, 238
  - penalty provisions, 265
  - purposive interpretation of, 240, 241
  - retrospectivity/retroactivity, 242, 252, 313, 317
- citation**, 342
- civil law**, *see* common/civil law rights

- codifying/consolidating statutes**, 243
- collocation of sections**, 142
- commencement of operation**, *see* *also* amendment; re-enactment; repeal; retroactive/retrospective operation; territorial operation
- discretion re, 295
  - duration of operation, 297
  - federal statutes, 287–289
  - general, 293–295
  - provincial statutes, 290–292
  - suspension of operation, 296
- common/civil law rights**
- ambiguity in Act, 213
  - discretionary powers, 213
  - fulfilment of statutory conditions, 212
  - general, 299, 300
  - new remedies, 217, 218
  - onus to show intention, 212
  - presumption against derogation from, 208, 213
  - privilege, solicitor-client, incursions on, 211
  - strict construction re encroachment on, 210
- consolidations**, *see* codifying consolidating statutes
- constitutional enactments**, *see also* Charter of Rights
- civil rights, 304
  - conventions, 235
  - Crown prerogative, 54
  - division of powers, challenges re, 136, 138
  - extrinsic evidence, 236
  - general, 49, 50, 232–234, 302
  - language rights, 166, 177
  - legislative provisions, 50
  - mandatory/directory doctrine, 166, 177
  - preamble, effect of, 11, 235
  - quasi-constitutional Acts, 237
  - reading down, 52, 53
  - regulations, 399
  - striking down/suspending, 52
  - vague statutes, 51
  - validity, presumption of, 194
- construction**, *see* interpretation of statutes
- contextual approach**
- bilingual versions, re, 66, 67
  - general, 75, 95
  - interpretation clauses, 65
- contracts**, 188, 224, 367
- costs**, 327
- courts (jurisdiction)**
- change of/encroachment on, 226
  - extraordinary powers, 227
  - general, 225
  - practice/procedure, 228
- Criminal Code**, *see* penal/criminal statutes
- Crown**
- binding of, 334, 336
  - prerogative, 54, 335, 337
- date of**, *see* commencement of operation
- debates**, 134
- declaratory enactments**, 308
- definition of statute**, 1
- deletions**, *see* adding/deleting words
- dictionaries, use of**, 72, 73
- directory**, *see* imperative/directory/permissive

## INDEX

---

- duration of operation**, 297, *see also* commencement of operation
- effective date**, *see* commencement of operation
- ejusdem generis rule**
- ambiguity not necessary, 147
  - associated words affecting unclear words, 151
  - effect of, 143, 144
  - genus, necessity for, 145
  - object/purpose of Act, 145, 147, 148
  - ordinary meaning governing, 147
  - repeal of special words, effect of, 146
  - specific words following general term, 149, 150
- enactment/publication**
- federal, 338, 339
  - provincial, 340, 341
  - regulations, 410
- errors**
- correcting, 99, 100, 330
  - general, 262
  - presumption against, 195, 196
- evidence**, *see* penal/criminal statutes
- exceptions**, *see* provisos/exceptions
- exemptions**, *see* privileges/exemptions
- expressio unius est exclusio alterius**
- bars to use of, 153, 154
  - general, 152
- expropriation**, 229–231
- family law legislation**, 286
- fiscal statutes**, *see* taxing statutes
- foreign statutes, as interpretative aids**, 129, 156, 160, 277, 395
- former enactments, reference to**, 23
- forms (prescribed)**
- affidavits, 39
  - deviations from, effect of, 37, 38
  - errors in, effect of, 39
  - guides/models, as, 39
  - lien claims, address for service, 38
  - schedules/agreements, in, 36
  - statute governing, not forms, 39
- “forthwith”**, 189
- general vs. special Acts**, 354–361
- generalia specialibus non derogant**, 162, 356
- golden rule**, *see* ordinary meaning
- Hansard**, 136
- headings**
- ambiguity, resolving, 13
  - clear enactments, headings not affecting, 12, 13
  - exclusion of as interpretative aids, 12
  - general use of, 12, 15, 16
  - inaccurate headings, 15
  - preamble, comparison to, 14
  - subheadings, 16
  - weight of as interpretative aids, 17
- human rights statutes**, 285, *see also* Charter of Rights
- imperative/directory/permissive**
- constitutional challenges, 166
  - courts, procedure of, 169
  - discretion, exercise of, 167, 168
  - exact fulfilment, 165, 180, 230
  - general, 165–174
  - injustice/inconvenience, avoiding, 169, 173

## STATUTES

---

- “must”, 182
  - nuisance to be avoided, 168
  - object/scope of Act, 170, 171
  - public vs. private duties/rights, 171, 174
  - public policy, effect of, 169
  - “shall”/“may”, 175–181
  - statutory protection, 168
  - substantial fulfilment, 165
  - taxing statutes, 249
- in pari materia rule**
- ambiguity, as precondition to use of, 158
  - conflict between statutes, 161
  - foreign statutes, use of, 156, 160
  - general, 155–157, 160
  - subject matter must be same, 155, 159
- inconsistency**, *see* absurdity/inconsistency/repugnancy, avoiding
- incorporation by reference**, 380, 411
- intention**, *see* object/purpose
- international treaties**, *see* treaties
- Interpretation Acts**
- federal, 55, 56
  - general, 58–60
  - provincial, 57
- interpretation clauses**
- applicability to other Acts, 62
  - context of use governing, 65
  - general application of, 61
  - inclusiveness of, 64
  - restriction/extension of meanings, 63
- interpretation of statutes**, *see* also Charter of Rights; constitutional enactments; regulations/orders in council; retroactive/retrospective operation; revised statutes; specific types of statutes, e.g., penal/criminal statutes
- absurdity/inconsistency/repugnancy, 41, 74, 82–100, 268, 348–361
  - adding/deleting words, 96–98, 195, 268
  - ambiguity, 81
  - “an”, 188
  - appeals re, 45
  - bilingual versions of statutes, 66–69, 70, 88–91, 121, 175, 239
  - Bill of Rights, as aid to, 47, 48
  - British legislation as aid to, 129, 395
  - codifying/consolidating statutes, 243
  - collocation of sections, 142
  - common law rights, statutes affecting, 208–213, 217, 218, 299, 300
  - contextual approach, 65–67, 75, 74, 95
  - contracts, statutes affecting, 188, 224, 367
  - courts, statutes re jurisdiction, 225–228
  - debates, use of, 134
  - dictionaries, use of, 72, 73
  - duty of court, 40–44, 46
  - ejusdem generis rule, 143–151
  - errors (drafting), correcting, 195
  - expressio unius est exclusio alterius, 152–154
  - expropriation statutes, 229–231
  - family law legislation, 286
  - “forthwith”, 189
  - generalia specialibus non derogant, 162
  - Hansard, use of, 136
  - imperative/directory/permissive, 165–182, 230, 249

## INDEX

---

- implied provisions, 43
  - Interpretation Act (federal), 55, 56
  - Interpretation Acts (general), 58–60
  - Interpretation Acts (provincial), 57
  - interpretation clauses, 61–65
  - judicial precedents, use of, 101
  - legal words/expressions, 187
  - Legislation Act (Ontario), 57
  - modern and purposive approach, 77–81
  - “must”, 182
  - natural justice, regard for, 102
  - new causes of action, Act creating, 214, 318, 322, 329, 361
  - new rights/remedies, Act creating, 215–221
  - object/purpose, 71, 94, 95, 107–115, 122, 131, 134, 145, 169, 190, 203
  - ordinary meaning, 41, 74–100, 104, 147, 272
  - origin/history of statute, 125–141
  - parliamentary records, use of, 130, 132–141
  - plain meaning, 42, 44, 126
  - presumptions, 190–202, 208
  - privileges/exemptions, 204, 222, 223
  - provisos/exceptions, 24–26, 264
  - questions of fact vs. law, 45
  - reading down, 52, 53
  - reasonable construction, 103–106, 205
  - regard to whole statute, 108, 122–124
  - remedial nature of Acts, 198, 202, 203, 205, 245
  - same words in different sense, 183–185
  - “shall”/“may”, 166, 175–181
  - specialia generalibus derogant, 150
  - speeches in legislature, 71
  - statutes in pari materia, 155–161
  - statutes incorporating other statutes, 163, 164
  - statutory provisions/aids, 47–73
  - subordinate legislation, 139, 194
  - taxing statutes, 180, 206, 230, 244–252, 314
  - technical/scientific words, 186
  - treaties as aids to, 113, 307
  - uniformity re federal statutes, 116–121
  - vagueness, 46, 51
- jurisdiction**, *see* courts (jurisdiction)
- language rights**, 166, 177, *see also* bilingual versions of statutes
- legal words/expressions**, 187, 299, 300
- liberal/strict construction**
- act creating new right/remedy, 221
  - charges, imposition of, 207
  - common law rights, 210
  - monopolies, 204
  - object/purpose, 203
  - penal/criminal statutes, 68, 257–264
  - private Acts, 272
  - privilege, solicitor-client, incursions on, 211
  - privileges/exemptions, 204, 222, 223
  - procedural statutes, 282
  - provisos/exceptions, 26
  - regulations, 402
  - remedial nature of Acts, 198, 202, 203, 205

## STATUTES

---

- school taxes, 206
- taxing statutes, 246
- liens, forms re**, 38
- limitations provisions**, 284, 319, 320, 325, 326, 391, 392
- mandatory**, *see* imperative/directory/permissive
- marginal notes**, 18, 19
- may**, *see* “shall”/“may”
- mischief**, *see* object/purpose
- modern or purposive approach**, 77–81, *see also* interpretation of statutes
- “must”**, 182, *see also* imperative/directory/permissive; “shall”/“may”
- natural justice**, 102
- new causes of action**, 214, 318, 322, 329, 361
- new rights/remedies**
  - common law remedy, effect on, 217, 218
  - general, 215, 220
  - intention to create duty/remedy, 219
  - limitation of remedies, 215, 216
  - strict construction, 221
- numbers of sections/subsections**
  - erroneous reference within statute, 21
  - general, 20
  - references to two or more parts, divisions etc., 22
- object/purpose**
  - clear language governing, 107, 108
  - conflicting policies, 115
  - conflicts between statutes, 112
  - ejusdem generis rule, 145, 147, 148
  - general, 94, 95, 109, 111, 112, 122, 134, 190, 203
  - international treaties as aids, 113
  - literal interpretation, 108, 110, 114, 115
  - mischief, remedying, 108, 122, 131
  - policy not overruling mandatory terms, 169
  - restrictive vs. comprehensive meaning, 114
  - speeches, as aids in determining, 71
- Official Languages Act**, *see* bilingual versions of statutes
- orders in council**, *see* regulations/orders in council
- ordinary meaning**
  - absurdity, avoidance of, 41, 74, 82–100
  - context indicating special meaning, 75
  - ejusdem generis rule, 147
  - general rule, 41, 74, 104
  - meaning at time of enactment, 76
  - popular sense, 76
- parliamentary records, as interpretative aids**
  - Charter cases, 141
  - committee reports, 133
  - constitutional challenges, 136, 138
  - debates, 134
  - extrinsic evidence, 138
  - general, 130, 132
  - Hansard, 136
  - Human Rights Act, 140
  - minister’s comments, 133, 135

## INDEX

---

- Royal Commission reports, 137
- subordinate legislation, 139
- penal/criminal statutes**
  - ambiguity, 68, 191, 258, 262
  - bilingual versions, conflict/ambiguity between, 68, 91
  - Charter of Rights, 265
  - collocation of sections, 142
  - definition, 253
  - double jeopardy, 267
  - drafting errors/omissions, 262, 268
  - evidentiary rules, 254, 266, 321
  - exceptions, 58
  - fines, 263
  - general, 124
  - “penalty”, 255, 265
  - procedural changes, 266
  - prohibition implied by penalty, 256
  - reading in, 268
  - repeal, effect of, 265–267, 375–378
  - retroactivity/retrospectivity, 317, 400
  - sentencing provisions, 259
  - special provisions, 269
  - strict construction of, 68, 257–264
  - uniform interpretation of, 116
- permissive**, *see* imperative/directory/permissive
- persona designata**
  - general, 278
  - judges as, 278–280
  - substitution of, 281
- policy**, *see* object/purpose
- preamble**
  - ambiguity, preamble resolving, 7, 8
  - Constitution Act, 1867, 11
  - Interpretation Acts, provisions of, 6
  - nature/purpose of, 6, 7, 9
  - removal of on revisions, effect of, 10
- presumptions aiding interpretation**
  - change in language/arrangement, 198–201
  - change in law, 202
  - common law rights, derogation from, 208–213
  - error, against, 195, 196
  - general, 190, 191
  - surplusage, against, 197
  - validity, in favour of, 192–194
- private Acts**, *see* public vs. private Acts
- privilege (evidence)**, 324
- privileges/exemptions**, 204, 222, 223
- procedural matters, statutes re**
  - alimony actions, 329
  - appeal rights, affecting, 323
  - bias, procedure giving rise to, 283
  - builders’ liens, 328
  - cause of action, affecting, 214, 318, 322, 329
  - costs, 327
  - evidentiary provisions, 321, 325
  - liberal construction, 282
  - limitations statutes, 284, 319, 320, 325, 326
  - penal/criminal matters, 266
  - privilege, 324
  - “procedure”, 320

## STATUTES

---

- retroactivity/retrospectivity, 266, 310, 320–329
  - Statute of Frauds, 325
  - substituted provisions on repeal, 346
- provisos/exceptions**
- effect of, 24
  - onus to obtain benefit of, 26, 264
  - strict construction of, 26
  - subsections, applicability to, 25
- public vs. private Acts**
- damages for breach, 276
  - definition of, 270
  - effect of, 271
  - express declaration as private, 271
  - inconsistency between, 274, 358
  - ordinary meaning, 272
  - overriding by private Act, 275
  - special Acts, derogation from other Act, 273
  - strict construction, 272
- publication**, *see* enactment/publication
- punctuation/capitals**
- capitalization, 32
  - deletion of, propriety of, 28, 31
  - general, 27
  - intent of legislature paramount, 29
  - reasonable inferences, 30
  - strict reliance on not proper, 30
- reading down legislation**, 51, 53
- reasonable construction**, 103–106, 205
- re-enactment**, *see also* amendment, repeal
- British/foreign statute, as interpretative aid, 395
  - general, 393
  - repeal and re-enactment, 347, 394
- regulations/orders in council**
- conflict with statute, 92, 404–407
  - constitutional challenges, 399
  - exceeding scope of authority, 406–408
  - filing of, 410
  - general, 396–400
  - intention to be found in statute, 398
  - Interpretation Acts, application of, 57
  - interpretation of, 401–403
  - Legislation Act (Ontario), 57
  - legislative nature of, 411
  - presumption of validity, 397
  - publication of, 410
  - repeal of parent Act, 372, 379, 409
  - retroactivity/retrospectivity, 400
- remedial nature of Acts**, 198, 202, 203, 205, 245
- repeal**, *see also* amendment; re-enactment; revised statutes
- amendments, effect on, 373, 374
  - effect (common law), 362–364
  - effect (statutory), 364–371
  - general, 343
  - implied, 348–361
  - penal statutes/penalty provisions, 375–378
  - provisions incorporated by reference, 380
  - regulations/orders in council, effect on, 372, 379
  - repeal and re-enactment, 347, 394
  - repeal and substitution, 345, 346



## INDEX

---

- retroactivity/retrospectivity, 381
  - revised statutes effecting, 330
  - saving clauses, 370
  - temporary Act, by, 344
- repugnancy**, *see*  
absurdity/inconsistency/repugnancy,  
avoiding
- retroactive/retrospective  
operation**, *see also* amendment;  
commencement of operation; re-  
enactment; repeal; revised statutes
- amendments, 386–390
  - appeal rights, affecting, 323
  - benevolent consequences, 316
  - causes of action, affecting, 318,  
322, 329
  - Charter of Rights, 242, 252, 312,  
313, 317
  - continuing fact situations, 311
  - declaratory enactments, 308
  - distinguishing between, 309
  - general, 293, 309–319
  - intention, express or clearly  
implied, 310
  - limitations provisions, 319, 325,  
326
  - penalty provisions, 317
  - presumption against, 310, 311,  
315, 316
  - privilege, affecting, 324
  - procedural matters, 266, 310,  
320–329
  - repeals, effect of, 381
  - simultaneous repeal/re-  
enactment, 319
  - Statute of Frauds, 325
  - suspending clauses, effect of,  
296
  - taxing statutes, 252, 314
  - unreasonableness, 310
- retrospectivity**, *see*  
retroactive/retrospective operation
- revised statutes**
- effect of, 333
  - general, 330
  - interpretation of, 331, 332
- schedules/agreements**
- appended to Act, 36
  - forms in, 36
  - Manitoba, 33
  - operation of, 33, 36
  - statutes, as, 35
  - statutory ratification of, effect  
of, 34
  - validation of by Act, effect of,  
35
  - words confirming/validating, 33
- school taxes**, 206
- scientific words**, 186
- scope of title**, 1, 2
- “shall”/“may”**, *see also*  
imperative/directory/permissive;  
“must”
- constitutional challenges, 166,  
177
  - “may” as imperative, 181
  - “shall” as imperative, 175, 178
  - “shall” as permissive, 176, 179
  - taxing statutes, 180
- specialia generalibus derogant**,  
150
- “statute”**, 1
- Statute of Frauds**, 325
- strict construction**, *see*  
liberal/strict construction
- subordinate legislation**, 139, 194
- surplusage**, 197
- suspension of operation**, 296, *see  
also* commencement of operation
- tables of contents**, 5

## STATUTES

---

### **taxing statutes**

- aids to construction, 247
- ambiguity, favouring taxpayer, 244
- amendments, 250
- Charter of Rights, 252
- general, 246, 248, 251, 339
- imperative/directory, 249
- interpretation bulletins, 247
- modern and purposive approach, 246
- onus on Crown, 244
- ordinary meaning, 206, 244
- remedial nature of, 245
- retroactivity of, 252, 314
- strict compliance, 180, 230
- strict interpretation

### **technical words**, 186

### **temporary Acts**, 344

### **territorial operation**, *see also* commencement of operation

- civil rights, legislation re, 304
- extraterritoriality, 298
- federal, 298
- general, 299, 300, 301, 302
- international treaties, 307
- local operation, effect of, 305
- overlapping jurisdictions, 306
- workers' compensation, 303

### **title of statute**

- aid for interpreting statute, as, 3
- part of enactment, as, 3
- scope of statute broader than title, 4

### **treaties**, 113, 307

### **vagueness**, 46, 51

### **validity, presumption in favour of**, 192–194

### **workers' compensation**, 303

## Index to Telecommunications

(All references are to paragraph numbers.)

### **Bell Canada, *see also* carriers (regulation of); duty to supply**

- acquisition/ownership of other companies, 15
- duty to provide service, 17
- general, 10, 14
- sale/disposition of facilities, 16
- works for general advantage of Canada, 15

### **broadcasting distinguished, 1, 115**

### **carriers (liability of/to)**

- agent of sender, as, 132
- breach of statute, 129, 130
- excavation damaging cables, 136, 137
- general, 127, 131
- limitation of liability, 127, 139–146
- non-delivery of messages, 133
- poles, accidents re, 134, 138
- submarine cables, 135

### **carriers (regulation of), *see also* facilities (installation/use of); rates and tariffs**

- “Canadian carrier”, 69, 70
- Canadian ownership/control requirements, 72
- duty to supply service, 116–120
- exemption from Act, 71
- “facilities-based carriers”, 70
- general, 124
- interconnection of, 9, 101
- international licences, 73–75
- international submarine cable licences, 80–82
- North American Numbering Plan, 125

- radiocommunication licences, 76–80
- “resellers”, 70
- subscriber-owned terminal equipment, 128
- “telecommunications common carrier”, 69
- “telecommunications service”, 69
- “transmission facility”, 69
- universal service fund, 126
- working agreements between, 102

### **Commissioner for Complaints for Telecommunications Services, *see* complaints**

### **complaints, Commissioner for, 68**

### **constitutional jurisdiction, *see also* legislation**

- general, 2, 3, 9, 162
- incorporating legislation, effect of, 6
- interprovincial/international services, 5, 7
- judicial review re, 61
- provincial laws, observance of, 8, 162
- telegraphs, 2, 3
- works for the general advantage of Canada, 4

### **CRTC (general), *see also* carriers (regulation of); facilities (installation/use of); Governor in Council; rates and tariffs**

- annual report by, 30
- composition of, 29, 62
- establishment of, 28
- guidelines/statements, issuing of, 35

- information, requiring carriers to provide, 37
- inquiry officers, 36
- inspectors, 38
- offices of, 31, 62
- powers of generally, 32–34
- regulations, contents/publication of, 39
- reports of, 64
- CRTC (proceedings)**
  - appeals, 52–59, 67
  - costs of, 48
  - decisions (publication/effect of), 49, 50
  - decisions (reconsideration of), 51, 57
  - determination of questions, 43
  - documents, production/inspection of, 46
  - evidence, rules of, 45
  - failure/refusal to exercise jurisdiction, 44
  - institution of, 41
  - judicial review of, 60, 61
  - public proceedings, 41
  - quorum, 42
  - rules governing, 40
  - stays of orders, 57
  - stays of proceedings, 47
  - witnesses, attendance/examination of, 46
- Department of Industry**
  - establishment of, 21
  - inquiries/reports, 27
  - licensing for submarine cables, 25
  - powers/duties of Minister, 22, 23
  - radiocommunications, 24
  - standards, establishment/publication of, 26
- division of powers, *see* constitutional jurisdiction**
- do not call list, *see* unsolicited telecommunications**
- duty to supply**
  - exemptions, 119
  - general, 116, 117
  - order to supply, 118
  - refusal to supply, 119
  - suspension/termination of service, 120
- expropriation, 108**
- facilities (installation/use of), *see also* carriers (regulation of); duty to supply; telecommunications apparatus**
  - access to poles/structures, 103, 105
  - alteration of routes, 114
  - burial of lines, 114
  - conflicting structures, 110, 112
  - CRTC, powers of, 103, 105, 109
  - duties of carriers, 104, 111
  - expropriation, 108
  - highways/public places, 104, 107, 110–113
  - municipal power to bar construction, 106, 107
  - satellite capacity, allocating, 115
- Governor in Council, *see also* CRTC**
  - appeals to, 67
  - appointment of CRTC members, 62
  - directions to CRTC, issuing, 63
  - establishment of CRTC offices, 62
  - radiocommunications, 66
  - regulations, matters subject to, 65, 66

## INDEX

---

- reports from CRTC, requiring, 64
- highways**, 104, 107, 110–113, 138, *see also* **legislation**
- inquiries**, 27, 36
- institutions**, *see* **CRTC; Department of Industry; Governor in Council**
- “intelligence”, 1
- interconnection of carriers**, 9, 101
- jurisdiction**, *see* **constitutional jurisdiction**
- legislation (Alberta)**
  - general, 162
  - offences, 66
- legislation (British Columbia)**
  - general, 162
  - pipelines, 165
  - railways, 163, 164
- legislation (federal)**, 10, *see also* **Bell Canada; constitutional jurisdiction; CRTC; Telecommunications Act; Teleglobe Canada; Telesat Canada**
- legislation (Manitoba)**, 162, 166, 167
- legislation (Ontario)**
  - general, 162
- legislation (Saskatchewan)**
  - annual reports/statements, 171
  - construction/maintenance, government assistance re, 172
  - crossings, 177
  - filings (required) with Minister, 170, 171
  - general, 162, 168
  - private phone systems, 168, 171
  - public telephone system, 169, 173–176
  - rural phone systems, 168
- liability**, *see* **carriers (liability of/to)**
- licensing (international generally)**, 73–75
- licensing (international submarine cables)**, 25, 80–82
- licensing (radiocommunications)**, 76–79
- licensing (regulations re)**, 65
- negligence**, *see* **carriers (liability of/to)**
- offences/penalties (federal)**, *see also* **legislation**
  - carriers, operating when ineligible, 150
  - consent, 151
  - corporate liability, 157
  - false distress-signals/messages, 154
  - fraudulent use/obtaining of telecommunication, 159, 160
  - intercepting/divulging communications, 155, 161
  - limitation, 151
  - prosecutions, time for, 158
  - radio apparatus, re installation/possession, 153
  - regulations, breach of, 156
  - submarine cables, re, 151
  - unsolicited telecommunications, 123, 130, 152
- radiocommunications**
  - general, 24, 66
  - licensing, 76–79

- rates and tariffs**, *see also*  
**carriers (regulation of); CRTC;**  
**legislation (Alberta)**
- approval/disallowance/amendment of, 84, 86
  - classes of service, 96
  - competition sufficient to avoid setting of rates, 97–100
  - discrimination in setting of, 94–96, 116
  - filing of, 84
  - forbearance of CRTC, 97–100
  - general, 83, 92
  - increases in, 88
  - interim/final rates, 93
  - joint tariffs, 85
  - jurisdiction over assets/liabilities, 90
  - just and reasonable, 87–89
  - legislative function in setting of, 91
  - prospective setting of, 93
  - “rate”, 87
- satellites**, *see* **Telesat Canada**
- scope of title**, 1
- service**, *see* **duty to supply**
- statutes**, *see* **legislation**
- submarine cables**, 25, 65, 80–82, 135, 151
- subscriber-owned terminal equipment**, 128
- “telecommunications”**, 1
- Telecommunications Act**
- broadcasting, Act not applying to, 12
  - Crown bound by, 12
  - general, 10, 11
  - objectives of, 13
  - supremacy over special Acts, 12
  - unsolicited telecommunications, 121–123, 130, 152
- telecommunications apparatus**
- inspections/examinations, 149
  - sale/import/distribution of, 147
  - technical acceptance certificates, 148
- Telelobe Canada**, 10, 20
- “telegraph”**, 3
- telephones**, *see* **Bell Canada; constitutional jurisdiction; legislation; radiocommunications**
- Telesat Canada**, 10, 18, 19, 115, 116
- transmission lines**, *see* **facilities (installation/use of)**
- unsolicited telecommunications**, 121–123, 130, 152

## Index to Timber

(All references are to paragraph numbers.)

- aboriginal rights**, 190, 191
- actions**, *see* **municipal rights/liability; trespass actions**
- adverse possession**, 18, 133
- assessment**, *see* **taxation**
- banks**, *see* **creditors' rights**
- chattel mortgages**, *see* **creditors' rights**
- conservation**, *see* **protection/conservation**
- contracts (general)**, *see also* **creditors' rights; liens**
  - assignments, effect of, 125
  - interests in land, 12, 13, 23, 24, 117, 119, 122
  - part performance of, 12
  - property, passing of, 130
  - registration issues, 117
  - rescission, 132
  - sale of goods issues, 25, 120–122, 130
  - Statute of Frauds, 12, 117, 119
  - writing requirements (British Columbia), 126
- contracts (interpretation of)**
  - evidence, 128, 129
  - general, 127–133
  - measurement issues, 135, 136
  - time, 134
- creditors' rights**, *see also* **liens**
  - bank security, 72
  - bankruptcy, 139
  - chattel mortgages, 17
  - execution against licensee, 149
  - mortgages, 17, 45
- criminal offences**
  - equipment, re, 66, 68, 69
  - evidence, 69
  - fraudulent taking, etc., 66, 295
  - onus of proof, 70
  - refusal to deliver up drift lumber, 67, 296
  - removal/alteration of marking, 66, 69
  - theft, 85, 294
- Crown**, *see* **timber rights (Crown); trespass actions**
- dams**, *see* **floating/driving timber**
- definitions**, *see also* **liens (forestry workers'); timber rights**
  - conveyance, 29
  - land, 51
  - lumber, 4
  - merchantable timber, 5, 7
  - ornamental trees, 3, 7, 73
  - shade trees, 3, 7, 73
  - standing timber, 9, 12
  - timber, 2–4, 7
- diseased/infested timber**, 76, 77, 278, 279, 289, 290
- entry rights**, *see* **roads/rights of way (British Columbia); timber rights (general)**
- execution**, *see* **creditors' rights; liens**
- expropriation**, 47–50
- fire prevention**, *see also* **protection/conservation**
- fire prevention (Alberta)**
  - closing of land, 297
  - fire hazards, 300
  - fire permits, 299

- fire season, 298
- protective fires, starting of, 301
- fire prevention (Manitoba)**
  - burning permits, 309, 310
  - duties of owners/occupiers, 305
  - duty to prevent uncontrolled/spread of fires, 304
  - duty to report wildfires, 306
  - permitted fires, 309
  - protective fires, starting of, 303
  - starting of fires generally, 307–310
  - wildfire protection powers, 302
  - wildfire season, 310
- fire prevention (Ontario)**
  - applicability of legislation, 311
  - clearing of land, burning of brush, 312
  - garbage dumps, 313
  - lumber camps, 313
  - mills, 313
  - mines, 313
  - smoking restrictions, 314
- fire prevention (Saskatchewan)**
  - applicability of legislation, 315
  - burning permit areas, 316, 318
  - burning permits, 320
  - commandeering of equipment, 317
  - evacuation/closure of areas, 321, 327
  - fire bans, 321
  - fire control plans, 324
  - fire hazards, 323
  - industrial operations, 324, 325
  - offences/penalties, 329
  - permitted fires, 322
  - prohibited/restricted activities, 318, 320, 326
  - protective fires, starting of, 328
  - reporting of fires, 319
  - starting of fires generally, 318
  - volunteers, 317
- floating/driving timber (general), see also marking of timber**
  - booms, 195
  - dams, construction of, 192–194
  - general, 196
  - improvements, use of, 192
  - mill owner’s rights, 193
  - obstructions, removal of, 192, 193
  - statutory rights generally, 192
  - tolls, 202
- floating/driving timber (Ontario)**
  - deposited/discharged matter, clearing of, 201
  - general, 197
  - impounded water, clearing timber from, 199
  - jams/obstructions, removal of, 200, 203
  - regulations re, 198
  - tolls, 202
- highways, see liens (forestry workers’); roads/rights of way (British Columbia); timber licences; trespass actions**
- injunctions, 26, 189, 190**
- insects, see diseased/infested timber**
- lessee’s rights (Alberta), 27**
- licensing, see timber licences**
- liens (Crown)**
  - Alberta, 143
  - British Columbia, 145
  - Ontario, 167
  - Saskatchewan, 177



**liens (forestry workers'-Alberta)**

- bona fide purchasers, rights of, 211
- general, 207
- “labour”, 208, 213, 214
- priorities, 209
- remedies for breach of legislation, 212
- road construction giving rise to, 214
- “services”, 208, 213
- statement of lien required, 210

**liens (forestry workers'-British Columbia)**

- arising of lien, 220
- corporations not entitled to, 222
- duration of lien, 220
- general, 215, 221
- “labour”, 216
- location of work governing scope of lien, 223, 224
- loss of lien, 224
- “person”, 222
- priorities, 217
- proceedings to enforce lien required, 219
- purchasers’ liability for lien, 226
- “services”, 216
- statement of lien required, 218
- time for filing, 227
- work done in numerous locations, 224

**liens (forestry workers'-Manitoba)**

- general, 228
- “labour”, 229
- priorities, 220
- “service/services”, 220
- statement of lien required, 231
- waiver/loss of lien, 232

**liens (forestry workers'-Ontario)**

- assignment of claims, 243
- contract directly with owner required, 236
- enforcement proceedings required, 239, 242, 243
- filing of claim, 239
- general, 233
- “labour”, 234, 235
- loss of lien, 239
- other remedies, 238
- priorities, 237, 238
- sale of transfer of logs subject to lien, 240
- wage payments outside Ontario banned, 241

**liens (forestry workers'-Saskatchewan)**

- general, 244, 247
- “labour”, 245
- persons entitled to, 245, 248
- priorities, 246
- statement of lien required, 247, 249

**liens (vendor’s), 12, 118, 123**

**lumber, *see* definitions**

**marking of timber, *see also* floating/driving timber; timber rights**

- British Columbia, 57, 58
- New Brunswick, 59–64
- offences re, criminal, 66–70
- offences re, statutory, 65
- Ontario, 59–64
- Quebec, 59–64

**mill owner’s rights, 193**

**mineral rights, *see* timber licences; trespass actions**

**mortgages, *see* creditors’ rights**

- municipal rights/liability, see trespass actions**
- nature of timber rights, see timber rights**
- negligence, 110, 113–115, 195, see also municipal rights/liability; nuisance; trespass actions**
- nuisance, 75, see also municipal rights/liability; negligence; trespass actions**
- offences/penalties, see criminal offences; fire prevention; marking of timber**
- ornamental trees, see shade/ornamental trees**
- permits, see timber licences**
- pests, see diseased timber**
- property rights, see definitions; timber rights**
- protection/conservation, see also fire prevention; timber licences; trespass actions**
- protection/conservation (Alberta), 250**
- protection/conservation (British Columbia)**
- forest and range protections, 258–269
  - forest stand management, 256
  - general, 251
  - Ministry of Forests, 255
  - salvage rights, 252–254
  - stumpage, 256, 257
- protection/conservation (federal), 291, 292**
- protection/ conservation (Manitoba), 270**
- protection/conservation (Ontario)**
- diseases/pests, 278, 279
  - entry on land/examination of timber, 273, 278
  - “forestry purposes”, 272
  - general, 271
  - legislative scheme, 280
  - municipal/county bylaws, 274, 276
  - offences/penalties, 275
  - reforestation agreements, 277
  - tax exemptions, 277
  - township councils, agreements with, 277
- protection/conservation (Saskatchewan)**
- agreements with minister, 283
  - damage prevention/repair, 288
  - diseases/pests, 289, 290
  - entry on land/examination of timber, 289
  - general, 281
  - powers of minister, 282, 283, 288
  - provincial forest, designation as, 285, 286
  - reforestation, 282
  - report by minister, 284
  - stop orders, 287
- public lands, see timber rights (Crown)**
- quotas, see timber licences**
- railways, see timber rights (general)**
- reforestation, see protection/conservation; timber licences**
- registration, see contracts; marking of timber; timber rights**
- reservation of rights, see timber rights (Crown)**
- rights, see timber rights**

## INDEX

---

- rivers**, *see* **floating/driving timber**
- roads/rights of way (British Columbia)**, 204–206, *see also* **liens (forestry workers’)**; **timber licences**; **trespass actions**
- sale of timber**, *see* **contracts**; **creditors’ rights**; **liens**
- salvage rights (British Columbia)**, 252–254, *see also* **criminal offences**
- scope of title**, 1
- seizure**, *see* **creditors’ rights**; **liens**
- shade/ornamental trees**
- action for injury to, 74, 75
  - definition, 3, 7, 73
- standing timber**, *see* **definitions**
- stumpage**, *see* **protection/conservation**
- taxation (British Columbia)**, 293
- taxation (Ontario)**
- exemptions, 52–54, 277
  - “land”, 51
  - liability of tenant, 54
  - orchards, 56
  - reforested lands, 55
  - woodlands, 56
- timber**, *see* **definitions**
- timber licences**, *see also* **marking of timber**; **protection/conservation**; **timber rights**; **trespass actions**
- timber licences (Alberta)**
- assignment of, 96
  - entry on land, 96
  - general, 96, 141
  - liens, minister’s, 143
  - operating plans, 141
  - permits, 142
  - powers of minister, 141
  - quotas, 141
  - reforestation, 141, 142
  - timber dues, 141, 142
- timber licences (British Columbia)**
- general, 144
  - liens, Crown, 145
  - roads, use/construction of, 97
- timber licences (federal)**, 186
- timber licences (general)**
- aboriginal rights, 190, 191
  - bankruptcy of licensee, 139
  - constitutional issues, 137–139
  - forfeiture, 187
  - injunctions, right to, 189, 190
  - royalties, refunds of, 140
  - standing to challenge licensing/bidding process, 188, 191
- timber licences (Manitoba)**
- general, 146
  - mining/oil and gas rights holders, 98
  - unauthorized cutting, 147, 148
- timber licences (Ontario)**
- agreements with Crown, 150
  - agricultural purposes, land disposed for, 169, 170
  - amendment of licences, 158
  - assignments/transfers, 159
  - creditors’ rights, 149
  - Crown rights/charges, 100, 101, 167
  - disposition of licensed land, effect of, 161, 169
  - effect of licence, 99
  - forest management plans, 150, 153
  - general, 151, 160

- interest in land not created by, 160
  - land subject to other licences, 162, 171
  - lien, Crown's, 167
  - limitation of amounts harvested, 153
  - manufacturing of harvested trees, 154
  - non-compliance with terms of licence, 165
  - occupation licences, effect of, 171
  - payment of Crown charges, 163, 164
  - prices, minister setting, 155
  - property in trees/resources, 157, 163, 169
  - reforestation, 151, 152
  - renewals, 151
  - seizure of products by ministry, 166
  - suspension/cancellation, 165, 170
  - surveys, 168
  - term of licence, 151, 152
  - up to five years in length, 152
  - up to twenty years in length, 151
- timber licences (Saskatchewan)**
- amendments, 180, 184
  - assignment/transfer of, 105, 179
  - cooperation between licence holders, 104
  - damaged timber, salvaging, 184
  - disposition of land/interests by Crown, 180
  - effect of licence, 102, 103, 174
  - fees/dues, 176, 177
  - forest management plans, 182
  - general, 172
  - interest in land not created by, 174
  - lien, Crown's, 177
  - operating plan required, 183
  - reforestation, 178
  - rights of licensees generally, 106
  - term of licence, 185
  - terms of licences, 173, 175, 185
- timber rights, *see also* marking of timber; timber licences; trespass actions**
- timber rights (Alberta), 27**
- timber rights (Crown)**
- British Columbia, 32
  - Ontario, 33–39
  - Saskatchewan, 40
- timber rights (general), *see also* liens**
- adverse possession, 18
  - chattel mortgages, 17
  - contractual rights, 12, 23
  - co-owners' rights, 133
  - entry onto land, 10, 11
  - goods/chattels, timber as, 6, 9
  - immoveable property, timber as, 9
  - injunctions, 26
  - interests in land, as, 11–13, 23, 24
  - life tenants', 41–43, 124
  - railways, 47–49
  - sale of goods issues, 25, 120–122
  - waste, 44–46
  - wills/estates, 20–22
- timber rights (Ontario)**
- boundary trees, 30, 31
  - conveyances, 29
  - registration of, 14–16, 28
- transportation, *see* floating/driving timber**

## INDEX

---

**trespass actions, *see also*  
municipal rights/liability;  
negligence; nuisance**

- charge to jury, 116
- Crown, by, 83, 84, 85
- damages, 107–113
- general, 50, 74, 82
- lessee of Crown land, by, 81
- licensee, by, 95, 163, 171
- limitation period, 116

- mining claims, 81, 84
- mortgagee, by, 78, 80
- municipality, by/against, 86–94
- person in possession, by, 86
- telephone companies, 75

**waste, *see* timber rights (general)**

**waterways, *see* floating/driving  
timber**

**wills/estates, 20–22**

## Index to Time

(All references are to paragraph numbers.)

- abridgement/extension of time**
- appeal, time for, 127
  - application after time expired, 112
  - commencement of action, time for, 124
  - consent, by, 116
  - consent orders, time periods in, 123
  - Criminal Code, 107, 108
  - discretion of court, 114, 124, 127, 128, 130
  - divorce, time for taking effect, 125
  - general, 106, 107, 110, 115, 129
  - jury trial, time for seeking, 126
  - leave to appeal, time for, 120
  - limitation periods, 109
  - mistake by counsel, relief from, 113, 118, 119
  - provincial statute not qualifying federal, 107
  - res judicata, 129
  - security for costs, 121, 122
  - service of originating process, 117
  - statute, time fixed by, 111
  - technical objections, 128
  - trial, service of notice/entry for, 130
  - “vested interest” of respondent, 127
- “after”, 77, 78**
- age, calculation of, 63, 105**
- “as soon as possible”, 41**
- astronomical time, 25**
- “at intervals of”, 48**
- “at least”, 23, 46, 75, 79**
- “at once”, 42**
- breathalyzer cases**
- “as soon as practicable”, 26
  - “at least fifteen minutes”, 33
  - errors in certificate re expression of time, 28–32
  - interval between tests, 33
  - time of day, 27
- “by”, 47**
- calendar month, 9, 10, 71**
- calendar year**
- British Columbia, 4
  - general, 3
  - Manitoba, 5
  - Ontario, 5
  - Saskatchewan, 5
- civil time, 25**
- clear days/months, 72, 75, 79, 104**
- commencement/termination of enactments, 25**
- computation of time**
- British Columbia, 63
  - court vacations, 98–104
  - days included/excluded, 62, 72, 74–86, 97, 104
  - general, 62
  - holidays included/excluded, 87–91, 93–96
  - months, 69–73
  - years, 64–68
- conflicting expressions of time, 49**
- court vacations, *see also* holiday**
- Alberta, 99, 103
  - British Columbia, 102, 103

- Federal Court, 98
- general, 104
- Manitoba, 100, 103
- Saskatchewan, 101
- Criminal Code**, 107, 108, *see*  
*also* breathalyzer cases
- custom/practice, effect of**, 12, 24
- day**
  - fractions of, 21, 97
  - general, 12, 13
  - holiday, 14–19
  - non-judicial days, 20
  - quarter-days, 22
  - Sunday, 20
  - time of, 25, 27
- daylight saving time**, *see* official time
- divorce**, 125
- dominical year**, 6
- fiscal year**, 7
- “forthwith”**, 34
- “from”**, 45, 77
- “hereafter”**, 23
- “heretofore”**, 23
- holiday**, *see also* court vacations
  - Alberta, 15
  - British Columbia, 16
  - federal, 14
  - Manitoba, 17
  - Ontario, 18
  - Saskatchewan, 19
- “in five years”**, 66
- interpretation of expressions**, 23, 24
- limitation periods**, 64, 65, 85, 104, 109
- lunar month**, 9, 10
- metric time**, 27
- military time**, 27
- month**, 9, 10, 71
- natural time**, 25
- “next”**, 23
- non-judicial days**, 20, 91
- “not later than”**, 62, 83
- “not less than”**, 79
- “now”**, 23
- official time**
  - Alberta, 51
  - British Columbia, 52
  - federal, 50
  - general, 61
  - Manitoba, 53
  - Ontario, 54–57
  - Saskatchewan, 58–60
- oil and gas leases**, 36, 62, 67
- “one year”**, 68
- quarters/quarter-days**, 22
- reasonable time**, 43
- running of time**, *see* computation of time
- sale of land**, 37–40
- Saturday**, 91
- school year**, 8
- sittings/terms, of court**, 22
- solar time**, 25
- standard time**, *see* official time
- Sunday**, 20, 91, 96
- tenders, deadline for**, 24
- time of day**, 25, 27
- time of the essence**
  - general, 35
  - oil leases, 36

## INDEX

---

- sale of land, 37–40
- “two previous months notice”, 72
- vacations**, *see* court vacations
- week**, 11
- wills/estates**, 88
- year**
  - British Columbia, 4, 6
  - calendar year, 3–5
  - dominical year, 6
  - fiscal year, 7
  - general, 1, 2
  - Manitoba, 5
  - Ontario, 5
  - Saskatchewan, 5
  - school year, 8



## Index to Torts

(All references are to paragraph numbers.)

- abuse of process**
  - act/threat furthering purpose, 205, 209
  - damage, 205
  - defences, 210, 211
  - elements of, 205–209
  - general, 204
  - illicit/collateral purpose, 205, 207, 208
  - motive, relevance, 208
  - reasonable/probable cause, 206
  - termination in plaintiff's favour, 206
- adultery**, 214
- agency**, 73
- appropriation of personality**, *see also* **defences**
  - common law, 136–139
  - damages, 138
  - death of plaintiff, 141
  - defamation, 136, 140
  - defences, 139
  - elements of, 137
  - general, 135
  - passing off, 136
  - pleadings, 137
  - statutory rights, 135, 140, 141
- assault**
  - consent, 97
  - intent, 16
- assignment of cause of action**, *see also* **parties/status**
  - assignable causes, 83
  - champerty and maintenance, 83
  - restrictions on, 82
  - subrogation, 84
- associations**, *see* **unincorporated associations**
- automatism**, 20
- bankruptcy, effect of**, 53, 54, 64
- battery**
  - consent, 97–99
  - general, 88
  - injury, 32
  - intent, 16
  - medical treatment, 99
- boating**, 124
- burden of proof**
  - general, 33
  - Lewis v. Cook, 34
  - multiple defendants, 34
  - res ipsa loquitur, 35
- capacity**, *see* **volition**
- causation**, 30, *see also* specific torts, e.g., **intimidation**
- champerty and maintenance**
  - assignment of cause of action, 83, 177
  - “champerty”, 172
  - contingency agreements, 179
  - damage, proof of, 180
  - elements of, 175–180
  - examples of, 175
  - general, 172, 173
  - improper motive, 176
  - incitement, 175
  - “maintenance”, 172
  - request vs. offer, relevance, 178
- Charter of Rights**, 12, 215
- children**, *see* **infants/dependants**

- compensation, as purpose of tort law**, 13
- concurrent contract/tort liability**
- damages, effect on, 38, 39
  - election of cause of action, 40
  - general, 36, 37
- confidence, breach of**
- communication between plaintiff/defendant, 163
  - defences, 165
  - elements of, 160–164
  - general, 159
  - identifiability, 162
  - inadvertent acquisition, 163
  - information protected, 161–163
  - knowledge/intent of defendant, 164
  - “novelty”, 161
  - recipes, 162
  - remedies, 166, 167
- conflict of laws**, *see* **jurisdiction**
- conspiracy**, 25
- constitutional issues**, 12, 124, 125
- contracts, inducing breach of**, *see also* **interference with economic interests**
- breach vs. interference, 155
  - causation, 149, 153
  - contract, proof of, 149
  - damages, 149, 156
  - defences, 157, 158
  - director’s liability, 154
  - elements of, 149–156
  - formation of contract, interference, 150
  - general, 148
  - intent, 152
  - knowledge of defendant, 149, 151
  - negligent inducement, 152
- corporations**, 46, 58, 134
- criminal conversation**, 214
- criminal liability**
- acquittal, effect on civil action, 121
  - general, 120, 121
  - punitive damages, effect on, 123
  - stay of civil proceedings, 122
  - tort liability distinguished, 120
- Crown**, 62, 63
- damages**, *see* **remedies**; specific torts, e.g., **appropriation of personality**
- death of plaintiff/defendant**, *see also* **parties/status**
- appropriation of personality, 141
  - common law, 80
  - general, 9
  - invasion of privacy, 133
  - statutory rights, 81
- defamation**
- appropriation of personality, 136
  - corporations, rights/liabilities, 46
  - injury, presumption of, 32
  - invasion of privacy, 128
  - motive, 25
  - privilege, 25
  - vicarious liability, 30
- defences**, *see also* specific torts, e.g., **invasion of privacy**
- accord and satisfaction, 107
  - automatism, 20
  - champerty and maintenance, 174
  - consent, 95, 97-99
  - estoppel, 106, 107
  - ex turpi causa, 90-94
  - general, 85
  - limitation periods, 9, 103–105
  - mistake, 26, 27

## INDEX

---

- necessity, 89
- official acts, 100
- release/settlement, 107
- res judicata, 106
- self defence/defence of property, 86–88
- statutory authority, 60, 101, 171
- volenti non fit injuria, 95, 96
- defendants**, *see also*  
**parties/status**
  - bankruptcy, effect of, 64
  - corporations, 58
  - Crown, 62, 63
  - general, 56
  - infants/dependants, 57
  - municipal corporations, 60
  - partnerships, 59
  - receivers, 65
  - unincorporated associations, 61
- definitions**, *see* specific entries, e.g., “**tort**”
- deterrence**, 13
- development of new torts**, 11, 12
- directors/officers**, 58, 154
- domestic relations, interference with**, 214, 215
- duty to injured party**, 28, 29
- economic interests**, *see* **contracts, inducing breach of; interference with economic interests**
- employment law**
  - employers as defendants, 70, 71
  - employers as plaintiffs, 45
  - interference with employment relations, 213
  - vicarious liability, 70, 71
- enticement**, 214
- evidence**, *see* **burden of proof**
- fiduciary duty**, *see* **confidence, breach of**
- functions of tort law**, 13
- general matters**, 1, 2
- harbouring**, 214
- husband and wife**, *see* **domestic relations, interference with; spouses**
- independent contractors**, 71
- infants/dependants**
  - defendants, as, 57
  - plaintiffs, as, 42, 43
  - vicarious liability for, 67, 68
- injunctions**, *see* **remedies**
- injury**, 30–32, *see also* **damages**
- intent**, *see also* **volition**
  - assault, 16
  - battery, 16
  - constructive intent, 15
  - general, 14, 17
  - motive distinguished, 23
  - onus on defendant, 15
  - proof of, 14
  - requirement to prove, 14
  - transferred intent, 16
  - volition distinguished, 20
- intentional infliction of mental suffering**, *see also* **defences**
  - acts/conduct, 143, 144
  - causation, 146
  - communications, 143, 144
  - defences, 147
  - elements of, 144–146
  - family law issues, 147
  - general, 128, 142, 143
  - “harm”, 145
  - “knowingly”, 144
  - negligence, 146

**interference with economic interests, *see also* contracts, inducing breach of**

- damage, 169
- defences, 171
- elements of, 169–171
- general, 168
- gross negligence, 169
- intent, 169
- labour relations, 168
- unauthorized acts, 170
- unlawful means, 168–171

**intimidation**

- asserting contractual right, 189
- causation, 190
- compliance with threat, 182, 187
- damage, 182, 190
- defences, 188
- elements of, 182–190
- express vs. implied, 183
- general, 181
- intent to injure, 182, 186
- three-party, 181
- two-party, 181
- unlawful threat, 182–185
- warnings, 184

**invasion of privacy, *see also* confidence, breach of; defences**

- common law (general), 126–129
- corporations, rights of, 134
- death of plaintiff, 133
- defamation, 128
- defences, 130, 132
- general, 126, 127, 129
- intentional infliction of mental suffering, 128
- nuisance, 128
- “privacy”, 131
- statutory rights (general), 126, 127, 130–134

- substantial/unreasonable invasion, 130
- trespass, 128
- wilful invasion, 130

**joint tortfeasors, *see also* parties/status**

- common design/plan, 74–77
- general, 74
- judgments, liability for, 78, 79
- *Lewis v. Cook*, 34

**jurisdiction**

- foreign lands, 119
- in personam, 117–119
- intra-jurisdictional torts, 114–116

**liability (general), principles of, *see also* vicarious liability**

- burden of proof, 33–35
- causation, 30
- concurrent, contract/tort, 36–40
- duty to injured party, 28, 29
- injury, 30–32
- intent, 14–17, 20, 23
- interest harmed, 30–32
- mistake, 26, 27
- motive, 23–25
- negligence, 10, 18, 28, 29
- standard determining, 14–20, 23
- strict liability, 19
- volition, 20–22

**limitation periods, *see* defences**

**loss, distribution of, 13**

**loss of consortium, 214**

**maintenance, *see* champerty and maintenance**

**mental incompetence, *see* infants/dependants**

**minors, *see* infants/dependants**

**mistake, 26, 27**

## INDEX

---

- motive**, *see also* specific torts, e.g., **champerty and maintenance**
- conspiracy, 25
  - defamation, 25
  - general, 23
  - good motives, 24
  - intent distinguished, 23
- municipal corporations**, 48, 49, 60
- nature of tort law**, 3–6
- negligence**
- duty of care, 28, 29
  - ex turpi causa, effect of, 90, 94
  - general, 10, 18
  - inducing breach of contract, 152
  - intentional infliction of mental suffering, 146
  - official acts, 100
  - statutory authority, 101
- new torts**, 11, 12
- nuisance**, 128
- overlapping causes of action**, 10
- parent/child**, *see* **infants/dependants**
- parties/status**, *see* **assignment of cause of action; death of plaintiff/defendant; defendants; joint tortfeasors; plaintiffs; vicarious liability**
- partnerships**, 47, 59, 72
- passing off**
- appropriation of personality, distinguished, 136
  - damage, 194, 203
  - elements of, 194–203
  - general, 191–193
  - imitation vs. misappropriation, 200
  - intent to injure, 194
  - misrepresentation, 194, 199, 201–203
  - reputation/goodwill, 192–198
  - shared trademarks, 198
- plaintiffs**, *see also* **parties/status**
- bankruptcy, effect of, 53, 54
  - corporations, 46, 58
  - employers, 45
  - general, 41
  - infants/dependants, 42, 43
  - municipal corporations, 48, 49
  - partnerships, 47
  - receivers, 55
  - spouses, 44
  - unincorporated associations, 50–52
- pleadings**
- defences, 85
  - general, 8, 9
  - historically, 7
  - overlapping causes of action, 10
- police associations**, 52
- principal/agent**, *see* **agency**
- privacy**, *see* **confidence, breach of; invasion of privacy**
- purpose of tort law**, 13
- receivers**, 55, 65
- remedies**, *see also* specific torts, e.g., **confidence, breach of**
- damages, 6, 9, 109–111, 123
  - declaration, 112
  - injunctions, 6, 113
  - self-help, 108
- risk, allocation of**, 13
- scope of title**, 1, 2
- sexual harassment**, 212

## TORTS

---

- spouses**, 44, 69, *see also*  
**domestic relations, interference with**
- stay of proceedings**, 122
- strict liability**, 19
- survival of actions**, *see* **death of plaintiff/defendant**
- “tort”**, 3–6, 120
- trade unions**, 51
- trademarks**, *see* **passing off**
- trespass**, 10, 128
- trust**, *see* **confidence, breach of**
- unincorporated associations**, 50–52, 61
- vicarious liability**, *see also*  
**liability (general) principles of; parties/status**
- employers, 70, 71
  - general, 66
  - independent contractors, 71
  - infants/dependants, 67, 68
  - partnerships, 72
  - principle/agent, 73
  - spouses, 69
- volition**, *see also* **intent**
- appreciation of consequences, relevance, 22
  - automatism, 20
  - capacity, 21
  - general, 20
  - intent distinguished, 20
  - motive distinguished, 23
  - onus on defendant, 20

## Index to Trade and Commerce

*(All references are to paragraph numbers.)*

### **combines and competition legislation**

- Canadian International Trade Tribunal, 25
- Competition Act, 20
- competition tribunal, validity and bias, 22
- foreign laws adversely affecting Canadian trade and commerce, 21
- investigation order, 24
- remedial action against detrimental mergers, 21
- restrictions in manufacture of product, 23

### **commercial expression**

- balanced with need to protect consumers, 48
- Charter, 47
- partial ban versus total ban, 50
- restrictions re professionals, 49
- signs and billboards, 50

### **constitutional principles**

- general principles, 2
- historical perspective, 3
- marketing, 6
- restraints on expansion of trade and commerce, 4, 5
  - federal regulation of key industries, 4, 5
  - provincial regulation of industry, professions/trades and labour issues, 5
- specific industries under trade and commerce, 7

### **exports and imports**

- Cultural Property Export and Import Act, 42
- export permits, issuance of, 46

- jurisdiction of Canadian International Trade Tribunal, 45
- notice issued under Export and Import Permits Act, 43
- offences under Export and Import Permits Act, 44

### **foreign investment law**

- federal regulation of particular economic sectors, 57–79
  - banking, 57–61
  - broadcasting, 62
  - energy, 68–77
    - Canada Petroleum Resources Act, 70–71
    - Canadian Ownership and Control Determination Act, 72–77
    - general, 68–69
  - insurance, 63–67
  - marketing schemes, 78
  - telecommunications, 79
- federal statutes dealing with international trade, 104–110
  - Bretton Woods and Related Agreements Act, 104
  - Canadian International Trade Tribunal Act, 105
  - Cultural Property Export and Import Act, 106
  - Department of Foreign Affairs and International Trade Act, 107
  - free trade agreements, 110
  - International Sale of Goods Contracts Convention Act, 108
  - United Nations Foreign Arbitral Awards Convention Act, 109

## Index to Trade Marks and Industrial Designs

(All references are to paragraph numbers.)

- abandoned trade-marks**, *see also* distinctiveness, loss of; registration (expungement)
- general, 183, 325, 327, 379
  - intention to abandon, 326
  - non-use, 326
  - onus of proof, 328
- accountings**, *see* damages/profits
- actions**, *see also* contempt; criminal offences; damages/profits; declaratory relief; delivering up; industrial designs; infringement; injunctions; passing off; remedies (general); trade libel
- acquiescence, effect of, 569
  - appeals, 618
  - certification marks, re, 39
  - common law marks, on, 31
  - conflict of laws, 76
  - costs, 605, 615, 616, 617
  - defences (infringement), 557–62
  - defences (passing off), 564–68, 584–86
  - delay, effect of, 569
  - detention of wares, 518, 521–523
  - disclaimers, effect of, 586
  - discovery, 545
  - distinguishing guises, 142
  - domain names, interim custody by court, 524, 525
  - evidence (infringement, of), 576–580
  - evidence (passing off, of), 581, 582
  - evidence (title of plaintiff, re), 573–575
  - evidence (trap orders), 583
  - foreign non-money judgment, 315
  - freedom of expression, 584, 585
  - injunctions, 546–555
  - interim custody of wares, 518–520
  - joinder of actions, 528, 529
  - jurisdiction of court, 27, 364, 365, 515, 516
  - limitation of actions, 570
  - particulars, 540–44
  - parties, 526, 527, 575
  - pleadings (general), 535–39
  - preservation of property, 525
  - res judicata, 571
  - stay of execution, 618
  - stay of proceedings, 572
  - trap orders, 583
  - vicarious liability, 530–34
- acquisition of rights**, *see also* assignments; registration
- adoption of trade-mark, 54–58
  - deviating use, 78, 79
- administration**
- general, 13, 14
  - register of trade-marks, 21–27
  - Registrar of Trade-Marks, 15–17
  - trade-mark agents, 18–20
- adoption of trade-mark**, 54–58, *see also* acquisition of rights; registration
- agents**, *see* trade-mark agents
- alteration of trade-mark**, 78, 79, 185, *see also* register of trade-marks (amendment)
- amendment**, *see* register of trade-marks (amendment); registration (applications)



- appearance**, *see* distinguishing guises
- application for**, *see* registration (applications)
- assignments**, *see also* licences
- carrying on business after, 511–513
  - confusing marks created by assignment, 313
  - deceiving the public, 316
  - distinctiveness of new owner, 316
  - general, 310–312, 314, 575
  - loss of distinctiveness, 329, 330
  - partial assignments, 314, 315, 320
  - registration of, 318, 319, 575
  - trade names, 317
  - “trafficking” in marks, 311
- associated trade-marks**, 131–133, *see also* registrable marks
- boy scouts**, 26
- Canadian Intellectual Property Office**, 13
- certification marks**
- action for unauthorized use, 39
  - change of purpose in use, 53
  - definition of, 36
  - distinguishing guises, 140
  - geographical marks, 41
  - licensing use by others, 38
  - persons entitled to register, 37
  - trade-marks confusing with, 40
- change of purpose in use**, 51, 354
- colour, effect of**, 186, 187, 735
- common law marks**, 31, 123
- computers**, *see* domain names/websites
- concurrent rights, registration of**, 150–152, *see also* registrable marks
- confusing trade-marks**, *see also* passing off; registrable marks
- assessment, 258, 263, 264, 265, 267, 270, 271, 274, 284, 444
- certification marks, confusion with**, 40
- “common to the trade”, 274, 275
  - common words, 273
  - co-regulation, 271
  - court rulings re, effect of, 227
  - date for determining, 261
  - expungement, 376
  - famous marks, 272, 308, 309, 279
  - foreign register, 271
  - general, 129, 130
  - inherent distinctiveness, 259, 272–275
  - initial interest confusion, 306, 307, 446
  - length of use, 259, 276, 277
  - “likelihood of confusion”, 270
  - location of business premises, 28
  - loss of distinctiveness, 262, 329–333
  - nature of  
wares/services/business, 259, 278–281
  - nature of trade, 282–288
  - non-use of registered mark, effect of, 262
  - onus of proof, 256
  - prior decisions, effect of, 269
  - public awareness, 259, 845, 286, 287
  - question of fact, as, 268
  - resemblance, degree of, 259, 266, 289–304
  - reverse confusion, 305, 445

## INDEX

---

- statutory criteria generally, 255, 256, 265
  - surrounding circumstances, 259, 260
  - test for, 129, 130, 258, 263, 264, 265, 267, 270, 274, 284
  - word marks vs. design marks, 301–04
- constitutional issues**, 8, 9
- contempt of court**, 494, 555, 594, 595, 597
- copyright**, 738–740
- corporations**, *see* names of corporations; vicarious liability
- criminal offences**, *see also* actions
- bottles, using trade-marked, 650
  - defacing/removing trade-marks, 649
  - false description of wares/services, 640–48
  - forfeiture of property, 653
  - forgery of trade-marks, 636–638
  - miscellaneous legislation re, 656
  - passing off/unfair trading, 639
  - punishments, 652
  - Royal Warrant, misrepresentations re, 654, 655
  - stamps/marks, counterfeiting, 657
  - used/reconditioned goods, selling, 651
- damages/profits**, *see also* actions; declaratory relief; injunctions; remedies (general)
- accountings, 600, 601, 614
  - delay by plaintiff, effect of, 603
  - election of plaintiff, 600, 601
  - general, 602
  - measure of damages, 607–613
  - patent cases, relevance of, 606
  - period covered by, 601
  - proof of, 604
  - reference re, 600, 604, 605
- declaratory relief**, 556, *see also* actions; injunctions
- definition of trade-mark**, 28–31
- delivering up**, *see also* actions; damages/profits; declaratory relief; injunctions; remedies (general)
- breach of order for, 597
  - delay by plaintiff, effect of, 599
  - depreciating goodwill cases, 397–402, 598
  - general, 596, 599
  - stay of order for, 618
- descriptive/misdescriptive trade-marks**, *see also* confusing trade-marks; passing off; registrable marks
- “character or quality”, 97
  - “clearly descriptive”, 96
  - conditions of production/employees, 106
  - disclaimer, 107
  - foreign trade-marks, effect of, 146
  - foreign words, 85, 103
  - general, 94–100
  - geographical words, 105, 125
  - invented words, 101
  - misspelt words, 104
  - secondary meaning, 122–124
  - suggestive words, 102
  - wares or services, 94, 97, 127, 128
- disclaimer**, 107, 198–202, 586
- distinctiveness**, *see also* confusing trade-marks; passing off; secondary meaning
- definition of, 42, 43, 47
  - domain names, 43, 48

- foreign trade-marks, 49, 147
- loss of, 329–33, 462
- multiple associations, 52
- Registrar’s determination of, 44, 45
- time for determining, 45, 46, 119, 120
- distinguishing guises**, *see also* passing off; registrable marks
  - certification marks, 140
  - definition of, 135
  - evidence re, 138
  - expungement, 141
  - function vs. appearance, 139
  - general, 134, 136
  - get-up distinguished, 467–476
  - industrial designs, as, 143
  - infringement actions, 142, 406, 407
  - registration of, effect, 137
- domain names/websites**, *see also* registrable marks
  - accessing websites, 666
  - actions re, 714–721
  - assigning of names/numbers, 679
  - bad faith conduct, 705–710
  - bookmarks, 666
  - browsers, 665
  - .ca (TLDs), 681, 682, 724
  - .com (TLDs), 685
  - components of domain names, 660
  - conflict between trade-mark/domain name rights, 687, 688
  - country codes, 686
  - “crawlers”, 667
  - custody of when action pending, 525, 526
  - directories, 666–673
  - dispute resolution (.ca TLDs), 690, 691
  - dispute resolution (TLDs generally), 687–689
  - dispute resolution (UDRP proceedings), 692–721
  - famous trade-marks, 309
  - freedom of expression, 688
  - functions of names, 661
  - garnishment of, 675
  - general, 47, 658, 659
  - generic, 683–85, 725
  - homepage, 663
  - HyperText Markup Language (HTML), 664
  - inactive websites, 702
  - indicator of source, 47, 75, 163, 675
  - initial interest confusion, 306, 474
  - initial protocol information, 30, 474
  - internet, nature of, 658
  - internet protocol address, 658
  - legitimate interest/rights, 700–704
  - mapping of, 659, 674
  - meta tags, 676, 677
  - nature of domain names, 674, 675
  - passing off, 309, 440, 479, 480, 494, 514
  - registration of, 660, 678–86
  - search engines, 666–673, 677
  - second level domain names (SLDs), 43, 678, 679
  - servers, 663
  - “spiders”, 667
  - suffixes, 698, 699
  - top level domain names (TLDs), 30, 474, 660, 677, 678

## INDEX

---

- transfer/control of, 717–70, 722–26
- uniform resource locator (URL), 662
- “use” arising from foreign sites, 69, 75
- webpages, 663
- website addresses, 662
- websites, 663
- evidence**, *see* actions; distinguishing guises; registration; secondary meaning
- expungement**, *see* registration (expungement)
- famous marks**, 272, 308, 309, 279, 514
- foreign registrations (effect of)**
  - “distinctive character”, 147
  - filing date, in Canada, 149
  - general, 144, 172–75
  - misdescription, effect of, 146
  - “substantially same” as foreign mark, 148
  - use abroad vs. registration, 145
- foreign words**, 83, 103, *see also* registrable marks
- fraudulent marks**, *see* prohibited/fraudulent trade-marks
- freedom of expression**, 584, 585, 688
- function vs. appearance**, 139, *see also* industrial designs
- geographical certification marks**, 41
- geographical words**, 105, 125, 154, 461, 496
- get-up**, *see* distinguishing guises; passing off
- girl guides**, 26
- historical characters**, 85, 90, *see also* registrable marks
- history**, *see* legislation
- industrial designs**
  - appealing to eye, 733
  - artistic merit not required, 736
  - assignments/licences, 756–759
  - definition/subject matter of, 728–737
  - colour, effect of, 735
  - copyright distinguished, 738–40
  - damages, 775–6
  - delivery up, 778
  - distinguishing guises as, 143
  - designs not registrable (examples), 732
  - general, 727
  - ideas not protected, 734
  - infringement, 758, 759, 765–774
  - injunctions, 777
  - international conventions, 781
  - limitation of actions, 782
  - marking of article, effect of, 751
  - originality, 741–748, 767
  - ornamental, design must be, 732
  - owner/proprietor of design, 754, 755
  - patent distinguished, 730
  - publication, 749, 750
  - redesigns, 737
  - register (amendment of), 760–64
  - registration, 731, 749, 752–55, 765, 779
  - remedies (general), 774
  - rules/regulations, 780
  - shape, 733
  - useful article, 729
  - utilitarian function, 729, 766

- infringement**, *see also* actions; industrial designs; passing off; trade libel
- adulterated wares, selling, 410, 453
  - containers bearing mark, use of, 415
  - copyright, effect of, 405
  - costs, 605, 615, 616, 617
  - defences, 557–562
  - distinguishing guises, 142, 406, 407
  - exporting goods bearing mark, 417
  - general, 393–396
  - goods of different quality, selling, 414, 453
  - goodwill, depreciating, 397–402
  - importing goods bearing confusing mark, 416
  - intention, relevance of, 409
  - passing off distinguished, 403, 404, 449–451
  - reconditioned goods, selling, 412, 453
  - second-hand goods, selling, 411, 453
  - spare parts, using, 414
  - spurious wares/goods, 559, 560
- injunctions**, *see also* actions; declaratory relief; industrial designs
- accounting in lieu of, 551
  - appeal/stay of injunction, 553
  - breach of, 555, 594, 595
  - delay in seeking, 551, 593, 631
  - general, 503, 507, 604
  - irreparable harm, 548, 549
  - official marks, re, 555
  - permanent, 590–592
  - quia timet, 550, 604
  - stay of, 618
  - test for, 546, 547
  - trade libel actions, 622, 631, 635
  - undertaking re damage to defendant, 553
- international law**, 10–12
- internet**, *see* domain names/websites
- invented words**, 101, 272
- jurisdiction**, *see* actions; constitutional issues
- legislation (Canadian)**
- common law marks, 31
  - constitutional issues, 8, 9
  - history, 1
  - *Canada Post Corporation Act*, 5
  - *Marketing Act*, 5
  - *Motor Vehicle Safety Act*, 5, 656
  - nature/effect of, 3, 4
  - Newfoundland, 2
  - *Plant Breeders' Rights Act*, 26
  - *Precious Metals Marking Act*, 5, 656
  - provincial legislation, 6
  - Quebec, 6, 7
  - regulations, 14
  - *Timber Marking Act*, 5, 656
  - *Tobacco Act*, 5
  - *Unfair Competition Act*, 23
- legislation (international)**, 10–12
- licences**, *see also* assignments
- historically, 321
  - improper licensing, effect of, 331
  - legislative changes, 322, 323
  - oral licences, 324
- literary/artistic works**, 463–466
- making trade-mark known**, 59–62, *see also* acquisition of rights; registration; use

- maple leaf**, 304
- misdescription**, *see*  
descriptive/misdescriptive trade-  
marks
- misspelt words**, 104
- names of business locations**, 510
- names of individuals**, *see also*  
registrable marks
- fictitious names, 91
  - general, 85–89, 153
  - historical characters, 85, 90
  - passing off, 497–502
  - “primarily merely”, 85, 88
  - “principal character”, 86, 87
  - secondary meaning, effect of,  
89, 121, 498
  - signatures, 92, 93
  - 30 year restriction, 85
- names of corporations**, 506–09
- non-use (removal for)**, *see also*  
register of trade-marks  
(amendment); registration  
(expungement); use
- amendment vs. expungement,  
351, 356
  - appeals, 361–363
  - cross-examinations, 345
  - decisions, notice/effect of, 359,  
360, 392
  - deviating use of mark, 352
  - effect of non-use, 356, 357
  - evidence/affidavits, 344, 345,  
348–352, 353, 354, 355, 362,  
363
  - general, 342–346
  - hearings, 358
  - initiating procedure, 346, 347
  - intention of owner, 357
  - purpose of legislation re, 343
  - summary nature of proceedings,  
344, 345
- offences**, *see* criminal offences
- official marks**, *see also*  
registrable marks
- general, 158, 161, 209, 554
  - parties entitled to, 158
  - “public authority”, 159
  - public notice of adoption/use,  
160
- packaging**, *see* distinguishing  
guises
- Paris Union**, 10–12
- passing off**, *see also* actions;  
confusing trade-marks; criminal  
offences; infringement; trade libel;  
trade name, copying
- action for, 451, 515
  - badges of fraud, 439
  - burden of proof, 437
  - common field of activity, 432,  
433, 488–490
  - confusing marks, legislation re,  
427
  - confusion of public, 419, 420,  
422, 442–446, 503
  - damage, 422, 423, 447, 448, 481
  - deceit, element of, 418, 435
  - defences, 555–568, 584–586
  - descriptive marks/names, misuse  
of, 454–460, 495
  - distinctiveness, loss of, 462
  - domain names, 309, 440, 479,  
480, 494, 514
  - elements of, 418, 422, 423
  - examples of infringing conduct  
(general), 434
  - foreign traders/activities,  
491–494
  - general, 396, 418
  - geographical words, use of, 461,  
496
  - get-up, copying, 467–74

- goodwill/reputation, proof of, 428–431
  - inferior wares of plaintiff, sale of, 453
  - infringement distinguished, 403, 404, 449–451
  - injunctions, 503, 507
  - intention of defendant, 438–441, 503–505
  - intra vires Parliament, 425
  - joint tort-feasors, rules apply, 436
  - misrepresentation, 418, 422, 432, 434, 435, 437, 441
  - non-registration of trade-mark, effect of, 451
  - purpose of action, 421
  - statutory codification of, 424–427
  - substitution for requested goods, 476
  - titles of literary/artistic works, 463–66
  - types of (general), 419, 420, 452
- pleadings**, *see* actions
- portraits**, 93, *see also* names
- profits**, *see* damages/profits
- prohibited/fraudulent trade-marks**, *see also* official marks; registrable marks
- authorized use of prohibited mark, 155
  - general, 153
  - geographical indications, 154
  - penalties for adoption/use of, 153
  - purpose of prohibitions, 156
  - wares and services, 157
- proposed trade-marks**
- application for, 33–35, 177–181, 230
  - commencement of use, declaration re, 35
  - definition of, 32
- RCMP**, 656
- Red Cross**, 153
- references**, 600, 604, 605
- register of trade-marks (amendment)**, *see also* registration (expungement); non-use (removal for)
- additional representations, demand for, 338
  - application for, 334–337
  - assignment of mark, after, 320
  - associated trade-marks, 133
  - change of representative, upon, 338
  - extending statement of wares/services, 336
  - jurisdiction of court, 27, 364, 365
  - non-use of mark, partial, 245
  - use, date of, 171
- register of trade-marks (general)**
- copies of documents, 22
  - database, 24–26
  - general, 21
  - indexes, 21
  - inspection of, 22, 24
  - online access to, 24–26
  - *Unfair Competition Act*, 23
- registered users**, *see* assignments; licences
- registrable marks (general)**, 83, 84, *see also* associated trade-marks; concurrent rights; confusing trade-marks; descriptive/misdescriptive trade-marks; distinguishing guises; domain names; foreign trade-marks; foreign words; names of

## INDEX

---

- individuals; official marks;  
prohibited/fraudulent trade-marks;  
secondary meaning; telephone  
numbers; wares or services
- Registrar of Trade-Marks**
- Acting Registrar, 15
  - appointment of, 15
  - duties re trade-marks, 17
  - filing of judgments/orders with, 243
  - Trade-Marks Journal, 16
- registration (appeals)**
- appeal against federal judge's reasons, 246
  - Attorney General as respondent, 234
  - evidence, 235, 236, 240
  - expungement proceedings, 244
  - failure to appeal, 373
  - general, 231, 242
  - interest to be considered, 239
  - judgments/orders, 243
  - judicial review, 245
  - notice of appeal, 233
  - standard of review, 237, 238, 241
  - timing of, 231, 232
- registration (applications)**, *see also* acquisition of rights; registration (appeals); registration (opposition to)
- abandonment of, 182, 191, 212, 220
  - advertisement of applications, 190, 203
  - allowance/registration, 229, 230
  - amendment of, 194–197, 337
  - colour of mark, 186, 187
  - consideration by Registrar, 188–190
  - correspondence with applicant/agent, 19
  - disclaimer, 107, 198–202
  - general, 184, 185
  - proposed trade-marks, 230
  - reply to official notices, 191–193
  - updated marks, 185
  - time extensions, 192, 193
- registration (expungement)**, *see also* infringement; non-use (removal for); register of trade-marks (amendment)
- abandonment of mark, 183, 325–28, 379
  - affidavits, 383, 384
  - appeal proceedings, effect of, 244
  - application for, 382
  - burden of proof, 386
  - confusing marks, 376
  - costs, 389
  - cross-examinations, 384
  - delay in seeking, 388
  - distinctiveness, lack of, 377, 378
  - distinguishing guises, 141
  - entitlement to register, lack of, 380
  - evidence, 383–385, 387
  - expungement hearing, 387
  - failure to appeal, effect of, 373
  - failure to renew, for, 340, 341
  - grounds for, 340, 341, 374–381
  - jurisdiction of court, 27, 364, 365
  - limitation period, 372
  - non-registrable marks, 375, 376
  - “person interested”, 247, 367–371
  - practice/procedure, 382–390
  - prior use of mark by another, 57
  - public interest, importance of, 366



- reference, availability of, 390
  - *res judicata*, 391, 392
  - restraint of trade, 381
  - standing to seek, 247, 367–71
  - summary proceedings, 383
  - use of wares, 387
- registration (general)**, *see also* acquisition of rights; register of trade-marks
- abandoned trade-marks, 183
  - assignments, of, 318, 319
  - effect/purpose of, 55, 56, 167, 253, 393, 394
  - industrial design vs. trade-mark, 731
  - renewals, 254
  - updated marks, 185
- registration (opposition to)**
- acquiescence in prior use, 207
  - adjournments, 224
  - confusing marks, 227
  - counterstatement, 212, 213
  - cross-examinations, 222
  - decisions/reasons of Registrar, 225
  - evidence/representations, 214–221, 226
  - frivolous objections, 211
  - grounds for, 205
  - notices, 224
  - onus of proof, 209
  - role of Board, 208
  - service of documents, 20
  - standing to oppose, 247
  - statement of opposition, 210, 213
  - timing of, 204, 206
  - validity of marks, challenging, 226
  - withdrawal of opposition, 214, 220
- written arguments, filing of, 223
- registration (persons entitled)**, *see also* acquisition of rights
- foreign trade-mark holders, 167–176
  - general, 80–82, 165–167
  - proposed trade-marks, 32–35, 177–181
  - rival claims, 166
  - use/making known, 59–62, 168–171, *see also* use
- registration (validity/effect of)**
- general, 247, 250–52, 253
  - incontestability, 248
  - invalidity, grounds of, 249
  - renewals, 254
- regulations**, *see* legislation (Canadian)
- remedies (general)**, 587–589, 600, *see also* actions; damages/profits; declaratory relief; delivering up; injunctions
- Royal Canadian Legion**, 26
- Royal Family**, 153
- secondary meaning**, *see also* distinctiveness; registrable marks
- descriptive words, 122–124
  - evidence of, 51, 110–112, 115, 116
  - effect of, 89
  - general, 50, 108–120
  - geographical words, 105, 125, 461
  - names, 89, 121, 498
  - territory where use required, 117, 126
  - test for, 113
  - time for determining existence of, 45, 46, 119, 120
  - use of mark by others, 118

## INDEX

---

- signatures**, 92, 93, *see also* names
- similar marks**, 167
- suggestive words**, 102
- telephone numbers**, 48, 164, 675, *see also* registrable marks
- titles of literary/artistic works**, 463–466
- trade libel (statutory)**, *see also* actions; criminal offences; infringement; passing off
- damages, 621
  - general, 619
  - injunctions, 622
  - knowledge of falsity, 620
  - malice, 620
- trade libel (common law)**, *see also* actions; criminal offences; infringement; passing off
- false statements, types of, 625–632
  - general, 623, 624
  - injunctions, 631, 635
  - manufacture under patent, representations re, 627
  - “original”/“only genuine”, holding out as, 627, 628
  - statements comparing goods, 629, 630
  - statements re infringement proceedings, 631, 632
  - truth as a defence, 633, 634
- trade-mark agents**
- authority to act, 19
  - correspondence with, 19
  - list of, 18
  - service of documents on, 20
- Trade-Marks Journal**, 16
- trade name, copying**, *see also* passing off
- basis of right, 477–487
  - business location, name of, 510
  - confusion, proof of, 482, 483, 486, 503
  - continuing business after assignment, 511–513
  - corporations, names of, 506–509
  - damage, 481, 484, 487
  - descriptive names, 495
  - domain names, 479, 480, 514
  - foreign traders/activities, 491–494
  - general, 317, 321
  - intention of defendant, 481, 503–505
  - length of use of name, 483
  - personal names, 497–502
  - similarity of business of parties, 485, 488–490
- updated marks**, 185, *see also* alteration of trade-mark
- use**, *see also* acquisition of rights; making trade-mark known; non-use (removal for); registration
- advertising, 70, 72, 74, 77
  - altering mark during use, 78, 79
  - change in use, 352
  - conflict of laws, 76
  - date of, 169–171
  - deemed use, 64, 70, 71
  - domain names, 77
  - exported goods, 71
  - general, 63–66, 77, 166, 168
  - “in the normal course of trade”, 67, 354
  - letterhead, 72
  - official mark, 162
  - preparatory work, 73
  - press releases, 72

## TRADE MARKS AND INDUSTRIAL DESIGNS

---

- public display, 162
  - test shipments/token use, 73
  - websites, 69, 75
- vicarious liability**, 530–534
- wares/services/business**, 94, 97, 127, 128, 157, 278–281, *see also* registrable marks
- websites**, *see* domain names/websites
- wines**, 26, 157

TRADE AND COMMERCE AND FOREIGN INVESTMENT IN  
CANADA

---

- • World Trade Organization Agreement Implementation Act, 109
- key federal statutes affecting trade and commerce, 80–103
- • Canada Business Corporations Act, 81–83
- • Canada Development Corporation Act, 85
- • Canadian Food Inspection Agency Act, 86
- • Canadian Wheat Board Act, 87
- • Citizenship Act, 80
- • Consumer Packaging and Labelling Act, 88
- • Criminal Code, 84
- • Farm Products Agencies Act, 89
- • Hazardous Products Act, 90
- • Investment Canada Act, 91–98
- • Meat Inspection Act, 99–100
- • Tobacco Act, 101
- • Trade Acts, 102–103
- government subsidies and development initiatives, 56**
- impairment of extraprovincial rights**
- power to impair extraprovincial contractual rights, 52
- validity of provincial statutes, 51
- marketing controls**
- agricultural marketing schemes, 27
- analysis of constitutionality of provincial legislation, 28
- inquiry by licensing agency re conduct of applicant, 31
- source of tribunal’s jurisdiction, 30
- specific market controls on market, 29
- use of Charter to nullify marketing schemes, 26
- mobility — people, goods and services**
- Charter rights, 53
- interprovincial trade, restriction on authority, 55
- right to transfer business assets, 54
- provincial regulation**
- Alberta, 111–122
- • Agricultural and Recreational Land Ownership Act, 111–114
- • Alberta Competitiveness Act, 115
- • Business Corporations Act, 116
- • Fair Trading Act, 117
- • Gaming and Liquor Act, 121
- • Land Titles Act, 119–120
- • Public Lands Act, 122
- British Columbia, 123–128
- • Business Practices and Consumer Protection Act, 123
- • Financial Institutions Act, 124
- • Land Act, 125
- • Liquor Control and Licensing Act, 126
- • Mineral Tenure Act, 127
- • Securities Act, 128
- Manitoba, 129–136
- • Corporations Act, 129–130
- • Discriminatory Business Practices Act, 131–132
- • Farm Products Marketing Act, 133
- • Liquor Control Act, 134

## INDEX

---

- • Manitoba Trade and Investment Corporation Act, 136
- • Securities Act, 135
- Ontario, 137–148
- • Business Corporations Act, 137
- • Collection Agencies Act, 138
- • Discriminatory Business Practices Act, 139–143
- • Economic Development and Trade Act, 144–145
- • Ontario Transportation Development Corporation Act, 146
- • Paperback and Periodical Distributors Act, 147
- • Securities Act, 148
- Saskatchewan
- • Alcohol and Gaming Regulation Act, 149–150
- • Business Corporations Act, 151
- • Economic and Co-operative Development Act, 152
- • Saskatchewan Farm Security Act, 153
- restraint of trade**
- condoned if benefitting Canadian public, 14
- former employee's right to compete, 13
- government contract providing for payment at minimum rate, 11
- lifetime ban on participation in particular field, 12
- restrictive covenants**
- determinations made by court, 15
- onus on employer, 16
- prima facie void, 16
- sale of business**
- employment not giving rise to legitimate proprietary interest, 19
- liability of vendor who competes with purchaser, 17
- unclean hands doctrine, 18
- trade custom and usage**
- conditions required for usage to be valid trade usage, 10
- governing award of contract, 8
- onus to establish implied term of contract, 9
- trade secrets and confidential information**
- breach of confidence/trade secrets by former employee, 36, 37, 40
- confidential information, requirements re, 33
- customer information of employer, 38
- dependency/vulnerability element re fiduciary relationship, 32
- liability of former employee for improper use of trade secrets, 35
- sealing orders, 41
- trade process having quality of confidence, 34
- trade secrets duty and reasonable time limitations, 39

## Index to Trespass

(All references are to paragraph numbers.)

- agency issues**, 77
- aiding/abetting/allowing**, 11, 13
- airspace**, 33, 110
- animals, trespass by/to**, 85–87, 189, 192
- assault**, *see* **trespass (person, to)**
- arrest of trespasser**, 185
- battery**, *see* **trespass (person, to)**
- case**, *see* **trespass (general)**
- cattle**, *see* **animals, trespass by/to**
- conversion**, *see* **trespass (chattels, to)**
- criminal trespass**, *see* **trespass (criminal)**
- crops**, 32, 72, 74, 82
- damages, trespass to chattels (compensatory)**, *see also* **trespass (chattels, to)**
  - accelerated depreciation, 221
  - Anton Piller order, 201
  - betterment, 222
  - defences, 214
  - diminution in value, 219, 220
  - embarrassment/inconvenience, 224
  - general, 217
  - interest, 218
  - loss of profit, 223
  - nominal damages, 219
  - repair costs, 219, 221
  - value of goods, 218
- damages, trespass to land (compensatory)**, *see also* **trespass (land, to)**
  - accidental vs. intentional trespass, 169
  - depreciation in land value, 161, 164
  - extent of invasion, changes/disturbances to property, 174
  - general, 158, 160
  - lessee's rights, 172
  - loss of profit/pecuniary losses, 168, 169
  - mitigation, 170, 172
  - negligent trespass, 169
  - rental value of property, 165, 167
  - repair costs, 162–163
  - shoplifters, 35, 159
  - special damages, 167
  - taking of title vs. possession, 166
  - vesting of land in trespasser, 173
- damages, trespass to person (compensatory)**, *see also* **trespass (person, to)**
  - cap on, 243
  - false imprisonment, 296
  - general, 291–294
  - provocation, effect of, 295, 300, 301
- defences (trespass to person)**, *see also* **trespass (person, to)**
  - age, 288
  - consent, 272–281, 284, 285
  - contributory negligence, 251, 286
  - criminal charges/conviction, 287, 298
  - discipline/control of children, 263, 264
  - ejection of visitors, 269–271
  - ex turpi causa, 244, 284

- honest belief, 290
- justification/legal authority, 259–268
- mental illness, 230, 282, 283
- protection of others, 237, 259, 260, 289
- protection/recovery of property, 262
- provocation, 258, 295, 300, 301
- reasonable force, 261
- self defence, 253–259
- volenti non fit injuria, 284, 285
- easements, see trespass (land, to)**
- ejectment, see trespass (land, to)**
- employer’s liability, 6, 105, 190, 245–250, 299**
- execution, see seizure of goods**
- highways/streets, 12, 106**
- hotels/innkeepers, see trespass (land, to)**
- hunting, 120, 151, 179**
- Indian Reserves, 58, 92–94**
- injunctions, 153–157, 302**
- invasion of privacy, 31, 238**
- invitees/leave and licence (trespass to land), see also trespass (land, to)**
  - acquiescence, 140
  - authority to invite/consent, 132, 135
  - general, 37, 48, 129, 130
  - inferred licences, 138
  - misrepresentation, 131
  - refusal to leave, 36, 102
  - revocation of licence, 136–138
  - rights of way, 134
  - successors in title, 141
  - third parties, 133
  - validity of consent, 139
- joint tenants, see trespass (land, to)**
- joint trespass, 8–11**
- jurisdiction, see practice/procedure**
- landlord’s/tenant’s rights**
  - abandoned goods, 78
  - crops, 74
  - possession requirements, 67, 68
  - privacy, infringement, 76
  - timber, 79
  - unauthorized use by landlord, 75
  - wrongful entry, 76
  - wrongful eviction, 74, 77
- licensees, see trespass (land, to)**
- limitation of actions**
  - Alberta, 15
  - British Columbia, 16
  - discoverability rule, 240
  - estoppel barring limitation defence, 21, 146
  - federal, 22
  - Manitoba, 17
  - medical treatment cases, 19
  - Ontario, 18
  - public officers/authorities, 19
  - Saskatchewan, 20
  - sexual misconduct cases, 16, 17, 20, 240, 241
- mineral rights, 106–109**
- mischief, see trespass (chattels, to)**
- mistake, 149**
- mortgagor’s/mortgagee’s rights, 63–66, 96**
- negligence, see trespass (general); trespass (land, to)**
- nuisance, 7, 31, 88, 89**

- petty trespass, see trespass (petty)**
- picketing**, 49, 111
- pleadings**
- accelerated depreciation, 221
  - assault vs. battery, 26
  - malice, 207
  - mesne profits, 23
- police**, 91, 127
- possession requirements (trespass to land), see also trespass (land, to)**
- Crown land, 57
  - entry/taking possession, 44–46, 54
  - general, 41, 42, 53, 54
  - giving up/loss of possession, 61
  - jus tertii, 142–144
  - landlord/tenant, 67, 68
  - legal title, 55
  - mortgagor/mortgagee, 63–66
  - occupiers having no title, 56, 70–73
  - publicity of possession, 52
  - right to possession, 54
  - use vs. possession, 47, 59
- power lines**, 117
- practice/procedure**
- equitable estate holder, action by, 25
  - jurisdiction (Federal Court), 24, 28
  - limitation of actions, 15–22
  - notice to Attorney General, 14
  - onus of proof, 27
- privacy, see invasion of privacy**
- profits a prendre, see trespass (land, to)**
- seizure/sale (trespass to chattels), see also trespass (chattels, to)**
- consent/leave and licence, 206
  - force, excess, 203
  - general, 9, 10, 34, 102, 192, 200
  - judgment creditor's liability, 205
  - persons liable for, 210, 211
  - resistance to/defence of property, 204
  - ships, 209
  - trespass ab initio, 208
  - validity of warrant/writ, 202, 205
- ships**, 209
- tax sales**, 49, 102
- technical trespass**, 12
- tenants in common, see trespass (land, to)**
- theft**, 35, 159
- third party's liability**, 6
- trees/timber rights**, 32, 48, 50, 73, 95–101, 215
- trespass (ab initio)**, 102, 103, 208
- trespass (chattels, to)**
- animals, 189, 192
  - consent/leave and licence, 206
  - conversion, 197, 198, 225
  - damages (exemplary), 226
  - defences, 212–216
  - elements of, generally, 188
  - interpleader, 205
  - judgment creditor's liability, 205
  - limited interest in goods, 144
  - mischief, 199
  - persons liable for, 210, 211
  - pleadings, 207, 221
  - possession founding action, 191–194
  - recapture of goods, 145



## TRESPASS

---

- reversioners' rights, 83, 192
  - ships, 209
  - tax sales, 102
  - telephone cables, 189
  - timber, 215
  - trover, 197, 198
  - vicarious liability, 190
  - wrongful interference, 195, 196
- trespass (criminal)**
- land, to, 187, 211
  - person, to, 227
- trespass (general)**
- aiding/abetting/allowing trespass, 11, 13
  - case distinguished, 5, 6
  - damage not required, 1, 7
  - direct vs. consequential interference, 1, 5
  - duty to object, plaintiff's, 2
  - employer/third party liability, 6
  - infliction of injury, 3
  - joint trespass, 8–11
  - mistake, effect of, 2
  - nature of, 1–4
  - nuisance distinguished, 7, 31
  - owner/occupier's rights, 4
  - question of fact for jury, 3
  - seizure of goods, 9
  - technical trespass, 12
  - trespasser's rights, 4
  - wrongful entry, 3
- trespass (land, to)**
- airspace, 33, 110
  - animals, by, 85–87
  - blazed lines, 52
  - continuing trespass, 113–119
  - crops, 32, 72, 74, 82
  - Crown land, 57
  - damages (exemplary), 175–178
  - defences, 129–151
  - definition, 3, 29
  - easements, 48
  - ejectment actions, 60, 62, 80
  - entry onto seller's property to remove item purchased, 152
  - exclusion rights of owner/occupier, 40
  - expropriation, 124
  - fencing/enclosing land, 51
  - forcible entry, right to, 38, 90, 91
  - foreshore, possession of, 49
  - highways/streets, 106
  - hunters, 120, 151
  - Indian reserves, 58, 92–94
  - injunctions, 153–157
  - innkeepers/guests, 34, 59, 102
  - intent of trespasser, 29
  - invasion of privacy, 31, 238
  - joint tenants/tenants in common, 79–81
  - jus tertii, 142–144
  - landlord's/tenant's rights, 67–69, 74–79, 147
  - legal title obtained through adverse possession, 112
  - liability to trespassers/negligence, 120–123
  - methods of committing (general), 30, 31
  - mineral rights, 106–109
  - mistake, 149
  - mortgagor's/mortgagee's rights, 63–66, 96
  - municipalities, liability of, 39
  - nuisance, abatement of, 88, 89
  - objects falling/deposited on, 32, 34
  - occupier's rights, 56, 70–73, 84, 90
  - picketing, 49, 111

## INDEX

---

- police, 91, 127
  - power lines, 117
  - preservation of life/property, 148
  - profits à prendre, 48
  - purchaser's rights, 119
  - recapture of goods, 145
  - reversioners' rights, 83
  - riverbeds, 47
  - sheriff selling seized goods, 34
  - statutory authorization for, 124–128
  - subsidence/support, 32
  - subsurface, damage to, 33, 43
  - surveyors, 150
  - tax sales, 49, 102
  - theatre seats, 59
  - theft, trespass for purpose of, 35
  - trees/timber rights, 32, 48, 50, 79, 95–101
  - trespass ab initio, 102, 103
  - vicarious liability, 6, 105
  - water, escape/directing of, 32, 104
  - waterways, trespass on, 34
- trespass (person, to)**
- arrests, unlawful/excessive force, 236, 265, 266, 268, 290
  - assault (general), 230, 231, 292
  - battery (general), 228, 229, 231, 292
  - children, parent failing to protect, 242
  - criminal charges, effect on civil cases, 287, 291, 298, 302
  - criminal injuries compensation, 303, 304
  - criminal trespass, 227
  - damage not required, 232
  - damages (criminal injuries compensation), 303, 304
  - damages (exemplary), 297–299
  - damages (mitigation), 300, 301
  - employer's/vicarious liability, 245–250, 299
  - false imprisonment (general), 227, 252, 296
  - foreseeability, 292
  - general, 1, 227, 234
  - injunctions, 302
  - intentional trespass, 1, 233
  - invasion of privacy, 31, 238
  - medical treatment, consent to, 235, 273, 274, 279
  - mental illness, 230, 282, 283
  - multiple defendants, liability of, 234
  - negligent trespass, 1, 233
  - occupier's liability, 251
  - onus of proof, 27, 228, 229, 234, 272, 276, 280
  - parents, 263, 264
  - police officers, 236, 265, 266, 268, 290
  - sexual assault/rape/incest, 239, 240, 250, 280, 281
  - teachers, 263, 264
  - trivial contacts, 232
- trespass (petty), see also trespass (land, to)**
- Alberta, 182
  - British Columbia, 180, 181
  - effect of conviction, 186
  - general, 179
  - Manitoba, 183
  - Ontario, 184
- trover, see trespass (chattels, to)**
- vicarious liability, 6, 105, 190, 245–250, 299**

## Index to Trials

*(All references are to paragraph numbers.)*

- **abandoned vehicle**, 250
- **adjournments**
  - absence of party, 151, 152
  - discretion of trial judge, 140–145
    - • Alberta, 143
    - • appellate interference, 140
    - • order that counsel pay costs, 145
    - • right to counsel of choice, 144
    - • terms, 142
    - • where no prejudice to other side, 141
  - grounds, 146–154
    - • absence of witness, 147–150
      - • • Federal Courts Rules, 150
      - • • injustice to opposing party, 149
      - • • Saskatchewan, 148
      - • • sole discretion of trial judge, 147
  - refused for delay, 153, 154
- **cross-examination**
  - rights of witnesses, 249–252
  - • admissions, 251
  - • document used to refresh memory, 252
  - • notice of intention to impeach credibility, 249
  - • use of discovery evidence to impeach credibility, 250
  - scope of questions, 253–255
  - vexatious questions, 256
- **evidence and argument after trial**
  - after rendering of oral judgment, 287
  - appeal already taken, 294
  - appellate deference re refusal to re-open trial, 285
  - evidence of absent witness, 288
  - fresh evidence, 284
  - important influence on decision, 291
  - introduction of opinion evidence, 290
  - leave to recall witness for further cross-examination, 292
  - less stringent rules than fresh evidence rules on appeal, 289
  - proof of material fact after trial, 282
  - remedy where party surprised by evidence, 293
  - re-opening before judgment, 286
  - setting aside judgment, Federal Court, 283
- **evidence in reply**, 257, 258
- **exclusion of persons from hearing**
  - public, 170–181
    - • doctor’s right to practice in issue, 177
    - • exception in case of infants, mentally deficient, 171
    - • exception re protecting identity of person who committed sexual assault, 174
    - • exceptions to open court rule, 175
    - • Federal Court, 176
    - • hearing of recording by trial judge in chambers, 179
    - • in camera, 170
    - • landlord’s application for writ of possession, 178

## TRIALS

---

- • prohibiting publication of names/identity of witnesses, 180
- • prohibition terminated at conclusion of case, 181
- • remedies for wrongful use of court proceedings, 172
- • witnesses' testimony in open court and orally, 173
- witnesses, 164–169
  - • Alberta, 165
  - • inherent jurisdiction, 164
  - • Manitoba, Saskatchewan, 166
  - • more than one plaintiff, 168
  - • party wrongfully excluded, 169
- expedited and summary proceedings**
  - Alberta, 470–484
  - British Columbia, 450–460
  - Federal Court simplified procedure, 490–493
  - Manitoba, 465–469
  - Saskatchewan, 485–489
- joinder and severance**
  - consolidation or trial together, 30–36
    - • Alberta, Manitoba, Saskatchewan, 33
  - • authority to order consolidation of different proceedings, 32
  - • British Columbia, 34
  - • defamation action, 36
  - • determining factors, 30
  - • Federal Court, 35
  - • test applied, 31
  - separate trial of issues, 43–50
    - • Alberta, 43
    - • British Columbia, 44
    - • determination of one issue and discovery on others, 48
  - • Federal Court, 46
  - • infirmities of principal witness, 49
  - • judicial review application, 50
  - • liability and damages, 47
  - • Manitoba, Saskatchewan, 45
  - separate trials, 37–42
    - • amendment resulting in embarrassment, delay and expense, 39
    - • Federal Court, 38
    - • Manitoba, Saskatchewan, 37
    - • refusal to stay, 40, 41
    - • test cases, 42
- juror, discharge of**
  - bias, 333, 334
  - illness or other cause, 331
  - improper motive, 332
  - verdict, 331
- jurors, number of**
  - Alberta, Manitoba, Saskatchewan, 315
  - British Columbia, 316
- jurors, qualifications and exemptions**
  - disqualifications, 295
  - religious/public interest/hardship/infirmity exemptions, 297
  - exemptions, 295
  - exemptions, British Columbia, 296, 297
  - specific age/prior service/language difficulties exemptions, 298
- jury challenges**
  - challenges for cause, 319–324
    - • Alberta, 320, 321
    - • British Columbia, 321, 322
    - • Manitoba, 323
    - • Saskatchewan, 324

## INDEX

---

- general, 317
- peremptory challenges, 318
- jury, discharge of**
  - general, 335–343
  - • any evidence upon which jury could reasonably come to conclusion, 337
  - • continuing as judge alone trial, 338
  - • inadmissible evidence elicited, 340
  - • matter of necessity and judge’s discretion, 335
  - • mention of insurance, 341
  - • severing of issues, 343
  - improper conduct of counsel, 344–348
    - • discretion to order new trial, 344
    - • objection re opening remarks, 345
    - • order that trial continue without jury, 348
    - • stating of amount claimed as damages, 347
- jury selection**
  - Alberta, 305, 306
  - British Columbia, 307
  - general, 303, 304
  - Manitoba, 308–311
  - Saskatchewan, 312–314
- jury, separation of**
  - Alberta, 349–351
  - belief by counsel that jury received evidence not led, 357
  - juror and interested person speaking, 356
  - Manitoba, 352–354
  - Saskatchewan, 355
- jury service, application for relief from**
  - Alberta, 299
  - British Columbia, 300
  - Manitoba, 301
  - Saskatchewan, 302
- jury, view by, 358–360**
- jury trial, charge by trial judge**
  - differing functions of judge and jury, 362–367
    - • contributory negligence, 367
    - • facts from which negligence reasonably inferred, 362
    - • facts/documents where no dispute, 365
    - • questions of mixed fact and law
    - • terms of oral contract, 363
  - general, 361
  - misdirection and non-direction, 368–378
    - • general, 368–373
    - • instances of misdirection, 374–378
- jury trial, payment of expenses**
  - Alberta, 325
  - British Columbia, 326
  - Manitoba, 327
  - Saskatchewan, 328–330
- jury trial, verdict**
  - errors in verdict, 395–397
  - general verdict, 382–385
  - questions put to jury, 386–394
  - reconsideration, 399–401
  - refusal to accept verdict, 398
  - requirement of unanimity, 379–381
- language of proceedings**
  - examinations for discovery, 157
  - right to interpreter, 155

- simultaneous interpretation (Federal Court), 156
- translation where credibility affected, 158
- leading of evidence**
  - affidavits, depositions and commission evidence, 229–232
  - demonstrative evidence, 246–248
  - discovery evidence, 233–242
    - • Federal Court, 234–236
    - • infant/mentally incompetent person, 240
    - • not to be read in until offered by parties, 237
    - • pre-trial examination of non-party, 241
    - • rebuttal testimony, 239
    - • resumption of discovery during trial, 242
    - • self-contained parts, 238
    - • western provinces, 233
  - examination of witnesses, 203–228
    - • counsel as witness, 210
    - • examination by telephone, 204–209
    - • expert witnesses, 211–228
      - • • Alberta, 211–217
      - • • British Columbia, 218–221
      - • • Federal Court, 224–227
      - • • Manitoba, 222
      - • • purpose, 228
      - • • Saskatchewan, 223
    - • testimony in open court, 203
  - evidence from other causes, 243–245
  - orders of court, 198–202
    - • limiting right of party to require proof in usual ways, 199
  - • mode of proving fact/document, 198, 201, 202
- • production of documents, 200
- new trials**
  - • conduct of new trial, 444–449
    - • • appellate decision on substantial question in litigation, 446
    - • • cross-examination on differences with evidence given at first trial, 445
    - • • judge from original trial not to preside, 449
    - • • irrevocable choice re nature of forum, 448
    - • • new trial of entire case or particular question, 447
    - • • references to first trial, 445
    - • • untrammelled by decisions made at first trial, 444
  - • discretion of court, 402–408
  - • grounds, 409–439
    - • • discovery of new evidence, 422–427
    - • • erroneous treatment of evidence, 416–421
    - • • general, 409–415
    - • • improper assessment of damages, 436–439
    - • • misdirection of jury, 428–433
    - • • perverse or ambiguous verdict, 434–435
  - • practice, 440
    - • • affidavit from witness contradicting trial testimony, 443
    - • • affidavit that witness since trial had made statements inconsistent with testimony, 443
    - • • discovery of new evidence, 442
    - • • new trial sought on ground of fraud, 441

## INDEX

---

- • where no request for new trial, 440
- non-appearance of party**, 182, 183
- nonsuit**
  - effect of making motion, 280, 281
  - general, 267–276
    - • Alberta, 268
    - • British Columbia, 269
    - • discretion to allow nonsuit without election, 272
    - • discretion to permit calling of further evidence, 273
    - • election by defendant, 271
    - • opportunity of calling evidence to establish defence, 274
    - • reversal of finding re prima facie case, 275
    - • Saskatchewan, 270
    - • upon opening statement, 267
  - grant or refusal of motion, 278, 279
  - joint or several defendants, 276, 277
- objections and arguments by counsel**
  - argument in Federal Court, 261
  - defence not formally pleaded, 266
  - judgment prior to argument, 262
  - reliance by plaintiff on alternate basis, 265
  - reply argument, 263
  - scope of argument, 264
  - timing of objection, 259
  - trial judge’s discretion re argument, 260
- opening remarks**
  - do not constitute admissions, 184
- Federal Court, 185
- participants at trial**
  - amicus curiae, 163
  - court-appointed experts, 159–162
    - • assessors, 159, 160
    - • report on question of fact or opinion, 159
    - • trial judge to exercise own judgment, 161
    - • trial not a scientific exploration, 162
- place of trial**
  - application to change place of trial, 19–29
    - • balance of convenience, 23–25
    - • factors considered, 26–29
      - • • connection with proposed place of trial, 26, 27
      - • • political considerations, 28
      - • • publicity, 29
    - • procedure, 19–22
      - • • affidavits, 20
      - • • family law proceedings (Saskatchewan), 21
      - • • specific application required, 22
  - selection by plaintiff, 6–18
    - • general, 6
    - • legislative provisions, 7–13
      - • • Alberta, 7, 8
      - • • British Columbia, 7, 9
      - • • divorce proceedings, 13
      - • • Federal Court, 14, 15
      - • • Manitoba, 7, 10
      - • • Saskatchewan, 7, 11, 12
    - • place cause of action arising, 16–18
- powers and duties of trial judge**
  - comments and remarks, 194–196
  - findings on evidence, 187–189

## TRIALS

---

- • decision in favour of one of conflicting versions, 188
- • findings of fact, 187
- • reasons for rejecting testimony, 189
- general supervision of trial, 186
- hearing witnesses, 190, 191
- inspection of property, 197
- interview in chambers, 193
- questioning witnesses, 192
- pre-trial conference**
- communication of statement made, 129
- Federal Court, 124, 125, 127
- judge hearing action with consent of parties, 130, 131
- judge not compellable to testify, 128
- matters aiding in disposition, 122
- procedure, Saskatchewan, 123
- proceedings on point of law**
- grounds, 51
- Federal Court, 53
- final disposition of action, 54
- piecemeal consideration of matters, 56
- Saskatchewan, 52
- selection of trial by jury**
- Alberta, 57–65
- British Columbia, 66–81
- federal, 91
- loss of right to jury trial, 92
- Manitoba, 82–86
- Saskatchewan, 87–90
- setting action down for trial**
- Alberta, 93–98
- • certificate requirements, 94
- • dispute resolution processes, 94
- • referring of matter to judge for directions, 96
- • request to schedule date, 93
- • setting of trial date by clerk, 95, 96
- • where no statement of defence, 98
- British Columbia, 99–108
- • date of hearing, 108
- • direction by court, 103, 104
- • notice of trial, 99, 100
- • requirements after entry for trial, 105–107
- • service of notice, 101, 102
- Federal Court, 119–121
- • setting down for trial, 119, 120
- • trial record, 121
- Manitoba, 109–112
- • dismissal of action for delay, 112
- • initiation of procedure, 109
- • pre-trial conference, 110
- • trial record, 110
- Saskatchewan, 113–118
- • pre-trial conference, 113
- • setting down for trial, 114–118
- time of trial**
- expedition of proceedings, 136–139
- • dismissal for delay, 137, 138
- • early trial (Saskatchewan), 139
- • general power to extend/shorten time periods, 136
- general, 132–135
- • Alberta, 133
- • British Columbia, 132
- • Manitoba, 135



## INDEX

---

- • Saskatchewan, 134
- trial**
  - commencement, 4
  - completion, 5
  - definition, 1,2
  - object, 3

## Index to Trusts

(All references are to paragraph numbers.)

- accounting**, *see* trustees  
(accounting)
- acquiescence**, 368–375
- actions**, *see* beneficiaries' rights;  
breach of trust; limitation of  
actions; practice/procedure; Public  
Trustee; trustees (actions  
involving); trustees (liability of)
- administration of trust**, *see*  
beneficiaries' rights; trustees
- advice and directions**, *see also*  
practice/procedure
- British Columbia, 34, 145, 273
  - general, 270–73, 287
  - Saskatchewan, 88
- agency distinguished**, 107
- agents, liability of**, 224, 315
- appointment**, *see* trustees  
(appointment)
- arrangements**, *see*  
variation/revocation
- banking relationship  
distinguished**, 107
- bare trusts**, 99
- beneficiaries' rights**, 303, 304,  
353, *see also* breach of trust;  
following trust property; trustees  
(liability of); variation/revocation
- “beneficiary”**, 97
- breach of trust**, *see also*  
constructive trusts; trustees  
(liability of)
- breach of trust (Alberta)**
- holding investment no longer  
authorized, 4
  - instigated by beneficiary, 6, 323
  - limitation of actions, 23
  - relief from, by court, 8
- breach of trust (British  
Columbia)**
- holding investment no longer  
authorized, 30
  - limitation of actions, 43
  - relief from, by court, 37
- breach of trust (general)**
- agent's liability for, 315
  - damages, calculation of, 306,  
307, 309
  - defences, 311, 312, 323
  - directors of corporation trustees,  
318
  - employer's liability for  
employee breach, 312
  - failure to convert assets, 245
  - failure to recover money owed,  
311
  - interest on trust funds used,  
308–310
  - losses, recovery of, 306
  - miscellaneous, 101, 132
  - persons liable for, 314
  - profits, discharging of, 305, 307
  - Public Trustee, liability of, 320
  - relief from, 321–24
  - sale of assets, re, 313
  - solicitor misappropriating funds,  
317
  - torts, liability for, 319
  - trustee de son tort, 316
- breach of trust (Manitoba)**
- holding investment no longer  
authorized, 50
  - instigated by beneficiary, 53,  
323
  - limitation of actions, 57, 58

- relief from, by court, 54
- breach of trust (Ontario)**
  - limitation of actions, 75–77
  - relief from, by court, 62
- breach of trust (Saskatchewan)**
  - holding investment no longer authorized, 82
  - instigated by beneficiary, 85, 323
  - limitation of actions, 93, 94
  - relief from, by court, 87, 88
- certainty**, *see* three certainties
- “cestui que trust”**, 97, 152
- charitable trusts**, 72, 106
- children**, *see* minors
- Clayton’s Case, rule in**, 335
- compensation**, *see* trustees (remuneration)
- conflict of interest**, *see* trustees (conflict of interest)
- conflict of laws**, 381
- constructive trusts**
  - commercial relationships, 128
  - family law cases, 135, 136
  - fiduciaries, gains by, 131
  - general, 105
  - intention of parties, 127
  - miscellaneous examples, 137
  - nature/purpose of, 127
  - profit from criminal activity, 134
  - reverse constructive trust, 136
  - secret trusts, 103, 108, 109, 133
  - standard for imposing, 130
  - trustee de son tort, 101, 132
  - unjust enrichment, 127–129
- contracts distinguished**, 107
- costs**, *see also* practice/procedure; trustees (actions involving)
  - applications re distribution of trust, 380
  - creditors suing beneficiary, 379
  - disputes between cestui/trustee, 377
  - general, 376
  - scale of costs, 376–378
- death**, *see* trustees (death of)
- debtor-creditor distinguished**, 107
- definitions**, *see* interpretation/construction; specific terms, e.g., “trust”
- delay**, 368–375
- dependent adults**, 90
- discharge**, *see* trustees (removal/discharge)
- execution against**, 106
- express trusts**
  - capacity of settlor, 116
  - creation of, 115–120
  - creditors, avoidance of, 119
  - general, 110, 111
  - non-compliance with statute, 117
  - tax issues, 118
  - undue influence, 120
- family law**, *see* constructive trusts; resulting trusts
- fiduciaries**, *see* breach of trust; constructive trusts
- following trust property**, *see also* beneficiaries’ rights
  - bankruptcy, effect of, 330, 331, 334
  - charge on vs. right to take property, 327, 330
  - Clayton’s Case, rule in, 335
  - general, 325, 326, 328, 337

## INDEX

---

- loss of right, 325, 334, 337–341
  - marshalling, doctrine of, 336
  - mixed funds, 327, 329–332
  - partnership assets, 333
  - pledges of trust property, 336
  - volunteers, rights of, 337
- gifts distinguished**, 107
- insurance**, 281
- inter vivos/living trust**, 100
- interpretation/construction**, 121
- investments (Alberta)**
- authorized by statute/instrument, 1–3, 254
  - court approval, application for, 2
  - delegation of authority, 4
  - discretion of trustee, 4
  - duty/liability, re, 3, 4, 238
  - holding investment no longer authorized, 4
  - paramountcy of trust instrument, 2, 3
- investments (British Columbia)**
- authorized by statute/instrument, 25–28, 254
  - court approval, application for, 26
  - discretion of trustee, 29
  - duty/liability, re, 26, 36, 238
  - holding investment no longer authorized, 30
  - mortgages, 31
  - paramountcy of trust instrument, 28
- investments (general)**
- authorized, 1–3, 25–28, 45, 59, 80, 254, 255, 260
  - discretion, 256, 257, 261
  - exercise of powers, 245, 246
  - general, 253, 258, 259, 261
  - “investment”, 257
  - risk, exposure to, 256
  - unauthorized, 249, 255
- investments (Manitoba)**
- authorized by statute, 45, 254
  - duty/liability, re, 50–52, 54, 238
  - holding investment no longer authorized, 50
- investments (Ontario)**
- authorized by statute, 59, 254
  - duty/liability, re, 60, 238
  - paramountcy of trust instrument, 66
- investments (Saskatchewan)**
- authorized by statute/instrument, 80, 254
  - court approval, application for, 80
  - duty/liability, re, 80, 83, 238
  - holding investment no longer authorized, 82
  - paramountcy of trust instrument, 81
- judicial trustees**, 182
- lashes**, 368–375
- land**
- land titles legislation, 142
  - limitation of actions, 77
  - partition/exchange of, 33
  - specific performance of contract, 33, 157
- leases**, 157
- legislation**, *see also* investments; limitation of actions; practice/procedure; Public Trustee
- legislation (Manitoba)**
- applicability of, 46
  - paramountcy of trust instrument, 47
- legislation (Ontario)**, 66

**liability of trustee**, *see* breach of trust; investments; limitation of actions; Public Trustee; trustees (liability of)

**limitation of actions**, *see also* trustees (actions involving)

- accrual of cause, 351
- Alberta, 23, 24, 362, 368
- British Columbia, 43, 44, 362, 364, 367
- laches/acquiescence, 368–375
- Manitoba, 57, 58, 362, 365, 366
- Ontario, 75–79, 362, 369–373
- Saskatchewan, 93, 94, 362, 363, 366

**mental incompetence**

- Alberta, 16, 20, 144
- British Columbia, 38, 40, 42
- general, 279
- Ontario, 74
- Saskatchewan, 90

**merger of estates**, 162

**minors (Alberta)**

- education/maintenance, 7, 276, 277
- Public Trustee acting for, 16, 19
- variation/revocation of trust, 11, 14, 345, 346

**minors (British Columbia)**

- education/maintenance, 32, 276, 277, 344
- Public Trustee acting for, 38, 40, 42

**minors (Manitoba)**, 55, 276, 277, 345, 346

**minors (Ontario)**, 74, 276, 277, 344

**minors (Saskatchewan)**, 86, 90, 276, 277, 344

**mortgages**

- distinguished, 107
- mortgagee as trustee, 158

**naked trusts**, 99

**nature of trusts**, 95–98, 102

**negligence**, *see* breach of trust; investments; trustees (duties)

**parties**, *see* practice/procedure

**perpetuities (Ontario)**, 65

**pleadings**, *see* practice/procedure

**powers of appointment**, 98

**practice/procedure**, *see also* costs

- advice/directions, 34, 145, 270–273
- Alberta, 144
- British Columbia, 145
- costs, 150
- Manitoba, 146
- Ontario, 147, 148
- Saskatchewan, 149

**precatory trusts**, 105, 113

**Public Trustee (Alberta)**

- administration of estates, 16
- common fund, 19
- costs/fees/expenses, 20, 21
- general, 17
- judgment against, effect of, 22
- liability of, 22, 320
- limitation of actions, 23, 24
- mental incompetents, acting for, 16
- minors, protection of, 16
- powers generally, 16
- security, posting, 18

**Public Trustee (British Columbia)**, 38, 39

- Public Trustee (Manitoba)**, 55, 56, 320
- Public Trustee (Ontario)**
- actions against, 69
  - administration of estates, 70, 73
  - charitable/public trusts, administration of, 72
  - general, 68
  - judgments against, payment of, 71
  - liability of, 320
  - security, giving of, 73
- Public Trustee (Saskatchewan)**
- dependent adults, 90
  - liability of, 91, 320
  - minors, 90
- rectification**, *see* variation/revocation
- removal**, *see* trustees (removal/discharge)
- remuneration**, *see* trustees (remuneration)
- replacement of trustee**, *see* trustees (removal/discharge)
- restraint on anticipation**, 6, 23, 85
- resulting trusts**
- creation of, 138
  - family law cases, 140
  - general, 105
  - illegal purpose, 143
  - intention of parties, 143
  - land titles legislation and, 142
  - miscellaneous examples of, 139
  - rebuttable presumption of, 140, 141, 143
- revocation**, *see* variation/revocation; termination
- Saunders v. Vautier, rule in**, 126, 301
- secret trusts**, 103, 104, 108, 109, 133
- simple trusts**, 99
- standard of care**, *see* trustees (duties)
- Statute of Frauds**, *see* writing requirements
- statutory trusts**, 109
- termination**, 125, 126, 300–302, *see also* variation/revocation
- testamentary trusts**, 100
- three certainties**
- general, 102
  - intention, 112
  - objects, 112
  - subject-matter, 112, 216
- tracing**, *see* following trust property
- “trust”**
- British Columbia, 43
  - common law, 95
  - Ontario, 67
- “trustee”**
- Alberta, 23
  - Ontario, 67
- trustee de son tort**, 101, 132, 224, 316, *see also* constructive trusts
- trustees (accounting)**, *see also* breach of trust
- bondholders, to, 269
  - general, 145, 148, 154, 264, 306
  - mingling, effect of, 268
  - right to, beneficiary’s, 267
  - sale of goods, 265
  - sale of land, 265, 266
- trustees (actions involving)**, *see also* costs; limitation of actions
- accrual of cause, 351

## TRUSTS

---

- assignment of rights, 356
- contracts, on, 352
- defences, 350, 351
- evidence, 357, 358
- jurisdiction, territorial, 354
- laches/acquiescence, 368–375
- Manitoba, 48, 52, 56
- requiring trustee to bring, 359
- right to bring, 350
- sale of land, 355
- standing to bring, 360, 361
- trustees (appointment, acceptance)**
  - express, 188–190
  - general, 188
  - implied, 188, 191
  - sufficiency of, 189, 191
- trustees (appointment, by court)**
  - beneficiaries as, 164
  - discretion of court, 175–177
  - foreign/non-resident trustees, 179
  - general, 164–167, 169
  - grounds for, 175–177
  - Public Trustee, 174
  - security, giving of, 181
  - trust companies, 178
- trustees (appointment, by settlor)**
  - cestui qui trust as, 162
  - failure to accept appointment, 160
  - failure to appoint, 160
  - general, 159
  - new/further trustees, 163
  - settlor as trustee, 153, 156, 161
- trustees (appointment, disclaimer)**
  - after acceptance, 188, 192, 195
  - executor, office of, 193, 195
  - express, 192
  - general, 192
  - implied, 192, 194
  - trustee, office of, 193, 195
  - vesting of property, 196
- trustees (appointment, general),** 159, 163–66, 181, 188
- trustees (appointment, judicial trustees),** 182
- trustees (conflict of interest)**
  - general, 213, 225, 226, 261
  - profiting from trust dealings, 213, 236
  - purchase from beneficiary, 235
  - purchase of trust property, 227–233
  - removal for, 207, 210
  - sale/loan to trust, 234
- trustees (death of),** 165, 181, 197
- trustees (duties)**
  - accounts, keeping, 154, 264–269
  - bondholders, to, 269
  - conflict of interest, 213, 225–236, 261
  - delegation of, 213, 218–224
  - general, 213–217
  - good faith, 215
  - honesty, 213, 321
  - impartiality, 263
  - investments, re, 238, 253, 256, 261
  - possession/control of assets, 242
  - profiting from dealings, 213, 236
  - sale of assets, 242–252
  - standard of care, 213, 237, 239, 320–322
  - trust document setting, 214
- trustees (general)**
  - accounting, 154
  - capacity to hold property, 151
  - cestui qui trust as, 153

## INDEX

---

- constructive trustees, 154, 155
- Crown as, 153
- establishment of trust relationship, 152, 154
- express trustees, 155
- leases, effect of assigning, 157
- legal vs. equitable title, 152
- mortgagee as, 158
- number of, 183
- security, giving of, 181
- settlor as, 153, 156, 161
- trustee de son tort, 155
- vendor/settlor of land as, 156
- vesting of property, 184–187, 196
- trustees (indemnification)**
  - charge on property, 288
  - enforcing, 288
  - general rule, 283, 284
  - legislation re, 283
  - onus on trustee, 285
  - “properly incurred”, 283
  - shares, re calls on, 286
  - solicitor’s fees, re, 287
- trustees (liability of)**, *see also* breach of trust; investments
  - agents, acts of, 219–224
  - delegation, unauthorized, 221
  - general, 218, 220, 238
  - relief from, 91, 321–324
  - standard of care, 213, 237, 239
- trustees (powers)**, *see also* investments
  - advice and directions, seeking, 34, 88, 145, 270–273, 287
  - agents, use of, 218–224
  - beneficial interest in estate, 240, 241
  - borrowing, re, 262
  - court-appointed trustees, 180
  - delegation of, 213, 218–225
  - discretionary powers, 180, 221, 275–280
  - exercise of, 215, 217
  - implied, 216
  - insurance, re, 281
  - investment, re, 245, 246, 249, 253–261
  - payment into court, 274
  - sale/conversion of assets, 242–252
  - statutory, miscellaneous, 281, 282
  - trust document setting, 215
- trustees (removal/discharge)**
  - Alberta, 164, 168–170, 200, 202
  - British Columbia, 165, 169, 200, 202
  - discretion of court/grounds, 173, 175, 202–212
  - Manitoba, 165, 169, 171, 200, 202
  - Ontario, 148, 165, 169, 200, 202
  - purpose of legislation, 173
  - Saskatchewan, 84, 165, 169, 172, 200, 202
  - vesting of property, 185–187
- trustees (remuneration)**
  - Alberta, 5, 15
  - amount of, determining, 290–292, 296, 297, 299
  - British Columbia, 35
  - court approval, 294
  - deductions from, 295, 298
  - expenses, 64
  - legislation re, 289
  - Manitoba, 51
  - multiple trustees, 299
  - Ontario, 63, 148
  - pre-estimation/setting aside of, 294



## TRUSTS

---

- Saskatchewan, 83, 89
- solicitor as trustee, 293, 298
- trustees (retirement)**, 165, 185, 198–201
- undue influence**, 120
- variation/revocation**, *see also* termination
- variation/revocation (Alberta)**
  - approval of court, 9, 302, 347–349
  - consent of interested parties, 11, 12
  - consent on beneficiary’s behalf, court’s, 11
  - discretion/duty of court, 13
  - general, 9, 123, 345, 346
  - minors, protection of, 11, 14
  - order approving, 10
- variation/revocation (British Columbia)**
  - approval of court, 40, 347–349
  - discretion/duty of court, 41, 344
  - general, 40, 123
  - minors/incompetents, protection of, 40–42, 344
- notice of application for, 42
- variation/revocation (general)**
  - discretion of court, 342, 343, 347–349
  - grounds for, 342
  - meaning of, 122
  - *Saunders v. Vautier*, rule in, 126
  - settlor, by, 124
- variation/revocation (Manitoba)**, 49, 123, 302, 345–349
- variation/revocation (Ontario)**, 74, 123, 148, 344, 347–349
- variation/revocation (Saskatchewan)**, 92, 123, 149, 344, 347–349
- wills/estates**
  - administration by Public Trustee (Alberta), 21
  - administration by Public Trustee (British Columbia), 38
  - administration by Public Trustee (Ontario), 70, 73
- writing requirements**, 103, 114

## Index to Victims of Crime — Compensation

(All references are to paragraph numbers)

- accidental injuries**, 15
- appeals/review**, *see also* eligibility
- Alberta, 47, 48
  - arbitrariness, 58, 59
  - bias, 59
  - British Columbia, 49, 50–52
  - general, 55
  - grounds for, 57–63
  - Manitoba, 53
  - natural justice, 59
  - Ontario, 25, 54, 56
  - privative clauses, 57
  - standard of, 46, 60
- applicants**, *see* eligibility
- availability of compensation**, 1–4
- awards**, *see* compensation
- bars to compensation**, *see* eligibility (factors affecting); eligibility (parties)
- battered wife syndrome**, 21, 59, 63
- causation 17, 57**, *see also* eligibility
- compensation**
- amount of, 25, 38, 39, 40
  - children born after sexual assault, 34
  - double recovery, 35, 36, 37
  - expenses, 32
  - general, 56
  - interim awards, 31
  - liability of perpetrator, 33
  - mental/nervous shock, 30, 33
  - pain and suffering, 30
  - pecuniary loss, 31, 32
  - periodic awards, 31
  - property damage, 32
  - reduction of, 20, 22, 25, 37, 40, 59, 63
  - statutory provisions (general), 30
  - subrogation rights, 41, 42–44
  - wages, loss of, 31
- conduct of applicant**, *see* eligibility (factors affecting)
- damages**, *see* compensation
- “dependant”**
- general, 34
  - Manitoba, 11
  - Saskatchewan, 13
- eligibility**, *see also* appeals/review; compensation
- eligibility (factors affecting)**
- battered wives, 21, 59, 63
  - change in circumstances, 50
  - conduct generally, 10, 18–20, 22, 23, 62
  - criminal code convictions, 23
  - firemen, 61
  - hitchhikers, 21
  - HIV victims, 18
  - imprudent behaviour, 56, 62, 63
  - inmates, 20
  - interveners in fights, 14, 20
  - intoxication, 62, 63
  - participants in fights, 20, 62
  - parties to crime, 10, 22, 24
  - police officers, 9
  - pre-existing medical condition, 26
  - protectors of others, 17, 61
  - reduction of compensation, 10, 20, 22, 25, 59, 63

- relation to perpetrator, 22
- statutory factors/bars, 18, 24, 36
- eligibility (general)**, 5, 50, 56
- eligibility (hearings)**, 45, 46, 57–61
- eligibility (limitation periods)**, 28, 61
- eligibility (offences creating)**
  - accidental injuries, 15
  - causation, 17, 57
  - conviction not required, 16
  - general, 14
  - jurisdiction to determine occurrence, 16
  - proof of offence, 15, 16
- eligibility (parties)**
  - Alberta, 6, 7
  - British Columbia, 8, 9
  - children born after sexual assault, 34
  - dependants generally, 34
  - Manitoba, 11
  - Ontario, 12
  - Saskatchewan, 13
- general**, 1–4
- grounds for compensation**, *see* eligibility
- firemen**, 61
- hearings**, *see* eligibility (hearings)
- “immediate family member”**, 8
- inmates/prisoners**, 20
- insurance analogy**, 2, 3
- judicial review**, *see* appeals/review
- jurisdiction over**, 1, 5, 16
- limitation periods**, 28, 29, 61, *see also* eligibility
- moral worthiness**, 2, 4, 58
- object/purpose of**, 2–4
- offences**, *see* eligibility (offences creating)
- parties**, *see* eligibility (parties)
- police officers**, 9
- prisoners/inmates**, 20
- review/reconsideration**, *see* appeals/review
- sexual assault**, 34

## Index to Vital Statistics

(All references are to paragraph numbers.)

### **adoption orders, registration of**

- amendment of birth registration, 54, 60
- birth certificates, 61
- contact between adopted child and birth mother, 63
- general, 52, 53, 58, 59
- name change upon adoption, 55–57
- sealed files, 62

### **appeals, 197–203**

### **birth**

- aboard Canadian ship, 35
- amendment of birth registration document, 16, 20–23
- application to register birth, 27
- assisted reproduction, child produced by, 30–32
- birth certificate, 36, 37
- certification of birth, Ontario, 33
- child born out of wedlock, registration of, 29
- concealment of parentage, 19
- definition, 4
- duty to provide notice, 9–14, 17
- examination by registrar or director, 25
- failure to notify, 28
- father, acknowledgment of, 18
- foundlings, registration of, 34
- genetic mother, treatment of, 15
- multiples, registration of, 24
- registration, 26
- surrogate mother, treatment of, 15

### **census**

- agricultural, 215
- *Charter*, 221–224
- disclosure of information, 217–219
- false information, providing, 220
- general, 212, 213
- Indians, 216
- population, 215, 225
- refusal to answer, 220, 225, 226

### **children, name change of**

- Alberta, 118, 119
- best interests of, 123–126
- British Columbia, 117
- consent required, 116
- general, 115
- Ontario, 120–122

### **common-law relationship**

- definition, 7
- registration of, 74

### **death**

- aboard Canadian ship, 93
- application for registration, 94
- birth certificate, notation of death on, 96
- burial permit, 87–92
- certified copy of registration, 98
- coroner's inquiry, 82–84
- death certificate, 97
- definition, 5
- disinterment, 99
- disposition permit, *see* **burial permit**
- medical certificate of death, 78–81

## VITAL STATISTICS

---

- death (*cont'd*)
- personal particulars of deceased, 76
  - presumption of death, 95
  - registration of, 75, 77, 85, 86
  - reinterment, 99
- declaration of parentage, registration of**, 165, 166
- Director of Vital Statistics**, *see* **Registrar of Vital Statistics**
- district registrars**, 176, 177
- evidence**
- use of certificate as, 204–207, 211
  - use of foreign records as, 208–210
- marriage**
- certificate of divorce, 73
  - certificate of marriage, 71
  - certified copy of registration, 72
  - definition, 6
  - evidence of, 206
  - general, 64
  - registration of, 65–70
- name change**, *see also* **children, name change of**
- access to records, Alberta, 157
  - access to records, Ontario, 158
  - amendment of documents and records, 139–141
  - annulment or revocation of, 144–150
  - appeal from denial of application, 151–156
  - application for, 127, 128
  - certificate of, 138
  - common law, 100, 101
  - denial of application for, 130
  - fees, 143
  - general, 3
  - legislation, 104–107
  - legislative history, 102, 103
  - offence, 142
  - procedure, Ontario, 135–137
  - procedure, Western provinces, 132–134
  - registration of, 129–131
  - revocation of, *see* **annulment or revocation of**
  - spouses, 108–114
- names**
- alteration of or addition to registration, 43, 44
  - definition, 8
  - language of registration, 45
  - objectionable names, 41
  - surnames, registration of, 38–40, 42
- native persons, registries relating to**, 175
- offences**
- cancelled certificate, failure to return, 192
  - contact with birth parent, 194
  - disclosure of information, unauthorized, 190
  - false information, 191–193
  - false document, use of, 192
  - general, 195
  - limitation periods, 196
  - notice, failure to provide, 191
  - registration, failure to transmit or return, 193
- Statistics Canada, duties of**, 212–215
- Registrar General**, *see* **Registrar of Vital Statistics**
- Registrar of Vital Statistics**
- appointment procedures, 174

## INDEX

---

- Registrar of Vital Statistics (*cont'd*)
- assistant or deputy registrars, 168, 178
  - districts, Ontario, 173
  - enforcement of *Vital Statistics Act*, 176
  - error or omission on documents, correction of, 182
  - fraudulent applications, 179, 180
  - fees, 187
  - general, 167
  - inspectors and officers, appointment of, 169
  - lost or stolen documents, 181
  - records, 184–186
  - responsibilities and duties of, 170–172, 183, 184, 189
  - search of registry, 186, 188
- scope of title**, 1
- stillbirth**
- definition, 4
  - registration of, 46–51
- transsexual surgery, registration of**, 159–164
- Uniform Vital Statistics Act**, 2

## Index to War and Emergency

(All references are to paragraph numbers.)

- agricultural operations (Saskatchewan)**, 219
- aid of civil power**, 14, 15
- air pollution**, 87, 148, 162, *see also* **environmental protection**
- aliens**, *see also* **prisoners of war**
- definition of, 51
  - enemy alien, 51
  - entitlement to leave, 59
  - forced labour, 60
  - Geneva Convention, 51, 53, 57
  - internment of, 57, 59
  - legislative authority re, 52
  - military service, liability for, 56
  - offences by/punishment of, 57
  - rights, protection of, 56, 58, 59, 61, 62, 63, 64
- ambulances**, *see* **health emergencies**
- animals**, *see* **agricultural operations (Saskatchewan); diseased plants/animals**
- atomic energy**, *see* **nuclear installations/hazards**
- aviation safety**, 99
- blizzards (Manitoba)**, 215
- buildings, safety of (Ontario)**, 187
- Canadian Security Intelligence Service**, 73, 74
- Charter of Rights**
- continuation of Parliament, 50
  - Emergencies Act (federal), effect of, 47–49, 67
- “civil emergency plan” (federal)**, 70
- communicable diseases**, *see* **health emergencies**
- courts, authority in state of war**, 10
- crops**, *see* **diseased plants/animals; pest control**
- dangerous goods transportation**, *see also* **environmental protection**
- Alberta, 144
  - federal, 94
  - Manitoba, 150, 152
  - Ontario, 159
- democratic rights**, 50
- disaster relief**, *see* **emergencies legislation**
- diseased plants/animals**, *see also* **quarantine of persons**
- Alberta, 190, 210
  - British Columbia, 191–193
  - Manitoba, 194
  - Saskatchewan, 195, 196
- distress**, *see* **shipping legislation**
- drainage/dikes**
- British Columbia, 213
  - Ontario, 218
- elections (Alberta)**, 209
- electricity**, *see* **energy, control of**
- emergencies legislation**, *see also* **specific emergencies, e.g., fire prevention/fighting**
- emergencies legislation (Alberta)**
- declaration of emergency, 101
  - Disaster Relief Fund, 106
  - expiration of emergency, 101
  - local emergencies, 103–105
  - powers of minister, 102, 105

**emergencies legislation (British Columbia)**

- communications, 108
- declaration of emergency, 108
- disaster relief, 110
- emergency plans (local), 107
- emergency plans (minister's), 107
- liability of officials, 109
- local emergencies, 107, 108

**emergencies legislation (federal)**

- Charter of Rights, 47–49
- compensation for loss, 43, 64
- general, 65–67
- international emergency, 32–37
- “national emergency”, 18
- Parliamentary supervision, 44–46
- property rights, protection of, 63, 64
- public order emergency, 26–31
- public welfare emergency, 19–25
- purpose of, 18
- war emergency, 38–42, 69

**emergencies legislation (Manitoba)**

- conflict between legislation, 117
- declaration of emergency, 112
- disaster relief, 115
- general, 111
- implementation of plans, 112
- intergovernmental agreements, 111
- liability, protection from, 116
- local authorities, 111, 114
- 911 calls, handling of, 113

**emergencies legislation (municipal)**

- Alberta, 103–105, 221
- British Columbia, 107, 108, 222, 223

- general, 220
- Manitoba, 111, 112, 114, 224, 225
- Ontario, 118, 226–230
- Saskatchewan, 126, 127, 231

**emergencies legislation (Ontario)**

- declaration of emergency, 118, 120
- emergency plans, 119, 122
- expiration of emergency, 118
- general, 119
- intergovernmental agreements, 125
- liability of officials, 123
- liability of person causing emergency, 124
- municipal powers, 118
- nuclear facilities, 121
- Premier's powers, 120

**emergencies legislation (Saskatchewan), 125–128, 208**

**emergency preparedness (federal), 16, 17, 70–72**

**endangered species (Manitoba), 216**

**energy, control of**

- Alberta, 202–204
- federal, 75–77
- Manitoba, 205, 206
- Saskatchewan, 207

**environmental emergencies (federal), *see also* toxic substances**

- codes of practice/guidelines, 82
- criminal offences, 86
- definition of, 82
- jurisdiction, 86
- powers/duties of minister, 82, 83
- regulations re, 84
- shipping legislation, 85



**environmental protection, *see also* air pollution; dangerous goods transportation; toxic substances; water (pollution/control)**

**environmental protection (Alberta)**

- dangerous goods transportation, 144
- declaration of emergency, 141
- emergency environmental protection orders, 142
- general, 141
- powers of inspector/investigator/director, 142, 143
- release of substances, 142

**environmental protection (British Columbia)**

- acquisition/disposal of personal property, 146
- declaration of emergency, 145
- escapes/spills, 146, 147
- functions of Ministry, 146
- powers of minister/officer, 145, 146

**environmental protection (Manitoba)**

- dangerous goods transportation, 150, 152
- “environmental accident”, 150
- “environmental emergency”, 150
- general, 148
- hazardous waste, 149
- investigations, 151
- oil and gas sites, 153
- ozone depleting substances, 148
- powers of officer/inspector, 151
- public inquiries, 152

**environmental protection (Ontario)**

- dangerous goods transportation, 159
- discharge of contaminants, 156
- Environmental Bill of Rights, 154
- environmental commissioner, 154
- environmental registry, 154
- judicial duties of director, 155
- objectives of legislation, 154
- ozone depleting substances, 158
- spill of pollutants, 157
- waste disposal, 155

**environmental protection (Saskatchewan)**

- air pollution, 162
- emergency environmental protection order, 161
- general, 160
- oil and gas, 163

**espionage, *see* Canadian Security Intelligence Service**

**farm implements (Alberta), 212**

**fire prevention/fighting, *see also* forest protection**

- Alberta, 129, 130
- British Columbia, 131, 132
- Manitoba, 133, 134
- Ontario, 135–138, 227
- Saskatchewan, 139, 140

**fisheries (Alberta), 210**

**floods, *see* water (pollution/control)**

**forest protection, *see also* fire prevention/fighting**

- Alberta, 190
- British Columbia, 191, 192

**hazardous waste (Manitoba), 149**

**health emergencies (Alberta)**

- ambulance services, 167
- duty to notify officer, 164
- epidemics, 164
- liability, protection from, 166
- powers re communicable diseases, 165

**health emergencies (British Columbia)**

- Emergency Health Services Commission, 170
- examination/treatment, compulsory, 169
- isolation/quarantine, 169
- possession of land/building, taking of, 168
- preventing spread of disease, 168
- regulations re, 168

**health emergencies (Manitoba)**

- ambulances, 177
- examination/treatment, compulsory, 171
- general, 148
- powers of officers, 171, 172
- quarantine, 171
- regulations re, 173, 174

**health emergencies (Ontario), 176**

**health emergencies (Saskatchewan)**

- ambulances, 180
- liability, protection from, 179
- powers of minister, 178
- powers of officers, 177

**housing, 66**

**human rights, *see* Charter of Rights**

**inflation, 66**

**“international emergency” (federal)**

- compensation for losses, 63
- consultation with affected province(s), 33
- declaration of, 33
- definition of, 32
- effective date of, 35
- expiration of, 35
- law enforcement during, 197
- Parliamentary supervision, 44–46
- powers during, 36, 37, 63
- specification of emergency/measures/ area, 34

**jurisdiction, *see also* specific issues, e.g., aliens**

- criminal offences, 86
- executive power (federal), 2
- federal/provincial conflicts, 5, 6
- legislative power (federal), 3, 4, 65–67, 86
- peace, order and good government, 4–6

**labour legislation, 66, 211, 217**

**law enforcement**

- British Columbia, 198
- federal, 197
- Ontario, 200, 201, 230
- Saskatchewan, 199

**legislation, *see* emergencies legislation (federal); jurisdiction**

**liquor traffic, 68**

**livestock operations (Saskatchewan), 219**

**local authorities, *see* emergencies legislation (municipal)**

**martial law, 9, 10**

**military law**

- aid of civil power, 14, 15

## INDEX

---

- defence powers, 12
  - definition of, 11
  - emergency powers generally, 13
  - Governor in Council's powers, 13
  - minister's duties/powers, 12
- milk**, 174, 193
- mines**, 184, 188
- “national emergency”**, 18
- national security**, *see* **Canadian Security Intelligence Service**
- natural resources**, *see* **energy, control of**
- nuclear installations/hazards**, 90, 121, 188
- occupational health (Alberta)**
- duty of workers re dangers, 182
  - first aid/emergency medical services, courses re, 183
  - powers of officers, 181
- occupational health (British Columbia)**, 184
- occupational health (Manitoba)**, 185, 186
- occupational health (Ontario)**, 187, 188
- occupational health (Saskatchewan)**, 189
- ocean dumping**, *see* **water (pollution/control)**
- off-road vehicles (Manitoba)**, 215
- oil and gas**, *see* **energy, control of; environmental protection**
- open “terrorist activity”**, 100
- ozone depletion**, 148, 158
- patents**, 98
- peace, order and good government**, *see* **jurisdiction**
- pest control**
- Alberta, 190
  - British Columbia, 191, 192
  - federal, 96
  - Manitoba, 194
  - Saskatchewan, 195, 196
- plants**, *see* **diseased plants/animals; pest control**
- police**, *see* **law enforcement**
- prisoners of war**, *see also* **aliens**
- appeal rights, 54
  - Code of Service Discipline, effect of, 53
  - death sentence, imposition of, 54
  - escapes, offences during/after, 55
  - Geneva Convention, breach of by prisoner, 53
  - notice of trial, 54
- property rights**, 63, 64
- public health**, *see* **health emergencies**
- public order emergency (federal)**
- consultation with affected province(s), 27
  - declaration of, 27
  - definition, 26
  - effective date of, 2
  - expiration of, 29
  - law enforcement during, 197
  - Parliamentary supervision, 44–46
  - powers during, 30, 31
  - specification of emergency/measures/ area, 28
- public welfare emergency (federal)**
- consultation with affected province(s), 20, 65
  - declaration of, 20
  - definition, 19

- effective date of, 22
- expiration of, 22
- law enforcement during, 197
- Parliamentary supervision, 44–46
- powers during, 23–25
- specification of emergency/measures/ area, 21
- quarantine of persons**, 95, 169, 171, *see also* **diseased plants/animals**
- railway safety**, 97
- resources**, *see* **energy, control of**
- riots**, 14, 15
- sabotage**, *see* **Canadian Security Intelligence Service**
- scope of title**, 1
- shipping legislation**, 85, 91–93, *see also* **water (pollution/control)**
- state of war**, 7, 8
- toxic substances**, *see also* **environmental emergencies (federal); environmental protection**
  - definition of, 78
  - List of Toxic Substances, 79
  - powers of minister, 78, 79
  - Priority Substances List, 78
  - regulations, 79
  - reporting release/apprehended release, 81
- Virtual Elimination List, 80
- war**, *see* **state of war**
- war crimes**, 63
- “war emergency” (federal)**
  - compensation for losses, 63
  - consultation with affected province(s), 39
  - declaration of, 39
  - definition of, 38
  - effective date of, 41
  - expiration of, 41
  - general, 69
  - Parliamentary supervision, 44–46
  - powers during, 42, 63
- water (pollution/control)**, *see also* **shipping legislation**
  - Alberta, 210
  - arctic waters, 89
  - drainage/dikes (British Columbia), 213
  - flood relief (British Columbia), 214
  - ocean dumping, 88
  - wells (Manitoba), 174
- water safety (Ontario)**, 230
- wildfires**, *see* **fire prevention/fighting**
- workers’ compensation (Alberta)**, 211

## Index to Waters and Watercourses

(All references are to paragraph numbers.)

- accretion, see riparian rights**
- alveus, 5**
- bank, 6–8**
- bed**
- definition, 8
  - ownership of, 2, 33–41
- bog, 12**
- bridges, 245, 269–271**
- channel**
- definition, 9
  - realignment of, 27
  - undefined channel, water in, 84
- coast, 10, see also shore**
- constitutional jurisdiction**
- federal, 4
  - general, 2, 3
  - navigation, 241–244, 283
  - provincial, 2, 3
  - residual, 4
- dams, right to construct, 79–83**
- diversion, see water**
- divert, 11**
- domestic purposes, see water**
- drainage, 27**
- dredging, 272**
- electrical energy, see water power**
- erosion, see riparian rights**
- erosion control, 27**
- expropriation, 307**
- fen, 12**
- fisheries, 2, 55, 264**
- floating logs, 284–290**
- flood control, 27**
- foreshore, 64, 256–258**
- frozen waters**
- general, 297
  - holes in ice, 294, 295
  - ownership of, 291, 292
  - passage over, 293
- groundwater**
- general, 22
  - legislative restrictions on use of, 29, 30, 43, 44, 206–208, 232, 233
- harbours**
- constitutional jurisdiction over, 2
  - definition, 304
  - ownership of, 303, 305
  - port authorities, 306
- high-water mark, 8, 13, 14**
- ice, see frozen waters**
- international agreements, 310**
- international rivers**
- diversion of, 309
  - improvements on, 308
- lacustrine proprietor, 48**
- lake**
- bed, 8
  - definition, 19
  - shore, 17
- legislation affecting water rights, see also licences and permits**
- legislation affecting water rights (Alberta)**
- administration, 93, 94
  - appeals, 128
  - general, 118–120

- inspection and enforcement, 112–116, 118
- offences, 122–125
- regulations, 121
- legislation affecting water rights (British Columbia)**
  - administration, 132, 133, 134
  - appeals and judicial review, 163–164
  - conveyances, 169–171
  - general, 129, 130, 131, 156–162
  - offences, 168
  - regulations, 165, 166
  - riverbank protection, 167–170
  - water users’ communities, 167
- legislation affecting water rights (Manitoba)**
  - administration, 172–175
  - appeals, 203
  - designated areas, 176–179
  - general, 195–199
  - groundwater and water wells, 206–208
  - intergovernmental agreements, 204, 205
  - offences, 201
  - protection from liability, 202
  - regulations, 200
  - removal and acquisition of works, 194
- legislation affecting water rights (Saskatchewan)**
  - administration, 209–213
  - appeals, 227
  - approval of works, 218–222
  - complaints, 224–226
  - groundwater conservation, 232, 233
  - offences and enforcement, 229–231
  - regulations, 228
- licences and permits (Alberta)**
  - amalgamation, 117
  - approval procedure, 98
  - assignment, 126
  - cancellation and suspension of, 97, 109
  - diversion through licensed works of another, 104
  - exemptions, 102
  - general, 95, 96, 105, 126, 127
  - licensee, obligations of, 108
  - preliminary licence, 99–101
  - priorities, 106, 107, 118
  - refusal, where applicant indebted to government, 103
  - renewal of, 110
  - right of Minister to take over and operate works, 119
  - running with land, 111
- licences and permits (British Columbia)**
  - amendment, transfer and apportionment of, 147–149
  - expropriation powers, 157–160
  - general, 28, 135–145
  - licensee, rights and obligations of, 150–154
  - priorities, 146
  - suspension and cancellation of, 155, 156
- licences and permits (Manitoba)**
  - general, 29, 180–185, 191
  - preliminary permit, 189, 190
  - priorities, 182, 187, 188
  - suspension and cancellation of, 192, 193
- licences and permits (Saskatchewan)**
  - cancellation and alteration of, 216, 217, 223
  - grant of water rights, 214–216

## INDEX

---

- logs**, *see* **floating logs**
- low-water mark**, 8, 13
- marsh**, 12
- morass**, 12
- natural boundary**, 15
- navigable waters**
- construction of works over, 245, 246, 247, 249–251
  - dredging, 272
  - navigability, test of, 234–240
  - ownership of, 252–255
  - ownership of foreshore, 256–258
- navigation (jurisdiction)**, 4, 241–244
- navigation (public right to)**
- general, 55–57, 59, 62, 63, 259–264
  - interference with, generally, 55–58, 248, 266–274
  - remedies in interference, 275–283
- overflow**, 6
- port authorities**, 306
- power**, *see* **water power**
- prescription**, 31
- railway works**, 274
- riparian owners' rights**
- access, 55–64
  - accretion and erosion, 49, 65–78
  - breach, remedies for, 85–92
  - dam construction, 79–83
  - general, 21, 49–54, 286
  - “riparian owner”, 47, 48
  - water in undefined channel, 84
- river**, *see also* **bank; bed; water**
- definition, 16, 19
  - international rivers, 308
  - tidal rivers, 64
- shipping, jurisdiction over**, 4
- shore**, 17, 18, *see also* **bank; coast**
- slough**, 19
- stream**, 19–22
- surface water**, 22
- swamp**, 12
- timber**, *see* **floating logs**
- use**, 27, *see also* **water**
- water**, *see also* **ground water; licences and permits; surface water**
- agricultural use, 46
  - definition, 22, 27
  - diversion of, 27, 31, 307, 309
  - domestic use, 29, 42–45, 180
  - ownership of, 27, 28, 29, 30, 32
  - use of (general), 27, 28, 29, 30
- watercourse**, 19, 24–26
- water power**
- general, 296
  - jurisdiction, 3
  - regulation of, 297–302
- wells**, *see* **groundwater**

## Index to Weights And Measures

(All references are to paragraph numbers)

### **certificates**

- evidence, as, 8, 32
- Electricity and Gas Inspection Act, 45, 47
- local standards, 32
- Weights and Measures Act, 18, 19, 32

### **coins, standard weights of, 37–39**

### **devices**

- approval by minister, 3, 9
- deemed use of in trade, 31
- defined, 9
- inspection and alteration, 17–19
- marking of, 19
- regulations, 11
- use of, 9

### **electrical and gas standards, *see also meters***

- standard apparatus, custody of, 41
- units of measurement, 40, 41

### **evidence**

- certificate, by, 8
- deemed use of device in trade, 31
- measure, 8
- onus of proving improper marking, 10
- prosecutions generally, 31–33

### **foreign weights and measures, *see jurisdiction***

### **forfeiture, 36**

### **grain standards, 52, 53**

### **inspections, Electricity and Gas Inspection Act, 44, 45, 47**

### **inspections, Weights and Measures Act**

- fees and charges, 20
- inspectors, 16–19, 21, 27, 32
- police assistance, 19
- regulations, 11

### **International System of Units, *see units of measurement***

### **jurisdiction**

- federal, 1
- foreign weights and measures, 6

### **local standards**

- certificates, 32
- defined, 13
- general, 12, 15

### **marking of commodities, 7, 8, 10**

### **meters**

- certificate of verification, 45
- defined, 43
- disputes, 51
- owner, duties of, 45
- testing, facilities for, 46
- verification and inspection, 44, 45, 47

### **offences**

- Electricity and Gas Inspection Act, 48, 49
- Precious Metals Marking Act, 8

### **offences, Weights and Measures Act**

- alteration of devices, 26, 27
- dealers, by, 22, 31
- evidence, 31–33
- failure to stop motor vehicle for inspection, 27
- inspectors, by, 21
- obstructing inspector, 27



## WEIGHTS AND MEASURES

---

- odometer adjustment and replacement, 23, 24
  - penalties, 30, 36
  - provision of service based on false amount of time, 29
  - removal of marking tag, seal or record, 25, 26
  - repairing devices without inspection, 26
  - sale or purchase of false quantity, 28
  - traders, by, 21, 22, 25, 31
- reference standards**
- defined, 12
  - electrical, 41
  - gas, 49
  - general, 14, 15
- regulations**, 11, 38, 50
- seals and tags**, 19
- seizure and detention**, 33–35
- surveys**, 54
- units of measurement**
- amendment, 4
  - definition, 2
  - derived, 2
  - electricity, 40
  - gas, 49
  - International System of Units, 2
  - local standards, 12, 13, 15
  - reference standards, 12, 14
  - regulations, 11
  - supplementary, 2
  - symbols and abbreviations, 2, 4
  - use of, authorized, 5

## Index to Wills

(All references are to paragraph numbers.)

- abatement**, 584–588, *see also*  
**failure of gift**
- “accretion”**, 326
- acknowledgment**, *see* **signature**  
**(testator’s)**
- active service**, 167, 168
- ademption**, *see also* **failure of gift**
- disposition by representative during testator’s life, 544
  - general, 335, 538
  - general legacies, 438, 538
  - life estates/remainders, 543
  - proceeds, 538, 541
  - retained interest, 539–542
- advancement**, 66–74, 548–551,  
*see also* **gifts**
- age**, *see* **testamentary capacity**  
**(age)**
- agreements regarding wills**, *see also*  
**joint/mutual wills**
- agreement to will property, 21–25, 686
  - agreement as compensation for services, 22, 23
  - not to revoke, 19, 220–222
  - *Statute of Frauds*, 23, 24
  - secret trusts, 26
- alterations**, *see also* **rectification and curing deficiencies; republication; revival; revocation**
- before execution, 142–145
  - codicils, 139
  - court validation, 136–138, 158–160
  - effect of republication on, 299
  - formalities, 134–140
  - holograph wills/alterations, 135, 139, 158–160
  - initials as signature, 140
  - memorandum validating, 140
  - privileged wills, 173
  - restrictions, 82
  - substitution of pages, 141
  - testamentary intent, 146
- animus testandi**, 4
- application of legislation**, 27–31
- appointment**, *see* **delegation of testamentary powers; powers of appointment**
- attestation**, *see also* **execution; rectification and curing deficiencies; signature (testator’s); signature (witness’); witnesses**
- presence of testator, 128
  - presence of both witnesses, 129
  - signature of witness, 130–132
- attested wills**, *see also*  
**alterations; attestation; execution; rectification and curing deficiencies; revocation; signature (testator’s); signature (witnesses’); types of wills; witnesses; writing requirements**
- alterations, 134–146, 299
  - attestation, 128–132
  - execution, 87, 108–127, 622–624
  - general, 5, 6
  - presumption of due execution, 133

- attested wills (*cont'd*)
- writing required, 9, 106, 107
- bank accounts**, 403, *see also*  
**joint accounts**
- beneficiaries**, *see also*  
**advancement; ademption;**  
**charitable bequests; children;**  
**disclaimer; effect of transfers**  
**during lifetime; election;**  
**failure of gift; ineligibility of**  
**beneficiary; lapse of gift;**  
**satisfaction; spouses/adult**  
**interdependent**  
**partner/common law partner**
- adopted children, 358–364
  - ascertainment at subsequent time, 62
  - charitable bequests, 79, 375–383, 421
  - children, 340, 342, 343, 350, 351–364, 388, 395, 397
  - children born outside marriage, 353–357
  - choice of, 79–81
  - class gifts (closing rules), 390–395
  - class gifts (general), 80, 385–389, 456
  - concurrent gifts, 396, 397
  - conditional gift to class, 392
  - cousins, 347
  - creditors, 546, 547
  - descendants, 342–345
  - designation, 75
  - “die without issue”, meaning, 345
  - double legacies, 335
  - executors, 370–374, 528
  - grandchildren, 340
  - “family”, 350
  - “heirs”, 340, 341
  - holders of office, 369, 524
  - inaccurate descriptions, 384
  - issue, 342–345
  - joint tenancy, 396
  - next-of-kin, 337–339, 394
  - nieces/nephews, 348
  - procurer/preparer of will being beneficiary, 89
  - *per capita*, 397
  - *per stirpes*, 397
  - “relatives”, 346–350
  - “representatives”, 336
  - same property given to different people, 335
  - siblings, 349
  - spouses, 365–368
  - stepchildren, 351
  - tenancy in common, 396
  - witness, acting as, 116, 117, 147, 172, 301, 520–527
  - unborn children, 351, 352
- benefit plans**, 75
- blind persons**, 128
- capacity**, *see* **testamentary capacity (age), testamentary capacity (mental capacity)**
- charitable bequests**
- cy-prés, 379
  - delegation re selection of charity, 79, 382
  - general, 375–377, 383, 421
  - identification/uncertainty, 378, 379, 381
  - lapse, 380
  - non-charitable purposes, 381
  - *Saunders v. Vautier*, rule in, 478
- children**, *see also* **advancement; beneficiaries; effect of transfers during lifetime;**

## INDEX

---

- children (*cont'd*)
- **lapse of gift; support of dependants**
  - adopted children, 358–364
  - born outside marriage, 353–357
  - class gifts, 388, 395
  - election, doctrine of, 512
  - general, 594, 595
  - gifts over to children, 470–471
  - guardianship, 77
  - meaning of, 340, 342, 343, 350, 351–364
  - *per capita/per stirpes*, 397
  - stepchildren, 351
  - unborn children, 351, 352
- class gifts**, *see* **beneficiaries; children**
- codicils**, *see also* **alterations; nature of; rectification and curing deficiencies; republication; revival; revocation; suspicious circumstances**
- conditional codicils, 14
  - conflict with will, 243
  - construction of, 243
  - general, 1, 2
  - gift to witness, saved by, 526
  - incorporation by reference, 219
  - multiple, 623
  - republication by, 14, 218, 295, 297, 299, 301
  - revival by, 283, 287–289, 291, 293
  - revocation, 239, 243, 247, 256
- conditional gifts**, *see also* **gifts**
- class, to, 392
  - conditions precedent/subsequent, 446–449
  - divesting, 463–471
  - early vesting, presumption re, 446
  - general, 442–445
  - ignorance not affecting non-compliance, 444
  - impossibility of fulfilment, 448, 449
  - public policy as bar to, 452–455
  - repugnancy of, 450, 451
  - substitution of legacy, effect of, 443
  - uncertainty, voiding, 447
- conditional wills**, 10–14, *see also* **types of wills**
- conflict of laws**
- administration of estate, 209
  - change in domicile, effect of, 205
  - determination of heirs, 340
  - essential validity, 207
  - formal validity, 198–206
  - general, 196, 197
  - “internal law”, 197
  - interpretation/construction, 210
  - land/immovable property, 198, 200, 201, 203, 207, 490
  - matrimonial vs. testamentary domicile, 205
  - movables/personal property, 199–204, 207, 490
  - powers of appointment, 211, 490
  - recognition of other jurisdictions, 8
  - renvoi, 197
  - revocation, 208
- construction**, *see* **interpretation**
- Convention Providing a Uniform Law on the Form of an International Will**, *see* **international wills**

- costs**, *see* **probate**
- date of will**, 254, 294, 297, 298, 326–329
- death of testator**, 3, 597–601
- debts**, *see* **payment of debts/legacies**
- definition of**, 1, 2
- delegation of testamentary power**, 79–81, *see also* **powers of appointment**
- delusions**, *see* **knowledge/approval of contents; testamentary capacity (mental capacity)**
- dependants**, *see* **beneficiaries; support of dependants**
- descendants**, 342–345, *see also* **beneficiaries**
- destruction of will**, *see* **revocation**
- “die without issue”, meaning**, 345, *see also* **beneficiaries**
- disclaimer**, *see also* **failure of gift**
- definition, 500
  - effect of, 500, 502
  - form of, 501
  - general, 500–502
  - life interests, 500
  - partial, 503
  - retraction, 502
  - retroactivity, 502
  - timing of, 502
- disinheriting**, *see* **beneficiaries; support of dependants**
- duplicate wills**, 264
- effect of transfers during lifetime**, 66–74
- election**, *see also* **failure of gift**
- accounting by electing beneficiary, 513
  - beneficiary lacking capacity, 512
  - circumstances calling for, 507–511
  - statement of doctrine, 504–506
- electronic documents**, 83
- errors**, *see* **rectification and curing deficiencies**
- evidence (capacity)**, *see also* **probate; testamentary capacity (age); testamentary capacity (mental capacity)**
- absurdity, effect of, 44
  - certificate of physician, 60
  - confidentiality (doctor/patient), 61
  - declarations of testator, 59
  - delusions, effect of, 51
  - discovery, 62
  - general, 54, 55
  - hearsay, 58
  - onus of proof, 51, 55
  - presumption, 55
  - sufficiency, 57
  - time for assessing, 56
- evidence (general)**, *see also* **interpretation; probate**
- conditional wills, 13
  - contemplated marriage, re, 230, 231
  - disclaimer, 501
  - holograph will, 151, 156
  - identification of charitable beneficiary, 378
  - incorporation by reference, re, 213, 216
  - interpretation of will, 304, 315, 316, 318, 320, 321

## INDEX

---

- evidence (general) (*cont'd*)
- knowledge/approval of contents, 86
  - lost wills, 269, 270, 271, 619
  - misdescribed property, 428
  - mistake, 104
  - privileged wills, 171
  - proving validity, 622–624
  - revival, 290
  - revocation, 245, 267, 268, 269, 270, 271
  - support of dependants, 680–684
  - suspicious circumstances, 87–93
  - undue influence, 97–101
- execution**, *see also* **attestation; attested wills; holograph wills/codicils; probate; rectification and curing deficiencies; republication; revival; revocation; signature (testator's); signature (witness's); suspicious circumstances; undue influence; witnesses**
- establishing at probate, 622–624
  - illiterate testator, 123
  - international wills, 182–184
  - language of will, 123
  - presence/qualifications of witnesses, 115–127
  - presumption, re, 87, 127, 133
  - proof of, 112
  - signature (testator's), position of, 108–110, 154, 155
  - signature (testator's), manner of signing, 111–114, 157
  - signature by another person for testator, 112, 113, 126, 154
  - timing of, 114
- executors**, *see also* **delegation of testamentary power; payment of debts/legacies; probate**
- beneficiaries, as, 370–374, 528
  - compensation, 373, 374
  - “representatives”, 336
  - revocation of appointment, 246–248, 257
  - witnesses, acting as, 116, 119
- failure of gift**, 495–499, *see also* **abatement; ademption; advancement; disclaimer; effect of transfers during lifetime; election; gifts; ineligibility of beneficiary; lapse of gift; satisfaction; surplus income**
- falsa demonstratio non nocet*, doctrine of, 309
- formal wills**, *see* **attested wills**
- fraud**, 103, *see also* **delusions; knowledge/approval of contents; mistake; suspicious circumstances; undue influence**
- gifts**, *see* **advancement; conditional gifts; election legacies (demonstrative); failure of gift; legacies (general); legacies (specific); payment of debts/legacies; postponed gifts; restriction of absolute estate**
- guardianship of children**, 77, *see also* **children**
- handwritten will**, *see* **holograph wills; types of wills**
- “heirs”**, 340, 341, *see also* **beneficiaries**
- holograph wills/codicils**, *see also* **rectification and curing deficiencies; types of wills**
- alterations, 158–160

- holograph wills/codicils (*cont'd*)
  - general, 5, 147–151
  - illegible portions, 150
  - incorporation by reference, 219
  - initials, 157
  - instructions to solicitor, 153
  - letter as, 149
  - name used by testator, 157
  - onus on propounder, 151
  - signature of testator, 154–157
  - testamentary intent, 152, 153
  - typewritten/printed forms, 148
  - witnesses, effect of, 147
- illiterate testators**, 123
- incorporation by reference**
  - description of document, 213, 214
  - document in existence, 212, 217, 218
  - evidence, re, 213, 216
  - general, 212
  - holograph will, 219
  - onus, re, 165
  - words of futurity, 215, 216
- independent advice**, 86
- Indian Act*, 175–179, 525, *see also* **types of wills**
- ineligibility of beneficiary**, *see also* **beneficiaries; executors; failure of gift; witnesses**
  - executors, 370–374, 528
  - interpreter re will, 529
  - office-holders, 524
  - person signing will on behalf of testator, 529
  - persons causing testator's death, 514–519
  - solicitor's duty of care to beneficiary, 530
  - witnesses, 116, 147, 172, 301, 520–527
- innocent misrepresentation**, 103
- intent**, *see* **testamentary intent**
- international wills**
  - certificate of authorized person, 185
  - Convention Providing a Uniform Law on the Form of an International Will, 5, 6, 180
  - execution, 182–184
  - general, 5, 6, 180–181
  - registration, 186
  - revocation, 187
  - witnesses, 182, 183
- interpretation**, *see also* **beneficiaries; property demised; rectification and curing deficiencies**
  - advice and directions, 306
  - armchair rule, 315
  - conflict of laws, 210
  - contrary intention, 319
  - disinheritance, presumption against, 333
  - double legacies, presumption against, 335
  - evidence, 304, 315, 316, 318, 320, 321
  - exclusion of words, 305, 309
  - foreign languages, 325
  - intestacy, presumption against, 330–332
  - irreconcilable clauses, 334
  - jurisdiction of court, 302–306
  - meaning of words/phrases, 322–325
  - precedent, use of, 307
  - presumptions, 326–335, 431, 446, 457

## INDEX

---

- interpretation (*cont'd*)
- principles of construction, 311–335
  - process of construction, 307–310
  - punctuation, 323
  - rectification of will, 321
  - statutory amendments, effect of, 308
  - supplying of words, 305, 310
  - surrounding circumstances, 312–314, 431
  - testator's intention, 311, 317, 318
  - will speaking from death, 326–329
- intoxication**, 46
- issue**, 342–345, *see also* **beneficiaries**
- joint accounts**, 68, 69
- joint/mutual wills**, *see also* **rectification and curing deficiencies in wills; revocation; types of wills**
- agreement regarding, 17
  - alteration before death, 18
  - binding on survivor, 18
  - election, doctrine of, 508
  - joint will, 15
  - mutual will, 16
  - revocation, 19, 221, 222, 258
- kin**, *see* **beneficiaries, next-of-kin**
- knowledge/approval of contents**, 56, 85, 86, *see also* **fraud; mistake; rectification and curing deficiencies; solicitors; suspicious circumstances; undue influence**
- lapse of gift**, *see also* **failure of gift**
- avoidance of, 532–537
  - charitable bequests, 380
  - children/issue, gifts to, 532–534
  - class gifts, 532, 535
  - siblings, gifts to, 532, 534
  - spouse, 532, 535
  - statutory rules, 531
- legacies (demonstrative)**, 430, 441, 583, 584, 588, *see also* **gifts; payment of debts/legacies**
- legacies (general)**, *see also* **gifts; payment of debts/legacies**
- abatement, 584, 585, 588
  - definition of, 437
  - evidence, 440
  - money, 433
  - set-off of debts, 583
  - stock, 438, 439
- legacies (specific)**, *see also* **gifts; payment of debts/legacies**
- abatement, 584, 587, 588
  - definition, 429
  - evidence, 431, 440
  - money/stock, 430, 433, 438
  - mortgages, 432
  - presumption against, 431
  - realty, 434
  - redemption of, 436
  - residue, 435
  - set-off of debts, 583
- legacies**, *see* **failure of gift; gifts; legacies (demonstrative); legacies (general); legacies (specific); payment of debts/legacies**
- legatees**, *see* **beneficiaries**
- lost wills**, 255, 264, 269–271, 619
- mariners**, *see* **privileged wills; types of wills**



- marriage, will in contemplation of**, 37, 38, *see also* spouses/adult interdependent partner/common law partner
- mental incompetence**, *see* election; revocation; testamentary capacity (mental capacity)
- military will**, *see* privileged wills; types of wills
- mistake**, 47, 104, 267, 305, 596, *see also* fraud; knowledge/approval of contents; rectification and curing deficiencies; suspicious circumstances; undue influence
- multiple wills**, 20, 242, *see also* types of wills
- mutual wills**, *see* joint/mutual wills; types of wills
- native persons**, 175–179, 525, *see also* types of wills
- nature of**, *see also* agreements regarding wills; testamentary intent; types of wills
- definition of will, 1, 2
  - operation upon death, 3
  - types of wills, 5–20
- next-of-kin**, 337–339, *see also* beneficiaries
- notice of will**, 84
- nuncupative wills**, 9, *see also* types of wills
- operation dependent on death**, 3
- payment of debts/legacies**, *see also* delegation of testamentary power; executors; failure of gifts; gifts; probate; satisfaction
- abatement, 584–588
  - administration of property, 562–568
  - annuities, 572–575, 585
  - charges on property, payment of, 568, 569
  - creditor, right to caveat property, 571
  - demonstrative legacies, 441
  - executor’s/trustee’s powers re, 552–561
  - general legacies, 437–439, 583–585, 588
  - interest on legacies, 589–596
  - set-off, 583
  - specific legacies, 436, 583, 584, 587, 588
  - taxes, 576–582
  - withholding distribution, 561
- postponed gifts**, *see also* gifts
- divesting of, 463–471
  - gifts of intermediate interest, 460–462
  - vested vs. contingent, 456–459
  - presumption of early vesting, 457
- powers of appointment**, *see also* delegation of testamentary powers; gifts
- conflict of laws, 211, 490
  - delegation of, 76
  - discretion of donee, 483–484
  - election, doctrine of, 429
  - exercise of, 485–494
  - failure to exercise, 492–494
  - formalities, 489–491
  - general vs. special powers, 480–482
  - guardian of child, 77
  - revocation of will made in exercise of, 224, 226, 227, 228

## INDEX

---

- powers of appointment (*cont'd*)
- termination/expiration of, 76, 487
  - time for exercising, 486, 488
  - validity, 81
  - words of gift, 479
- precatory instruments**, 4
- presumption of advancement**, 66–69, *see also* **advancement; effect of transfers during lifetime; gifts**
- presumption of resulting trust**, 66–69, *see also* **advancement; effect of transfers during lifetime; gifts**
- priorities**, *see* **abatement; payment of debts/legacies**
- privileged wills**, *see also* **rectification and curing deficiencies; testamentary capacity (age); types of wills**
- “active service”, 167, 168
  - admissibility to probate, 171
  - alteration, 173
  - certificate of officer, 167
  - duration, 166
  - general, 5, 6
  - gifts to witnesses, 172
  - mariners/seamen, 169
  - requirements, 161–165
  - revocation, 174
  - testamentary capacity, 32, 35–37
  - testamentary intention, 170
- probate**, *see also* **executors; payment of debts/legacies**
- codicils, 620
  - costs, 625–632
  - defendants, 615
  - documents admissible to, 618–621
  - execution, establishing proper, 622–624
  - executor’s right to, 506
  - general, 602–617
  - estoppel from challenging, 607, 617
  - examination for discovery, 612, 613
  - fraud, raising, 608
  - impeaching earlier will, 606
  - jurisdiction of court/registrars, 305, 609–611, 616
  - lost wills, 619
  - presumption of death, 597–601
  - privileged wills, 171
  - production of documents, 614
  - proof in solemn form, 604, 605, 626
  - revocation of grant, 614, 617
  - witnesses, examination of, 612, 623
- property demised**, *see also* **failure of gift; gifts; interpretation**
- “accretion to”, 326
  - “bank balance”/“bank book”, 410
  - bonds, 414–416
  - “business”, 418
  - “cash”, 408–411
  - “chattels”, 404
  - choses in action, 398
  - contents of house, 406, 407
  - debentures, 415
  - dividends, 413
  - dwelling, 405
  - “effects”, 401
  - endowment, 421
  - general, 398, 399
  - “goods”, 404
  - homestead, 405

- property demised (*cont'd*)
- “household effects”, 402
  - income, 419–421, 425, 552, 554, 560
  - “interest”, 400, 414
  - misdescription of real property, 428
  - “money”, 408–411, 430, 433
  - mortgages, 404, 432
  - “personal effects”, 402, 403
  - “personal property”, 398, 423
  - “proceeds”, 408
  - promissory notes, 414
  - “property”, 398, 399
  - residence, 405
  - residue of estate, 422–427, 435
  - “securities”, 409, 412–418, 420
  - “shares”, 413, 417
  - “stock”, 413, 430, 438, 439

**property subject to disposition**

- general, 63–65, 398, 399
- effect of transfers during lifetime, 66–74
- joint accounts, 68, 69

*quantum meruit*, 22, *see also* **agreements regarding wills**

**rectification and curing deficiencies**

- Alberta, 188–190
- British Columbia, 191, 192, 321
- general, 7, 195
- Manitoba, 193
- mistake, 104
- Saskatchewan, 193
- substantial compliance, 194

**registration**, 84, 186

**“relatives”**, 346–350, *see also* **beneficiaries**

**“representatives”**, 336, *see also* **beneficiaries, executors**

**republication**, *see also* **alterations; revival; revocation**

- codicil, by, 14, 218, 295, 297, 299, 301
- conditional wills, 14
- date of will, 297, 298
- effect of, 297–301
- general, 295, 296
- gift to attesting witness, 301
- incorporation by reference, 218
- revocation effected by, 300

**requirements for will**, *see* **execution; rectification and curing deficiencies; testamentary intent; types of wills**

**reservation of power to dispose**, 78

**restriction of absolute estate**, *see also* **gifts**

- general, 472, 473
- interpretation by court, 472, 474
- *Saunders v. Vautier*, rule in, 476–478
- trust, imposition of, 474, 475

**revival**, *see also* **republication; revocation**

- codicil, by, 283, 287–289, 291, 293
- destroyed wills, 285
- effect of, 294
- evidence, 290
- formalities, 282–285
- holograph wills, 285
- intention, 286–293
- oral declarations ineffective, 285
- partial, 291

## INDEX

---

- revival (*cont'd*)
- revocation of revoking instrument, 292
- revocation**, *see also* **alterations; revival; republication**
- agreement not to revoke, 19, 220–222
  - benefit plans, 75
  - capacity to revoke, 266, 269
  - change in circumstances, 233–238
  - codicils, 243, 247, 256
  - conditional revocation, 277–281
  - conflict of laws, 208
  - court authorization where under age, 33
  - dependent-relative revocation, 277–281
  - destruction of will, 240, 259–271, 285
  - divorce/nullity, by, 234–238
  - duplicate wills, 264
  - effect of revocation, 256, 257
  - executors, 246–248, 257
  - implied, 246, 248
  - intention to revoke, 242–253, 260, 265–267, 277–281
  - international wills, 187
  - joint/mutual wills, 19, 221, 222, 258
  - lost wills, 255, 264, 269–271
  - marriage, by, 223–232
  - mistake, 267
  - obliteration of will/words, 240, 272–275
  - other act, by, 276
  - partial destruction, 262, 263
  - privileged wills, 174
  - restrictions, 241
  - subsequent will, by, 239, 242, 246, 249–253
  - substitution of pages, 141
  - undated wills, 254
  - written declaration, by, 239–258
- satisfaction**, 546, 547, *see also* **failure of gift**
- Saunders v. Vautier**, rule in, 476–478
- seamen**, *see* **privileged wills**
- secret trusts**, 26
- servicemen**, *see* **privileged wills**
- signature (testator's)**, *see also* **attested wills; execution; signature (witnesses'); witnesses; attestation; probate; rectification and curing deficiencies**
- acknowledgement of, 115, 122, 124
  - assistance in making, 113
  - assumed name, 111
  - former name, 111
  - holograph will, 154–157
  - initials, 111, 140, 157
  - knowledge of witnesses, 122, 127
  - mark as, 111
  - part of name, 111
  - position of, 108–110, 154, 155
  - presence/qualifications of witnesses, 115–127, 183
  - presumption, 121, 127
  - proof of, 622–624
  - signature by another person for testator, 112, 113, 126, 154, 182, 184, 529
  - timing of, 114
- signature (witnesses')**, *see also* **attested wills; signature (testator's); execution; witnesses; probate;**

signature (witnesses') (*cont'd*)

**rectification and curing deficiencies; attestation**

- affidavit, 131
- assistance by another, 130
- initials, 130
- mark as, 130
- partial, 130
- timing of, 114
- presence of both witnesses, 129
- presence of testator, 128
- position of, 132

**solicitors**

- duty re capacity, 53
- duty to beneficiary, 530
- instructions, taking, 105

**sound mind, see evidence (capacity); testamentary capacity (mental capacity)**

**spouses/adult interdependent partner/common law partner, see also beneficiaries; marriage, support of dependants; will in contemplation of**

- gifts to spouse, 365–368, 532
- divorce/nullity, effect of, 234–238, 365
- revocation of will by marriage, 223–232

**Statute of Frauds, see agreements regarding wills, writing requirements**

**substantial compliance, 194, see also rectification and curing deficiencies**

suicide, 46

**support of dependants, see also children; spouses/adult**

**interdependent partner/common law partner**

- adequacy of deceased's provisions, 655–660
- agreements, effect of, 641, 675, 677
- children, 646–650
- circumstances governing rights/needs, 665–678, 693
- costs of application, 669–701
- dependant, 646–651
- disinheritance, 627, 640, 661, 664
- evidence, 680–684
- family law election, 639
- general, 633, 634
- jurisdiction, 635–641
- legal/moral obligations, 655–657, 659–662
- onus of proof, 663, 664
- orders for, 690–698
- procedure, 652–654
- purpose of legislation, 633, 634
- spouses/adult interdependent partner/common law partner, 646, 647, 649, 650, 651, 678
- support and maintenance threshold, 655–659
- survival of application, 637
- time for determining adequacy, 679
- time limits for application, 653, 654
- valuation of estate, 685–689
- who may apply, 642–651

**surplus income, 545**

**suspicious circumstances, see also execution; fraud; knowledge/approval of contents; mistake; undue influence**

- codicils, 92

## INDEX

---

- suspicious circumstances (*cont'd*)
- degree of suspicion, 91
  - onus/presumption, 87, 88, 93
  - procurer/preparer of will being beneficiary, 89
  - unequal division of property, 90
- taxes, see payment of debts/legacies**
- testamentary capacity (age), see also evidence (capacity); privileged wills**
- Alberta, 32, 33
  - court authorization where under age, 33
  - British Columbia, 34, 35
  - Manitoba, 36
  - Ontario, 37
  - Saskatchewan, 38
- testamentary capacity (mental capacity), see also evidence (capacity); fraud; mistake; probate; suspicious circumstances; undue influence**
- absurdity, effect of, 44
  - delusions, 47–51
  - disposing mind/memory, 42
  - evidence, 44, 51, 54–62
  - general, 39, 40
  - impaired mental power, 45, 46
  - intoxication, 46
  - lost wills, 269
  - medication, 46
  - mistaken belief, 47
  - presumption, 55, 87
  - solicitor's duty to make inquiries, 105
  - sound mind/memory, 41–44
  - time for assessing, 52, 53, 56
- testamentary intent, see also interpretation;**
- knowledge/approval of contents**
- alterations, 146
  - *animus testandi*, 4
  - conditional wills, 12
  - holograph wills, 152, 153
  - operation of will dependent on death, 3
  - privileged wills, 170
  - revival, 286–293
- trusts, see also payment of debts/legacies**
- failure to exercise power of appointment, 493
  - gifts to trustee, 370
  - mutual wills, under, 16
  - restricting absolute estate, 474, 475
  - secret trusts, 26
  - surplus income, 545
  - testamentary, 3
- types of wills, see attested wills; conditional wills; conflict of laws; holograph wills; Indian Act; international wills; joint/mutual wills; multiple wills; nuncupative wills; privileged wills**
- undue influence, see also fraud; knowledge/approval of contents; mistake; probate; suspicious circumstances**
- agreement to will property, 25
  - evidence, 58
  - general, 94, 96
  - particular gifts, 102
  - persuasion, 95
  - presumptions, 97–101
- valuation of estate, see probate; support of dependants**

## WILLS

---

- variation of will, see support of dependants**
- vesting, see postponed gifts**
- witnesses, see also alterations; attestation; attested will; execution; ineligibility of beneficiaries; privileged wills; probate; rectification and curing deficiencies; signature (testator's); signature (witnesses')**
- acknowledgment of testator's signature, 115, 122, 124
  - beneficiary/spouse acting as, 116, 117, 147, 172, 301, 520–527
  - capacity, 116, 117, 120
  - creditor/spouse acting as, 118
  - dual capacity, acting in, 125
  - executor/spouse acting as, 116, 119
  - holograph will, effect on, 147
  - knowledge re will, 116, 122, 127
  - presence/qualification of witnesses, 115–129, 182, 183
  - presumption, 121, 127
- writing requirements, see also execution**
- general, 9, 106, 107
  - international wills, 182
  - paper vs. other media, 106
  - pencil vs. ink, 106
  - punctuation marks, use of, 86
  - revival of will, 285
  - *Statute of Frauds*, 23, 24

## Index to Workers' Compensation

(All references are to paragraph numbers.)

- accident/injury/personal injury**,  
*see also* **claims (Alberta); claims (British Columbia); claims (entitlement); claims (Manitoba); claims (Saskatchewan); employers (duties/liabilities)**
- Alberta, 134, 135, 165, 242
  - British Columbia, 134, 135
  - Manitoba, 134, 135, 170, 254
  - Saskatchewan, 134, 135, 173, 255
- actions**, *see* **subrogation rights; tort actions, barring of**
- advisors**, 524
- ambulance drivers**, 68, 90
- ambulances, provision of**, 276
- appeals (Alberta)**, *see also* **confidentiality of information (appeal, on); judicial review; Ombudsman; workers' compensation boards (jurisdiction)**
- appeals commission, review by, 459–469
  - assessments, initial review of, 456, 457
  - compensation claims, initial review of, 454, 455
  - general, 451, 458
  - informal review process, 453
  - judicial appeals, 518, 519–522, 603
  - jurisdiction of appeals commission, 27
  - long-standing contentious matters, 470
  - reopening/rehearing of cases, 37, 453
  - representation on appeal, 523
  - review processes available, 452
- appeals (British Columbia)**
- assessments/classifications/rates, of, 477
  - general, 451
  - judicial appeals, 517
  - medical review panels, 479–484
  - receiving and acceptance of information, 486
  - reopening/rehearing of cases, 37, 471
  - representation on appeal, 524, 525
  - Worker's Compensation Appeal Tribunal, 471–502
- appeals (general)**
- immunity from action, findings re, 139
  - judicial review, 450
  - precedent, board not bound by, 449
- appeals (Manitoba)**
- appeals commission, 505, 506
  - chief appeal commissioner, further appeal to, 507, 614
  - fair practices advocate, 527
  - general, 451
  - judicial appeals, 517
  - medical review panels, 508–511
  - reopening/rehearing of cases, 451, 614
  - reconsideration, 503, 505, 507
  - representation on appeal, 526
  - review processes available, 503
  - standing to bring, 504
- appeals (Saskatchewan)**
- general, 451, 512
  - judicial appeals, 517



## WORKERS' COMPENSATION

---

- medical review panels, 513–516
  - reopening/rehearing of cases, 451
  - representation on appeal, 528
  - steps in review process, 512
- armed forces personnel**, 120
- assessments (collection-general)**
- directors' liability (Manitoba), 376
  - execution (Alberta), 374
  - general, 359
  - injunction barring operation of business, 383, 384
  - registration on tax roll (Saskatchewan), 377
  - registration under PPSA (Alberta), 382
  - principal/subcontractor liability, 385
  - security for payment of, requiring, 378–380
  - summary judgment for, 381
- assessments (collection-statutory priority)**
- Alberta, 366, 367
  - British Columbia, 368, 369, 375
  - federal, 373
  - Manitoba, 370, 371
  - Saskatchewan, 372, 402
- assessments (general)**
- amount/collection of, 359
  - classifying/subclassifying of industries, 358, 445–448
  - creation/maintenance of accident fund, 356
  - experience rating, 365, 445–448
  - general, 356, 364
  - investment of funds, 357
  - payroll estimates, provision by employer, 359, 363, 417–422
  - publication/notice of, 360–362
  - transfer of costs of claims, 445–448
  - uniformity of, 364
- assessments (occupational health and safety)**
- Alberta, 403, 410
  - constitutional issues, 405
  - British Columbia, 404–409
  - injury prevention programs, 416
  - Manitoba, 403, 411
  - safety associations, 410–412
  - Saskatchewan, 403, 412
- assessments (third party liability)**
- change of ownership/employership, 400, 401
  - principals, contractors, subcontractors, 385–395
  - purchaser of industry/stock/equipment, 396, 397
  - purchaser of timber, 398
  - transfers between related parties, 399
- athletes**, 65
- bankruptcy**, *see compensation (attachment/diversion of)*
- boards**, *see workers' compensation boards*
- cancer claims**, 256–267
- Charter of Rights**, *see also constitutional issues*
- equality rights, 7, 8, 137
  - general, 449
  - life, liberty and security, 9
  - native persons, 6, 7
- claims (Alberta)**
- dependant's duty, 151
  - employer's duty, 151
  - form of application, 151

## INDEX

---

- investigations, 152
- reports/notices, 152
- physician's duty re, 278
- time limits, 153
- worker's duty, 151
- claims (British Columbia)**
  - dependant's/worker's duty, 154
  - discoverability, 157
  - employer's duty, 155
  - failure to report/apply, 154, 156
  - form of application, 156
  - physician's duty re, 278
  - time limits, 156, 157
- claims (entitlement), see also compensation; subrogation rights**
  - Alberta, 165–167, 176, 178, 470
  - British Columbia, 168, 169, 176
  - Manitoba, 170–172, 176
  - Saskatchewan, 173–175, 177, 178
- claims (Manitoba)**
  - dependant's/worker's duty, 158
  - employer's duty, 159
  - failure to report, 159
  - form of application, 161
  - interference with application, 160
  - physician's duty re, 278
  - time limits, 161
- claims (Saskatchewan)**
  - dependant's/worker's duty, 162
  - employer's duty, 163
  - form of application, 164
  - physician's duty re, 278
  - time limits, 162
- compensation, see also subrogation rights**
  - compensation (attachment/diversion of)**
    - bankrupt workers, 627–630
    - Crown (federal), claims of, 621
    - general, 615, 616, 624
    - matrimonial property claims, 625, 626
    - minors/incapacitated claimants, protection of, 622, 623
    - spousal/child maintenance claims, 617–620
  - compensation (cost of living adjustment)**
    - Alberta, 345–347
    - British Columbia, 348
    - Manitoba, 349
    - Saskatchewan, 350, 351
  - compensation (fatalities-Alberta)**
    - “child”, 300
    - children, no spouse, 297
    - death of spouse, subsequent, 297
    - “dependant”, 286, 287, 289
    - funeral expenses, 290
    - general, 286
    - other dependants, 299
    - remarriage of spouse, effect of, 352
    - spouse or equivalent generally, 294, 296
    - spouse or equivalent, incapacitated, 298
    - spouse or equivalent with dependant children, 295
    - vocational rehabilitation, 341
  - compensation (fatalities-British Columbia)**
    - “child”, 319
    - children, no spouse, 305, 311, 312
    - death of spouse, subsequent, 305
    - “dependant”, 286, 288, 289, 316

## WORKERS' COMPENSATION

---

- duration of payments, 318
  - funeral expenses, 291
  - general, 286
  - lump sum benefit, 313
  - non-dependant persons, 315
  - other dependants, 314
  - reduction of benefit, 306
  - remarriage of spouse, effect of, 353
  - situations not provided for by Act, 317
  - spouse, common law, 309, 310
  - spouse fifty or older, 303
  - spouse, incapacitated, 303, 304
  - spouse, separated, 308, 310
  - spouse with child, 302, 305
  - spouse with children, 301, 305
  - spouse without children, 307
  - vocational rehabilitation, 342
- compensation (fatalities-Manitoba)**
- adjustment of payments, 325
  - amounts, limits on, 324
  - “child”, 327
  - children, 322
  - “dependant”, 286, 287, 289
  - funeral expenses, 292
  - general, 286
  - other dependants, 323
  - remarriage of spouse, effect of, 354
  - “spouse”, 326
  - spouse, common law/former, 321
  - spouse, generally, 320
  - vocational rehabilitation, 343
- compensation (fatalities-Saskatchewan)**
- “child”, 340
  - children, 329, 332, 334, 338
  - death of spouse, subsequent/no spouse, 333
  - “dependant”, 286, 289
  - dependants not living as family unit, 331
  - funeral expenses, 293
  - general, 286, 339
  - other dependants, 336
  - proof of requirements, 337
  - remarriage of spouse, effect of, 355
  - spouse, common law, 335
  - spouse, generally, 328–330, 335
  - vocational rehabilitation, 344
- compensation (medical aids/health care)**
- Alberta (general), 269, 270
  - ambulances/transportation, 276
  - amount of, limitations on, 275
  - boards’ powers re, 274, 277
  - British Columbia (general), 269, 271
  - Manitoba (general), 269, 272
  - physician, choice of, 279, 280
  - physicians, duties of, 278
  - Saskatchewan (general), 269, 273
- compensation (occupational diseases)**
- Alberta, 242–244
  - British Columbia, 245–253
  - Manitoba 252, 254
  - Saskatchewan, 254
- compensation (vocational rehabilitation)**
- Alberta, 281, 341
  - British Columbia, 282, 342
  - duty to co-operate, worker’s, 285
  - Manitoba, 283, 343
  - Saskatchewan, 284, 344

## INDEX

---

- compensation (wages-Alberta),**  
*see also claims*
- additional compensation, 194
  - alteration/commutation of, 197
  - “compensation”, 179
  - deductions by employer barred, 183
  - degree of impairment, determining, 192
  - disability for more than one day, 181
  - disability for one day or less, 180
  - disfigurement, 194
  - doctor’s report required, 182
  - duty to accept other employment, 189
  - employer not paying, 184
  - “net earnings”, 185, 186
  - lump sum payments, 194, 197
  - permanent partial disability, 188, 190, 195
  - permanent total disability, 187, 190
  - pre-existing conditions, 193
  - recurrence of temporary disability, 196
  - residual disability, 190
  - statutory minima, 191
  - temporary partial disability, 188–190, 196
  - temporary total disability, 187, 190, 196
  - timing of payments, 37–161, 185
- compensation (wages-British Columbia),** *see also claims*
- age limits, 213
  - amendments/transitional provisions, 198
  - average earnings/earning capacity, 208–211
  - cessation of disability, 204
  - “compensation”, 179
  - day of injury, 199
  - days subsequent to injury, 199
  - duty to give information, worker’s, 216
  - disfigurement, 205
  - “initial payment period”, 208, 209
  - lump sum payments, 214, 215
  - maximum amounts/wage rate, 207, 209
  - mental stress, 206
  - permanent partial disability, 203
  - permanent total disability, 202
  - pre-existing disability/injury, 212
  - recurrence of injury, 211
  - retirement benefit, lump sum, 214
  - temporary partial disability, 201
  - temporary total disability, 200
- compensation (wages-Manitoba),**  
*see also claims*
- amount of, 218, 222
  - annuities, 219
  - “compensation”, 179, 217
  - denial of compensation, 226
  - degree of impairment, determining, 218, 220
  - duration, 222
  - general, 217, 221
  - loss of earning capacity, calculating, 223–225
  - lump sum awards, 218, 219
  - returning to employment, 225
- compensation (wages-Saskatchewan),** *see also claims*
- amount of, 228
  - annuity on retirement, 236, 237
  - “compensation”, 179
  - duration of/age limits, 229
  - “earnings”, 230

## WORKERS' COMPENSATION

---

- general, 227
- loss of earnings, calculation of, 231–235
- overpayments, recovery of, 239
- permanent functional impairment, 240, 241
- pre-existing conditions, 238
- recurrence of injury, 233
- confidentiality of information (appeal, on)**, *see also subrogation rights*
  - Alberta, 530
  - British Columbia, 531
  - Manitoba, 532, 533
  - Saskatchewan, 534–536
- confidentiality of information (general)**, *see also subrogation rights*
  - Alberta, 529, 537, 538
  - British Columbia, 529, 537, 539
  - Manitoba, 529, 537, 540
  - Saskatchewan, 529, 537, 541
- constitutional issues**, *see also Charter of Rights; legislation, history/purpose of*
  - division of powers, 4, 5
  - federal undertakings, 4, 405
  - native persons, 6, 7
- coverage**, *see legislation (applicability of)*
- creditors' rights**, *see compensation (attachment/diversion of)*
- decisions**, *see workers' compensation boards (decisions)*
- directors**, 85, 86, 140, 376, 415
- discoverability**, *see claims (Alberta); claims (British Columbia); claims (Manitoba); claims (Saskatchewan)*
- employees (federal)**, *see also "workers"*
  - accidents/disease covered, 121
  - armed forces excluded, 120
  - "compensation", 123
  - Crown liability/immunity, 130
  - disease, compensation for, 131
  - election between action/compensation rights, 126–129
  - "employee", 119
  - employees usually working outside Canada, 125
  - Federal Court, jurisdiction of, 132
  - general, 118, 133
  - jurisdiction of boards, 124, 133
  - rate of compensation, 123
  - RCMP excluded, 120
  - recovery generally, 122
- "employers"**, *see also legislation (applicability of); voluntary coverage; "workers"*
  - Alberta, 58
  - British Columbia, 59
  - coverage as workers, purchasing, 415
  - general, 57
  - Manitoba, 60–62
  - Saskatchewan, 63
- employers (duties/liabilities)**, *see also prohibitions/penalties*
  - accommodation of disabilities, 440
  - accidents, reporting, 432–439
  - insurable earnings, reporting, 423–431
  - payroll estimates, providing, 359, 363, 417, 418–422
  - prosecution of offences, 441–444
  - reinstatement of injured workers, 440

## INDEX

---

- evidence**, *see* **confidentiality of information; witnesses/evidence**
- execution**, *see* **compensation (attachment/diversion of)**
- exemptions**, *see* **legislation (applicability of); voluntary coverage**
- extra-provincial coverage**, *see also* **“employers”**; **legislation (applicability of); voluntary coverage; “workers”**
- Alberta, 99–102
  - British Columbia, 104, 105
  - Manitoba, 106–110, 112–114
  - Saskatchewan, 115–117
- fatalities**, *see* **compensation (fatalities)**
- firefighters**, 68, 90, 118, 256–268
- cancers presumed to be occupational disease, 256
  - • Alberta, 258, 260, 268
  - • British Columbia, 259, 264
  - • Manitoba, 257, 261, 266
  - • Saskatchewan, 260
  - minimum period of employment for listed diseases, 263, 265, 267
  - • British Columbia, 263
  - • Manitoba, 265
  - • Saskatchewan, 267
  - primary site cancers and minimum period of exposure, 262
  - • Alberta, 262
- freedom of information**, *see* **confidentiality of information**
- funding of system**, *see* **assessments**
- immunity**, *see* **subrogation rights; tort actions, barring of**
- Indians**, *see* **native persons**
- industries subject to**, *see* **legislation (applicability of)**
- inflation**, *see* **compensation (cost of living adjustment)**
- injury**, *see* **accident/injury/personal injury**
- inmates/prisoners**, 91, 175
- inquiries/investigations**, *see* **claims (Alberta); claims (British Columbia); claims (Manitoba); claims (Saskatchewan); workers’ compensation boards (powers of)**
- intentional acts**, *see* **accident/injury/personal injury**
- judicial review**, *see also* **appeals; Ombudsman; workers’ compensation boards (jurisdiction)**
- alternatives to, 613, 614
  - availability generally, 25–27, 29, 32, 34, 449, 450, 603, 604
  - breach of natural justice as grounds for, 605, 606
  - correctness of decision, 611
  - Federal Court, jurisdiction of, 132
  - patent unreasonableness, 609, 610
  - privative clauses, effect of, 607, 608
  - reasonableness simpliciter, 610
  - remedies available, 612
  - standard of review, generally, 607, 608
- jurisdiction**, *see* **constitutional issues; workers’ compensation boards (jurisdiction)**
- legislation (applicability of)**, *see also* **claims; employees (federal); “employers”**; **extra-provincial**

**coverage; voluntary coverage; "workers"**

- Alberta, 48–50
- British Columbia, 51
- general, 47, 133, 415
- Manitoba, 52
- Saskatchewan, 53–56

**legislation (general), see also constitutional issues**

- governing statutes, 10, 11
- history/purpose of, 1–3
- insurance legislation, 11
- miners, 69
- occupational health and safety, 405

**maintenance claims, see compensation (attachment/diversion of)**

**mental incapacity, see inmates/prisoners**

**mental stress, see compensation (wages-British Columbia)**

miners, 69, 251

**misconduct, see accident/injury/personal injury**

native persons, 6, 7, 49, 67

**negligence, see tort actions, barring of**

**occupational diseases, see compensation (occupational diseases)**

**occupational health and safety, see assessments (occupational health and safety)**

**offences, see employers (duties/liabilities)**

Ombudsman, 613

**out of province accidents, see extra-provincial coverage**

partners, 85, 415

**payroll estimates/statements, see employers (duties/liabilities)**

**personal coverage, see voluntary coverage; "workers"**

**personal injury, see accident/injury/personal injury**

**policies, see workers' compensation boards (general)**

**prisoners, see inmates/prisoners**

**privacy, see confidentiality of information**

**privative clauses, see judicial review; workers' compensation boards (jurisdiction)**

**prohibitions/penalties**

- Alberta, 142–146, 441
- British Columbia, 141, 406, 407, 408
- Manitoba, 149, 150
- Saskatchewan, 147, 148

**prosthetics, see compensation (medical aids/health care)**

**RCMP personnel, 120**

**reporting, see assessments (general); claims (Alberta); claims (British Columbia); claims (Manitoba); claims (Saskatchewan); employers (duties/liabilities)**

**safety, see assessments (occupational health and safety)**

**statutory immunity, see tort actions, barring of**

students, 91

**subrogation rights (Alberta)**

- allocation of award, 556
- costs of action, 556
- distribution of proceeds, 571, 572
- general, 543

## INDEX

---

- legal fees, 555
- production of documents, 560
- settlements, 564–566
- subrogation rights (British Columbia)**
  - costs of action, 557
  - distribution of proceeds, 573, 574
  - election by worker, 544–546
  - general, 544, 547
  - production of documents, 561
  - settlements, 567, 568
- subrogation rights (general)**, 542
- subrogation rights (Manitoba)**
  - apportionment of damages, 577
  - costs of action, 558
  - distribution of proceeds, 575–577
  - election by worker, 548, 549
  - motor vehicle accidents, 414, 551
  - production of documents, 562
  - right of action in another jurisdiction, 550
  - settlements, 569
- subrogation rights (Saskatchewan)**
  - costs of action, 559
  - distribution of proceeds, 578
  - general, 552, 553
  - notice re bringing of action, 554
  - production of documents, 563
  - settlements, 570
- survivors**, *see* **compensation (fatalities)**
- teachers/trustees**, 65, 73, 92–94
- tort actions, barring of**, *see also* **subrogation rights**
  - Alberta, 580–582
  - aggravated/punitive damages, 137
  - appeals re finding of immunity, 139, 593
  - British Columbia, 583
  - Charter issues, re, 8, 9, 137
  - directors, liability of, 140, 587
  - general, 1–3, 136, 413, 414, 542, 579
  - increases in premiums, claims re, 138
  - Manitoba, 414, 551, 584–586
  - Saskatchewan, 588, 589
  - status as worker/employer, determination of, 140, 587, 590–595
  - third party procedure, 582, 596–602
  - wilful acts, 13
- truckers/transportation workers**, 111
- voluntary coverage**, *see also* **“employers”**; **extra-provincial coverage**; **legislation (applicability of)**; **“workers”**
  - Alberta, 88, 90–94
  - British Columbia, 95
  - Manitoba, 96
  - personal coverage, purchase by parties not covered by Act, 390
  - Saskatchewan, 97, 98
- wilful acts**, *see* **accident/injury/personal injury; claims (entitlement); tort actions, barring of**
- witnesses/evidence**, *see also* **confidentiality of information**
  - boards’ powers re, 35
  - statutory presumptions, 176–178, 190, 243, 248, 256–260
- “workers”**, *see also* **employees (federal)**; **“employers”**;



## WORKERS' COMPENSATION

---

### **legislation (applicability of); voluntary coverage**

- Alberta, 64, 65, 77, 85
- British Columbia, 66–70, 78
- deemed workers, 77–84
- Manitoba, 71–75, 79, 86, 87
- parties purchasing personal coverage, 85–87, 415
- Saskatchewan, 76, 80–85

### **workers' compensation boards (decisions)**

- general, 39
- policies of board, effect of, 45
- review of, 132, 454

### **workers' compensation boards (general)**

- accountability to government, 15–18
- audits of, 17
- courts distinguished from, 5
- evaluation of liabilities, 15
- function of, 19
- policies of (creation/implementation), 44–46
- reporting requirements, 15

### **workers' compensation boards (jurisdiction), *see also* appeals; judicial review**

- Alberta, 27
- British Columbia, 28, 29

- Manitoba, 30–32
- privative clauses generally, 25, 26, 449
- Saskatchewan, 33, 34

### **workers' compensation boards (liability of), 36, 140**

### **workers' compensation boards (powers of)**

- generally, 35–39
- inquiries/investigations, 41–43, 434
- rehearing/reopening of cases, 37, 38
- witnesses/evidence, re, 35, 40, 41

### **workers' compensation boards (structure/status of)**

- “board”, 24
- corporations, status as, 12, 13, 14
- Crown, board not branch of, 18
- decisions of, 24
- delegation of powers by, 23
- directors, duties/liabilities of, 22, 140, 587
- governing body, appointment of, 18, 20, 21
- head offices, 12
- officers/employees of, 23, 24

## Index to Wrongful Dismissal

(All references are to paragraph numbers.)

- absences, see just cause**
- Agents, 4, 5, 8**
- alcohol, see just cause**
- arbitration, see collective agreements/arbitration**
- assignment of employment contracts, 57–59**
- bankruptcy, effect of, 9, 77, see also receivership, effect of**
- casual employees, 11**
- chance of profit, 4**
- Charter of Rights, 20**
- collective agreements/arbitration, see also employment standards legislation**
- actions not barred, 21
  - bar to action, as, 18, 19, 21, 23, 195–196
  - “bridging clauses”, 22
  - Charter of Rights, 20
  - fair representation by union, 19
  - general, 18, 19
  - tort/misrepresentation, 21
- condonation, see dismissal (constructive); just cause**
- constructive dismissal, see dismissal (constructive)**
- control test, 4, 49, 51, 54**
- corporations, see directors; employer; oppression remedy; shareholders**
- Crown servants/employees, see also municipal officers/employees; police**
- Alberta, 29
  - British Columbia, 30
  - Crown corporations, 25
  - federal employees, 25–28, 34–37
  - Manitoba, 31
  - pleasure of Crown, dismissal at, 24
  - Saskatchewan, 32, 33
- damages (deductions)**
- employment insurance benefits, 244, 314–317
  - general, 243
  - mitigation, 305–307
  - pension benefits, 269
  - sickness or disability benefits, 244, 318
  - workers’ compensation benefits, 244, 319
- damages (general)**
- date of damage, 205, 207–208
  - discounting of, 249
  - flowing from breach, 245
  - income vs. earning capacity, 243
  - interest on, 248
  - lump sum awards, 247
  - purpose of, 242
  - salary continuance method, 247
- damages (heads of)**
- bad faith, effect of, 209, 229, 240, 241, 250, 284, 286, 289, 291, 292
  - benefits (general), 172, 273
  - benefits (medical/insurance), 246, 254–256, 260, 290
  - benefits (pension), 202, 246, 265–269
  - bonuses, 246, 261–264
  - club dues, 246
  - depression, treatment costs, 273
  - director’s fees, 259, 274

## WRONGFUL DISMISSAL

---

- disallowed expenses, 274
  - employment agency fees, 273
  - expenses of finding new job, 273, 275, 278
  - fixed-term contracts, 89
  - general, 242–250
  - loss of bargaining unit position, 273
  - loss of competitive position, 285
  - loss of reputation, 281, 282, 284
  - mental distress, 273, 286–289, 323
  - misrepresentation of job/conditions, 48, 293
  - moving expenses, 246, 275–278
  - near cause, effect of, 189
  - punitive damages, 291, 292, 323
  - reference, refusal to provide, 229, 279, 280, 283, 289
  - salary, 251–253
  - specified amount in contract, 3
  - starting new business, 273, 308–309
  - stock options/shares/dividends, 7, 246, 257–258
  - vacation pay, 246, 270–272
- damages (mitigation)**
- constructive dismissal, 123
  - effect of failure to mitigate, 303–306
  - fixed-term contracts, 90, 298
  - general, 243, 294–307
  - legislation, effect of, 63
  - lesser employment, acceptance of, 297
  - moving expenses as cost of, 275
  - onus on employer, 295
  - reasonable effort, 296, 297
  - reasonable refusal of offer, 300–301
  - relocation, requirement for, 302
  - retraining, 310
  - specified notice period/payment, effect of, 299
  - starting new business, 273, 308, 309
- damages (taxation)**
- exempt payments, 323
  - legal fees/expenses, 325
  - retiring allowances, 320–324
  - withholding by employer, 321
- defences, see frustration; just cause; limitation of actions; near cause; previous action/adjudication; settlement; termination agreement**
- directors, 6, 259, 274**
- disability, effect of, 102–103, 172–173, 184–186, 260, 318**
- Discrimination, 103, 173, 184–187**
- dishonesty, see just cause**
- dismissal (constructive)**
- change in duties (unilateral), 107–110, 118, 119
  - change in location, 115–117, 177
  - change in salary/benefits (unilateral), 111–114
  - changes (temporary), 120
  - condonation by employee, 120, 121
  - corporate reorganization, 109, 118–119, 180
  - criticism (unwarranted), 122
  - days of work, altering, 110
  - demotions, 107
  - general, 105–106
  - hours of work, altering, 114
  - lateral transfers, 108
  - mitigation, 123
  - probation, placement on, 17, 122

## INDEX

---

- receivership, effect of, 55, 56, 119
- resignation, forced, 125, 126
- dismissal (general)**, *see also* **damages; just cause; near cause; reasonable notice; settlements; termination agreements**
  - communication to employee, 97
  - date of, 97
  - express dismissal, 97
  - fixed-term contracts, 3, 86–90
  - frustration of contract, 100–104, 180, 181
  - illness/disability, effect of, 102–103
  - layoffs, 69, 74, 77, 79, 82, 91–96
  - notice of, 98
  - repudiation of contract, 128–129, 344
  - resignation, 124–127
  - specified damages in contract, 3
  - strikes/lockouts, 74, 104
  - types of, 84
  - working during notice period, 98, 99
- dismissal (group)**
  - British Columbia, 76, 78, 305, 313
  - federal, 69–72
  - Manitoba, 82
  - Saskatchewan, 83
- drugs**, *see* **just cause**
- duty to warn**, *see* **just cause**
- economic dependency**, 4
- “employee” (general)**, 1–5, *see also* **specific entries, e.g., teachers**
- employer**, *see also* **“employee” (general); specific entries, e.g., Crown servants/employees**
  - control test, 4, 49, 51, 54
  - general, 49–53
  - independent contractors, 4, 5, 10, 50
  - multiple employers, 51, 54
  - non-profit corporations, 53
  - purchase/sale of corporation, 57–59
  - receivership, effect of, 55, 56
  - transfer of employees, effect of, 52, 54
- employment standards legislation**
  - Alberta, 73–74
  - British Columbia, 75–79, 305, 313
  - common law, effect on, 60–64
  - constitutional jurisdiction, 65–67
  - federal, 68–72
  - general, 60–64, 312
  - group terminations, 70, 76, 82
  - Manitoba, 80–82
  - Saskatchewan, 83
- fiduciary breaches**, *see* **just cause**
- fixed-term contracts**, *see also* **written contracts**
  - damages for breach, 89
  - extensions, effect of, 87
  - general, 3, 86, 327, 343
  - mitigation, 89, 298
  - until job completed, 90
  - writing, need for, 88
- frustration**, *see* **dismissal**
- group terminations**, *see* **dismissal (groups)**
- illness, effect of**, 102–103, 172–173, 184–186
- income tax**, *see* **damages (taxation)**
- incompetence**, *see* **just cause**

- independent contractors**, 4–5, 10, 50
- integration**, 4
- just cause**, *see also* dismissal;  
**near cause**; **written contracts**
- absence/lateness, 178–179
  - condonation by employer, 141–145, 176, 192
  - conduct outside work, 182–183
  - cumulative acts, 133, 139
  - degree of misconduct, 132, 136–138
  - discontinuance of function, 28, 118, 180
  - dishonesty, 135, 137, 151–154
  - drug/alcohol abuse, 168–173
  - duty to warn/employer's), 139, 155–156, 159, 160, 168–170
  - economic problems, 28, 92–96, 101, 180, 181
  - failure to relocate, 115–117, 177
  - fiduciary breaches, 164–167
  - general, 130–139
  - illness/disability, 102–103, 172, 173, 184–186
  - immorality, 137
  - incompetence, 159–163
  - lack of work/layoffs, 28, 92–96, 101, 180, 181
  - legislation, effect of, 64
  - miscellaneous factors, 187, 188
  - misrepresentation re skills, 162
  - onus of proof, 135, 142, 154
  - personality conflicts, 174–176
  - probation, placement on, 17, 122, 139, 160, 163
  - redundancy, 180
  - sexual harassment, 155–158
  - single acts, 137, 147–149
  - transfer of work, 27
  - unknown transgressions, effect of, 134
  - wilful disobedience, 137, 149–150
- labour legislation**, *see* collective agreements/arbitration; **scope of title**
- lack of work**, **relevance of**, 27, 92–96, 101
- lateness**, *see* just cause
- layoffs**, *see* dismissal (general); **just cause**
- legislation**, *see* collective agreements/arbitration; **employment standards legislation**
- limitation of actions**, 197–200
- mandatory retirement**, 330
- municipal officers/employees**, *see also* Crown servants/employees; **police**
- general, 38
  - hearing re dismissal, 39, 42
  - pleasure of council, dismissal at, 38, 40–41
- near cause**, 189, 213
- non-profit corporations**, 53
- oppression remedy**, 7
- ownership of tools**, 4
- parties**, *see* “employee”; **employer**; **specific entries**, e.g., **Crown servants**
- part-time employees**, 11, 238
- personality conflicts**, *see* just cause
- police**, 43–45
- policy manuals/statements**, 328, 336
- previous action/adjudication**, *see* collective agreements/arbitration

## INDEX

---

### **probationary employees**

- definition of, 12
- employment standards legislation, 13
- just cause for dismissal, 14–15
- length of probation, 16
- notice of probationary status, 3
- permanent employee made probationary, 17
- reasonable notice, 15
- suitability for permanent job, determining, 14

### **reasonable notice**, *see also*

#### **written contracts**

- age of employee, 222–223
- availability of similar employment, 224–28
- bad faith/unfair dismissal, 209, 229, 240–241, 250, 284, 286, 289, 291–292
- date of notice, 205, 207–208
- employee's duty on resignation, 124
- evidence re employability, 210
- factors governing length (general), 209, 212
- fixed-term contracts, 3, 85–90, 327
- form/content of notice, 201, 204, 207
- general principles, 201–213
- implied intention vs. public policy, 201
- implied term of contracts, as, 2, 201
- industry standards/custom, 239
- length of service, 215–221
- maternity leave, effect of, 311
- nature of position, 214
- near cause, effect of, 189, 213
- necessity for providing, 86
- part-time employees, 11, 238

- pension benefits, right to, 202
- pension vesting, effect of, 268
- probationary employees, 15, 235–237
- purpose of notice, 205
- recession, effect of, 230–232
- recruited/relocated employees, 209, 216, 221, 233–234
- settlement offers, effect of, 203, 211
- statutory (Alberta), 73–74
- statutory (British Columbia), 75
- statutory (federal), 69–72
- statutory (general), 60–64, 312
- statutory (Manitoba), 80
- statutory (Saskatchewan), 83
- warning of pending termination, 206–207

### **receivership, effect of**, 55–56, 119, *see also* **bankruptcy, effect of**

### **reference, refusing to provide**, 229, 279, 280, 283, 289

### **repudiation**, *see* **dismissal**

### **resignation**, *see* **dismissal**

### **retiring allowances**, *see* **damages (taxation)**

### **risk of loss**, 4

### **scope of title**, 1

### **seasonal employees**

- Alberta, 74
- British Columbia, 77
- general, 95

### **settlements**, *see also* **termination agreements**

- condonation, as, 144, 192
- general, 190
- gratuitous payments, 191–192
- sufficiency/scope of, 191

## WRONGFUL DISMISSAL

---

- unconscionability, 193
- sexual harassment**, *see* **just cause**
- shareholders**, 7
- statutes**, *see* **collective agreements/arbitration; employment standards legislation**
- strikes/lockouts**, *see* **dismissal (general)**
- taxation**, *see* **damages (taxation)**
- teachers**, 46–47, 77
- temporary employees**, 11
- termination**, *see* **dismissal**
- termination agreements**, 194, *see also* **settlements**
- transfer of employees, effect of**, 52, 54
- unemployment insurance**, 244, 314–317
- warnings**, *see* **just cause**
- workers' compensation**, 244, 319
- written contracts**, *see also* **fixed-term contracts; reasonable notice**
  - alteration of terms, 337–338
  - change of duties/remuneration, effect of, 333
  - contra proferentum, 334, 340
  - duress, 340
  - general, 326–331
  - just cause, termination for, 342
  - mandatory retirement, unilateral imposition, 330
  - policy manuals/statements, 328, 336
  - reasonable notice, 326–329, 339–341, 343–346
  - rectification of, 332
  - repudiation, effect of, 344
  - standard form, applicability of, 335
  - termination provisions, 341–345, 347
  - unconscionability, 340, 345
  - validity of, 331, 335, 337–338, 340
- wrongful hiring**, 48, 293

## Index to Youth Criminal Justice

(All references are to paragraph numbers.)

- admission of facts**, 248, 249
- adult sentence**, *see also* **sentence**
  - appeal, 109
  - application of Criminal Code, 110
  - definition, 96
  - election, 96
  - hearing, 107, 108
  - included offences, 106
  - non-presumptive offences, 98
- adulthood**
  - continuation of youth court proceedings, 16
  - right to counsel and, 61
- age, proof of**
  - birth or baptismal certificate, 246
  - judicial inference, 247
  - parental statement, 245
- appeal**
  - contempt of court order, 40
  - indictable offences, 229
  - jurisdiction, 227, 228
  - sentence on review, 233
  - summary conviction offences, 229, 230
  - superior court, 231
  - Supreme Court of Canada, 232
- arrest**, 63
- autrefois convict**, 200
- Canada Evidence Act**, 132
- Canadian Charter of Rights and Freedoms**
  - right to counsel, 57–59
- charge**
  - reading of, 82
  - unrepresented person and, 84
  - waiver, 83
- child welfare agency referral**, 95
- committees, youth justice**, 27
- conferences, youth justice**, 28
- contempt of court**, 36–40, 54
- Contraventions Act**, 51
- conviction, effect on subsequent criminal convictions**, 201
- counsel, right to**, 55–60
- Criminal Code**
  - adult sentencing hearing, 110
  - application generally, 22, 23
  - judicial interim release, 70–72
  - mental disorder provisions, 94
  - preliminary inquiry, 89
- Crown**
  - election, 87
  - notice of intention to seek adult sentence, 85
- custody, post-judgment**
  - conditional supervision, 184
  - continuance of order, 183
  - principles, 178, 179
  - remand re breach of community supervision order, 182
  - review, 180
  - transfer to adult facility, 181
- custody, pre-judgment**, 64, 65
- designated offence**
  - DNA samples, 190
  - not criminally responsible on account of mental disorder, 190
  - primary designated offence, 190
  - reasons for decision, 190



- secondary designated offence, 190
- where court not required to make order, 190
- detention**, 48–50
- election**
  - Crown, 87
  - two or more persons charged, 105
  - young person, 88, 90, 104
- employment, federal, and conviction**, 200
- evidence, material, admissibility**, 249
- exclusion of persons from proceedings**, 34
- extrajudicial measures**, *see* **Youth Criminal Justice Act**
- extrajudicial sanctions**, *see* **Youth Criminal Justice Act**
- guilty plea**, 137
- guilty verdict**, 138
- identity**, *see* **publication ban**
- indictment**, *see* **prosecutions**
- information**, *see* **prosecutions**
- joinder of counts**, 105
- judicial interim release**, 62, 66–69, 117
- justice of the peace, jurisdiction**, 19
- Juvenile Delinquents Act**, 45
- legal aid**, 59, 60
- medical or psychological assessment**, 91–93
- National Parole Board**, 199
- offence**
  - definition, 2
  - designated, *see* **designated offence**
  - indictable, 63, 122
  - presumptive, 86, 97, 106
  - serious violent offence, 106
  - summary, 63
- parent**
  - definition, 73
  - notification of arrest, 51–54
  - notification of extrajudicial sanctions, 14
  - surety on recognizance, 73
- penitentiary**, 113
- person assisting young person in breach of sentence**, 42
- placement order**
  - appeal, 114
  - general, 113
  - review, 115
- preliminary inquiry**, 89, 105
- pre-sentence reports**
  - availability, 144, 146, 147
  - contents, 140
  - cross-examination of maker, 148
  - form, 143
  - general, 139
  - information relevant to custody, 141
  - necessity, 142
  - record of case, 150
  - statements of young person, 149
  - withheld information, 145
- primary designated offence**, *see* **designated offence**
- privacy**, *see* **publication ban**
- probation**
  - conditions, 191, 192
  - transfer to another jurisdiction, 193

- prosecutions**
  - indictment, 47
  - information, 47
  - pre-screening programs, 44
  - private prosecutions, 43
- protection and privacy provisions, constitutionality**, 35
- provincial director, definition**, 4
- provincial statutes, identity and**, 33
- provincial young offender legislation**, 251
- public documents, admissibility**, 250
- publication ban**, 30–32, 112, 131
- records, youth court proceedings**
  - access period, indictable or presumptive offences, 206
  - availability for inspection, 204
  - availability to police, 203, 207
  - RCMP records, 205
  - requirement, 202
  - retention of, 203
- reintegration leave**, 194–197
- responsible person, release to**, 74–79
- restitution order**, 127, 185–189
- restraint, temporary**, 49
- secondary designated offence**, *see* **designated offence**
- sentence**
  - accountability of young person, 173
  - adult sentence, 100, 101, 118
  - Criminal Code, application of, 161
  - custodial, 167–172
  - deferred custody and supervision order, 153
  - dispositions, 152
  - effect of future transfer, 176
  - guilty plea, 137
  - hearing, 136
  - hybrid offences, 157
  - intensive rehabilitative custody and supervision order, 156
  - intermittent, 154
  - jump principle, 174
  - pre-sentence reports, *see* **pre-sentence reports**
  - pre-sentenced detention, 177
  - principles, general, 151, 162, 163, 175
  - probation, *see* **probation**
  - reasons for sentence, 159
  - termination of, 119, 198, 199
  - youth sentence, 99, 102, 103, 111, 155, 158
- service of documents**, 134, 135
- statements**
  - admissibility generally, 234, 241
  - children’s statements, 239
  - medical or psychological assessments, 244
  - notice of rights, 236
  - opportunity to consult with counsel, 237
  - parental statement, age, 245
  - person in authority, 243
  - spontaneous statements of young person, 240
  - statement made in presence of consulted person, 238
  - voluntariness, 235
  - waiver of rights, 240
  - young person held out as adult, 242
- summary conviction offence**, 41
- summary conviction procedure**, 120, 121, 126

- superior court judge, jurisdiction, 18**
- transfer, provincial jurisdiction, 20, 21**
- trial**
  - appointment of counsel, 125
  - commencement, summary procedure, 126
  - hybrid offences, 128
  - presence of young person, 124
  - procedure, 123
  - subpoena, 129
  - warrant, 130
  - witnesses, 132
  - • person under fourteen years of age, 133
- undertakings**
  - failure to comply with, 80, 81
- victim fine surcharge, 41, 164, 189**
- warrant of committal, 160**
- weapons prohibition orders, 165, 166**
- Young Offenders Act**
  - extrajudicial sanctions continued, 13
  - proceedings begun before April 1, 2003, 45
- young person, definition, 2**
- Youth Court, 5**
- Youth Court Judge**
  - jurisdiction, 17
  - power to detain, 50
- Youth Criminal Justice Act**
  - extrajudicial measures, 9–11
  - extrajudicial sanctions, 12–14
  - forms, 24
  - interpretation, 7
  - judicial interim release, 62
  - jurisdiction, 8, 15–19
  - principles, general, 1, 2, 6, 9
  - proceedings begun after April 1, 2003, 46
  - regulations, 24
  - rules, 24–26
- youth facility, 113, 116, 117**
- Youth Justice Court, 5**
- youth sentences, review, custodial sentences**
  - automatic review, 208–211
  - judicial duties, 215
  - notice, 216
  - progress report, 214
  - provincial director's recommendation, 217–219
  - when review made, 212
  - who may bring review, 213
- youth sentences, review, non-custodial sentences**
  - appeal process and, 224
  - application, 220
  - disposition, 225
  - extension of time for compliance, 226
  - granting of leave, 221
  - grounds for review, 222
  - progress report, 223
- youth worker, 29**