# Table of Contents

*Preface* ............................................................... iii  
*Table of Cases* .................................................. xvii  

**Chapter 1  Status and Liability of the Police** ........................................... 1  
1. HISTORY ......................................................... 2  
2. LEGAL STATUS OF A POLICE OFFICER .............................................. 3  
   (a) The Duties ............................................... 3  
   (b) The Liabilities .......................................... 9  
   (c) Consequences of Failure to Perform Duties .......................... 12  
   (d) The Powers ............................................... 13  
3. PROTECTION UNDER FEDERAL STATUTES .......................................... 15  
   (a) Generally .................................................. 15  
   (b) Required or Authorized by Law .................................. 17  
   (c) The Meaning of “Reasonable Grounds” ........................... 19  
   (d) The Use of Force ......................................... 21  
   (e) Acting in the Execution of Duty .................................. 24  
   (f) Sting and Reverse Sting Operations .............................. 25
<table>
<thead>
<tr>
<th>Chapter 2</th>
<th>Arrest</th>
<th>35</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>GENERAL COMMENTS</td>
<td>37</td>
</tr>
<tr>
<td>2.</td>
<td>WHAT CONSTITUTES AN ARREST?</td>
<td>39</td>
</tr>
<tr>
<td>3.</td>
<td>THE MEANING OF REASONABLE AND PROBABLE GROUNDS</td>
<td>41</td>
</tr>
<tr>
<td>4.</td>
<td>DETENTION FOR INVESTIGATION</td>
<td>43</td>
</tr>
<tr>
<td>5.</td>
<td>THE CHARTER OF RIGHTS AND FREEDOMS</td>
<td>52</td>
</tr>
<tr>
<td>a)</td>
<td>Rights upon Arrest or Detention</td>
<td>52</td>
</tr>
<tr>
<td>b)</td>
<td>Meaning of “On Arrest or Detention”</td>
<td>52</td>
</tr>
<tr>
<td>c)</td>
<td>The Nature and Meaning of the Right to Counsel</td>
<td>63</td>
</tr>
<tr>
<td>d)</td>
<td>Protection Against Arbitrary Detention</td>
<td>75</td>
</tr>
<tr>
<td>e)</td>
<td>Consequences of a Breach of the Charter</td>
<td>77</td>
</tr>
<tr>
<td>6.</td>
<td>GENERAL POWERS OF ARREST WITHOUT A WARRANT</td>
<td>84</td>
</tr>
<tr>
<td>a)</td>
<td>Finds Committing an Indictable Offence</td>
<td>85</td>
</tr>
</tbody>
</table>
(b) Believes on Reasonable Grounds has Committed a Criminal Offence and is Escaping From and is Being Freshly Pursued ...................... 86
(c) Has Committed an Indictable Offence ................................. 89
(d) Believes on Reasonable Grounds that an Indictable Offence has been Committed .... 90
(e) Finds Committing a Criminal Offence ................................. 91
(f) Believes on Reasonable Grounds is About to Commit an Indictable Offence .............. 91
(g) Finds Committing a Breach of the Peace ............................... 92
(h) Reasonable Grounds to Believe That a Warrant is In Force .............. 93

7. SPECIFIC POWERS OF ARREST ................................................... 93

8. LIMITATIONS ON POWERS OF ARREST ........................................ 96

9. PROCEDURE TO BE FOLLOWED WHERE THE OFFICER DOES NOT ARREST .............................................. 97

10. DUTIES AFTER ARREST ......................................................... 99

11. LAYING OF AN INFORMATION .................................................. 103

12. ARREST WITH A WARRANT .............................................. 104

13. WHEN MAY AN ARREST WARRANT BE ISSUED? ............. 105

14. CARRYING THE WARRANT .............................................. 106
15. EXECUTION OF A WARRANT
WHERE THE ACCUSED IS IN
ANOTHER PROVINCE ............... 107
16. SUMMONS .......................... 108
17. ARREST OF WRONG PERSON
OR ON FAULTY GROUNDS ....... 109
18. SEARCHING AN ARRESTED
PERSON ................................. 111
19. ARRESTING A YOUTHFUL
OFFENDER ............................. 119
20. TRESPASS IN MAKING AN
ARREST ................................. 122
21. ASSISTING A PEACE OFFICER
........................................... 126
22. REFUSAL OF CITIZEN TO
IDENTIFY SELF ...................... 126
23. CONSEQUENCES OF AN
ILLEGAL ARREST ................... 128
24. ARREST UNDER PROVINCIAL
STATUTES AND BYLAWS .......... 129

Chapter 3 Search and Seizure ................. 131
1. INTRODUCTION .................... 133
2. THE CHARTER OF RIGHTS AND
FREEDOMS ........................... 134
   (a) Unreasonable Search and
       Seizure ............................ 134
   (b) The Necessity for a Search
       Warrant ........................... 137
   (c) Admissibility of Illegally
       Obtained Evidence ............... 140
   (d) Good Faith Actions of Police
       Officers ........................... 143
# TABLE OF CONTENTS

3. **GENERAL POWERS OF SEARCH UNDER THE CRIMINAL CODE** .... 144

4. **WARRANTLESS SEARCHES (EXIGENT CIRCUMSTANCES)** ... 147

5. **PROCEDURE TO OBTAIN A SEARCH WARRANT** .............. 149
   (a) A Statement of the Offence Involved ....................... 150
   (b) The Grounds of Belief ................................. 151
       (i) More than Mere Suspicion ........................................ 152
       (ii) Confidential Informers ...... 153
   (c) Building, Place or Receptacle ... 154
   (d) "Will Afford Evidence" ........ 154

6. **JUDICIAL DISCRETION** ........... 155

7. **WHERE A WARRANT IS REFUSED** .............................. 156

8. **FORM OF THE WARRANT** ........ 157

9. **TELEWARRANTS** .......................... 158

10. **THE GENERAL WARRANT** .......... 161

11. **TRACKING DEVICES AND TELEPHONE RECORDERS** .... 163

12. **EXECUTION OF THE SEARCH WARRANT** .................... 164

13. **SEIZURE OF THE GOODS (PLAIN VIEW DOCTRINE)** ........ 166

14. **SEARCH OF THE PERSON** ........ 167

15. **COMPUTER SEARCHES** ............ 168

16. **PRODUCTION ORDERS** ............ 169

17. **POWER OF DETENTION DURING SEARCH** .................. 171

18. **DUTIES AFTER THE ARTICLES ARE SEIZED** ............... 173

19. **SEARCH OF THE MEDIA** ............ 175
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.</td>
<td>LAW OFFICE SEARCHES</td>
<td>176</td>
</tr>
<tr>
<td>21.</td>
<td>EXECUTING A WARRANT OUTSIDE THE TERRITORIAL JURISDICTION</td>
<td>180</td>
</tr>
<tr>
<td>22.</td>
<td>SEALING ORDER</td>
<td>182</td>
</tr>
<tr>
<td>23.</td>
<td>SPECIFIC POWERS OF SEARCH AND SEIZURE UNDER THE CRIMINAL CODE</td>
<td>182</td>
</tr>
<tr>
<td></td>
<td>(a) Generally</td>
<td>182</td>
</tr>
<tr>
<td></td>
<td>(b) Prohibited and Restricted Weapons, Firearms or Ammunition</td>
<td>183</td>
</tr>
<tr>
<td></td>
<td>(c) Gaming, Betting, Lotteries and Bawdy Houses</td>
<td>184</td>
</tr>
<tr>
<td></td>
<td>(d) Obscene Publications, Crime Comics, Child Pornography and Voyeuristic Recordings</td>
<td>185</td>
</tr>
<tr>
<td></td>
<td>(e) Blood Samples</td>
<td>186</td>
</tr>
<tr>
<td></td>
<td>(f) Bodily Substances for Forensic DNA Analysis</td>
<td>187</td>
</tr>
<tr>
<td></td>
<td>(g) A Print or Impression of the Body</td>
<td>189</td>
</tr>
<tr>
<td></td>
<td>(h) Proceeds of Crime</td>
<td>190</td>
</tr>
<tr>
<td></td>
<td>(i) Valuable Minerals and Registered Timber</td>
<td>193</td>
</tr>
<tr>
<td></td>
<td>(j) Hate Propaganda</td>
<td>193</td>
</tr>
<tr>
<td></td>
<td>(k) Counterfeit Money</td>
<td>194</td>
</tr>
<tr>
<td>24.</td>
<td>POWERS OF SEARCH UNDER OTHER FEDERAL STATUTES</td>
<td>194</td>
</tr>
<tr>
<td></td>
<td>(a) The Controlled Drugs and Substances Act</td>
<td>195</td>
</tr>
<tr>
<td>25.</td>
<td>POWERS OF SEARCH UNDER PROVINCIAL STATUTES</td>
<td>198</td>
</tr>
</tbody>
</table>
# Chapter 4  Interrogation  ........................................ 201

1. GENERAL CONSIDERATIONS  ... 203
   (a) What is a Confession or  Admission?  ......................... 203
   (b) Should a Statement be taken in  Every Case?  .................. 204

2. THE CHARTER OF RIGHTS AND  FREEDOMS  .......................... 206
   (a) The Right to Remain Silent  ........... 206
   (b) The Right to Counsel  ............... 219
   (c) Exclusion of Evidence  ............. 228

3. LAW AS TO ADMISSIBILITY  .... 232
   (a) Generally  ................................... 232
   (b) What is the Onus of Proof?  ........ 235
   (c) What is a Threat?  .................... 235
   (d) What is a Promise or Inducement?  ......................... 237
   (e) What is Compulsion or Oppression?  ....................... 238
   (f) The Utterance of an Operating Mind  ......................... 240
   (g) Appreciating the Consequences of Making a Statement  .... 242
   (h) An Informed and Effective Choice  ......................... 245
   (i) Police Trickery  ....................... 248
   (j) Who is a Person in Authority?  ......................... 250

4. CONSIDERATION OF THE STATE OF MIND OF THE ACCUSED  .............. 253
   (a) Generally  ...................... 253
   (b) Young Persons  ................... 253
(c) Intoxication .......................... 258
(d) Mental Illness ........................ 260

5. FACTORS TO BE CONSIDERED
PRIOR TO TAKING THE STATEMENT .......................... 261
(a) General Considerations .......... 261
(b) The Environment ................. 261
(c) Communications with Friends and Relatives ...................... 263
(d) Interpreters .......................... 263
(e) Food and Drink ..................... 266
(f) The Caution .......................... 267

6. PROCEDURE ON TAKING STATEMENTS .......................... 269
(a) Interrogation Generally ........... 269
(b) The Form of Questioning ........ 271
(c) Cross-Examination ................. 274
(d) Recording the Statement .......... 275
   (i) Video and Audio Recordings ............... 275
   (ii) Typewritten vs. Handwritten Statements .... 278
   (iii) The Oral Statement ............... 278
(e) Use of Trickery ........................ 279

7. INTRODUCING THE STATEMENT AT THE TRIAL .......... 284
(a) The Voir Dire .......................... 284
(b) The Nature of the Inquiry and the Burden of Proof .......... 285
(c) Giving Evidence at Trial
   Including the Use of Notes ......... 286
(d) Cross-Examination of the Officer .......................... 291
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>STATEMENTS MADE IN THE PRESENCE OF THE ACCUSED AND ASSENTED TO BY THE ACCUSED</td>
<td>292</td>
</tr>
<tr>
<td></td>
<td>Chapter 5 Interviewing Witnesses</td>
<td>295</td>
</tr>
<tr>
<td>1</td>
<td>INTRODUCTION</td>
<td>295</td>
</tr>
<tr>
<td>2</td>
<td>THE CROWN’S OBLIGATION TO DISCLOSE</td>
<td>297</td>
</tr>
<tr>
<td>3</td>
<td>THIRD PARTY RECORDS</td>
<td>299</td>
</tr>
<tr>
<td>4</td>
<td>UNDERSTANDING THE NATURE OF MEMORY RECALL</td>
<td>303</td>
</tr>
<tr>
<td>5</td>
<td>ADMISSIBILITY OF A PRIOR CONSISTENT STATEMENT</td>
<td>307</td>
</tr>
<tr>
<td>6</td>
<td>OFFICERS AS WITNESSES — THE IMPORTANCE OF MAKING ACCURATE NOTES</td>
<td>311</td>
</tr>
<tr>
<td>7</td>
<td>RECORDING STATEMENTS</td>
<td>322</td>
</tr>
<tr>
<td>8</td>
<td>VIDEOTAPED STATEMENTS OF CHILDREN &amp; VULNERABLE WITNESSES</td>
<td>324</td>
</tr>
</tbody>
</table>

Index | 329 |