

Index

AS SOON AS PRACTICABLE

- Admissibility, **6:2**
- Case law, **6:4**
 - Court of Appeal, **6:5**
 - Superior/Provincial Court, **6:6**
 - Supreme Court of Canada, **6:4**
- CC 254(3)(a)(i) (demand), **6:2**
- CC 258(1)(c)(ii) (sample), **6:2**
- Crown can call expert, **6:2**
- Deruelle, **6:2**
- Forsythe, **6:2**
- Forthwith, compared to, **6:2**
- “Hard” time limits, **6:3, 6:7**
 - no later than two hours, **6:3**
 - offence “within three hours,” **6:3**
- Presumption, **6:2**
- Unexplained delay, **6:6**
- “Within two hours,” case law, **6:7**
 - Court of Appeal, **6:8**
 - of identity, **6:6**
 - Superior/Provincial Court, **6:9**
 - Supreme Court of Canada, **6:7**

DETENTION

- Advised of reasons for
 - change in gravity of offence, **3:2**
 - change in police investigation, **3:2**
- Charter s. 10(a), **3:2**
 - breach of, **3:9**
- effect of not understanding, **3:2**
- Evans test, **3:3**
 - Orbanski & Mann, **3:4, 3:7**
 - possible changes to the Evans test, **3:4, 3:5**
- express statement, **3:2**
- objective nature, **3:2**
 - nature of investigation, **3:2**

DETENTION—Cont’d

- Advised of reasons for—Cont’d
 - “ought to have known,” **3:2**
 - questioned about alcohol consumption, **3:2**
- Case law, **3:7**
 - Court of Appeal, **3:8**
 - Superior/Provincial Court, **3:9**
 - Supreme Court of Canada, **3:7**
- Grounds for
 - arbitrary detention, **2:2, 2:4, 2:5**
 - Charter s. 9, **2:2, 2:5**
 - detention at roadside, **2:2**
 - detention in residence, **2:2**
 - articulable cause for, **2:8**
 - case law, **2:14**
 - check stop, **2:4, 2:5**
 - not general search warrant, **2:5**
 - R.I.D.E Check Stop
 - See DETENTION, grounds for, check stop
 - saved by Charter s. 1, **2:5**
- not at roadside, **2:9, 2:10**
 - accused in residence, **2:8**
 - case law, **2:17**
 - CC 495, **2:8**
 - CC 529.3, **2:8**
 - no duty on police to arrange transportation, **2:19**
 - non-consensual search, **2:19**
 - reasonable expectation of privacy, **2:19**
 - strip search without just cause, **2:19**
- random stop, **2:2**
 - abuse of, **2:4**
 - intrusive searches, **2:4**
 - length of detention, **2:4**

DETENTION—Cont’d

- Grounds for—Cont’d
 - random stop, **2:2**—Cont’d
 - intrusive searches, **2:4**
 - Cont’d
 - reasons for detention, **2:4**
 - questions at the roadside, **2:4**
 - “random roving” stops, **2:6**
 - “articulable cause” not required, **2:6**
 - formal check stop not required, **2:6**
 - random traffic stop, **2:4**
 - reasonable and probable grounds for, **2:4**
 - reasonable grounds to detain, **2:8**
 - hearsay, **2:8**
 - hunch, **2:8**
 - misunderstanding of law, **2:8**
 - rural v. large cities, **2:8**
 - subjective and objective grounds, **2:8**
 - traffic stop, **2:2**
 - highway traffic purpose
 - See DETENTION, grounds for, traffic stop, traffic safety purpose
 - subjective nature of test, **2:4**
 - traffic safety purpose, **2:2, 2:4, 2:11**

EVIDENCE TO CONTRARY

- Amendments, July 2, 2008, **8:2, 8:8**
 - author’s opinion, **8:11**
 - case law since, **8:14**
 - examples, **8:10**
 - new rules, **8:9**
 - overview, **8:8**
 - presumption of accuracy, **8:2**
 - presumption of identity, **8:2**
 - R. v. St-Onge Lamoureux, **8:12**
- Case law, **8:13**
 - checklist, **8:1**
 - overview, **8:2**

EVIDENCE TO CONTRARY

—Cont’d

- Gibson and MacDonald, **8:2, 8:13**
- dissent, **8:6**
- “majority,” **8:4**
- meaning of decision, **8:7**
- “minority,” **8:5**
- pre-Gibson rule, **8:3**

REASONABLE AND PROBABLE GROUNDS

- Case law, **5:5**
 - Court of Appeal, **5:6**
 - Superior/Provincial Court, **5:7**
 - Supreme Court of Canada, **5:5**
- Charter s. 8, **5:2, 5:7**
 - statutory compliance, **5:2**
- Charter s. 10, **5:7**
- Charter s. 24(2), **5:7**
- Common law position, **5:2**
- “Fail” reading on ASD, **5:2**
- Hearsay, **5:2**
- Indicia precedes before demand, **5:2**
- Objective and subjective component, **5:2**
- Prima facie case not required, **5:2**
- Rilling, the rule in, **5:2, 5:3**
 - Bernshaw, interpretation, **5:3**
 - Crown burden, **5:3**
 - statutory compliance v. Charter application, **5:3**
 - Woods, interpretation, **5:3**
- Spousal incompetency rule, **5:7**
- “Totality of the evidence,” **5:2**

REMEDY

- Adjudication on merits, **9:5**
- Balancing interests, **9:8**
- Case law, **9:6 to 9:8**
 - Court of Appeal, **9:7**
 - Superior/Provincial Court, **9:8**
 - Supreme Court, **9:6**
- Charter protected rights of accused, impact on, **9:4**
 - case law, **9:6 to 9:8**
- Checklist, **9:1**

REMEDY—Cont'd

- Evidence to the contrary, **9:7**
- Impact on accused, **9:4, 9:8**
- Main test, **9:2 to 9:5**
- Seriousness of breach, **9:3**
 - case law, **9:6 to 9:8**
 - young person, **9:8**
- Seriousness of charter infringing state conduct, **9:3, 9:8**
- Society's interest, adjudicating on merits, **9:5, 9:8**

RIGHT TO COUNSEL

- Accused changes his mind, **7:2**
- Arrest or detention, **7:2**
- Basic rule, **7:2**
- Bill of Rights, **7:2**
- Check stop, **7:4**
 - sobriety tests, **7:4**
 - suspension of right to counsel, **7:4**
- Choice of counsel, **7:16**
 - Canadian lawyer, **7:16**
 - case law, **7:32, 7:35**
 - hold-off, **7:16**
 - internet, **7:32**
 - right to third party, **7:32**
- Defence burden of proof, **7:2**
- Detention, **7:3, 7:23**
 - based on circumstances, **7:3**
 - psychological detention, **7:3**
- Diligence, **7:2, 7:35**
- "Hold-off," **7:7**
 - accused changes his mind, **7:7**
 - prosper, **7:7**
 - waiver, **7:7**
- Implementational component, **7:2, 7:11, 7:32**
 - case law, **7:32**
 - choice of counsel, **7:34**
 - comments/inquiries implying confusion ignored, **7:31**
 - English as a second language, **7:34**

RIGHT TO COUNSEL—Cont'd

- Implementational component, **7:2, 7:11, 7:32—Cont'd**
 - 24-hour duty counsel, **7:11, 7:12, 7:31**
 - lawyer personally present, no right to, **7:14**
 - not read verbatim, **7:31**
 - "one phone call," not limited to, **7:10, 7:34**
 - personal cell phone of officer, **7:34**
 - phone, **7:12**
 - phone books, **7:12**
 - missing pages, **7:34**
 - phone call to non-lawyer, **7:34**
 - phone numbers, **7:12**
 - police do not have to speak to counsel, **7:10**
 - reasonable opportunity, **7:11**
 - refrain from gathering evidence, **7:11**
 - request for translator, **7:34**
 - special circumstances, **7:34**
 - time given for call, **7:34**
 - time limit of presumption not "urgent and dangerous," **7:11**
 - "urgent and dangerous" circumstances, **7:11**
- Informational component, **7:2, 7:5, 7:6, 7:29**
 - accused understands, **7:8**
 - English (or French) as a second language, **7:8, 7:31**
 - too intoxicated, **7:9**
 - advised phone call is "free," **7:10**
 - availability of 24-free legal aid assistance, **7:31**
 - comments/inquiries implying confusion ignored, **7:31**
 - duty counsel, **7:6**
 - no "one phone call" rule, **7:31**
 - not read verbatim, **7:31**

RIGHT TO COUNSEL—Cont'd

Informational component, 7:2, 7:5,
7:6, 7:29—Cont'd

phone call to non-lawyer, 7:31

request for translator, 7:31

special circumstances, 7:31

“without” delay, 7:31

Minimum standards rule, 7:17

Reasonable diligence, 7:15, 7:35

case law, 7:35

choice of counsel, 7:37

Reasonable opportunity, 7:2

availability of 24-free legal aid

assistance, 7:31

comments/inquiries implying

confusion ignored, 7:31

not read verbatim, 7:31

Roadside, 7:4, 7:26

Special circumstances, 7:37, 7:39

“Trump” rule, 7:17

“Urgent circumstances,” 7:2

Crown’s need for statutory

presumption not urgent, 7:2

Waiver, 7:2, 7:18

case law, 7:38 to 7:40

choice of counsel, 7:40

“high” standard, 7:2, 7:18

not fully informed, 7:40

waiving informational

component, 7:18

Without delay, 7:2, 7:14

ROADSIDE SCREENING

ASD (Approved Screening Device),
4:2

effect of “fail” reading, 4:2

“fail reading,” 4:3

Breach of CRF s. 8, 4:3

Case law, 4:10 to 4:18

Court of Appeal, 4:11

Superior/Provincial Court, 4:12

Supreme Court of Canada, 4:10

ROADSIDE SCREENING—Cont'd

Crown must prove reasonableness
of search, 4:3

Forthwith, 4:2, 4:3, 4:10

case law, 4:10

delay, 4:11

forthwith means immediately?,
4:4

meaning of, 4:11

“Magic” words required, 4:8

Officer must articulate reasons for
demand, 4:8

Other issues, 4:16

Reasonable and probable grounds,
provides, 4:2

Reasonable suspicion, 4:2, 4:5 to
4:8, 4:13

basic standard, 4:6

belief need only relate to alcohol
in body, 4:7

bona fide belief, 4:7

case law, 4:13

compared to reasonable and
probable grounds standard,
4:6

examined from viewpoint of
officer when formed, 4:6

constellation of objectively
discernible facts, 4:7

delay, 4:15

demanding officer must have
reasonable suspicion, 4:8,
4:15

error to view evidence in isola-
tion, 4:7

hearsay, based on, 4:8

hunch is not enough, 4:6

objective and subjective
component, 4:6, 4:15

prima facie case not required, 4:7

Right to counsel, suspension of, 4:3