All references are to section number.

# ABORIGINAL PERSONS

bail, 1.15 *Gladue* factors, 1.15, 7.2 sentencing, 7.3, 7.5

ABSCONDING ACCUSED, 4.7

#### ACCESSORY AFTER THE FACT

s. 23(1) of the Criminal Code, 2.1.3.5

# ACCUSED'S POSITION IN COURTROOM, 4.9.3

#### ACCUSED'S UTTERANCES, see also COMPELLED STATEMENTS

voluntariness -

completeness of record, 5.3.5.1.3 general rule, 5.3.5.1.1 operating mind, 5.3.5.1.7 oppression, 5.3.5.1.4 persons in authority, 5.3.5.1.2 police trickery, 5.3.5.1.6 spontaneous utterances, 5.3.5.1.9 tainting, 5.3.5.1.8 threats/promises/inducements, 5.3.5.1.5

**ADJOURNMENTS**, 4.9.3

# **ADMINISTERING NOXIOUS SUBSTANCE**, 2.11

AGGRAVATED ASSAULT, 2.22

**ANIMAL CRUELTY**, 7.6.1

#### **APPEALS**

extension of time to serve, 4.17.1 neutral delay, 6.6.6.10

#### APPELLATE REVIEW

judicial reasons, of, 4.17.6 reasons inadequate, 4.17.11 judicial, 4.17.6 sentences, of, 4.17.8 verdicts, of, 4.17.7

#### APPROVED SCREENING DEVICE

failures, 2.16.1.1 refusal, 2.16.2.1

#### **ARSON**, 7.6.1

#### **ASSAULT**

aggravated, 2.22 bar fights, 7.6.3.1 bodily harm, causing, 2.21 generally, 2.20 sentencing, 7.6.3, 7.6.3.1 sexual, see SEXUAL ASSAULT

#### ASSAULT CAUSING BODILY HARM

bar fights, 7.6.3.1 generally, 2.21 sentencing, 7.6.3, 7.6.3.1

# ATTEMPTED MURDER, 2.10

# ATTENDANCE OF WITNESSES, 4.8

#### **AUTOMATISM**, 3.2.1

#### **BAIL**

aboriginal persons, 1.15 appeal, pending, 1.18 bonds, 1.4 consent release, 1.3 disclosure, 1.2 electronic monitoring, 1.11 estreatment, 1.14 evidence, 1.5 generally, 1.1 GPS monitoring, 1.11 jurisdiction, 1.17 ladder principle, 1.1.1 preliminary hearing judge, 1.17 presumption of innocence, 1.6 primary ground, 1.7 review, 1.12 revocation section 523, 1.13.2 section 524, 1.13.1 secondary ground, 1.8 sentencing, credit at, 7.2.9 sureties, 1.10 tertiary ground availability of, 1.9.2

#### **BREACH OF TRUST BY PUBLIC OFFICER**, 2.2.5

#### BREAK AND ENTER

elements, 2.27.3 generally, 2.27 included offences, 2.27.4 presumption, 2.27.2 principles, re, 2.27.1

#### **BREATHALYZER EVIDENCE**, see OVER 80

# **BRUTAL NATURE OFFENCE**, 7.7.7.3

#### CAUSATION

factual, 5.1.9.1
general principles, 5.1.9.1
intervening acts, 5.1.9.1
multiple causes, 5.1.9.1
murder –
accelerating death, 5.1.9.1
constructive, 2.27.3
generally, 2.27.1
negligence-based offences, 5.1.9.1
preliminary inquiry, evidence of, 4.16.1.1

#### **CERTIORARI**

generally, 4.16.1 grounds – considering evidence in isolation, 4.16.1.3 not considering whole of evidence, 4.16.1.4 usurping role of trier of fact, 4.16.1.1 weighing competing inferences, 4.16.1.2

#### CHARTER OF RIGHTS AND FREEDOMS

abandonment of interests, 6.3.3

#### **CHARTER OF RIGHTS AND FREEDOMS** – continued "ambush" motions, 6.1.2 arbitrary detention, s. 9, 6.4.1 general principles, 6.4.1 investigative detention, 6.4.2.1 post-offence detention, 6.4.2.2 s. 253 offences, 6.4.3 traffic stops, 6.4.2.3, 6.4.3 bad faith, 6.2.5.1 constitutional question, notice of, 6.1.2.1 counsel, right to, s. 10(b), see COUNSEL delay, unreasonable, see UNREASONABLE DELAY disclosure issues, see DISCLOSURE exclusion of evidence, s. 24(2), 6.11 fair trial, s. 7, 4.4.3, 4.9.2, 4.9.7, 4.9.9, 6.6.3.1 full answer and defence lost evidence and, 6.2.5 particulars, 4.4.3 pre-charge delay and, 6.6.3.1 procedural rules and, 6.1.2 surrebuttal, 4.14 third party records, 4.9.10.1, 4.9.10.3.3 general principles, 6.1.5 "impromptu" motions, 6.1.2 interpreter, 6.7 lesser punishment, 6.12 life, liberty and security of person, s. 7, 6.2 abuse of process, 6.2.1, 6.2.2, 6.2.5.1 compelled statements, 6.2.6, see also COMPELLED STATEMENTS criminal proceeding to enforce civil debt, 6.2.2 Crown discretion, 6.2.1 destroyed evidence, 6.2.5.1 disclosure, 6.2.3, see also DISCLOSURE fair trial rights, 6.2.7 lost evidence, 6.2.5 use of force, 6.2.4, see also USE OF FORCE notice requirements, 6.1.2 presumption of innocence, s. 11(d), 1.3, 4.9.7, 4.9.9 reasons for detention, right to, s. 10(a), 6.5.1 remedies costs, 6.10.1 exclusion of evidence, 6.11 sentence reduction, 6.4.2.3, 6.10.1 stay of proceedings, 6.4.2.3, 6.6.3.1, 6.10 general principles, 6.10.1 lost evidence, 6.10.3 rules of court re applications, 6.1.2 search and seizure, unreasonable, s. 8, see SEARCH AND SEIZURE self-crimination, protection against, s. 13, 6.9 tried only once, 6.7 Vukelich hearings, 6.1.4 waiver of rights, 6.1.1, 6.3.3, 6.5.2.7, 6.6..6.12

#### **CHEATING AT PLAY**, 2.6

# **CHILD PORNOGRAPHY**, 2.4, 2.4.1, 3.14, 7.6.19

#### COMPELLED STATEMENTS

generally, 6.2.6 procedural compulsion, 6.2.6.2 statutory compulsion, 6.2.6.1

#### **CONSPIRACY**

exception to hearsay rule, 5.3.3.2.3 generally, 2.31

# CONTEMPT OF COURT

generally, 2.2.1

**COSTS**, 6.10.1

#### **COUNSEL**

appellate, appointment of, 4.17.9 appointment by court, 4.9.7 Crown, recusal of, 4.9.4 Fisher applications, 4.9.8 removal of application of principles, 4.9.5.3 general principles, 4.9.5.2 remedy, 4.9.5.4 timing, 4.9.5.1 right to, under Charter change in circumstance, 6.5.2.6 counsel of choice, 6.5.2.5 "detention", 6.5.2.1 duty to hold off, 6.5.2.4 "forthwith", 6.5.3.1 implementational component, 6.5.2.3 informational component, 6.5.2.2 intoxicated accused, 6.5.2.2.2 invoking, 6.5.2.8 language issues, 6.5.2.2.1 privacy, 6.5.2.3.1 purpose of protections, 6.5.2 roadside detention, 6.5.3.1 s. 253 offences, 6.5.3 timing of roadside demand, 6.5.3.2 waiver, 6.5.2.7 Rowbotham applications, 4.9.7 state-funded, 4.9.8

#### COUNSELLING

generally, 2.1.4

#### **COUNSELLING** – continued

predicate offence, whether, 2.1.4.1, 2.1.4.2

#### **CREDIBILITY**

child witness, 5.2.2.1 domestic violence, 5.2.2.3 generally, 5.2.2 officer's notes, 5.2.2.2

#### CRIMINAL CODE

Part XVIII, 4.16.1.4

Part XXIII, 7.1

Part XXIV, 7.7.8

- s. 4(3), 5.1.9.2
- s. 21, 2.1.3 s. 22, 2.2.1
- s. 23(1), 2.1.3.5
- s. 25, 6.2.4.1 s. 27, 6.2.4.1
- s. 34, 3.12, 6.2.4.1
- s. 43, 3.5
- s. 85, 2.2.2, 7.6.12
- s. 88, 2.2.3
- s. 109, 7.8.2.5
- s. 117.01, 2.2.4
- s. 122, 2.2.5
- s. 129, 2.2.6 s. 131, 2.2.7
- s. 145, 2.2.8
- s. 162, 2.3
- s. 163.1, 2.4
- s. 172.1, 2.5
- s. 209, 2.6
- s. 215, 2.7
- s. 219, 2.8
- s. 229, 2.9 s. 239, 2.10
- s. 245, 2.11
- s. 249, 2.12
- s. 253, 2.13, 2.14, 2.15, 6.3.7, 6.5.3, 7.6.13
- s. 254(2), 6.3.7.1, 6.4.3, 6.5.3.1
- s. 254(2) or (3), 6.2.6.1
- s. 254(3) and (5), 6.2.6.2
- s. 258, 6.3.7.2.6
- s. 264(2), 2.18
- s. 264.1, 2.19
- s. 266, 2.20
- s. 267, 2.21
- s. 268, 2.22
- s. 271, 2.23
- s. 276, 5.4.9

# **CRIMINAL CODE** – *continued*

- s. 278, 4.9.10.3.3
- s. 278.1, 4.9.10.4.6
- s. 279, 2.24
- s. 279.011, 2.25
- s. 300, 2.26
- s. 348, 2.27
- s. 349, 2.28
- s. 366, 2.29
- s. 380, 2.30
- s. 467.1(1), 2.32
- s. 475, 4.7
- s. 486.2, 4.9.9
- s. 490.1, 7.8.2.1
- s. 490.1(1), 7.8.2.1
- s. 490.2(2), 7.8.2.1
- s. 490.41(3), 7.8.2.1
- s. 515, 1.6
- s. 522, 1.6
- s. 523, 1.13, 1.13.2
- s. 524, 1.13.1
- s. 529, 6.3.4.2
- s. 529.1, 6.3.4.2
- s. 530(1), 4.6
- s. 540(7), 4.3.4
- s. 581(1), 2.1.6
- s. 589, 4.9.6.2
- s. 601(4.1), 4.4.2
- s. 645(5), 4.15.1
- s. 650(1), 4.10.5
- s. 650.1, 4.10.5
- s. 653.1, 4.19.1
- s. 669(2), 4.15.3
- s. 669.1, 4.15.1
- s. 683(1)(b), 4.10.2
- s. 698(1), 4.8
- s. 715, 5.4.6, 7.3
- s. 715(1), 5.4.6, 7.3
- s. 715.1, 5.4.7.1, 5.4.7.2
- s. 718, 7.8.2.1
- ss. 718-718.2, 7.7.1
- s. 718.2, 7.2.2.1, 7.3
- s. 718.2(e), 7.3
- s. 719, 7.2.6
- s. 719(3.1), 7.2.6
- s. 723(5), 7.2.1, 7.7.4, 7.8.2.1
- s. 724(3)(b), 7.2.1
- s. 724(2)(a), 4.10.12
- s. 726.1, 7.7.4
- s. 745.4, 7.6.1.1
- s. 752.1, 7.7.5
- s. 753(1)(a), 7.7.7

# **CRIMINAL CODE** – *continued*

s. 753(1)(a)(i), 7.7.7.1 s.753(1)(a)(ii), 7.7.7.1, 7.7.7.2 s. 753(1)(b), 7.7.7 s. 810.01, 7.6.17, 7.9 s. 810.1, 7.6.17 s. 810.2, 7.6.17

#### CRIMINAL HARASSMENT

generally, 2.17, 7.6.6 internet/social media, 7.6.1 predicate offences, 2.9.3.1.3

#### **CRIMINAL NEGLIGENCE**

driving offences, 7.6.7 generally, 2.8

# **CRIMINAL ORGANIZATION**, 2.32

#### **CROSS-EXAMINATION**

accused, of, 4.11.2.1
affiant, of, 4.11.2.2
Browne v. Dunn, rule in, 5.2.4
collateral facts rule, 5.2.3
informant, 6.3.8.3
limits on, 4.3.5
objections on —
misstatements of evidence, 4.12.3
repetitive or abusive questioning, 4.12.4
questioning accused re disclosure, 4.12.1
questioning witness re veracity of others, 4.12.2
preliminary inquiry, at, 4.3.5
witness, of, using police notes, 4.11.2.4
witness, of, on criminal record, 4.11.2.3

#### CURATIVE PROVISO, 4.17.10

#### **DANGEROUS DRIVING**, see DRIVING OFFENCES

# DANGEROUS OFFENDERS

assessment orders
criteria –
anti-androgen drugs, 7.7.8.1
persistent behaviour, 7.7.7.2
reasonable possibility of eventual control, 7.7.7.3
repetitive behaviour, 7.7.7.1
evidence –
expert, 7.7.5
hearsay, 7.7.4
generally, 6.3.6.1

```
predicate offence, nature of, 7.7.3
purpose of legislation, 7.7.1
"serious personal injury offence", 7.7.2
DEFENCES
age, mistake of, 3.13
air of reality, 3.1.3
alibi, 3.6, 4.4.2
bolus drinking, 2.14.4
child pornography, 3.14
consent -
     bodily harm, 3.7.1
     honest but mistaken belief in, 3.7.3
     in sports, implied, 3.7.2
     sado-masochistic sex, 3.7.4
corrective force, 3.5
de minimis, 3.1.4
diminished capacity, 3.3
duress, 3.8
entrapment, 3.9
evidentiary burden, 3.1.1
intoxication, 5.1.5
issue estoppel, 5.1.8
mistake of age, 3.13
mistake of law, 3.1.5
necessity, 3.10
provocation, 3.11
reasonable excuse defence, 2.16.3
res judicata, 5.1.8
self-defence, 3.12
thin skull principle, 3.1.2
third party suspect, 5.4.4
DISCLOSURE
Charter rights and obligations –
    alleged breaches, 6.2.3.3
     generally, 6.2.3.1, 6.2.3.3
     lost evidence, 6.2.5, 6.2.5.1, 6.10.3
     over 80 disclosure, 6.2.3.2.1, 6.2.5.1
     procedure on breach motion, 6.2.3.3
     radar, 6.2.3.2.2
     remedies for breach, 6.2.3.3, 6.10
     videotape, lost, 6.2.5.1
notice of intent, 5.3.1.1
reasonable notice, 5.3.1.2
third party records, see THIRD PARTY RECORDS
"unacceptable negligence", 6.2.5
warrants, 6.3.8.4
```

**DANGEROUS OFFENDERS** – continued

#### DISCREDITABLE CONDUCT EVIDENCE

accused statements, assessing, 5.4.3.3.4 domestic violence, 5.4.3.3.3 general principles, 5.4.3 linkage, 5.4.3.1 materiality, 5.4.3.2 prejudicial effect, 5.4.3.4 probative value, 5.4.3.3 relevance, 5.4.3.2 similar fact evidence, 5.4.3, 5.4.3.3.1 third party suspect, 5.4.4

# DOMESTIC VIOLENCE

credibility, assessing, 5.2.2.3 discreditable conduct, 5.4.3.3.3 sentencing, as factor for, 7.6.20

#### **DRIVING OFFENCES**

criminal negligence, 7.6.7 dangerous driving, 2.12 drug impaired driving evidence of impairment, 2.15.2 mens rea, 2.15.1 failure to provide samples, 2.16.1 impaired care/control, see IMPAIRED CARE/CONTROL impaired driving, see IMPAIRED DRIVING Kienapple principle and, 2.13.7 "motor vehicle", 2.13.6 "operates", 2.13.5 over 80, see OVER 80 refusal to provide samples -ASD refusal, 2.16.2.1 elements generally, 2.16.2 reasonable excuse defence, 2.16.3 sentencing, 7.6.7, 7.6.13 speeding radar disclosure, 6.2.3.2.2

# DRUG IMPAIRED DRIVING, see DRIVING OFFENCES

# **DWELLING HOUSE, UNLAWFULLY IN A, 2.28**

# **ELECTIONS**

application for judge alone, 4.1.4 generally, 4.1 hybrid offences, 4.1.1 re-election, 4.1.3 timing, 4.1.2

# **ENDORSEMENTS**, 4.17.4 ENTRAPMENT, 3.9 ESTOPPEL, ISSUE, 4.5 **EVIDENCE** accused's utterances, see ACCUSED'S UTTERANCES acquittal, of, 1.5 admissions, 5.3.8 alibi, 3.6, 4.4.2 assessing, 5.2 bail hearing, at, 1.5 Browne v. Dunn, rule in, 5.2.4 breathalyzer evidence, see OVER 80 burden of proof, 5.1.3 causation, of, 5.1.9.1 cell phone, 5.3.9 charge to, 4.10.6 child witness contradiction in testimony, 5.2.2.1 credibility, 5.2.2 date recollection, 4.4.2 delayed disclosure, 5.4.7.2 generally, 5.2.2.1 judicial notice, 5.2.2.2 Rowbotham applications, 4.9.7 testimonial aids, 4.9.9 circumstantial evidence break and enter, of, 2.27 generally, 5.3.11 preliminary inquiry, at, 4.3.4.2 collateral facts rule, 5.2.3 common sense inference, 5.1.4 compelled statements, 6.2.6 confessions, see ACCUSED'S UTTERANCES corroborative, 5.1.11 corroboration, 5.2.2.1 courtroom demonstrations, 5.4.8 credibility, 5.2.2 "credible or trustworthy", 4.3.4 cross-examination, see CROSS-EXAMINATION DNA, 5.3.4.6 dangerous offenders, re, see DANGEROUS OFFENDERS deceased, photos, 5.3.7 demonstrative, 5.3.10 destruction of evidence, 6.2.5.1 direct evidence, 4.3.4.1 disclosure, see DISCLOSURE discreditable conduct, of, see DISCREDITABLE CONDUCT EVIDENCE Dixon test, 4.17.3.1

```
EVIDENCE – continued
documentary evidence, 5.3.1
"evidence to the contrary", 2.14.5
evidentiary burden, 3.1.1
examination-in-chief, see EXAMINATION-IN-CHIEF
exclusion of evidence, Charter, 6.11
experiments, 5.3.6
expert evidence -
    accident reconstruction, 5.3.2.2
    admissibility voir dire, 5.3.2
    bloodstain pattern analysis, 5.3.2.3
    dog tracking, 5.3.2.4
    psychological, 7.6.5
    recovered memories, 5.3.2.6
    slang, interpretation of, 5.3.2.5
fingerprints, 5.3.4.5
fresh, 4.17.3
hearsay, see HEARSAY EVIDENCE
identification evidence -
    fingerprints, 5.3.4.5
    general principles re, 5.3.4
    in-dock identification, 5.3.4.1
    photo line-ups, 5.3.4.2
    preliminary inquiry, at, 4.3.4.3, 4.16.1.1
    recognition evidence, 5.3.4.3
    videos or stills, use of, 5.3.4.4
illustrative, 5.3.10
intoxication, re, 5.1.5
issue estoppel, 5.1.8
judicial notice -
    delayed disclosure by child, 5.2.2.1
    generally, 5.1.6
    jury selection, in, 4.10.2
lost evidence, 6.2.5, 6.2.5.1, 6.10.3
misstatements of, 4.12.3
motions re-
    Corbett applications, 5.4.1, 5.4.2
    courtroom demonstrations, 5.4.8
     "other discreditable conduct", see DISCREDITABLE CONDUCT
      EVIDENCE
    post-offence conduct, 5.4.5
    s. 715: preliminary inquiry statements, 5.4.6
    s. 715.1: videotaped statements, see videotaped statements
motive, 5.3.12
multi-count information, 5.1.7
notice of intent, 5.3.1.1
officer's notes, 5.2.2.2
objections, see CROSS-EXAMINATION
photos of deceased
    alive, while, 5.3.7.1
    generally, 5.3.7
    post mortem, 5.3.7.2
```

```
EVIDENCE – continued
possession, of, 5.1.9.2
post-offence conduct, 5.4.5
preliminary hearing/inquiry, at, see PRELIMINARY HEARING/INQUIRY
presumption of admissibility, 6.1
prior consistent statement, 4.11.1.1
production orders, 6.3.6
reasonable notice, 5.3.1.2
recantations, 4.17.3.2
re-enactments, 5.3.6
relevance, 5.1.1
res judicata, 5.1.8
sentencing, 7.3
silence of accused, 5.2.1
surrebuttal, 4.14
testimony of accused, 5.2.1
third party records, see THIRD PARTY RECORDS
trace evidence, 5.3.4.6
unsavoury witness warning, 5.2.5
videotape, lost, 6.2.5.1
videotaped statements -
    adoption, 5.4.7.1
    generally, 5.4.7
    reasonable time, 5.4.7.2
wilful blindness, re, 5.1.3
withdrawn charges, of, 1.5
"EVIDENCE TO THE CONTRARY", 2.14.5
EXAMINATION-IN-CHIEF
"adverse" witness, 4.11.1.5
adoption of prior statement, 4.11.1.4
leave to cross-examine own witness, 4.11.1.6
past recollection recorded, 4.11.1.3
present memory refreshed, 4.11.1.2
prior consistent statement, 4.11.1.1
s. 9(1) of the Canada Evidence Act, 4.11.1.5
s. 9(2) of the Canada Evidence Act, 4.11.1.6
EXCEPTION, 3.4
EXCUSE, 3.4
EXEMPTION, 3.4
EXPERT, see EVIDENCE
EXTRAORDINARY REMEDIES
certiorari, see CERTIORARI
habeas corpus, 4.16.4
```

#### **EXTRAORDINARY REMEDIES** – continued

mandamus, 4.16.2 prohibition, 4.16.3

#### FAIL TO APPEAR

mens rea, 2.2.8.2.1

#### FAIL TO PAY RESTITUTION, 2.2.8.2.2

**FAIL TO RESIDE**, 2.2.8.2.3

#### **FIREARMS**

generally, 2.2.2 possession for dangerous purpose, 2.2.3 possession while prohibited, 2.2.4

# FISHER APPLICATIONS, 4.9.8

#### FITNESS TO STAND TRIAL, 4.18

#### **FRAUD**

elements, 2.30.1 generally, 2.30 mens rea, 2.30.2 relationship with victim, 2.30.3

#### **GUILTY PLEA**

as hearsay evidence, 5.3.3.2.5 defined, 4.2 nolo contendere and, 4.2 setting aside, 4.17.2 voluntariness, 4.2 withdrawal of, 4.2.1

# HABEAS CORPUS, 4.16.4

# HEARSAY EVIDENCE

admissible at bail hearing, 1.5
admissible on sentencing, 7.6.4
circumstances, particular –
911 Call, 5.3.3.2.1
accomplice hearsay, 5.3.3.2.7
accused's utterances, 5.3.3.1, 5.3.3.2.2
co-conspirators' exception, 5.3.3.2.3
deceased officer's notes, 5.3.3.2.4
guilty plea, 5.3.3.2.5
telephone calls, 5.3.3.1
exceptions to rule, traditional –
co-conspirators, 5.3.3.2.3
generally, 5.3.3.1

```
HEARSAY EVIDENCE – continued
"for the truth of its contents", 5.3.3.1
general principles, 5.3.3.1
investigative, 5.3.3.2.6
necessity, 5.3.3.1.1
reliability, 5.3.3.1.2
sentencing, 7.3.2
transcript of proceedings, 5.3.3.2.8
HOME INVASION, 5.3.4.5, 7.2.2.3, 7.6.9
HUMAN TRAFFICKING, 2.25
IMMIGRATION, 7.2.5
IMPAIRED CARE/CONTROL, see also IMPAIRED DRIVING
arbitrary detention, 6.4.2.3, 6.4.3
counsel, right to, 6.5.3, see also COUNSEL
de facto care or control, 2.13.4.3
generally, 2.13.4
Kienapple, 2.13.7
"motor vehicle", 2.13.6
"operates", 2.13.5
presumption, 2.13.4.2 principles, 2.13.4.1
sentencing, 7.5.13
traffic stops, 6.4.2.3, 6.4.3
IMPAIRED DRIVING, see also IMPAIRED CARE/CONTROL
actus reus, 2.13.1
arbitrary detention, 6.4.2.3, 6.4.3
contemporaneous inferences, 2.13.3.4
counsel, right to, 6.5.3, see also COUNSEL
death, causing, 7.6.21
impairment -
    cause of, 2.13.3.2
    definition of, 2.13.3.1
    proof of, 2.13.3.3
Kienapple, 2.13.7
mens rea, 2.13.2
"motor vehicle", 2.13.6
"operates", 2.13.5
sentencing, 7.6.13, 7.6.21
traffic stops, 6.4.2.3, 6.4.3
INCEST, 7.6.18
```

# INCLUDED OFFENCES

diminished capacity and, 3.3 test applicable, 2.1.2

#### **INFORMANT PRIVILEGE**, 4.11.4

# INFORMATION AND INDICTMENT

amendments, 4.4.2 joinder of counts, 4.9.6.4 – *see* severance multi-count information, 5.1.7 particular, 4.4.3 severance of counts, 4.9.6.1, 4.9.6.2 timing, 4.4.1

# **INTERMITTENT SENTENCES**, 7.4.1

**INTERNET LURING**, 2.5

**INTERVENOR STATUS**, 4.9.1

**INVESTIGATIVE DETENTION**, 6.3.4.4

**ISSUE ESTOPPEL**, 4.5

JOINDER, see SEVERANCE

**JOURNALIST PRIVILEGE**, 6.3.8.6

#### JURISDICTION OF COURT

constitutional, 6.1.3 extraterritorial, 4.15.5 functus officio, 4.15.3 inherent, 4.15.1 judge and jury trial, on, 4.15.2 judge unable to continue, 4.15.4 youth offenders, 4.15.6

# **JURY**

charge to generally, 4.10.6, 4.17.5 standard of review, 4.17.5.1 deliberation aids, 4.10.7 exhortation, 4.10.10 impact of findings, 4.10.12 influences, outside, 4.10.3 instructions generally, 4.10.6 Vetrovec caution, 5.2.5 wilful blindness, re, 5.1.3 opening address, 4.10.3 pre-charge conference, 4.10.5 questions by general principles, 4.10.9.1, 4.10.14 requests for transcripts, 4.10.9.2

```
{\bf JURY}-continued
recommendations, 7.6.11.1
selection -
    challenge for cause, 4.10.2
    vetting, 4.10.1
sequestration, 4.10.8
unanimity, 4.10.4
unsavoury witness warning, 5.2.5
verdict, 4.10.11
KIDNAPPING, 2.24
KIENAPPLE PRINCIPLE, 2.1.1, 2.13.7
LANGUAGE OF PROCEEDINGS, 4.6
LEGAL AID, 4.9.7, 4.9.8
LIBEL, 2.26
LITIGATION PRIVILEGE, 4.9.11.2
MANDAMUS, 4.16.2
MANSLAUGHTER, 7.6.10
MILGAARD APPLICATIONS, 4.11.1.6
MISTAKE OF AGE, 3.13
MISTAKE OF LAW, 3.1.5
MISTRIALS, 4.19
MR. BIG INVESTIGATIONS, 5.3.5.2
MURDER
attempted, 2.10
causation, 2.9.1, 2.9.3.2, 2.9.3.3, 5.1.9.1
    intervening acts, 5.1.9.1
constructive murder -
    causal link, 2.9.3.2
    generally, 2.9.3
    substantial cause, 2.9.3.3
    temporal link, 2.9.3.2
```

unlawful confinement, 2.9.3.1.1

generally, 2.9

joinder of counts, 4.9.6.2 parole ineligibility, 7.6.11

#### MURDER – continued party liability, 2.9.2 sentencing, 7.6.11 severance of counts, 4.9.6.2

#### NOLO CONTENDERE, 4.2

#### NOT CRIMINALLY RESPONSIBLE

mental disorder, by way of, 3.2.2 severance of counts, 4.9.6.2

#### **OBSTRUCT POLICE**, 6.2.4, 6.5.2.4

#### **ORDERS**

ancillary, 7.8.2 fine, 7.8.2.2 forfeiture, 7.8.2.1 generally, 7.8 pre-sentence, 7.8.1 psychiatric assessments, 7.8.1.1

#### **OVER 80**

```
approved screening device test -
     grounds for arrest and, 6.3.7.2.2
     mouth alcohol, residual, 6.3.7.1.1
    officer's beliefs re, 6.3.7.2.2
     "reasonable suspicion", 6.3.7.1
arbitrary detention, 6.4.2.3, 6.4.3
bolus drinking defence, 2.14.4
breath demand -
    authority to make, 6.3.7.2.3
     form of, 6.3.7.2.4
     general principles, 6.3.7.2.1
     "reasonable probable grounds", 6.3.7.2
     timing of, 6.3.7.2.5, 6.5.3.2
breath sample, 2.14.1
certificate evidence, 2.14.2
counsel, right to - see also COUNSEL
     "forthwith", 6.5.3.1
    roadside detention, 6.5.3.1
     timing of roadside demand, 6.5.3.2
disclosure, 6.2.3.2.1
"evidence to the contrary", 2.14.5
identity, presumption of, 2.14.3
mouth alcohol, residual, 6.3.7.1.1
presumptions, 2.14.3
sentencing, 7.6.13
traffic stops, 6.4.2.3, 6.4.3
```

# PARTY LIABILITY accessory after the fact, 2.1.3.5 firearm offences, for, 2.1.3.6 generally, 2.1.3 mandatory minimums, 7.2.8 murder, 2.9.2 principles, re, 2.1.3.1 s. 21(1)(a) of the *Criminal Code*, 2.1.3.2 s. 21(1)(b) of the *Criminal Code*, 2.1.3.3 s. 21(2) of the *Criminal Code*, 2.1.3.4 sentencing, in, 7.2.4 PERJURY, 2.2.7 POLICE 911 calls, 6.3.4.8 arbitrary detention, see CHARTER OF

```
911 calls, 6.3.4.8
arbitrary detention, see CHARTER OF RIGHTS AND FREEDOMS
breathalyzer testing, see OVER 80
counsel, right to, and, see CHARTER OF RIGHTS AND FREEDOMS
declarant, status of, 5.3.5.1.10
disciplinary records, 4.9.10.4.5
disclosure, 6.2.3.1, 6.2.3.2.1
drug-detection dogs, 6.3.4.5
dynamic entries, 6.3.5.2
editing, 5.3.5.3
entrapment, 3.9
execution of searches, 6.3.5.2
fear of, 4.11.1.6, 5.3.5.1.4
fleeing from, 6.3.3, 7.6.8
implied invitation to knock, 6.3.4.2
inducements, 5.3.5.1.5
influencing jury, 4.10.3
inventory searches of motor vehicles, 6.3.9.1
investigating alibi, 3.6
investigative detention, 6.3.4.4
jury vetting, 4.10.1
misconduct, 4.11.1.6, 6.2.3.1, 6.2.4.3
notes -
    completeness, 5.2.2.2, 5.3.5.1.3
    testimonial aids, 5.2.2.2
    use in cross, 4.11.2.4
obstruction, 2.2.6
occurrence reports, 4.9.10.4.6
oppression, 5.3.5.1.4
penile swabs, 6.3.4.6.4
procedural compulsion, 6.2.6.2
promises, 5.3.5.1.5
roadside detention, 6.5.3.1
safety searches, 6.3.4.3
search and seizure, see SEARCH AND SEIZURE
search incident to arrest, see SEARCH AND SEIZURE
```

#### POLICE – continued state agency, 6.3.1 threats, 5.3.5.1.5 traffic stops, 6.4.2.3, 6.4.3 trickery, 5.3.5.1.1, 5.3.5.1.6 use of force, see USE OF FORCE

# POSSESSION

child pornography, of, 2.4.1 offences, 2.2.9 proof of, 5.1.9.2 s. 4(3) of the *Criminal Code*, 5.1.9.2

#### **POST-OFFENCE CONVICTIONS**, 7.2.3

#### PREDICATE OFFENCES

criminal harassment, 2.9.3.1.3 generally, 2.9.3.1 sexual assault, 2.9.3.1.3 unlawful confinement, 2.9.3.1.1

#### PRELIMINARY HEARING/INQUIRY

certiorari, see CERTIORARI
cross-examination, limits on, 4.3.5
evidence –
circumstantial evidence, 4.3.4.2
considering evidence in isolation, 4.16.1.3
"credible or trustworthy" evidence, 4.3.4
direct evidence, 4.3.4.1
generally, 4.3.4
identification evidence, 4.3.4.3, 4.16.1.1
not considering whole of evidence, 4.16.1.4
s. 715: tendering evidence at trial, 5.4.6
usurping role of trier of fact, 4.16.1
weighing competing inferences, 4.16.1.2
test for committal, 4.3.3

# **PRE-TRIAL**, 6.6.6.9

# **PRIVILEGE**

generally, 4.9.11.1 informants, 4.11.4 litigation, 4.9.11.2 settlement, 4.9.11.3

# PROBATION

breach of – failure to appear, 2.2.8.2.1 failure to pay restitution, 2.2.8.2.2 failure to reside, 2.2.8.2.3

#### PROBATION – continued breach of – continued generally, 2.2.8 mens rea, 2.2.8.1

**PROHIBITION**, 4.16.3

**PUBLICATION BANS**, 4.9.12

**RECOGNIZANCE**, 7.9

**RECUSAL OF CROWN**, 4.9.4

**RE-ELECTION**, 4.1.2

**RE-EXAMINATION**, 4.11.3

**RE-OPENING CASE**, 4.13

**RESTITUTION ORDERS**, 7.8.2.4

#### **ROBBERY**

car jacking, 7.6.22.3 commercial, 7.6.5, 7.6.22.1 home invasion, 7.6.9 party liability, 2.27.2 sentencing, 7.6.6, 7.6.9, 7.6.19 swarmings, 7.6.15, 7.6.22.2

ROWBOTHAM APPLICATIONS, 4.9.7

**SCREEN TESTIMONY**, 4.9.9

**SINGLE TRANSACTION RULE**, 2.1.6

#### SEARCH AND SEIZURE

```
Charter protection –
abandonment of privacy interests, 6.3.3
common law exceptions –
consent searches, 6.3.4.1
drug-detection dogs, 6.3.4.5
impaired/over 80 cases, 6.3.7
implied invitation to knock, 6.3.4.2
investigative detention, 6.3.4.4
plain view doctrine, 6.3.4.4
safety searches, 6.3.4.3
search incident to arrest, 6.3.4.6
reasonable expectation of privacy –
common areas, 6.3.2.1
```

```
SEARCH AND SEIZURE – continued
Charter protection – continued
    reasonable expectation of privacy -- continued
                   generally, 6.3.2
              invited guests, 6.3.2.2
    reasonableness of execution, 6.3.5.2
    s. 8 framework, 6.3.1
dynamic entries, 6.3.5.2
impaired/over 80 cases –
    "reasonable and probable grounds" -
         ASD, 6.3.7.2.2
         authority to demand breath, 6.3.7.2.3
         authority to obtain sample, 6.3.7.2.6
         form of breath demand, 6.3.7.2.3
         generally, 6.3.7.2.1
         timing of breath demand, 6.3.7.2.5
    "reasonable suspicion", s. 254(2), 6.3.7.1
         residual mouth alcohol, 6.3.7.1.1
inventory searches of motor vehicles, 6.3.9.1
production orders, 6.3.6
search incident to arrest -
    cell phone, 6.3.4.6.3
    motor vehicle, 6.3.4.6.2
    person, 6.3.4.6.1
warrants
    challenging, 6.3.8.2
    conditions, 6.3.8.5
    disclosure, 6.3.8.4
    generally, 6.3.8
    journalist privilege, 6.3.8.6
    monitoring, live, 6.3.8.5.1
    unsealing, 6.3.8.1
SENTENCING
aboriginal offenders, 1.15, 7.3
aggravating and mitigating factors -
    child victim, 7.2.2.1, 7.6.14
    elderly victim, 7.2.2.2
    generally, 7.2.2
    victim impact statements, 7.2.2.4
ancillary orders -
    fine in lieu of forfeiture, 7.8.2.2
    forfeiture, 7.8.2.1
bail conditions, credit for, 7.2.9
child pornography, 7.6.19
conditional sentence, 7.6.2, 7.6.4, 7.6.7
consequences, collateral, 7.2.5
criminal record, 7.3.4
dangerous offenders, see DANGEROUS OFFENDERS
domestic violence, 7.6.20
evidence, 7.3
```

# **SENTENCING** – continued hearsay, 7.3.2 impaired driving, 7.5.21 joint submissions, 7.2.7 offences, specific arson, 7.6.2 assaults, 7.6.3, 7.6.3.1 bar fights, 7.6.3.1 child abandonment, 7.6.5 criminal harassment, 7.6.6 criminal negligence (driving), 7.6.7 flight, 7.6.8 home invasions, 7.6.9 manslaughter, 7.6.10 murder, 7.6.11 robberies, commercial, 7.6.5 s. 253 offences, 7.6.13 sexual assaults, 7.6.14 orders appeal pending, 7.8.3 s. 109, under, 7.8.2.5 parole ineligibility, 7.6.11 principles aboriginal offenders, 1.15, 7.3 consecutive and concurrent, 7.2.1 credit for pre-sentence custody, 7.2.6 immigration consequences, 7.2.5 jump principle, 7.1.3 maximum sentence, 7.1 parity, 7.1.4 participation, degree of, 7.2.4 rehabilitation, 7.6.3, 7.6.3.1 retribution, 7.1, 7.6.3.1 totality principle, 7.1.2 proportionality, 7.1.1 reduction, 6.4.2.3, 6.10.1 robbery – car jacking, 7.6.19.3 commercial, 7.6.19.1 generally, 7.6.19 swarmings, 7.6.19.2 types, 7.4 **SETTLEMENT PRIVILEGE**, 4.15.6 **SEVERANCE**

accused, 4.9.6.3 child, 7.6.14.1 counts, 4.9.6.1 joinder of offences, 4.9.6.4 murder cases, in, 4.9.6.2

# **SEVERANCE** – *continued* s. 589 of *Criminal Code*, 4.9.6.2

# SEXUAL ASSAULT

child, 7.6.14.1 consent generally, *see* DEFENCES consent vitiated by fraud, 3.7.3 generally, 2.23 HIV transmission and, 2.23.1 predicate offences, 2.9.3.1.2 sentencing, 7.6.14

STARE DECISIS, 5.1.12

#### STATUTORY INTERPRETATION, 5.1.10

#### STAY OF PROCEEDINGS, 4.4.4

#### **SUBPOENA**

Crown, compellability of, 4.8.1.1 issuance of, 4.8.1 quashing, 4.8.2

**SWARMINGS**, 7.6.15

**TESTIMONIAL AIDS**, 4.9.9, 5.4.7

#### THIRD PARTY RECORDS

application —
evidentiary foundation, 4.9.10.3.1
likely relevance, 4.9.10.3.2
salutary and deleterious effects, 4.9.10.3.3
general principles, 4.9.10.1
procedure, 4.9.10.2
types of records —
CAS records, 4.9.10.4.1
counselling and psychiatric records, 4.9.10.4.2
diaries, 4.9.10.4.3
education records, 4.9.10.4.4
McNeil, 4.9.10.4.5, 4.9.10.4.6
police disciplinary records, 4.9.10.4.5
police occurrence reports, 4.9.10.4.6

THREATS, UTTERING, 2.19

# UNLAWFUL CONFINEMENT

predicate offences, 2.9.3.1.1

# UNREASONABLE DELAY appellate delay, 6.6.2.3 complexity, 6.6.5.2 defence, 6.6.4 discrete events, 6.6.5.1 exceptional circumstances, 6.6.5 general principles, 6.6.2 prejudice, 6.6.6.13 reasons for delay acccused's actions, 6.6.6.4 appeals, 6.6.3.3 complex cases, 6.6.5.2, 6.6.6.11 Crown's actions, 6.6.6.5 holidays, 6.6.6.6 inherent delay, 6.6.6.5 inherent time, 6.6.6.3 institutional delay, 6.6.6.7 "operative intake", 6.6.6.3 pre-trials, 6.6.6.10 unforeseeable events, 6.6.6.8 sentencing, 6.6.3.2 timeframe, impugned pre-charge period, 6.6.3.1 total, 6.6.3 transitional provisions, 6.6.6 waiver, 6.6.6.12 **USE OF FORCE** police, by generally, 6.2.4.1 pepper spray, 6.4.2.2 police dog, 6.2.4.2 taser, 6.4.2.2 remedy for breach of rights, 6.2.4.3

#### **VICTIM IMPACT STATEMENT**, 7.2.2.4

#### **VICTIM SURCHARGE**, 7.8.2.3

# VOYEURISM, 2.3

# WARRANTS

challenging, 6.3.8.2 conditions, 6.3.8.5 disclosure, 6.3.8.4 generally, 6.3.8 journalist privilege, 6.3.8.6 monitoring, live, 6.3.8.5.1 unsealing, 6.3.8.1

# **WEAPONS DANGEROUS**, 2.2.3

# WILFUL BLINDNESS

consent and, 3.7.3 equivalent of knowledge, 5.1.3 instruction to jury re, 5.1.3

# WIRETAPS

generally, 6.3.10 step six, 6.3.10.1

# WITNESSES

child witness, *see* EVIDENCE credibility, 5.2.2 cross-examination, *see* CROSS-EXAMINATION defence, 4.11.5 examination-in-chief, see EXAMINATION-IN-CHIEF testimonial aids, 4.9.9 unsavoury, warning re, 5.2.5 warrants, 4.8.3

# YOUNG PERSONS

bail, 1.16 sentencing, 7.10