

INDEX

AIDING AND ABETTING, 1.1.7

ARRESTS, NATURE OF

buy and bust, 1.3.2

following lengthy surveillance or investigation, 1.3.6

home search, 1.3.5

incidental to arrest for another matter, 1.3.7

investigative detention, 1.3.5

K-9 search, arresting resulting from, 1.3.4

street detention, 1.3.1

vehicle stops, detention or arrest resulting from 1.3.3

BAIL

ascertaining Crown's position, 1.2.3, 2.3

hearing

 approaching Crown, 2.4

 client conduct following, 2.5

 meeting with client concerning, 2.3

 information to obtain, 2.3.1

 retainer, 2.3.2

 sureties, 2.3.3

 reverse onus, 2.1, 2.2

monies, exempted from proceeds of crime provision, 16.8

CHARTER ISSUES

Canada Evidence Act and section 13, 13.4

cross-examination

affiant, 10.10.9

officer who swore ITO, 10.10.10

sub-affiant, 10.10.13

detention and imprisonment

 brief detention based on belief that detainee is related to offence, 10.8

 reasonable and probable grounds for arrest, 10.9

section 9, 10.6

sufficient grounds, determination of, 10.10

whether person is "detained", 10.7

electronic surveillance, 11.6

excising material from unreasonable searches, 10.10.14

exclusion of evidence, 10.10.16, 11.6

informers, information from, 10.10.11, 10.10.12

notice of, pre-trial proceedings, 7.7, 10.1

search and seizure

DEFENDING DRUG CASES

CHARTER ISSUES — *Continued*

search and seizure — *Continued*

- incident to lawful arrest, 10.4, 10.5
- notice, 10.1
- officer safety during investigative detention, 10.3
- voir dire*, 10.1
- warrantless searches and seizures, 10.2
- self-incriminating evidence and defence witnesses, 12.8
- standing, 10.10.8
- sufficient grounds for arrest
 - components of section 10(b), 10.10.2
 - conduct after exercise of s. 10(b) rights, 10.10.5
 - due diligence and waiver, 10.10.3
 - notice of breach, 10.10.7
 - right to be informed, 10.10.1
 - right to counsel, 10.10.1
 - search warrants, challenging, 10.10.6
- warning, supplementary, 10.10.4
- voir dire*, 7.8, 10.1, 10.10.8
- warrant
 - challenging, 10.10.6
 - setting aside, 10.10.15
 - warrantless searches and seizures, 10.2

CONFLICT OF INTEREST

- representing more than one accused, 17.2
- representing more than one defendant, 17.1
- retainer
 - non-payment of fees, withdrawing from record, 17.6
 - paid by legal fees exemption under s. 462.34(c)(ii), 17.5
 - third party payor of, 17.4
 - sureties, dealing with, 17.3
 - withdrawing from record for non-payment of fees, 17.6

CONSPIRACY OFFENCES, 1.1.8

CONTACT WITH CLIENT, *see also* INTERVIEW WITH CLIENT, FIRST

- ascertaining Crown's position re bail, 1.2.3
- by telephone, pitfalls of, 1.2.1
- caution to client, 1.2.2
- first interview, 4
- information to obtain, 1.2.2

CONTROLLED DRUGS AND SUBSTANCES ACT

- definitions

INDEX

CONTROLLED DRUGS AND SUBSTANCES ACT — *Continued*

- definitions — *Continued*
 - controlled substance, 1.1.1
 - evidence to contrary, 8.5.1(b)
 - offence-related property, 1.1.1
 - trafficking, 1.1.3, 8.4.1(b)
 - detention and restoration of seized property, 4.6
 - forfeiture under, 15.4
 - suspension of, pending application for relief, 15.5.3(d)
 - importing and exporting offences, 1.1.6
 - offences, generally, 1.1.1, 1.1.2, 1.1.3, 1.1.4, 1.1.5, 1.1.6, 6.1.1, 8.2.1, 8.3.1, 16.6
 - police powers, 9.3-9.6
 - possession offences, 1.1.2, 1.1.4
 - proceeds of crime
 - laundering, 16.6
 - possession of property obtained by commission of predicate offences, 16.4
 - statutory provisions, 16.1
 - production offences, 1.1.5
 - proof of substance by certificate, 8.5.1
 - Schedules, 14.4, Appendix A
 - search and seizure provisions
 - exigent circumstances, 9.5
 - person, search of, 9.3
 - place, search of, 9.2
 - warrant requirement, 9.1
 - what can be seized, 9.4
 - trafficking offences, 1.1.3, 1.1.4
- COUNSELLING, 1.1.9
- CRIMINAL CODE OFFENCES
- aiding and abetting, 1.1.7
 - conspiracy, 1.1.8
 - counselling, 1.1.9
 - criminal organization, 1.1.10
 - laundering proceeds, 1.1.1
 - possession of property obtained by commission of offence, 1.1.1
- CRIMINAL ORGANIZATION OFFENCES, 1.1.10
- DEFENCES
- de minimus non curat lex*, 13.5
 - entrapment, 13.9
 - jury trial, at, 13.9.2
 - Mack* and other cases, 13.9.1

DEFENDING DRUG CASES

DEFENCES — *Continued*

entrapment — *Continued*

- non-jury trial, at, 13.9.3
- reverse stings, 13.9.4
- fact patterns, common, and
 - agent for purchaser, 13.7
 - Canada Evidence Act* and Section 13 of the *Charter*, 13.4
- entrapment, 13.9
 - joint possession, 13.2
 - lack of consent, 13.1.3, 13.1.4
 - lack of control, 13.1.2
 - lack of knowledge, 13.1.1, 13.1.4
 - lack of knowledge and consent, 13.1.4
 - minute traces of drug, 13.5
 - mistake of fact, 13.8
 - motor vehicle, drugs found in, 13.3
- possession for purpose of trafficking cases, 13.6, 13.9.1
 - joint possession, 13.2
 - mistake of fact, 13.8
- possession cases, 13.1
 - entrapment, 13.9
 - joint possession, 13.2
 - lack of consent, 13.1.3, 13.1.4
 - lack of control, 13.1.2
 - lack of knowledge, 13.1.1, 13.1.4
 - lack of knowledge and consent, 13.1.4
 - possession for purpose of trafficking cases, 8.3, 13.6, 13.9.1
 - purpose of possession in question, 8.3, 13.6
 - reverse stings, 13.9.4
- trafficking cases, 13.9.1
 - mistake of fact, 13.8

DETENTION AND IMPRISONMENT

- arrest on reasonable and probable grounds, 10.9
- brief detention on reasonable grounds, 10.8
- Charter* rights under Section 9, 10.6
- determining whether “detained”, 10.7
- determining whether investigating officer had sufficient grounds, 10.10
- reasonable grounds
 - arrest, 10.9
 - brief detention on, 10.8
- Reports to Crown Counsel (RTCC), 10.10

INDEX

DISCHARGE

charges where available, 14.6.1
conviction, or, 14.5
principles for granting, 14.6

DISCLOSURE

cataloguing, 5.1.6
contents, 5.2
 complicated cases, 5.2.3
 amount, weight, purity and value of drug, 5.2.3(l)
 copies of seized documents, 5.2.3(j)
 criminal record of all witnesses, 5.2.3(h)
 disciplinary record of police witnesses, 5.2.3(i)
 forensic reports and notes of experts, 5.2.3(c)
 information to obtain, 5.2.3(d)
 interception of private communications, 5.2.3(g)
 investigation files, 5.2.3(k)
 police reports, 5.2.3(b)
 search warrant, 5.2.3(d)
 surveillance evidence, 5.2.3(f), 5.2.3(g)
 unsealing informations to obtain, 5.2.3(e)
 wiretap affidavits, 5.2.3(e)
 witness lists, statements and will-says, 5.2.3(a)
 simple cases, 5.2.2
Crown counsel's duty respecting, 5.1.3
defence counsel's duty to obtain, 5.1.2
follow-up demands, 5.1.7
full disclosure, right to, 5.1.1
generally, 5.1
objectives of, 5.2.1
preliminary hearing, further disclosure and, 6.1.2(b)
request in writing, 5.1.5, 5.1.7, Appendix B
timeliness, 5.1.4

ELECTION

judge or jury, 6.2
preliminary hearing or trial, 6.1
 strategic considerations, 6.1.2
 choice of jurist, 6.1.2(d)
 judicial control of scope of inquiry, 6.1.2(c)
 test of sufficiency, as, 6.1.2(a)
 vehicle for further disclosure, as, 6.1.2(b)
 when question will arise, 6.1.1

DEFENDING DRUG CASES

ELECTRONIC SURVEILLANCE

- authorization
- challenging validity, 11.3
- legal requirements for, 11.2
- standing to challenge, 11.4
- Charter* issues, 11.6
- cross-examination of wiretap affiant, 11.5
- disclosure, 5.2.3(e)-(g)
- generally, 11.1

ENTRAPMENT, *see* DEFENCES

ESSENTIAL ELEMENTS TO BE PROVED BY CROWN

- possession for purpose of trafficking, 8.3
 - possession, 8.3.1(a)
 - proof of substance alleged, 8.3.1(c), 8.5
 - purpose, 8.3.1(b)
- possession offences, 8.2
 - consent, 8.2.2(b)
 - control, 8.2.2(c)
 - knowledge, 8.2.2(a)
 - proof of substance alleged, 8.2.2(d)
 - when offences arise, 8.2.1
- when possession offences arise
- proof of substance alleged, 8.5
 - admissions, 8.5.3
 - certificate, by, 8.5.1
 - viva voce evidence of analyst, 8.5.2
- trafficking offences, 8.4
 - knowledge, 8.4.1(a)
 - proof of substance alleged, 8.3.1(c), 8.5
 - trafficking, mode of, 8.4.1(b)
- triable issues, determination of, 8.1

ETHICAL ISSUES AND CONFLICT OF INTEREST

- pleading guilty, 17.7
- representing more than one accused, 17.2
- representing more than one defendant, 17.1
- retainer
 - non-payment of fees, withdrawing from record, 17.6
 - paid by legal fees exemption under s. 462.34(c)(ii), 17.5
 - third party payor of, 17.4
 - sureties, dealing with, 17.3
 - withdrawing from record for non-payment of fees, 17.6

INDEX

EVIDENCE, *see also* DISCLOSURE, ELECTRONIC SURVEILLANCE, PROOF OF SUBSTANCE ALLEGED, SEARCH AND SEIZURE

- accused as witness, 12.7
- admissibility, *voir dire* challenging, 7.8
- Charter* exclusion of, 10.10.16, 11.6
- continuity issues, 12.5
- credibility, 12.3
- cross-examination
 - accomplice witness, 12.3
 - affiant, 10.10.9
 - Crown experts, 12.4
 - informer, 10.10.11
 - police witnesses, 10.10.10, 12.1, 12.2
 - sub-affiants, 10.10.13
- wiretap affiant, 11.5
- defence witnesses
 - accused as, 12.7
 - self-incrimination and, 12.8
- electronic surveillance evidence
 - challenging admissibility, 11.1
 - challenging validity of authorization, 11.3
 - cross-examination of wiretap affiant, 11.5
 - exclusion under *Charter*, 11.6
- voir dire*, procedure on, 7.8
- insufficient evidence, motion to dismiss, 12.6
- proof of substance alleged, 8.3.1(c)
- search and seizure
 - CDSA*, under
 - exigent circumstances, 9.5
 - person, search of, 9.3
 - place, search of, 9.2
 - warrant requirement, 9.1
 - what can be seized, 9.4
 - Criminal Code*, under, 9.7
 - exclusion under *Charter*, 11.6
- self-incriminating evidence of defence witnesses, 12.8
- voir dire*, procedure on, 7.8

FORFEITURE OF OFFENCE-RELATED PROPERTY, *see also* PROCEEDS OF CRIME

- appeal of order, 15.5.4
- conveyance set aside, 15.4.4
- conviction, following, 15.4.2
- definition of offence-related property, 15.1

DEFENDING DRUG CASES

FORFEITURE OF OFFENCE-RELATED PROPERTY — *Continued*

- relief from forfeiture
 - appeal of order, 15.5.4
- application and notice, 15.5.3(b)
 - burden of proof, 15.5.3(c)
 - suspension pending application, 15.5.3(d)
 - who may apply, 15.5.3(a)
- statutory provisions, 15.4.1
- third parties, rights of
 - notice requirements, 15.5.1
 - relief from forfeiture, 15.5.3
 - restoration, application for, 15.5.2
- where client dies or absconds, 15.4.3

INTERVIEW WITH CLIENT, FIRST

- advising client
 - analyzing position, 4.5.1
 - cautioning client, 1.2.2, 4.5.2
- detention and restoration of seized property, 4.6, *see also* SEARCH AND SEIZURE
- disclosure, 4.2, 4.7
- early disposition, 4.8
- general, 4.1
- information to obtain from client
 - biographical information, 4.4.3
 - circumstances of arrest, 4.4.2
 - circumstances of offence, 4.4.1
 - circumstances of search, 4.4.2
- receiving instructions, 4.3

JUDICIAL INTERIM RELEASE

- ascertaining Crown's position, 1.2.3, 2.3
- hearing
 - approaching Crown, 2.4
 - client conduct following, 2.5
 - meeting with client concerning, 2.3
 - information to obtain, 2.3.1
 - retainer, 2.3.2
 - sureties, 2.3.3
 - reverse onus, 2.1, 2.2
- monies, exempted from proceeds of crime provision, 16.8

LEGAL FEES AND RETAINERS

- judicial interim release, 2.3.2
- non-payment of fees, withdrawing from record, 17.6
- paid by legal fees exemption under s. 462.34(c)(ii), 17.5

INDEX

LEGAL FEES AND RETAINERS — *Continued*

proceeds of crime, legal fees
applications for, 16.7(c)
 exemption for, 16.8
third party payor of, 17.4

MARIJUANA, LEGALIZING, 14.13

OFFENCE-RELATED PROPERTY, *see* FORFEITURE OF OFFENCE-RELATED PROPERTY

PARDONS (RECORD SUSPENSION), 14.12

PLEA BARGAINS, 3.1, 3.2

PLEADING GUILTY, *see also* SENTENCING

decision to plead, 14.1
sentence accommodation reached with Crown, 14.2

PRE-TRIAL PROCEEDINGS

Charter issues, notice of, 7.7
disclosure, motion for, 7.2
generally, 7.1
particulars, application for, 7.4
quash, motion to, 7.3
severance of accused, motion for, 7.5
severance of counts, motion for, 7.6
*voir dire*s, 7.8

PROCEEDS OF CRIME

definition, 16.3
exemptions, 16.8
forfeiture, 16.9
laundering, 16.6
legal fees
applications for, 16.7(c)
 exemption for, 16.8
offences related to, 16.4
restraint orders, 16.7(b)
 procedure to obtain, 16.7(b)(i)
review procedures, 16.7(c)
special search warrants, 16.7
 defined, 16.7(a)(i)
 procedure to obtain, 16.7(a)(ii)
statutory provisions
federal, 16.1
provincial, 16.2

DEFENDING DRUG CASES

PROCEEDS OF CRIME — *Continued*

trafficking of, 16.5
what can be seized, 9.4

PROOF OF SUBSTANCE ALLEGED, 8.5, *see also* EVIDENCE

admissions, 8.5.3
certificate, by, 8.5.1
possession offences, 8.2.2(c), 8.3.1(c)
viva voce evidence of analyst, 8.5.2

REPORTS TO CROWN COUNSEL (RTCC), 10.10

SEARCH AND SEIZURE

CDSA, search under
exigent circumstances, 9.5
person, search of, 9.3
place, search of, 9.2
warrant requirement, 9.1
what can be seized, 9.4
Charter issues
 incident to lawful arrest, 10.4, 10.5
 notice, 10.1
 officer safety during investigative detention, 10.3
 voir dire, 10.1
 warrantless searches and seizures, 10.2
Criminal Code, under, 9.7
detention and restoration of seized property
 CDSA, under, 4.6
 Criminal Code, under, 4.6.1
 access to detained property, 4.6.1(b)
 detention of things seized, 4.6.1(a)
 restoration of seized property, 4.6.1(c), 4.6.1(d)
 generally, 4.6
offence-related property
 restraint orders, 15.3
 seizure, 15.2
police powers, 9.6
proceeds of crime
 federal statutory provisions, 16.1
 provincial statutory provisions, 16.2
 special search warrants, 16.7
what can be seized, 9.4
voir dire, procedure on, 7.8
warrant requirement, 9.1
warrantless searches and seizures, 10.2

INDEX

SELF-INCRIMINATION, PROTECTION AGAINST

Canada Evidence Act, s. 5, 12.8

SENTENCING

accommodation reached with Crown, 14.2

aggravating factors, 14.10

CDSA Schedules, 14.4, Appendix A

conditional sentence orders (CSO), 14.7

discharge

charges where available, 14.6.1

conviction, or, 14.5

principles for granting, 14.6

drug treatment court, 14.11

mandatory minimums, 14.8

marijuana, legalizing, 14.13

mitigating factors, 14.9

pardons (record suspension), 14.12

purpose, 14.3

SEVERANCE

accused, of, 7.5

counts, of, 7.6

SHOW CAUSE HEARING

judicial interim release, *see* JUDICIAL INTERIM RELEASE

meeting with client before, 1.2.3

STATUTORY DECLARATIONS, 3.2

WITNESSES, *see* EVIDENCE

