Index

ABUSE OF PROCESS
Generally, **8:38**

ACCUSED
False statements by
see False statements
Inferences from silence of, **7:5**
Injured, **5:66**
Intoxicated, **5:66**
Investigation in custody
removal from state to police custody, **5:46**
Mental condition of, **1:2, 2:50, 2:51, 6:82, 8:15**
Misled to believe was witness, **2:67**
Photograph of, **9:45**
Police plants in cell of, **8:19 to 8:22**
Psychiatric examination of, **2:4, 2:5**
Right to counsel of
see Right to counsel on arrest or detention
Right to remain silent
see Right to remain silent
Self-serving evidence of, **10:110**
State of mind of
see Voluntariness
Subnormal, **5:100**
Testimony at voir dire by, **6:24, 8:3 to 8:7**
Videotaped statement of, broadcasting, **6:82**
Written apology by, **2:72**

ADMINISTRATION OF JUSTICE, DISREPUTE AND
Generally, **7:10 to 7:12, 7:15**

ADMISSIBILITY RULING
Judge may reverse to restore fairness, **6:50**

ADMISSIBILITY RULING —Cont'd
Similar fact evidence, **10:92**

ADMISSION AGAINST PENAL INTEREST
Generally, **10:88, 10:103**

AGENT OF STATE
Agreed statement of facts, **10:107**
Effect on s. 13 Charter, **10:107**
Physician as, **2:10**
Private citizens, **5:32**
Security guards, as, **8:27**
Test re, **8:26, 8:34**

AGENT PROVOCATEUR
Generally, **10:49, 10:52**

ALIBI
False, inferring guilt from, **4:10**
Notice of, **1:7**
Right to silence and, **4:8, 4:9**
Timely disclosure, failure to make, **4:11**

ARREST OR DETENTION, MEANING OF
ASD demand, **5:3**
holding off right to counsel, **5:4**
Attendance at police station with counsel, **5:27**
Border/customs search context, **5:20, 5:30**
Borderline cases, **5:27**
Breath sample context, **5:2 to 5:8**
Demand or direction, **5:27**
Detention vs. investigation
breath sample context, **5:2 to 5:8**
line between, **5:27**

ARREST OR DETENTION, MEANING OF—Cont'd
Duration of detention before questioning, **2:62**
Entry of dwelling, **5:50**
Entry re 911 call, right of, **5:53**
Good faith of police, **5:47**
Identification, request for, **5:21, 5:22, 7:11**
Immigration and customs context, **5:21**
Intimidation, subjective sense of, **5:27**
Investigative detention, **5:26, 5:31**
Invitation to police station, **5:27**
Length of detention, **5:37 to 5:47**
Objective test of detention, **5:6**
Pedestrian, **5:22**
Police offiver's safety concerns, **5:29**
Private investigators and non-governmental persons, detention by, **5:49 to 5:54**
Psychological detention, **5:27, 5:50**
Questioning at home, **5:27**
Questioning in course of investigation, **5:27**
Request to attend police headquarters, **5:27**
second or subsequent request, **5:28**
School context, **5:7**
Search incident to investigative detention, **2:32**
Urgency or necessity, **5:47**
Vehicle stops, **5:37**

AUDIO/VIDEO
See Recording interrogation sessions

BREATHALYZER TESTING
Arrest or detention and, **5:8**
Compulsion of statute and, **10:113**

CANADA EVIDENCE ACT
See Prior inconsistent statements; Spousal communications; Voluntariness

CAPACITY
See State of mind of accused

CAUTION
See Warning

CHARTER OF RIGHTS AND FREEDOMS
Aboriginal rights/freedoms and, **5:34**
Appeal, raising Charter violation for first time on, **7:25**
Application procedure, **7:1**
Charter relief as personal claim, **7:16**
disclosure, mid-trial, **10:4**
Economic regulation schemes and criminal charges, **10:116**
Exclusion of evidence
see Exclusion of evidence
Extradition hearing, **7:6**
Extraterritorial application of, **7:23, 7:24**
full answer and defence, **7:24**
participant surveillance and, **9:36**
right to counsel, **7:23**
search and seizure, unreasonable, **7:23**
Freedom of religion, **1:10**
Full answer and defence, right to make, **7:24, 10:71**
Fundamental justice
compelled testimony and, **10:126**
statements under Income Tax Act, **10:116**
statements under motor vehicle legislation, **10:115**
Income Tax Act prosecutions, **10:115**
Remedies under, see also Exclusion of evidence,
Crown-directed stay, **7:26**
other, availability of, **7:27**
vicarious liability of government, **5:54**

CHARTER OF RIGHTS AND FREEDOMS—Cont'd
Right against self-incrimination at trial, **4:7**
Right to counsel
see Right to counsel on arrest or detention
Right to testify, **6:42**

CO-ACCUSED
Cross-examination of, **6:55, 8:1, 10:109**
Incriminating statement by, **8:39**
Joint trial of, **6:55**

COMMUNITY SHOCK TEST
Generally, **7:11**

COMMUNITY STANDARDS TEST
Generally, **7:10**

COMPELLED TESTIMONY
Balanced interests, **10:126**
Compellability discussed, **10:126**
Derivative evidence, use of, **10:126**
Derivative use immunity, **10:126**
Dominant purpose test, **10:116**
Fundamental justice and, **10:126**
Legitimate public purpose requirement, **10:126**
Limited conditions for, **10:126**
Professional bodies, power re, **10:126**
Revenue Canada, statements to, **10:116**

COMPULSION OF STATUTE, STATEMENTS BY
Breath sample demand, **10:114**
Income Tax Act, **10:116**
Provincial legislation, **4:16**
Voluntariness
not necessary to be proved, **10:114**
proof of required, **10:114**

CONFESSIONS
Body of rules re, **1:1**
Employee receiving, **2:12**
false, **6:83**
Inducement to obtain, **1:2**
Investigator's skill and, **1:1**
Jailhouse, **8:35**
Lying to induce, **8:17**
mentally ill accused, **6:83**
Operating mind, by person with, **2:53**
Polygraph, use of to induce, **9:16**
Post-Charter violation, **5:96**
Proof before jury, **6:41**
Publication ban re undercover methods of obtaining, **6:80**
Recanting at trial, **6:25**
Recording
see Recording interrogation sessions
Reid Technique and false, **1:8**
Reliance on only one of two, **6:14**

CONSCIOUSNESS OF GUILT
Generally, **6:26 to 6:34**
Calm and uninterested, **6:30**
Changing appearance, **6:34**
Demeanour as evidence of, **6:30**
Failure to call emergency services, **6:35**
Failure to co-operate with police, **6:26**
False alibi as evidence of, **6:33**
False statement, **6:26**
Jury instruction, **6:26**
Lack of hesitation before flight from scene, **6:31**
Level of guilt, determining, **6:26**
Neutral evidence - unusual quietness, **6:26**
Police opinion, **6:31**
Post-offence conduct, **6:26 to 6:32**
Veracity, police opinion on statement, **6:31**

COUNSEL
Belittling of counsel by police, **5:70**
Cross-examination and right to, **8:21**
Denigration of counsel by police, **5:66**
Effective assistance, **6:44**
Fresh start principle, **5:68**
Ineffective assistance, **6:46**
Jury address and right to, **8:21**
Notes written in prison to, **10:68**
Obligation of police to answer questions relating to breathalyzer, **5:104**
Plain view doctrine, **5:9, 5:94**
Police impersonation of, **7:15**
Production of notes for defence, **10:1**
Right of counsel to be present during interrogation, **2:47**
Right to
see Right to counsel on arrest or detention
Undermining right to, **8:21**
Voluntariness and right to, **1:2**
Waiver of voir dire by
see Voir dire

CROSS-EXAMINATION
Co-accused, of, **6:55, 8:1, 10:110**
Impeachment vs. incrimination, **10:105**
Maker of statement, of, **6:55, 6:56**
Police re identity of informer, of, **10:51**
Prior inconsistent statements, **10:84, 10:106**
Voir dire, on, **6:24**

CROWN
Costs against the, **10:131**
Cross-examination, provocative during personal, **10:9**
Disclosure by, **8:43, 10:3 to 10:12, 10:22, 10:128**
late disclosure, **8:43**

CROWN—Cont'd
Disclosure by, **8:43, 10:3 to 10:12, 10:22, 10:128**—Cont'd
mid-trial, **10:4**
police databases, limited access to, **10:129**
Non-disclosure by, **10:5**
Onus on to show voluntariness, **8:8**
Police and, privilege re, **10:16, 10:68**
Police reconstruction reports and, **10:5**
provincial offences, **10:128**
Role of, **10:7**
Vicarious liability, **5:54**

CUSTOMS SEARCHES
Generally, **5:20, 5:21, 5:30**

DEMEANOUR, FACIAL EXPRESSION AS INFERENCE
Failure to show grief at child's injuries, **6:30**

DETENTION
See Arrest or detention, meaning of
Security guard, by, **5:32**

DIAGRAMS
See Notes, use of

DISCLOSURE
Adequacy of, **10:3**
Alibi disclosure rule, **4:8**
Compensation, **10:45**
Cost of disclosure, **10:45**
Costs award re failure, **10:44**
Covert operations, policy governing, **2:21**
Crown, by, **10:3 to 10:10, 10:22, 10:128**
Databases, police, **10:129**
Defence, by, **10:46, 10:48**
Delayed by Crown, **10:22**
Due diligence onus on defence, **10:10**
Electronic disclosure, **10:6**

DISCLOSURE—Cont'd
Evidence of police misconduct, **10:15**
Inadvertent disclosure by prosecution, **10:55**
Investigative techniques, **6:81**
judicial discretion to limit, **10:19**
late, **8:43**
Legal advice by Crown counsel, of, **10:16**
limit, judicial discretion to, **10:19**
provincial offences, **10:128**
Notes, of
see Notes, use of
Peripheral issues, non-disclosure by Crown, **10:12**
Police-complainant relationship, romantic, **10:2**
Police conduct investigations, **10:120**
Police-informer, **10:51, 10:54**
setting aside protection order, **10:58**
Police reconstruction reports, **10:5**
Pretrial disclosure re agent provocateur, **10:52**
Software, **10:6**
Stay of proceedings for failure re, **10:21**
Third party, by, **10:10**
Third party disclosure, **10:15**
Third party records, of, **10:17**
Whereabouts of two officers not disclosed, **10:10**

DNA EVIDENCE
Discarded straw, from
no expectation of privacy in, **5:14, 9:63**
Matches made years later, **5:18**
Sampling orders, see DNA Order
Standard of proof for consent to sample, **5:15**

DNA ORDER
Ex parte orders for DNA, **5:17**

DNA ORDER—Cont'd
Matches made years later, **5:18**
Post conviction and sentence young offenders, **3:14**
Stay pending conviction appeal, **5:19**
Upon conviction, **5:16**

DNR
Interception, constituitionality of, **9:40**

DOG SNIFF
Generally, **5:75**
Bus depot, **5:75**
School, **5:23**

DUNCAN INSTRUCTION
Generally, **1:6**

DYING DECLARATIONS
Admissibility
circumstances re, **10:62**
procedure re, **10:62**
General principle re, **10:62**
Homicide cases, **10:62**
Inculpatory statements, **10:62**
Limitation on admission, **10:62**
Settled and hopeless expectation of immediate death, **10:62**
Trustworthiness, **10:62**

ENGLISH JUDGES' RULES
Generally, **1:12**

ENGLISH RULES
Exclusion of evidence, re, **7:3, 7:5**

ENTRAPMENT
Generally, **10:55**
Crown privilege and, **10:55**
"Random virtue testing," **6:71**
Solicitor-client privilege and, **6:75, 10:74**

EVIDENCE
Attend, refusal to, **1:11**
Charter violation, of, **5:102**
circumstantial, **10:127**

EVIDENCE—Cont'd
Conscriptive vs. non-conscriptive, **7:15, 7:17**
Contempt for disobeying subpoena, **1:11**
Derivative, **7:20, 9:9, 10:126**
Exclusion of
see Exclusion of evidence
"Friends with benefits," **10:112**
Inconsistencies, **10:111**
failing to resolve material, **10:102**
reconciling, **10:111**
Inconsistent statements, **9:3**
ITO, currency information in, **10:79**
Loss of, **10:10, 10:21**
Material, subpoena to attend to provide, **1:11**
Police report as, **10:49**
Preservation of evidence dilemma, **7:13**
Private communications, **10:78**
Psychiatric, **8:34**
Real, **7:12, 7:13, 7:15, 7:17**
Real estate reporting letter, **10:81**
Record of case under s. 32(2) Extradition Act, **10:14**
Refusal to attend, **1:11**
Residential energy records, **10:78**
Right to remain silent at trials as, **4:8**
Self-serving
see Self-serving evidence
Sexual relationship, of, **10:112**
Similar fact, **10:92**
S. 715.1 of Criminal Code and, **10:87, 10:98**
Verdict, unreasonable or unsafe, **10:127**

EXCLUSION OF EVIDENCE
American rule, **7:6**
Appeal, raising Charter violation for first time on, **7:25**
Canadian Committee on Corrections report, **7:8**

EXCLUSION OF EVIDENCE —Cont'd
Charter caselaw, **5:42, 5:46, 6:5, 7:10 to 7:20, 8:28, 8:32**
administration of justice, disrepute and, **7:10 to 7:12, 7:15, 8:32**
appellate function, **7:11**
causal connection with violation, **7:17**
civil proceedings, **7:14**
Collins, rules in, **7:11**
community shock test, **7:11**
community standards test, **7:10**
conscriptive vs. non-conscriptive evidence, **7:15, 7:17**
crime-scene re-enactment, **7:18**
derivative evidence, **7:17, 7:20**
detention context, **7:11**
discretionary aspect of remedy, **7:10**
early cases, **7:10**
inadvertent breach of rights, **7:12**
investigating accused on remand removal from state to police custody, **5:46**
jeopardy, understanding one's, **7:19**
limited purposes admission of evidence, **7:21**
personal diary, **8:28**
police bad faith as factor in s. 24(2) exclusion, **1:2**
police good faith as factor, **5:42, 11:2**
police urgency vs. accused's rights, **7:20**
preliminary inquiry, at, **6:5**
preservation of evidence dilemma, **7:13**
real evidence question, **7:12, 7:13, 7:15, 7:17**
s. 24(2), operation of, **7:10, 7:14, 7:20**
Stillman, application of, **7:15**

EXCLUSION OF EVIDENCE —Cont'd
Charter caselaw, **5:42, 5:46, 6:5, 7:10 to 7:20, 8:28, 8:32** —Cont'd
subjective test of s. 24, **7:10**
surveillance of residence, warrantless, **7:20**
test for exclusion, **7:11, 7:13, 7:19**
unfair trial assessment, **7:11, 7:15**
vehicle, expectation of privacy re, **5:41, 7:20**
English rule, **7:3, 7:5**
caution used, wording of, **7:5**
inferences from accused's silence, **7:5**
Extradition hearing, **7:6**
Gunshot residue, **9:35**
Improper police conduct, as means of discouraging, **7:9, 7:12**
Judicial discretion
Baldree case, **10:96**
criteria of necessity and reliability satisfied, when to exclude, **10:88**
discovery of physical evidence confirming statement, **7:3**
exclude when criteria of necessity and reliability satisfied, to, **10:89 to 10:96**
infringement of constitutional right, **7:2**
prejudice vs. probative value, **10:89**
statements generally, **7:2 to 7:7**
statements to informants, **7:4**
Law Reform Commission of Canada's report, **7:9**
Miranda, rule in, **7:6, 7:7, 8:22**
Post demand delay, **5:5**
Post-violation confession, **5:96**
Pre-Charter discretion, **7:2 to 7:4**
English practice, **7:3**
integrity of criminal justice system, **7:4**

EXCLUSION OF EVIDENCE —Cont'd
Pre-Charter discretion, **7:2 to 7:4** —Cont'd
judge's confessions rule, **7:4**
probative value vs. unfairness, **7:2 to 7:4**
St. Lawrence rule, **7:3**

EXCULPATORY STATEMENTS
Admissibility for/against accused, **6:18**
Consciousness of guilt derived from, **6:27**

EXPECTATION OF PRIVACY
Airline passenger list, **9:72**
Airports, at, **5:21**
Ambulance, **9:70**
Blood samples at hospital, **2:37**
Briefcases, **5:77**
Bus depot lockers, **5:74**
Camera pens and, **9:78**
Cell phone found while executing warrant, **5:84**
Cell phone records, **9:57**
Chewing gum, **9:67**
Computer, **5:84, 5:94**
contents of, **5:84, 5:86, 5:94**
shared, **5:86**
Detention centre phone calls, **9:59**
Discarded straw, **5:14, 9:63**
Driveway entry, **9:66**
Electrical consumption, **9:74**
Farmers' fields, **9:61**
Garbage left for collection, **9:71**
Greenhouses, **9:71**
Hand-held communications device, **5:92**
Heat, odours leaving a private place, **5:75**
Historical text messages, **9:81**
Home partially converted to place of business, **9:65**
Hospital records, **2:37**
International travel, during, **5:21**

EXPECTATION OF PRIVACY —Cont'd
Internet service provider, **9:80**
Laptop computer provided by school, **9:77**
Outbuildings, **9:60**
Parking garage, **9:58**
Phone towers, records re, **9:62**
Police service record, **9:52**
Public place, street, **9:66**
Reasonable suspicion, **9:73**
Residence used for selling narcotics, **9:64**
School settings, in, **9:78**
Sensing diagnostic module, **9:67**
Sniffer dogs, **5:75**
Teachers and, **9:78**
Text messages
accomplice's device, **5:86**
production from service provider, **5:86**
Utility records, **5:81**
Vehicle, less in, **5:41**
Video files, **5:94, 9:79**

FALSE STATEMENTS
Generally, **1:5**
Accused, by, **4:1**
Factor in determining voluntariness of entire statement, **8:3**
Post-offence behaviour, and, **6:26**
Wrongful convictions, incidence of false statements on, **1:9**
Young person, by, **3:6**

FUNDAMENTAL JUSTICE
See Charter of Rights and Freedoms

HEARSAY
Generally, **9:11, 10:84, 10:85, 10:88, 10:96**
Admission against penal interest exception, **10:103**
Admission of, reasons for, **10:99**
Baldree case, **10:96**
Co-conspirator's exception, **10:104**

HEARSAY—Cont'd
Khelawon criteria and beyond, **10:96**
Res gestae exception, re, **10:110, 10:113**

HYPNOSIS
Generally, **1:2, 1:3, 8:8, 8:44**

IMMIGRATION
Generally, **5:21**

INDUCEMENTS
Generally, **2:41, 2:71, 4:1, 8:17, 9:16**
Promise of release if alibi verified, **4:9**
Spiritual, **2:73**
Temporal connection, **5:57**

INFORMERS
Credibility of, **10:60**
Cross-examination re identity of, **10:51**
In camera hearing to prevent identification, **9:27**
Jailhouse, **2:8**
Privilege
see Police-informer privilege
Promise of confidentiality, **10:51**

INFRA-RED CAMERAS (FLIR) TECHNOLOGY
Generally, **9:50**

INNOCENCE AT STAKE EXCEPTION AND PROFESSIONAL MISCONDUCT OF PROSECUTOR
Generally, **10:71**

INTERCEPTED COMMUNICATIONS
See Recording interrogation sessions; Spousal communications

INTERPRETERS
Generally, **2:49**
Accredited by Attorney General, **2:27**

INTERROGATION
See also Young persons, statements by; Recording interrogation sessions
Audio/visual recording of, **9:18**
Failure to record, **5:67**
Obligation under s. 10(a) Charter, **2:35**
Unfair techniques, **8:44**

INTIMIDATION
Generally, **5:27, 8:9 to 8:13**

INTOXICATION
Generally, **8:9, 8:13**

INVESTIGATIONS
See Police inquiries/investigations

JAIL CELL
Police attempting to overhear conversation, **8:36**
Youth offender confiding to undercover officer in cell, **3:18**

JAILHOUSE CONFESSIONS
Generally, **8:35**

JUDGES
Advice of counsel, re, **8:19**
Apprehended bias on part of, **6:58**
Assistance, duty to provide, **8:19**
assumptions based on stereotypes, **10:93**
Charter issues, assisting with, **8:19**
Confessions rule, **7:4**
English Judges' Rules, **1:12**
Independence re Chief Justice, **6:62**
Interference by, **6:61**
Myths, **6:68**
Obligation to provide translation, bilingual jury, **2:52**

JUDGES—Cont'd
Self-serving evidence, power re, **10:110**
Stereotypes, **6:68**
Voir dire, role on
see Voir dire
Voluntariness as question of fact for, **8:2, 8:3**

JURY
Address to, undermining right to counsel via, **8:21**
Non disclosure of vetting, **10:12**
Proof of confession before, **6:41**
Voir dire and
see Voir dire

LANGUAGE
See also Interpreters
Right to counsel and, **2:49, 5:66**
Warning and, **2:49 to 2:53**

LEGAL AID
Ability to apply for, **2:36**
Right to legal aid counsel at trial, **5:110**

LIE DETECTOR
See Polygraph

MENTAL CAPACITY
See State of mind of accused

MINISTERIAL REVIEW
Generally, **11:4**

MIRANDA RULE
Generally, **7:6, 8:22**

MOTOR VEHICLE LEGISLATION, STATEMENTS UNDER
Fundamental justice and, **10:115**

NARCOANALYSIS
See Voluntariness

NECESSITY AND RELIABILITY
Generally, **10:88**
Baldree case, **10:96**

NECESSITY AND RELIABILITY —Cont'd
Khelawon criteria and beyond, **10:96**
Police notes — notes transposed, **10:48**
Prior consistent statements of accused, **10:83**
Privacy rights and interference with accused's integrity or dignity, **7:15**

NOTES, USE OF
Admissibility question, **10:1**
Completeness, **10:1**
Contemporaneity requirement, **10:48**
Criteria for, **10:1**
Disclosure requirement
application re, **10:21**
costs of, **10:21**
Crown, by, **10:10**
loss of evidence, **10:21**
police, by, **10:10 to 10:16**
privacy in child pornography case, **10:21**
solicitor-client privilege and, **10:16**
third party, by, **10:10**
Independent recollection requirement, **10:1**
Omission of information in notes, **10:1.1**
Police-informer
see Police-informer privilege
Production for examination by defence counsel, **10:1**
Revival of memory function, **10:48**
Transcription of notes, **10:48**

OPERATING MIND
Generally, **1:2, 2:49, 8:14 to 8:16, 9:9**

OPPRESSION
Generally, **1:2**
Voluntariness and, **8:11, 8:12**

OPPRESSION—Cont'd
Warning re, **2:56**

PEDESTRIAN
Identification of, **5:22**

PERSONS IN AUTHORITY
Ambulance attendant, **2:10**
Bank manager/director, **2:12**
Burdens of proof re admissibility, **2:25**
Charter violation and
see right to remain silent and, infra
Confessions rule and, **2:13**
Defined, **2:1, 2:2**
Detention officials, **2:11**
Employee receiving confession, **2:12**
Father, **2:12**
Foreign attorneys, **2:15**
Informer in jail, **2:8**
Insurance adjuster, **2:24**
Masters and servants, **2:3**
Miscellaneous examples, **2:12**
Mother of thirteen-year-old boy, **2:9**
Mr. Big strategy, **2:16 to 2:18, 2:20, 2:21**
confirmation, lack of independent, **2:22**
"holdback" evidence, need for, **2:22**
Parents, relatives and friends of victim, **2:13**
Parents and guardians, **2:9**
Persons capable of controlling corrupt police, **2:23**
Physician not functioning as agent of State, **2:10**
Police informants, **2:8**
Police officer, undercover, **2:8, 2:14**
"Protected statements," Criminal Code provision re, **2:5**
Psychiatrist examining accused in custody, **2:4, 2:5**

PERSONS IN AUTHORITY —Cont'd
Raising issue at trial, importance of, **2:13**
Right to remain silent and, **2:8**
Social workers, **2:6**
Stepfather, **2:13**
Undercover officers, **2:14 to 2:23**
Victim as, **2:12**
Victim's parents, etc., **2:13**
Voir dire, evidence triggering, **2:13, 2:23**
Youth workers, **2:7**

POLICE CONDUCT/MISCONDUCT INVESTIGATIONS
American practice, **10:121**
Charter protection for police, **10:119, 10:120**
"use of force report," **10:122**
Confidentiality and disclosure requirement, **10:120**
Co-operation requirement, **10:119, 10:120**
Counsel, right of officer to consult, **10:120**
Discipline, **10:119**
Duty statements, **10:119 to 10:121, 10:123**
Impersonating counsel, **7:22**
Inappropriate behaviour by police during interview of accused, **7:22**
Informer privilege and, **10:53**
Legal advice, reliance/non-reliance on, **10:71**
Mr. Big strategy, **2:16 to 2:18, 2:20, 2:21**
confirmation, lack of independent, **2:22**
"holdback" evidence, need for, **2:22**
Ontario Police Act disciplinary proceedings, **10:119**
Ordered statements, **10:118, 10:120**

POLICE CONDUCT/MISCONDUCT INVESTIGATIONS—Cont'd
Police officer's notes for SIU
preparation and vetting with counsel, **10:120**
Reform re, **10:123**
Charter application to, **10:119**
incriminating statements, **10:119**
investigation provisions, **10:119**
right to silence, **10:119**
Stay of proceedings, **10:24 to 10:38**
Voir dires, **10:119**

POLICE-INFORMER PRIVILEGE
Absolute nature of, **10:54**
Adequacy of information to obtain warrant (ITO), **10:51**
Agent provocateur, pretrial disclosure re, **10:52**
Claiming prior to production of notes, **10:50**
Crime Stoppers, **9:28**
Disclosure requirements and, **10:52, 10:53**
Disclosure to commission of inquiry, **10:50**
Editing of notes, **10:51**
Exceptions to, **10:48, 10:50**
Full answer and defence argument, **10:50**
Fundamental importance of, **10:48**
Identity of informer
cross-examination of police re, **10:51**
protect, obligation of state to, **10:57**
setting aside order protecting, **10:58**
"Innocence at stake" exception, **10:54**
Misconduct charges and, **10:53**
Paid informers, role of, **10:51**
Patient information by physician, **10:50**
Promise of confidentiality, **10:51**

POLICE-INFORMER PRIVILEGE —Cont'd
Public duty not to inform, **10:50**
Reliability of informers, **10:59**
Reliance on hearsay, **10:51**
Rule of law explained, **10:50**

POLICE INQUIRIES/INVESTIGATIONS
See also Arrest or detention, meaning of
Accused on remand
removal to police custody, **5:46**
Approaching youth in school yard, **5:22**
Assessments vs. suspicions, **10:131**
Assistance in making choices, **2:44**
Attendance at police station with counsel, **5:27**
Belittling accused's lawyer, **5:66**
Counsel, right to, **5:27, 5:30**
Detention, **5:22**
Duties re right to counsel, **2:36, 5:100, 5:112**
Foreign nationals, re, **2:48**
Good faith, **5:47**
Guidelines for police conduct, **5:60**
Interview prior to arrest, **2:80**
Investigation, stages of, **2:29**
Misconduct, discouraging, **7:9, 7:12**
Police informer privilege, in camera procedure, **9:26**
Police plants, **8:19 to 8:22**
Public interest privilege and, **10:61**
Questioning after counsel consulted, **5:107**
Questions, right to ask, **2:29**
Reconstruction reports, disclosure of, **10:5**
Recording/videotaping interviews, **2:5, 2:76**
Re-enactment, **2:78**
Role in administration of justice, **10:131**
Search incident to investigative detention, **2:32**

POLICE INQUIRIES/INVESTIGATIONS —Cont'd
Solicitor-client privilege re Crown law officer, **10:16, 10:68**
Solicitor-client relationship, need for counsel to assert, **10:72**
State of investigation, information re, **2:66**
Undercover, **2:8, 2:14, 8:31 to 8:33**
Vehicle stops, **5:37**

POLICE REPORT, USE AS EVIDENCE
Generally, **10:49**

POLYGRAPH
Abuse of, **9:6**
Accuracy of, scientific view, **9:12**
Adverse inference from refusal, **9:7**
Alternatives to, **9:12**
Civil cases and, **9:11**
Confession, use to induce, **9:16**
Counsel advice re, non-admissibility of, **9:14**
Credibility, as instrument for testing, **9:1 to 9:5**
Derivative evidence and, **9:9**
Examination sessions, recording, **9:18 to 9:20**
value of, **9:18**
Examiner not entitled to speculate on reliability, **9:13**
Future of, **9:20**
Hearsay, rule against, **9:11**
Inconsistent statements, **9:3**
Inducement or threat, use as, **9:6, 9:16**
Informational requirements at pre-interview, **9:8**
Investigative technique, use as, **9:14**
Oath helping, rule on, **9:2**
Operating mind test, **9:9**
Paucity of caselaw, **9:1**
Polygraph officer, role of, **9:15**

POLYGRAPH—Cont'd
Post-polygraph statement, admissibility of, **9:9**
Probative weight of, **9:9**
"Psychological rubber hose," as, **9:16**
Refusal to submit to, **9:10**
Relevance of, **9:16**
Reliability, scientific comment on, **9:12**
Right to counsel and, **9:9**
Statement, use to induce, **9:6**
Test results not admissible, **9:5**

PRIOR CONSISTENT STATEMENTS
Reliance on, **10:86**

PRIOR INCONSISTENT STATEMENTS
Adverse witness
adverse vs. hostile, **10:84**
meaning of, **10:84**
necessity of declaration, **10:88**
Canada Evidence Act provision re
s. 9(1), **10:84**
s. 9(2), **10:83, 10:85**
s. 10 statement of witness, **10:84**
text, **10:84**
Cross-examination on
credibility, re, **10:84**
leave for, **10:84**
Evidence admitted under s. 715.1 of Criminal Code, **10:87, 10:98**
Jury instruction re, **10:106**
New rule, **10:85**
application of, **10:85**
flexibility, **10:85**
hearsay dangers and, **10:85**
necessity, **10:85, 10:88**
principled exception to hearsay rule, **10:88**
reliability, **10:85, 10:88**
s. 9 of Canada Evidence Act and, **10:85**

PRIOR INCONSISTENT STATEMENTS—Cont'd
New rule, **10:85**—Cont'd
voir dire, role of trial judge on, **10:85**
Orthodox rule
cases reaffirming, **10:85**
described, **10:85**
Estey J.'s rejection of, **10:85**
reform to, **10:85**
Police report or notes, **10:84**
Self-incrimination and
see Self-incrimination, privilege against
judicially led, **10:85**
legislative, **10:87**
recommendations for, **10:84**
witnesses' exculpatory identification evidence, **10:87**
Witness statement
hearsay, vs., **10:84**
implicating accused, recanting, **10:97**
voir dire to determine whether made, **10:84**

PRIVACY
Airports, expectation at, **5:21**
Blood samples taken at hospital, **2:37, 9:69**
Camera pens and expectation of, **9:78**
Child pornography case, in, **5:91, 10:21**
Computer, shared, **5:86**
Expectation of, **9:50 to 9:58**
see also Expectation of privacy
High school, in, **9:50**
Hospital records, **2:37**
International travel, expectation during, **5:21**
Lawyer's residence, **6:41**
Right to counsel and
see Right to counsel on arrest or detention

PRIVACY—Cont'd
School settings, in, **9:78**
Teachers and, **9:78**
Vehicle, in, **7:20**

PRIVILEGE
Crown privilege, **10:55**
Observation post, **6:81**
Parent and child communication, **3:15**
Police informer
see Police-informer privilege
Priest, communications to, **10:82**
Psychologist, communications to, **10:82**
Real estate reporting letter, **10:81**
Self-incrimination, against
see Self-incrimination, privilege against
Settlement communications, **10:42**
Solicitor-client
see Solicitor-client privilege
Spouses
see Spousal communications

PROVINCIAL OFFENCES
Disclosure, **10:128**

PSYCHIATRIC EVIDENCE
Generally, **8:34, 10:124**
Statements made under s. 672.21 of Criminal Code, protected, **2:5, 10:124**

PSYCHIATRISTS
Generally, **2:4, 2:5**

PSYCHOLOGICAL DETENTION
Generally, **5:27**

PSYCHOLOGIST, COMMUNICATIONS TO
Generally, **10:82**

PUBLICATION BANS
Generally, **6:80, 10:73**
Police methods re obtaining confessions, **6:80**

PUBLICATION BANS—Cont'd
Videotaped statement of accused, **6:82**

QUID PRO QUO
Generally, **1:2**

REASONS TO SUPPORT DECISIONS
See also Voir dire, judge
Admission of hearsay, re, **10:99**
Editing by judge, **10:100**
Sufficiency, obligation re providing, **10:101**

RECORDING INTERROGATION SESSIONS
Confessions, audio/video recording of, **9:22, 9:48 to 9:50**
clandestine, **9:48**
police line-up, **9:50**
practice of, **9:18**
privacy, expectation of, **9:50**
unreasonable search and seizure, as, **9:50**
value of, **9:48**
verification of, **9:50**
viewing of by juries, **9:49**
Failure to inform accused of videotaping, **9:44**
Intercepted communications
authorized, **9:46**
cellphones, **9:42**
consent re, **9:33 to 9:36, 9:38**
exclusion for Charter violation, **9:36**
message on paging service, **9:38**
participant surveillance, **9:36**
undercover police in prison, **9:38**
unreasonable search and seizure, as, **9:36**
Non-use of available video facilities, **9:43**
Photograph of accused, **9:45**
Police failure to use available equipment, **9:43**

RECORDING INTERROGATION SESSIONS—Cont'd
Tape recording
access to, **9:30 to 9:32**
admissibility procedure, **9:21, 9:24**
Code of Practice (U.K.), **9:22**
exhibits, records as, **9:30**
in camera hearing to prevent identification, **9:27**
refreshing memory on basis of, **9:37**
safeguards in preserving recordings, **9:29**
studies and reports on, **9:22**
surreptitious use of, **9:24**
use of, **9:21, 9:22**
voir dire re admissibility, **9:33**
Videotaping
confessions, of, **9:22**
criminal record, reference to during interrogation, **2:77**
disclosure of statement, **6:81, 10:3**
editing, **2:68, 2:77**
pilot project, **9:22**
police interviews, **2:76**
recommendations re, **9:22**
statement of accused, **2:77, 6:81**
viewing results of by jury, **9:32, 9:49**

REID TECHNIQUE
Generally, **1:8**

REMEDIES
See Exclusion of evidence

RES GESTAE
Generally, **10:110**

RETRIAL ON SAME INDICTMENT
S. 13 Charter, **10:106**

RE-WARNING
Generally, **2:54, 5:100 to 5:103, 5:112, 7:17**

RIGHT TO COUNSEL AT TRIAL
Generally, **5:107**
Counsel of choice, **5:111**

RIGHT TO COUNSEL ON ARREST OR DETENTION
See also Warning
generally, **2:36, 2:41**
"against you," avoidance of wording, **2:53**
counsel of choice and informational component, **2:40**
inducements, previously made, **2:41**
language difficulty, where, **2:49**
lawyer not to act as interpreter, **2:49**
operating mind test, **2:49, 2:53**
touching person after entry of dwelling, **5:50**
understanding of right, ensuring, **5:100**
Adequate advice from counsel, **5:56**
Arrest or detention, meaning of
see Arrest or detention, meaning of
Arrival of counsel, no requirement to wait for, **5:109**
Attempting to reach counsel, **5:48**
Automatic Roadside Prohibition Regime (ARP) and, **5:10**
Belittling accused's lawyer by police, **5:66**
Breathalyzer demand, grounds for holding off, **5:4**
police not required to disclose, **5:105**
Broad interpretation of, **5:66**
Burden of establishing violation, **5:65**
911 call, entry after, **5:53**
non-governmental person, detention by, **5:49**

RIGHT TO COUNSEL ON ARREST OR DETENTION —Cont'd
Change in circumstances, **2:36**
Charter text re, **4:20**
Common law, at, **4:20**
Contradictory evidence, **5:63**
Co-ordination test, request for, **5:12**
"Counsel," meaning of, **4:20**
Counsel of choice, **2:46, 5:64, 5:65**
Customs searches, **5:20, 5:21**
Delay in advising, **2:36**
Detention, meaning of
see Arrest or detention, meaning of
Diligence in exercising, **5:97 to 5:99**
DNA analysis, request for sample for, **5:13**
Duty counsel, availability of, **2:36**
Entry of dwelling, **5:50**
Entry re 911 call, right of, **5:53**
Evidence of violation, **5:102**
Exclusion of evidence where violation of, **5:96 to 5:98**
Extraterritorial application of Charter, **7:23**
Failure to exercise rights diligently, **5:98**
Government obligation re providing counsel, **2:36**
Guidelines re exercise of, **5:112**
Holding for questioning, **5:31 to 5:47**
Informed of specific offences, Charter s. 10(a), **5:69**
Informed without delay, **5:55**
exigencies of investigation and, **5:55**
U.K. provisions re, **5:55**
Interval between caution and questioning, **5:103**
Investigative detention, **5:26, 5:31, 5:34**
common law search power during, **5:26**

RIGHT TO COUNSEL ON ARREST OR DETENTION —Cont'd
Language difficulties, **2:49 to 2:53**
Legal aid
see Legal aid
mentally ill persons
generally, **2:50**
ADHD, claiming, **2:51**
claustrophobia, **2:51**
implementational duties, **2:50**
Obligation to explain, **5:60**
Obstructive accused, **5:97**
Officers' personal phone, use of, **2:39**
Opportunity to exercise, **5:58 to 5:63, 5:96 to 5:106**
abuse of right, **5:61**
components of, **5:58**
counsel of choice, **5:64**
credibility, **5:63**
due diligence, **5:97 to 5:99**
guidelines for police conduct, **5:60**
increased seriousness of charges, **5:62, 7:19**
no questioning after assertion of right, **5:58, 5:59**
onus on accused, **5:60**
unsuccessful attempt to contact, **5:59**
Passengers, questioning of, **5:25**
Pedestrian identification, **5:22**
Police duties re, **2:36, 5:100, 5:112**
Police interference or advice, **5:31**
Police misconduct, **5:43**
Police officer's safety concerns, **5:29**
Police searches, **5:30, 5:31**
Police station attendance, request re, **5:27, 5:28**
Polygraph and, **9:9**
Privacy requirement, **2:36, 5:67 to 5:73, 5:96, 5:101**
airline passenger list, **5:79**

RIGHT TO COUNSEL ON ARREST OR DETENTION —Cont'd
Privacy requirement, **2:36, 5:67 to 5:73, 5:96, 5:101**—Cont'd
breath sample cases, **5:71**
briefcases, **5:77**
cell phone, **5:84**
commencement of, **5:96**
computer, contents of, **5:84, 5:94**
EDR data on vehicle, **5:83**
emergency situations, **5:73**
hand-held communications device, in, **5:92**
hospital, telephone calls in, **5:72**
inherent in right to privacy, **5:96**
laptop computer provided by school, in, **5:89**
locker in bus depot, **5:74**
origins of, **5:71**
overhearing by police, **5:71 to 5:73, 5:96**
request required of accused, **5:71, 5:96, 5:98**
sniffer dogs, **5:75**
utility records, digital recording ammeter, **5:81**
video files, **5:94**
visual privacy, **5:71**
waiver of, **5:71**
Questioning after counsel consulted, **5:66, 5:107 to 5:109**
accused's choice, **5:107, 5:108, 5:112**
Charter, impact of, **5:107**
counsel directing police questioning, **5:108**
counsel interfering with investigation, **5:112**
counsel's presence at questioning, **5:66, 5:67, 5:108**
factors for consideration, **5:107**
high onus on police, **5:107**
post-investigative stage, as, **5:108**

RIGHT TO COUNSEL ON ARREST OR DETENTION —Cont'd
Questioning after counsel consulted, **5:66, 5:107 to 5:109**—Cont'd
pre-Charter jurisprudence, **5:107, 5:109**
Questioning prior to exercise of, **5:96, 5:108, 5:109, 5:112**
Reconciling discrepancies before ruling, **2:82**
Refusal of request for, **2:36, 5:61**
Reinforming accused of right, police duty re, **5:69, 5:100 to 5:103, 5:112, 7:17**
Remand in custody, on, **5:46**
Repeat offender, **5:101**
Re-warning, obligation re, **2:54, 5:101**
Right to have counsel throughout police interview, **5:66, 5:67**
Roadside, use of officers' personal phone, **2:39**
Roadside screening, **5:8**
Rowbotham order, **5:108, 5:110**
Search as part of on-going investigation, **5:25**
Second statement, **2:37**
Self-incrimination, relation to, **5:59**
Serious charges contemplated, where, **5:62**
Statements not result of police questioning, **5:48**
Subnormal accused, **5:100**
Subsequent statements, tainting of, **5:57**
Summary re, **5:109**
Toll-free number requirement, **2:36**
Unsuccessful attempt to contact counsel, **5:106**
Vehicle stop, **5:37**
Violation of right —-
evidentiary requirement, **5:102**
onus of establishing, **5:65**

RIGHT TO COUNSEL ON ARREST OR DETENTION —Cont'd
Violation of right ——Cont'd
vicarious liability of government, **5:54**
Voluntariness and, **1:2**
Waiver of, **2:36, 5:66, 5:101**
"awareness of consequences" test, **5:66**
Crown's burden of establishing, **2:36**
informed waiver, **5:66, 5:101, 7:19**
injured accused, **5:66**
intoxicated accused, **5:66**
privacy, **5:71 to 5:73**
refusal to contact counsel suggested by police, **5:66**
understandable language requirement, **5:66**
Warrant s. 11 Controlled Drugs and Substances, **5:52**
Young persons, **3:3, 3:6 to 3:8, 5:112**
Youth Criminal Justice Act, **3:16**

RIGHT TO REMAIN SILENTS
See also Alibi, Self-incrimination, privilege against
Alibi disclosure rule and, **4:9**
Appeal
introducing different positions on, **4:20**
raising issue for first time on, **4:19**
"At large," while, **4:18**
Comments of counsel re, **4:3, 4:4**
Confession to cellmate acting as agent of State, **8:35**
Consciousness of guilt, silence not to be used as evidence of, **8:19**
Debate re, **1:1**
Importance of, **1:1**
Incriminating conversations, in face of, **4:1**
contemporaneous requirement, **4:1**

RIGHT TO REMAIN SILENTS —Cont'd
Incriminating conversations, in face of, **4:1**—Cont'd
express adoption requirement, **4:1**
false statement, **4:1**
incriminating written statement, **4:1**
induced by hope of advantage, **4:1**
natural reaction assumption, **4:1**
offer to plead guilty, **4:1**
reasonable opportunity to reply, **4:1**
Off the record statements, **4:2**
Operating mind requirement, **1:2**
Persons in authority and, **2:8**
Post-conviction stage, **4:13**
Pretrial, **4:5, 4:6**
Recent possession, doctrine of and, **8:20**
SIU investigations, **4:15**
Specific offences, right to be informed of, **5:69**
Statement inadmissible as compelled, **4:17**
Statutory requirement to provide information, where, **4:14 to 4:16**
Trial, at, **2:28, 4:8**
alibi context, **4:8**
as distinct piece of evidence, **4:8**
jury vs. judge, before, **4:8**

ROADBLOCKS
Conditions justifying stopping all cars, **5:39**

SEARCHES
Automatic Roadside Prohibition (ARP), **10:117**
Blood samples taken at hospital, **2:37, 9:69**
Cell phone propagation maps, **9:39**

SEARCHES—Cont'd
Cell phones not ''locked'' or ''password protected,'' **5:44, 9:54, 9:56**
Child pornography, **5:91**
Customs, **5:20, 5:21, 5:30**
Hand-held communication devices, **5:92**
Hospital records, **2:37**
Information to obtain (ITO), the S.C.C. and, **10:79**
Investigative detention and, **5:25, 5:26, 5:31**
Lawyer's residence, **5:91**
Liability of police, civil, **9:51**
On-going investigation and, **5:25**
Pat-down search, **5:26**
School context, **5:7, 5:89**
software, use of updated, **9:55**
Text messages, access to, **9:41**
updated software, use of, **9:55**
Unreasonable, **7:23, 9:36, 9:50, 10:60**
Valid or informed consent, **2:33**
While testifying, **10:108**

SELF-INCRIMINATION, PRIVILEGE AGAINST
Applicable only to ''incriminating'' evidence, **10:95**
Prior inconsistent statements and case law, **10:105**
cross-examination to impeach vs. to incriminate, **10:105**
perjury, exception for, **10:106**
statements inadmissible due to Charter violation, **10:105**
Right to remain silent and see Right to remain silent

SELF-SERVING EVIDENCE
Complainant's motive to fabricate, **6:73**
Evidence from 911 call, **10:110**
Evidence obtained on cross-examination of co-accused, **10:110**

SELF-SERVING EVIDENCE —Cont'd
Judge's power re, **10:110**
Possession of recently stolen goods, **10:110**
Recent fabrication, **10:110**
Res gestae, statement as part of, **10:110, 10:113**
Rule re use of by accused, **10:110**
Statement as evidence for or against maker, **10:113**
Weight, use for, **10:110**

SILENCE
See Right to remain silent

SOLICITOR-CLIENT PRIVILEGE
Actus reus of crime, **10:73**
Confidence requirement, **10:73**
Crown law officer advice to police, **10:16, 10:68, 10:71**
Draft documents, protection of, **10:70**
Entrapment and, **6:74, 10:74**
Inadvertent disclosure, **10:55**
Innocence at stake, principle of, **10:71**
Law office searches, **10:77 to 10:80**
s. 487 definition of ''law office,'' **10:80**
Lawyer's residence, search of, **5:91**
Legal advice requirement, **10:68**
Limitation on privilege, **10:68**
Plea negotiations, **10:75**
Psychiatric assessment, **10:68, 10:73**
Public safety exception, **10:73**
Purpose of privilege, **10:68**
Seizure of notes written in prison to counsel, **10:68**
Seizure under s. 488.1 of Criminal Code, **10:76**

SOLICITOR-CLIENT RELATIONSHIP
Need for counsel to assert, **10:72**

SPECIAL INVESTIGATIONS UNIT (SIU)
Generally, **4:15**

SPIRITUALIST
Generally, **8:18**

SPOUSAL COMMUNICATIONS
Canada Evidence Act provision re
purpose of, **10:63**
s. 4(3), **10:64**
s. 4(4), **10:64**
s. 4(5), **10:67**
s. 4(1) not offending s. 15(1) of Charter, **10:65**
text, **10:64**
Federal Law Reform Commission report re, **10:64**
Intercepted communications: spouse and counsel, **10:67**
Intercepted private communication, **10:64, 10:66, 10:67**
Marital reconciliation, statements during, **10:67**
Overheard communication, **10:64, 10:66**
Post-divorce/annulment statements, **10:67**

STATEMENTS
Agreed
witness recanting, **10:97**
Alibi notice as, **1:7**
Awareness of consequences, **2:43**
Broadcasting videotaped statement of accused, **6:81**
Caution, inadequate, **2:42**
Circumstances of taking formal statements, **2:55**
Confronting suspect with exhibit, **2:48**
Conversations, recording of, **2:63**
Criminal record of accused, referring to
in videotaped interrogation, **2:77**
Cross-examination during course of, **4:1**

STATEMENTS—Cont'd
False
see False statements
Form of, **2:68 to 2:79**
editing, **2:68, 2:77**
illegal detention and, **2:70**
narrative form, **2:68**
oral statements, **2:68**
questions, type of, **2:69**
time taken for, **2:69**
videotaped, **2:77 to 2:79**
Functional equivalent of interrogation, **9:8**
Gestures as, **1:5**
Good faith factor, **11:2**
Illegal detention and, **2:70**
Income Tax Act, under, **10:116**
Incomplete statements, admissibility of, **6:78**
Incriminating vs. exculpatory, **1:5**
Inducement, **2:71, 4:1**
spiritual, **2:73**
Intimidation, **2:74**
Lengthy detention, **2:61, 2:69**
Off-the-record statements, **4:2**
Overheard statements, non-contextual, **6:78**
Police notes, absence of, **2:64**
Police opinion on veracity of, **6:31**
Police role in administration of justice, **10:131**
Preliminary questions by police, **10:131**
Prior inconsistent
see Prior inconsistent statements
Protected statements
Criminal Code, provision re, **2:5**
under s. 672.21 of Criminal Code, **10:124**
Quality of counsel's advice, no requirement to ensure, **2:45**
Reading back by accused, **4:1**
Recollection of past conversation with accused, **2:65**

STATEMENTS—Cont'd
Recording officer and witness, role of, **2:60 to 2:63**
Re-enactment, **2:78**
Reform proposals, **11:1**
Signing by accused, **4:1**
Stage of investigation, **2:71 to 2:74**
Subsequent statements, tainting of, **5:57**
Tainted statement, temporal connection, **7:12**
Taking, **2:1 to 2:76**
Veracity of, police opinion on, **6:31**
Warning, inadequate, **2:42**
Weight and admissibility, **6:76**
Witness statement
see Prior inconsistent statements
Written form, **2:55**
Wrong to edit statement, **6:19**

STATE OF MIND OF ACCUSED
See Voluntariness

STAY OF PROCEEDINGS
Generally, **10:21**
Arbitrary detention or imprisonment, **10:38**
Bail hearing delayed, **10:39**
Battered woman syndrome, **10:34**
Change in Crown position, **8:39**
Costs awarded against Crown for non-disclosure, **10:45**
Crown misleading court, **8:40**
Destruction of evidence, and, **10:36**
Entitlement to have issue litigated, **10:41**
Judge cannot order on own motion, **10:44**
Language of accused, **10:43**
Non-disclosure, for, **10:21**
Not appropriate, absence of interpreter, **10:40**
Physical health of the accused, **10:30**
Police behaviour, **10:24**
Police erasing tapes, **10:28**

STAY OF PROCEEDINGS —Cont'd
Police intentionally not taking notes, **10:37**
Police misconduct, **10:26, 10:28**
Remedy for infringement of Charter, **7:26**
Settlement privilege rule, **10:42**
Unreasonable delay, **10:33**
Violation of s. 7 Charter, **8:42**

SURVEILLANCE
Intercepted communications, **9:36 to 9:43**
Participant surveillance, Charter issues and, **9:36**
Police-installed probes, **9:46**
Residence, of, **7:20**

TAPE RECORDING
See Recording interrogation sessions

TELEWARRANT
Impracticality requirement, **5:94**

THREATS AND PROMISES
Generally, **1:4, 9:16**

TRICKS AND STRATAGEMS
See Voluntariness

UNDERCOVER POLICE
Generally, **2:8, 2:14, 8:31 to 8:33, 9:38**
Person in authority, as, **2:14 to 2:23**
Publication bans on operational methods re confessions, **6:80**
Spiritual advisor, **1:10**

VEHICLES
Expectation of privacy in, **5:41**
Proving events, **9:47**
Random stops of vehicles, **5:11**
Record of previous vehicle stop by police, **10:13**

VIDEO TAPES
See also Youth Criminal Justice Act, use of video tape
Broadcasting accused's videotaped statement, **9:25**
Face of accused not visible, **9:23**
Made within a reasonable time (s. 715.1 Code), **9:34**
Playing part of complainant video at trial, **9:31**
Quality of videotape, **9:23**
Statement under s. 715.1 of the Criminal Code, **3:13**
TV/Radio Broadcasting of accused's statement, **9:25**

VIDEOTAPING OF STATEMENTS
Generally
see Recording interrogation sessions
Children's statements, **3:11**

VOIR DIRE
Absence of, **6:9**
Abuse of process and, **6:59**
Allegation of recent fabrication, **6:14**
Appeal against ruling on, right of, **6:76**
Bias on part of judge, apprehended, **6:64 to 6:69**
remedies, **6:59 to 6:63**
Blended, **6:42**
Burdens of proof, **2:25**
Charter protection against self-incrimination, **6:55, 6:56, 10:104, 10:105**
perjury trial, exception for, **6:55, 10:106**
Charter violation, allegations of, **6:40**
Co-accused, joint trial of, **6:55**
Complainant's motive to fabricate, **6:74**
Concession, liability for, **6:48**

VOIR DIRE—Cont'd
Confessions,
racanting at trial, **6:25**
reliance on only one or two, **6:14**
Consciousness of guilt
see Consciousness of guilt
Contested evidence, introduction of other, **6:17**
Counsel's liability for concession, **6:48**
Cross-examination
accused, of, **6:24**
co-accused, of, **6:55**
maker of statement, of, **6:55, 6:56**
Databases, access to police, **6:47**
Described, **6:3**
Discretion, **6:2**
Evidence other than statements, **6:17**
Exceptions to requirement for
misleading statement in public mischief charge, **6:6**
res gestae statements, **6:8**
statement of refusal to take blood test, **6:6**
statements made prior to commission of offence, **6:7**
statements under Police Services Act, **6:7**
Exculpatory post-arrest statements, **6:16**
Expert evidence, **6:73, 6:74**
Inadmissible statements not to be used at trial, **6:51**
Independence re Chief Justice, **6:62**
reasons —-
clarifying after judgement, **6:54**
duty to give, **6:72, 6:73**
lack of, **6:53**
role of, **6:9, 10:85**
ruling not binding another judge, **6:55**
sitting alone, role of, **6:41**

VOIR DIRE—Cont'd
Ineffective assistance of counsel, **6:46**
conflict of interest, **6:46**
Intervention by judge, **6:58 to 6:76**
Introducing statement, timing of, **6:12**
Investigatory vs. arrest statement, distinction between, **6:10**
Judge
bias, **6:67 to 6:70**
control of proceedings by, **6:57 to 6:61**
Judicial independence, **6:62**
Jury
assessment of authenticity of statement by, **6:77**
charge to re waiver, **6:11**
exclusion of, **6:41**
proof of admitted confession, **6:41**
''Obviously voluntary'' test, **6:10**
Opinion evidence, **6:73, 6:74**
Order of introduction of statements, **6:14**
Personal costs against counsel, **6:49**
Police conduct investigations and, **10:119**
Police databases, access to, **6:47**
Post-offence conduct
see Consciousness of guilt
Preliminary inquiry, at, **6:5, 6:36**
admissibility ruling not binding at trial, **6:38**
Prosecutor withholding statement until cross-examination, **6:15**
Purpose of, **6:1, 6:8**
Random virtue testing, **6:71**
Ruling in jury trial, **6:43**
Self-incrimination protection, awareness of, **6:56**
Summary rulings with reasons to follow, **6:52**
Testifying at, **6:13 to 6:24**
accused, by, **6:24**

VOIR DIRE—Cont'd
Testifying at, **6:13 to 6:24**—Cont'd
introduction of statements in chronological order, **6:14**
police responsibility, **6:13**
witnesses required to be called, **6:20 to 6:23**
Testimony from, use at trial, **6:41 to 6:50**
Uniformed policeman, whether ''person in authority,'' **6:9**
Unrepresented accused, **6:42, 6:60**
Victim's motive to fabricate, asking accused about, **6:36**
Voluntariness —-
necessity of voir dire to determine, **6:8 to 6:10**
standard of proof, **6:39**
Waiver by counsel, **6:11**
charge to jury and, **6:11**
judge's ultimate duty re, **6:11**
proper form of, **6:11**
Weight and admissibility, **6:77**
Witnesses
correctional authorities, **6:21**
Crown witness at defence's disposal, **6:22**
non-absolute rule re, **6:21**
peripheral, **6:23**
production of, **6:20**

VOLUNTARINESS
Burden of proof, **8:7**
Canada Evidence Act protection, **8:3**
Co-accused, cross-examination of accused by, **8:1**
Compulsion of statute
see Compulsion of statute, statements by
Crown misleading court, **8:40**
Custodial delay, **8:3**
Defined, **1:2**
Delusions, and, **8:14**
English Judges' Rules, **1:12**
Exaggerating evidence, **8:12**

VOLUNTARINESS—Cont'd
False admission of crime not committed, **8:3**
Hypnosis and narcoanalysis, **1:2, 8:8, 8:44**
American cases, **8:44**
consensual vs. unconsented, **8:44**
interrogation techniques, unfair, **8:44**
paucity of caselaw, **8:44**
reliability problem, **8:44**
voluntariness, **8:44**
Ibrahim rule, **1:2**
Instruction of counsel, mental ability and, **8:15**
Investigative custody, nature of, **8:3**
Judicial assistance, scope of, **8:19**
Jury not concerned with, **8:3**
Mental condition and ability to instruct counsel, **8:15**
Onus on Crown to show, **8:8**
Oppression and, **1:2, 8:11, 8:12, 8:33**
Physical gestures, **8:12**
Question of fact for judge, **8:2, 8:3**
Reasonable doubt burden of proof, **8:8**
Right to counsel and, **1:2**
Skin search, effect of, **8:11**
Standard of proof, **6:39**
Standard of review, **2:81**
State of mind of accused, **1:2, 8:9 to 8:16**
awareness of consequences test, **8:16**
drug consumption, **8:13**
insanity or mental abnormality, **8:14, 8:16**
intimidation or oppression, **8:9 to 8:12**
intoxication, **8:9, 8:13**
operating mind test, **8:14 to 8:16**
psychological harm, **8:41**
voir dire within voir dire, **8:9**

VOLUNTARINESS—Cont'd
Stratagems or tricks, **8:17 to 8:39**
judicial discretion and, **8:17**
post-Charter cases, **8:18 to 8:39**
abuse of process and, **8:38**
actively eliciting admissions, **8:19**
agent of State
Charter protection for statements to, **8:26**
ruse practised by manager as, **8:37**
security guards as, **8:27**
test re, **8:26, 8:27, 8:34**
befriending accused to obtain admission, **8:23**
casual remarks to off-duty police, **8:30**
co-accused, incriminating statement by, **8:39**
community shock test, **8:31**
confession to psychiatrist under Criminal Code, s. 537, **8:34**
Criminal Code curative provision, **8:26**
girlfriend, recorded conversation with, **8:29**
good faith of police, **8:32**
inmates obtaining information for police favours, **8:25**
jailhouse confessions, **8:35**
lawful vs. dirty tricks, **8:18, 8:37**
observation vs. elicitation, **8:19 to 8:22, 8:26**
police artifice, **8:22**
police plants in accused's cell, **8:19 to 8:26**
post-arrest right to silence, **8:19**
psychiatric evidence, **8:34**
sex, use of, **8:23**
sleeping accused, **8:26**
subjective belief of accused, **8:33**

VOLUNTARINESS—Cont'd
Stratagems or tricks, **8:17 to 8:39**
—Cont'd
post-Charter cases, **8:18 to 8:39**
—Cont'd
subjective nature of exclusion tests, **8:18**
subterfuge, **8:35**
tricks vs. dirty tricks, **8:38**
truthfulness of accused's statement, **8:26**
undercover police, statements to, **8:31 to 8:33**
voluntary informants, **8:25**
volunteered information, **8:29, 8:30**
pre-Charter cases, **8:17**
accomplices, statements of, **8:17**
deliberate lying to induce confession, **8:17**
false affidavit, **8:17**
impersonations, **8:17**
inducement, **8:17**
lie re presence of witness at scene of offence, **8:17**
seriousness of charge trick, **8:17**
showing accused evidence, **8:17**
untrue suggestion, **8:17**
voluntariness test, **8:17**
Testimony of accused at voir dire
credibility, questions going to, **8:3 to 8:7**
permitted questions, **8:3**
Threats, inducements and promises, **1:4**
Truthfulness, determination of, **8:3**
Undercover officer posing as spiritual advisor, **8:24**
Unrepresented accused, **8:4**
"Voluntary," meaning of, **8:8**
Weight vs. admissibility, **8:9**

WAIVER
Right to counsel
see Right to counsel on arrest or detention
Voir dire
see Voir dire
Young offenders and, **3:6**

WAIVER OF PROTECTION UNDER s. 672.21 OF CRIMINAL CODE
Generally, **10:125**

WARNING
Arrest or detention and, **2:27, 2:28**
Charter rights and, **2:28 to 2:30**
Confession by person with operating mind, **2:53**
Contents of, **2:34**
Demand or direction, **2:28**
English rule, **7:5**
Exaggerating evidence, **2:59**
Foreign nationals, re, **2:48**
Inadequate, **2:42**
Informational component, **2:36 to 2:40**
Interview prior to arrest, **2:80**
Investigation period, during, **2:29**
Language difficulties, **2:49 to 2:53**
Nature of, **2:34**
Need for caution—witnesses vs. suspects, **8:8.50**
Oppression and, **2:56**
Physical contact, **2:56**
Police assistance re choices, **2:44, 2:45**
Printed form of, **2:34**
Proximity to accused, **2:56**
Purpose of, **2:27**
Quality of counsel's advice, no requirement to ensure, **2:45**
Re-warning, obligation re, **2:54, 5:100 to 5:103, 5:112, 7:17**
Right to counsel and
see Right to counsel on arrest or detention

WARNING—Cont'd
Search incident to investigative detention, **2:32**
Second statement, **2:37**
Suggested forms of, **2:41, 2:58**
Suspicion vs. accusation, **2:29**
Test for requirement, **2:27**
Voluntarily coming to police station, **2:29**

WITNESSES
Adverse
see Prior inconsistent statements
Hostile
see adverse, supra
Material, subpoena to, **1:11**
Need for caution—witnesses vs. suspects, **8:8.50**
Recanting agreed statement implicating accused, **10:97**
Recanting by complainant, **10:130**
Refusing to answer questions, **1:11, 10:97**
Voir dire, required
see Voir dire
Witness statement
see Prior inconsistent statements

YOUNG OFFENDERS
See Young persons, statements by

YOUNG PERSONS, STATEMENTS BY
Charter, effect of, **3:2**
Common law, at, **3:2**
compulsion, **3:2**
"guidelines," conformity with, **3:2**
person in authority, **3:2**
presence of parent, **3:2**
voluntariness, test of, **3:2**
Cross-examination by accused, **3:20**

YOUNG PERSONS, STATEMENTS BY—Cont'd
Videotaped statement of child, **3:11**
"detention" and, **3:6**
Voluntariness of, **3:12**
Young Offenders Act provisions re, **3:1**
ambulance attendant, statements to, **3:5**
Criminal Code, where conflict with, **3:6, 3:7**
effect of, **3:3**
explanation of rights, **3:6**
false statements, **3:6**
mandatory nature of, **3:2**
misapprehension of age by police, **3:6**
opportunity to consult with parent, **3:6**
"person in authority," meaning of, **3:5**
problematic aspects, **3:2, 3:6**
"spontaneous," meaning of, **3:9**
"statement," meaning of, **3:10**
subsequent statements, tainting and, **3:6**
transfer to adult court
requirement to mention possibility, **3:6**
voluntariness, **3:6**
waiver, **3:6**
"young person," meaning of, **3:4**
Youth Criminal Justice Act, **3:16**
burden of proof, **3:17**
waiver, **3:17**

YOUTH CRIMINAL JUSTICE ACT
Curative proviso of s. 146(6), Y.C.J.A., **3:19**
Use of video tape, s. 715.1, Criminal Code, **3:13**