

Index

ABORIGINAL RIGHTS

Generally, **15:39**
Competing interests, **15:1, 15:2**
Constitution Act, 1982 s. 35(1),
 3:16, 15:1, 15:2, 15:15, 15:21,
 15:29 to 15:39
Constitution Act, 1982 s. 52(1)
 generally, **15:29, 15:34, 15:38,**
 15:39
 litigation to secure Aboriginal
 rights, remedies in, **15:30 to**
 15:37
 compensation, **15:36**
 declarations, **15:31**
 declarations plus and negotia-
 tions, **15:32**
 equitable remedies, **15:35**
 injunctions, **15:35**
 reading down and
 constitutional exemptions,
 15:34
 suspended declarations of
 invalidity/ transition
 periods, **15:33**
 prosecutions against Aboriginal
 rights, **15:38**
 remedies, generally, **15:29**
Crown's duty to consult
 generally, **15:1, 15:2, 15:14 to**
 15:21
 breach of, remedies, **15:15 to**
 15:20
 damages and costs, **15:20**
 “declaration plus” techniques,
 15:19
 declarations, **15:18, 15:27**
 interlocutory injunction, **15:17**
 quashing government deci-
 sions to allow develop-
 ment, **15:16**

ABORIGINAL RIGHTS—Cont'd

Crown's duty to consult—Cont'd
 Haida Nation case origins of,
 15:14
 honour of Crown basis of, **15:14**
 interlocutory injunction and,
 15:14, 15:17
 jurisdictional issues, **15:21**
 limits on, **15:21**
Crown's fiduciary duty, **15:1, 15:25**
 to **15:28**
Enforcement of
 declaratory relief, **15:2**
 effectiveness issue, **15:2**
 evolution and purpose of reme-
 dies re, **15:2**
 fair process, **15:2**
 interlocutory remedies
 see interlocutory remedies
 purposive approach, **15:2**
 reconciliation purpose, **15:2**
 variations, **15:1**
Extinguishment/diminution of
 Aboriginal title (pre-1982),
 remedies for
 generally, **15:22 to 15:28**
 breach of fiduciary duty
 criticisms re approach to,
 15:26
 remedies for, **15:25**
 declarations concerning
 government's obligations,
 15:27
 expropriation, compensation for,
 15:23
 no legal right to compensation,
 15:24
Injunctions against Aboriginal
 protests, **15:12**

ABORIGINAL RIGHTS—Cont'd

Interlocutory remedies

generally, **15:3 to 15:13**

American Cyanamid test, **7:4, 15:3, 15:4**

balance of convenience test, **15:1, 15:3, 15:6, 15:8 to 15:11, 15:13, 15:39**

determination of, **15:10**

public interest, no monopoly on, **15:9**

Crown's duty to consult, **15:14, 15:17**

defendant's undertaking to pay damages, **15:6**

injunctions against Aboriginal protests, **15:12**

irreparable harm to defendant, **15:6**

irreparable harm to plaintiff, **15:5**

Aboriginal perspectives, **15:5**

monetary compensation, **15:5**

James Bay case, **15:3, 15:7, 15:10, 15:13**

preservation of status quo, **15:7**

presumption of constitutionality, **15:7**

strength of plaintiff's case, **15:4**

Pre-1982 Treaty Claims, **15:27:50**

Pre-trial vs. final remedies, **15:1**

Remedies and, generally, **15:1**

ABORIGINAL TITLE

See ABORIGINAL RIGHTS

ADMINISTRATIVE TRIBUNALS

Charter jurisdiction

see CHARTER JURISDICTION

Historical context

see HISTORICAL REMEDIES

Reading down legislation and, **14:12, 14:13**

APPELLATE REVIEW

Charter claims, standard of, **5:14**

Exclusion of evidence, standard of, **10:18**

APPELLATE REVIEW—Cont'd

Interlocutory remedies, **7:19**

Stay of criminal proceedings, deference, **9:14, 9:15**

BALANCE OF CONVENIENCE

See INTERLOCUTORY INJUNCTIONS

BALANCE OF INTERESTS

Generally, **3:13, 9:11**

BRITISH NORTH AMERICA ACT, 1867

See CONSTITUTION ACT, 1867

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

See also STAY OF CRIMINAL PROCEEDINGS

Claims

see CHARTER CLAIMS

Constitutional exemption

see LEGISLATION, REMEDIES RE UNCONSTITUTIONAL

Costs

see COSTS

Court of competent jurisdiction

see COURT OF COMPETENT JURISDICTION

Criminal process remedies

see CRIMINAL PROCESS, REMEDIES IN

Damage claims

see CHARTER DAMAGE CLAIMS

Equality rights

see EQUALITY RIGHTS

Exclusion of evidence

see EXCLUSION OF EVIDENCE

Freedom of expression

see LEGISLATION, REMEDIES RE UNCONSTITUTIONAL, reading down

**CANADIAN CHARTER OF
RIGHTS AND FREEDOMS**

—Cont'd

- Future relief
 - see DECLARATIONS
- Interlocutory injunctions and
 - see INTERLOCUTORY
INJUNCTIONS
- Jurisdiction
 - see CHARTER JURISDICTION
- Origin and development of, **2:21,
2:22**
- Remedies
 - see CHARTER REMEDIES
- Standing
 - see STANDING
- Supremacy clause
 - see LEGISLATION, REMEDIES
RE UNCONSTITU-
TIONAL

CERTIORARI

- Generally, **2:15, 6:5, 6:11, 9:2,
9:36, 9:40**

CHARTER CLAIMS

- Anticipatory claims, **5:15**
- Appellate review, standard of, **5:14**
- Burdens of proof, **5:13**
- Damages
 - see CHARTER DAMAGE
CLAIMS
- Establishment of, requirements, **5:11 to 5:14**
- Facts re violation, requirements, **5:12**
- Mootness
 - generally, **5:16 to 5:22**
 - actions immunized from review, **5:20**
 - adversarial context and, **5:17**
 - bringing issue to court factor, **5:21**
 - confined prisoners context, **5:20**
 - discretion re, exercise of, **5:16**
 - doctrine re, exposition of, **5:16**

CHARTER CLAIMS—Cont'd

- Mootness—Cont'd
 - early case re, **5:16**
 - institutional context issue, **5:19**
 - judicial economy issue, **5:18**
 - remedial powers and, **5:16**
- Ripeness of claim, **5:15**
- Standing
 - see STANDING

CHARTER DAMAGE CLAIMS

- Generally, **11:1, 11:35**
- Alternative remedies, **11:2, 11:19**
- Approach to, **11:12**
- Class proceedings, **11:5**
- Compensatory awards, **11:15, 11:23**
- Countervailing factors against
 - awards, **11:18 to 11:20**
 - alternative remedies, **11:2, 11:19**
 - effective governance concerns, **11:20**
- Court of competent jurisdiction
 - issue, **11:3 to 11:5**
 - provincial criminal courts, **11:4**
 - superior courts of criminal juris-
diction, **11:5**
- Defendant, government as, **11:13**
- Deterrence, **11:17, 11:25**
- Distinct public law remedy, as, **11:12**
- Estoppel and abuse of process, **11:7**
- Evolution and purpose of money
 - awards, **11:2**
- Exemplary/punitive damages, **11:26**
- Functional need for damages, **11:14
to 11:17**
 - deterrence of Charter violations, **11:17**
 - harm and loss, compensation for, **11:15**
 - vindication of Charter right, **11:16**
- Government defendant, **11:13**
- Immunities from civil actions
 - generally, **11:9 to 11:11**
 - absolute immunities, **11:10**

CHARTER DAMAGE CLAIMS

—Cont'd

- Immunities from civil actions
 - Cont'd
 - qualified immunities, **11:11**
- Officials vs. governments, **11:2**
- Quantum, **11:2, 11:21 to 11:28**
 - compensatory awards, **11:23**
 - deterrence, **11:25**
 - exemplary and punitive damages, **11:26**
 - per se awards, rejection of, **11:22**
 - vindication, **11:24**
- Statutes of limitations, **11:8**
- Vindication of Charter right, **11:16, 11:24**

CHARTER JURISDICTION

- Generally, **6:1, 6:17**
- Administrative process, in
 - see also Charter s 24(1), jurisdiction under
 - generally, **6:3, 6:13**
 - Charter s. 24(1), **6:15**
 - Constitution Act, 1982, s. 52(1), **6:3, 6:14**
 - Federal Court, role of, **6:16**
 - provincial superior courts, role of, **6:16**
- Charter s. 24(1), jurisdiction under
 - generally, **6:2**
 - Conway case jurisprudence, **6:1, 6:2**
 - Federal Court of Appeal, **6:2**
 - functional and structural determination, **6:2**
 - habeas corpus application, **6:2**
 - preliminary inquiry, **6:2**
 - principles re, **6:2**
 - remedial question approach, **6:2**
 - statutory/inherent jurisdiction of court/tribunal, **6:2**
 - superior court, **6:2**
- Civil process, in, **6:10 to 6:12**
 - provincial superior courts
 - generally, **6:10**

CHARTER JURISDICTION

—Cont'd

- Civil process, in, **6:10 to 6:12**
 - Cont'd
 - provincial superior courts
 - Cont'd
 - administrative agencies/schemes, in relation to, **6:12**
 - Federal Court, in relation to, **6:11**
 - Constitution Act, 1982, s. 52(1), jurisdiction under, **6:3**
 - administrative tribunals, **6:3, 6:14**
 - human rights complaints, **6:3**
 - positivistic approach, **6:3**
 - presumption of jurisdiction, **6:3**
- Criminal process, in
 - generally, **6:4 to 6:9**
 - appellate courts, **6:8**
 - Federal Court, **6:9**
 - preliminary inquiries, **6:2, 6:4**
 - provincial and other statutory courts, **6:6**
 - superior courts, **6:2, 6:5, 6:7**

CHARTER REMEDIES

- s 24(1). see CHARTER JURISDICTION; CONSTITUTIONAL REMEDIES; COSTS; HABEAS CORPUS; LEGISLATION, REMEDIES RE UNCONSTITUTIONAL; STANDING
- s 24(2). see CONSTITUTIONAL REMEDIES; EXCLUSION OF EVIDENCE

CIVIL LIBERTIES

- Generally, **2:2**

CIVIL PROCESS

- See CHARTER JURISDICTION

COMPETING INTERESTS

- Generally, **3:13, 7:15, 15:1, 15:2**

COMPLIANCE

See CONSTITUTIONAL REMEDIES

CONSTITUTION ACT, 1867

See also HISTORICAL REMEDIES

Civil liberties remedies, **2:2**

Declarations of invalidity, **2:2**

Division of powers

enforcement of, **2:2**

pith and substance analytical approach, **2:2**

Education provisions, **2:2**

Remedies under, generally, **2:2**

Reservation and disallowance of statutes, **2:2**

CONSTITUTION ACT, 1982

s 35(1). see ABORIGINAL RIGHTS

s 52(1). see ABORIGINAL RIGHTS;
CONSTITUTIONAL REMEDIES;
CHARTER JURISDICTION;
LEGISLATION, REMEDIES RE
UNCONSTITUTIONAL;
STANDING

CONSTITUTIONAL REMEDIES

See also HISTORICAL REMEDIES

Generally, **3:1, 3:18**

Alternative remedies and, **3:16**

Balance of interests approach, **3:13**

Charter criminal law remedies, **3:1**

Charter s. 24(1), textual analysis of, **3:3**

Charter s. 24(2), textual analysis of, **3:4**

Compensatory damages purpose, **3:9**

Competing interests, **3:13**

Constitution Act, 1982 s. 52(1), textual analysis of, **3:5**

Constraints on, **3:1**

CONSTITUTIONAL REMEDIES

—Cont'd

Context, effect of, **3:1**

Corrective justice purpose, **3:9**

Countervailing factors and interests, **3:13**

Effectiveness of, **3:9, 3:10**

Fairness to all parties, **3:12**

Future compliance purpose

generally, **3:10**

damages, **3:10**

deterrence principle, **3:10**

equality rights, **3:10**

human rights issues, **3:10**

judicial approach to, **3:10**

regulatory approach, **3:10**

stays of proceedings, **3:10**

Institutional roles, respect for, **3:11**

Judicial discretion, **3:7**

Judicial interpretation, **3:8**

Judicial role, **3:1, 3:11**

Mitigating factors, **3:13**

Positive vs. negative remedies, **3:6**

Proportionality principle

generally, **3:1, 3:15 to 3:17**

alternative remedies and, **3:16**

public interest constraints and, **3:17**

Prospective relief, **3:14**

Public interest constraints, **3:17**

Purposes, **3:1, 3:9, 3:10**

Purposive approaches, **3:8**

Remedial discretion, **3:7**

Retroactive relief, **3:14**

Textual approaches, **3:2 to 3:5**

Vindication purpose, **3:9**

COSTS

Generally, **11:1, 11:27, 11:35**

Advance costs, **11:28**

Charter remedy, as, **11:1**

Criminal cases and appeals, **11:2, 11:30**

Normal rules re, **11:2**

COSTS—Cont'd

- Rule in constitutional litigation,
11:2, 11:29
- s. 24(1) remedy, use as, **11:34,**
11:35
- Successful Charter applicant, for,
11:33
- Unsuccessful Charter applicant
against, **11:31**
for, **11:32**

**COURT OF COMPETENT
JURISDICTION**

- See CHARTER DAMAGE
CLAIMS; CHARTER JURIS-
DICTION; CRIMINAL PRO-
CESS, REMEDIES IN

COURTS

- Charter jurisdiction
see CHARTER JURISDICTION
- Court of competent jurisdiction
see COURT OF COMPETENT
JURISDICTION
- Remedies
see CONSTITUTIONAL REME-
DIES; HISTORICAL REME-
DIES

**CRIMINAL PROCESS,
REMEDIES IN**

- Generally, **3:1, 9:1, 9:53**
- Bail review, **9:50**
- Charter jurisdiction
see CHARTER JURISDICTION
- Charter violation as criminal
defence, **9:44**
- Conditions of imprisonment issues,
9:49
- Costs, **11:2, 11:30**
- Court of competent jurisdiction
issue, **9:42**
- Evolution and purpose of, **9:2**
- Exclusion of evidence
see EXCLUSION OF EVI-
DENCE

**CRIMINAL PROCESS,
REMEDIES IN—Cont'd**

- Habeas corpus
see HABEAS CORPUS
- Historical
see HISTORICAL REMEDIES
- Prerogative remedies
generally, **9:37 to 9:40**
certiorari, **2:15, 6:5, 6:11, 9:2,**
9:36, 9:40
mandamus, **9:39**
prohibition, **9:38**
- Pre-trial relief, **9:35, 9:36**
- Return of evidence, **9:41 to 9:43**
court of competent jurisdiction
issue, **9:42**
tests for, **9:43**
- Sentence reductions
generally, **9:45 to 9:48**
Charter violation and circum-
stances of offence, **9:46**
general considerations, **9:45**
serious crimes, **9:45**
statutory minimum sentences
and, **9:47**
- Stay of proceedings
see STAY OF CRIMINAL
PROCEEDINGS

CROWN DUTIES

- See ABORIGINAL RIGHTS

CROWN IMMUNITY

- See CHARTER DAMAGE
CLAIMS; HISTORICAL
REMEDIES; MANDATORY
REMEDIES

DAMAGES

- Charter claims
see CHARTER DAMAGE
CLAIMS
- Judicial remedies, as, **2:8**
- Undertaking to pay, **7:10, 15:6**

DECLARATION OF INVALIDITY

See CONSTITUTION ACT, 1867;
LEGISLATION, REMEDIES
RE UNCONSTITUTIONAL

DECLARATIONS

Generally, **12:1, 12:18**
Aboriginal rights and, **15:18, 15:31 to 15:33**
Consent declarations, **12:14**
Constitutional rights, re, **12:5 to 12:8**
 equality cases, **12:7**
 suspended declarations, **12:8**
 minority language cases, **12:6**
Directions, as, **12:12**
Disputes re meaning of, **12:11**
Evolution and purposes of, **12:2**
Future Charter relief, re
 generally, **12:3**
 detailed declarations, **12:3**
 leading case, **12:3**
 legislative policy-making function an, **12:3**
 probable future harm requirement, **12:3**
 temporary remedy, as, **12:3**
Generalized effect of, **12:9**
Implementation of, consultation and negotiations re, **12:13**
Inappropriate contexts for
 generally, **12:15 to 12:17**
 custodial institutions, **12:16**
 governmental resistance and neglect, **12:17**
Injunctions vs., **12:1, 12:10**
Interim declarations, **7:17**
Invalidity
 see DECLARATION OF INVALIDITY
Judicial development of, **2:10**
Limits of, **12:1**
Origins of declaratory relief, **12:2**
Past violations, re
 generally, **12:4**

DECLARATIONS—Cont'd

Past violations, re—Cont'd
 advantages/disadvantages of declaratory relief, **12:4**
 historical violations, **12:4**
 limited practical effect of, **12:4**
 routine administrative actions, re, **12:4**
Retention of jurisdiction re, **12:11**

DISCLOSURE

See STAY OF CRIMINAL PROCEEDINGS

DIVISION OF POWERS

See CONSTITUTION ACT, 1867;
LEGISLATION, REMEDIES
RE UNCONSTITUTIONAL

EQUALITY RIGHTS

See also HUMAN RIGHTS
Declarations and, **12:7**
Enforcement
 see MANDATORY REMEDIES
Future compliance and, **3:10**

EVIDENCE

Exclusion of
 see EXCLUSION OF EVIDENCE
Return of, **9:41 to 9:43**

EXCLUSION OF EVIDENCE

Generally, **10:50**
Burden of proof
 evidential burdens, **10:22**
 persuasive burden, **10:21**
Charter s. 24(2) provision re, **10:1**
Collins/Stillman tests
 generally, **10:6 to 10:12**
 abolition of fair trial test, **10:12**
 Collins test, **10:6**
 criticisms of, **10:11**
 effects of excluding evidence, **10:9**
 fair trial exclusion purpose, **10:7**

EXCLUSION OF EVIDENCE

—Cont'd

- Collins/Stillman tests—Cont'd
 - implications of Collins test, **10:10**
 - judicial condonation exclusion purpose, **10:8**
 - Stillman test, **10:6**
- Evidence obtained in manner violating Charter rights
 - generally, **10:23, 10:24**
 - remoteness, **10:24**
 - temporal/causal connection between violation and evidence, **10:23, 10:24**
- Evolution and purposes of
 - generally, **10:2 to 10:5**
 - balancing tests for, **10:5**
 - police conduct, regulation of, **10:4**
 - violation of constitutional right, **10:3**
- Grant test
 - generally, **10:26**
 - ascendency of, **10:12**
 - good faith violations
 - generally, **10:30 to 10:36**
 - reliance on judicial decisions, **10:32**
 - reliance on practices and policies, **10:34**
 - reliance on statutes, **10:31**
 - reliance on warrants, **10:33**
 - uncertainty in law, effect of, **10:35**
 - impact of breach on accused's Charter-based interests
 - generally, **10:41 to 10:45**
 - bodily substances, **10:43**
 - derivative evidence, **10:45**
 - physical evidence, **10:44**
 - statements from accused, **10:42**
 - seriousness of Charter violation generally, **10:27 to 10:40**

EXCLUSION OF EVIDENCE

—Cont'd

- Grant test—Cont'd
 - seriousness of Charter violation
 - Cont'd
 - compliance with Charter during investigation, **10:29**
 - deliberate/blatant/flagrant violations, **10:38**
 - discoverability of evidence, alternative means, **10:39**
 - good faith violations
 - see good faith violations
 - inadvertent/minor Charter violation, **10:37**
 - purpose of, **10:28**
 - urgency/necessity, **10:40**
 - society's interest in adjudication on the merits
 - generally, **10:46 to 10:49**
 - disrepute, determining, **10:47**
 - importance/reliability of subject evidence, **10:49**
 - seriousness of offence, **10:48**
- Historical remedy, as, **2:13**
- Procedure for exclusionary claims
 - generally, **10:16**
 - appeal, on, **10:17**
 - appellate review, standard of, **10:18**
 - no substantial wrong/miscarriage of justice, **10:19**
 - trial, at, **10:16**
 - use to be made of impugned evidence, **10:20**
- Standing issue, **5:10, 10:14, 10:15**
- Stay and, **9:22, 9:33**
- Third party rights violations, **10:14, 10:15**

FEDERALISM

See DIVISION OF POWERS

HABEAS CORPUS

Ancillary remedies, **9:52**

HABEAS CORPUS—Cont'd

- Availability of, expanded, **9:51, 9:53**
- Charter ss. 24(1) and 10(c) incorporation, **6:2, 9:50**
- Criminal Code bail review provision re, **9:50**
- Historical context, **2:15**

HISTORICAL REMEDIES

- See also CONSTITUTION ACT, 1867
- Administrative remedies, development of
 - generally, **2:17 to 2:19**
 - human rights commissions, **2:18**
 - social and economic rights, **2:19**
- Canadian Bill of Rights, **2:16**
- Canadian Charter of Rights and Freedoms, origin and development of, **2:21**
- Civil disobedience, **2:7**
- Criminal process remedies
 - generally, **2:13 to 2:15**
 - exclusion of evidence, **2:13**
 - habeas corpus, **2:15**
 - stays of proceedings, **2:14**
- Crown immunity, **2:8**
- International law, development of, **2:20**
- Judicial remedies, development of
 - generally, **2:8 to 2:12, 2:22**
 - damages, **2:8**
 - declarations, **2:10**
 - injunctions, **2:9**
 - prerogative writs, **2:12**
 - standing, **2:11**
- Manitoba Act, 1870 issues, **2:3 to 2:6**
 - denominational school rights, **2:5**
 - Manitoba Official Language Act, **2:3**
 - Metis land rights, **2:5.50**
 - minority language rights, **2:4**
- Prerogative writs, **2:12**

HUMAN RIGHTS

- See also EQUALITY RIGHTS
- Constitution Act, 1982, s. 52(1) jurisdiction, **6:3**
- Future compliance issue, **3:10**
- Human rights commissions, **2:18**
- Mandatory remedies and
 - see MANDATORY REMEDIES

INJUNCTIONS

- See also MANDATORY REMEDIES
- Indian practice, **13:9**
- Interlocutory
 - see INTERLOCUTORY INJUNCTIONS
- Preventive injunctions, **13:11**
- Reparative injunctions, **13:12, 13:13**
 - Reference re: Language Rights under the Manitoba Act, 1870, **13:13**
- South African practice, **13:10**
- Structural injunctions
 - generally, **13:14**
 - denied/overturned
 - generally, **13:24**
 - Federal Court of Appeal cases, **13:23**
 - Khadr v. Canada (Prime Minister), **13:22**
 - Little Sisters Book and Art Emporium v. Canada (Minister of Justice), **13:21**
 - granted and sustained
 - Doucet-Boudreau v. Nova Scotia, **13:18**
 - La Societe des Acadiens v. Minority Language School Board, **13:15**
 - Lavoie v. Nova Scotia, **13:17**
 - Marchand v. Simcoe (County Board of Education), **13:16**

INJUNCTIONS—Cont'd

- Structural injunctions—Cont'd
 - granted and sustained—Cont'd
 - minority language rights cases, **13:19**
 - national security and criminal cases, **13:20**
- United States practice
 - generally, **13:5 to 13:8**
 - academic commentators, **13:8**
 - Fiss's typology, **13:7**
 - judicial experience, **13:6**

INTERIM DECLARATIONS

- Generally, **7:17**

INTERIM STAYS OF LEGISLATION

- Generally, **7:1, 7:16**
- Competition Act cases, **7:16**
- Interlocutory injunction vs., **7:16**
- Public interest, **7:16**
- Suspensions, as, **7:16**

INTERLOCUTORY INJUNCTIONS

- Aboriginal rights and
 - see ABORIGINAL RIGHTS, interlocutory remedies
- Balance of convenience factor
- Charter rights violations and, **7:15**
 - competing rights issues, **7:15**
 - maintenance of status quo, **7:11**
 - proportionality and, **7:14**
 - public interest, consideration of, **7:12**
 - suspensions and exemptions, **7:13**
- Early jurisprudence, **7:2**
- Interim stay of legislation vs., **7:16**
- Irreparable harm factor
 - harm to defendant, **7:9**
 - harm to plaintiff, **7:8**
 - minority language school cases, **7:8**

INTERLOCUTORY

INJUNCTIONS—Cont'd

- Irreparable harm factor—Cont'd
 - no harm, decisions finding, **7:8**
 - purposive approach, **7:8**
 - search and seizure cases, **7:8**
 - types of irreparable harm, **7:8**
 - undertaking to pay damages, **7:10**
- Leading case, **7:2**
- Public interest and balance of convenience, **7:2**
- Standard of review, **7:3**
- Strength of plaintiff's case factor
 - final determination of action, **7:6**
 - justification of limitation, **7:4**
 - no presumption of constitutionality, **7:7**
 - serious question not frivolous/vexatious, **7:4**
 - simple questions of law, **7:5**

INTERLOCUTORY REMEDIES

- Generally, **7:1, 7:20**
- Aboriginal rights and
 - see ABORIGINAL RIGHTS
- Appellate review of trial decisions, **7:19**
- Injunctions
 - see INTERLOCUTORY INJUNCTIONS
- Interim costs, **7:18**
- Interim declarations, **7:17**
- Special issues, **7:1**
- Stay of judgment pending appeal, **7:1**
- Stay of legislation
 - see INTERIM STAYS OF LEGISLATION
- Test re, **7:1**

JURISDICTION

- See CHARTER JURISDICTION

LANGUAGE

- See MINORITY LANGUAGE RIGHTS

**LEGISLATION, REMEDIES RE
UNCONSTITUTIONAL**

Generally, **14:51**
 American practice
 generally, **14:2**
 Canadian approach vs., **14:2**
 constitutional exemptions, **14:2**
 narrow approach, **14:2**
 reading down, **14:2**
 stays and prospective rulings,
 14:2
 Charter s. 24(1), application of
 constitutional exemption
 see constitutional exemption
 remedial effect, **14:1**
 Constitution Act, 1982, 52(1),
 application of
 constitutional exemption
 see constitutional exemption
 declarations of invalidity
 see declaration of invalidity
 evolution of remedies under, **14:4**
 extension of legislation
 see reading in/nullification of
 underinclusive legislation
 reading down
 see reading down
 reading in/nullification
 see reading in/nullification of
 underinclusive legislation
 remedial effect, **14:1**
 severance
 see severance
 upholding permissive legislation,
 14:5
 Constitutional exemption
 generally, **14:14 to 14:19**
 Charter s. 24(1) remedies, **14:17,**
 14:18
 early jurisprudence, **14:15**
 Ferguson case, **14:16**
 suspended declaration of invalid-
 ity, during, **14:18**
 Declaration of invalidity
 generally, **14:1, 14:4**

**LEGISLATION, REMEDIES RE
UNCONSTITUTIONAL**

—Cont'd

Declaration of invalidity—Cont'd
 de facto doctrine and, **14:50**
 issues re, **14:1**
 retroactive relief, **14:50, 14:51**
 suspended
 see suspended declaration of
 invalidity
 transition period, **14:50**
 Division of powers, enforcement of,
 14:3
 Extension of legislation
 see reading in/nullification of
 underinclusive legislation
 Interpretive devices to save legisla-
 tion, use of, **14:4**
 Reading down
 generally, **14:3, 14:4, 14:6 to**
 14:13
 administrative cases, **14:12**
 criminal cases
 generally, **14:9 to 14:11**
 case survey, **14:9**
 Criminal Code s. 43, **14:11**
 reading down not appropriate,
 cases re, **14:10**
 freedom of expression cases
 generally, **14:7, 14:8**
 Butler case, **14:8**
 Osborne case, **14:7**
 Rocket case, **14:7**
 Sharpe case, **14:8**
 Zundel case, **14:8**
 functional alternative, **14:19**
 Reading in/nullification of under-
 inclusive legislation
 generally, **14:24 to 14:37**
 appropriate cases for, **14:35**
 Charter purposes, respect for,
 14:31, 14:32
 constitutional rights and hints,
 role of, **14:32**
 included group, size issue, **14:30**

LEGISLATION, REMEDIES RE UNCONSTITUTIONAL

—Cont'd

- Reading in/nullification of under-
inclusive legislation—Cont'd
legislative objectives, consistency
with, **14:29**
legislature's role, respect for,
14:27, 14:30
non-appropriate cases for, **14:36**
remedial precision issue, **14:28**
Schachter case, **14:26 to 14:34**
temporary suspension of, **14:33**
vulnerable minorities, protection
of, **14:31**
- Remedial discretion, exercise of,
14:1
- Retroactive relief, **14:50**
- Severance
generally, **14:20 to 14:23**
appropriate cases for, **14:22**
non-appropriate cases for, **14:21**
- Supremacy, **14:1**
- Suspended declaration of invalidity
generally, **14:38 to 14:50**
early jurisprudence, **14:40**
exemption for successful Charter
applicants, **14:45 to 14:47**
non-appropriate cases for, **14:48**
- Reference re: Language Rights
under the Manitoba Act,
1870, **14:39**
retroactive relief, **14:50**
Schachter case, **14:42**
Schachter guidelines
generally, **14:42**
cases inside, **14:43**
cases outside, **14:44**
- Upholding permissive legislation,
14:5

MANDAMUS

- Generally, **2:12, 3:11, 4:1, 5:12,**
6:5, 6:11, 9:39, 12:12, 12:13,
13:26, 13:27

MANDATORY REMEDIES

- Generally, **13:1, 13:34**
- Crown immunity, declaratory relief
preference, **13:4**
- Equality rights, enforcement of
generally, **13:29 to 13:33**
American experience, **13:30**
human rights codes and
see human rights codes
- Equity, role of, **13:3**
- Evolution and purposes of, **13:2 to**
13:4
- Human rights codes
generally, **13:31**
Action Travail des Femmes v.
C.N.R. Co., **13:33**
adverse effect discrimination,
13:32
affirmative action programs,
13:33
Charter s. 15 violations and,
13:32
discriminatory effects vs.
purposes, **13:32**
remedial plans remedy, **13:32,**
13:33
remedies available under, **13:31**
- Injunctions
see INJUNCTIONS
- Mandamus
generally, **13:26, 13:27**
declaratory relief alternative,
13:26
Insite case, **13:27**
prisoners' rights, **13:26**
voting rights cases, **13:26**
- Prerogative writs, **13:25**
- Prohibition, **13:28**

MINORITY LANGUAGE RIGHTS

- Declarations, **12:6**
- Denominational school rights, **2:5**
- Irreparable harm issue, **7:8**
- Manitoba Act, 1870 issues, **2:3 to**
2:6

**MINORITY LANGUAGE RIGHTS
—Cont'd**

Manitoba Official Language Act,
2:4
Structural injunctions and
see INJUNCTIONS

MOOTNESS

See CHARTER CLAIMS

PREROGATIVE REMEDIES

See CRIMINAL PROCESS, REM-
EDIES IN; HISTORICAL
REMEDIES; MANDATORY
REMEDIES

PROHIBITION

Generally, **9:38, 13:28**

PROPORTIONALITY

Generally, **3:1, 3:15 to 3:17, 7:14**

PUBLIC INTEREST

Generally, **3:17, 7:2, 7:12, 7:16,
15:9**

PUBLIC INTEREST STANDING

Generally, **5:2 to 5:7**

READING DOWN

See LEGISLATION, REMEDIES
RE UNCONSTITUTIONAL

READING IN

See LEGISLATION, REMEDIES
RE UNCONSTITUTIONAL

RETROACTIVITY

Generally, **3:14, 14:50, 14:51**

SEVERANCE

See LEGISLATION, REMEDIES
RE UNCONSTITUTIONAL

STANDING

See also CHARTER CLAIMS
Generally, **5:1**
Charter s. 24(1), under
generally, **5:10**
causal nexus issue, **5:10**

STANDING—Cont'd

Charter s. 24(1), under—Cont'd
Constitution Act, 1982, s. 52(1)
standing vs., **5:10**
entitlement to remedy vs., **5:10**
exclusion of evidence relief and,
5:10
personal remedy, as, **5:10**
restrictive approach to, **5:10**
ripeness of claim, **5:10**
third party rights violations, **5:10**
Constitution Act, 1982, s. 52(1),
under
generally, **5:2 to 5:9**
criminally accused standing, **5:9**
discretionary standing (non-direct
affect)
see public interest standing
private interest standing
generally, **5:8**
direct affect, defined, **5:8**
restricted approach to, **5:8**
public interest standing
generally, **5:3 to 5:7**
genuine interest in validity of
legislation, **5:5**
rationale for, **5:3**
reasonableness and effective-
ness, **5:6, 5:7**
requirements, **5:3**
serious issue of constitutional-
ity, **5:4**
standing as of right (direct affect)
see private interest standing

**STAY OF CRIMINAL
PROCEEDINGS**

Generally, **9:3, 9:34**
Abuse of process origins, **9:3, 9:5**
Conditions of confinement, viola-
tion of rights re, **9:28**
Detention, unconstitutional, **9:33**
Disclosure rights, violations of
generally, **9:16 to 9:25**

STAY OF CRIMINAL

PROCEEDINGS—Cont'd

- Disclosure rights, violations of
 - Cont'd
 - alternative remedies
 - generally, **9:19 to 9:25**
 - disclosure order, **9:20**
 - exclusion of non-disclosed evidence, **9:22**
 - mistrial, **9:21**
 - new trial, **9:24, 9:25**
 - stay granted, cases re, **9:17**
 - stay reversed, cases re, **9:18**
- Drastic remedy, as, **9:3**
- Exclusion of evidence cases, **9:33**
- Fair trial, violation of right to, **9:30**
- Functional approach, **9:33**
- Interpreter, violation of right to, **9:29**
- Language rights, violation of, **9:29**
- Legal assistance, violation of right to
 - generally, **9:26, 9:27**
 - alternative remedies, **9:27**
 - stay of proceedings, **9:26**
- Procedural issues
 - generally, **9:15**
 - appellate deference to trial judges' decisions, **9:14**
 - burden/standard of proof, **9:12**
 - timing of application, **9:13**
- Restrictive approach, **9:33**
- Search and seizure, unreasonable, **9:33**
- Test, three-part
 - generally, **9:4 to 9:15**
 - adequate alternative remedy issue, **9:10**
 - aggravation/abuse perpetuated by subsequent trial, **9:9**
 - alternative grounds factor
 - generally, **9:5 to 9:8**
 - court integrity vs. rights of accused, **9:5**

STAY OF CRIMINAL

PROCEEDINGS—Cont'd

- Test, three-part—Cont'd
 - alternative grounds factor
 - Cont'd
 - cumulative effects re integrity and rights, **9:8**
 - fair trial, stays based on, **9:7**
 - integrity-based test, **9:5**
 - judicial integrity, stays based on, **9:6**
 - balance of affected interests, **9:11**
 - seriousness of charges, **9:11**
- Trial within reasonable time, violation of right to, **9:31, 9:32**
- child apprehension hearings, **9:32**

STAY OF JUDGMENT

- Generally, **7:1**

STAY OF LEGISLATION

- See INTERIM STAYS OF LEGISLATION

STAY OF PROCEEDINGS

- Criminal proceedings
 - see STAY OF CRIMINAL PROCEEDINGS
- Future compliance purpose, **3:10**
- Historical context
 - see HISTORICAL REMEDIES

SUPREMACY

- See LEGISLATION, REMEDIES RE UNCONSTITUTIONAL

SUSPENDED DECLARATION OF INVALIDITY

- See LEGISLATION, REMEDIES RE UNCONSTITUTIONAL

TIMING

- See CHARTER CLAIMS

VINDICATION OF CHARTER RIGHTS

- Generally, **3:9, 11:16, 11:24**