

# Contents

|                      |       |
|----------------------|-------|
| Preface .....        | iii   |
| Table of Cases ..... | xxxix |

## PART I BASIC CONCEPTS

|                                                      |    |
|------------------------------------------------------|----|
| <b>Chapter 1 Sources</b> .....                       | 3  |
| 1.1 Constitutional law .....                         | 3  |
| 1.2 Constitution Act, 1867 .....                     | 4  |
| 1.3 Constitution Act, 1982 .....                     | 7  |
| 1.4 Constitution of Canada .....                     | 8  |
| 1.5 Imperial statutes .....                          | 11 |
| 1.6 Canadian statutes .....                          | 11 |
| 1.7 Case law .....                                   | 12 |
| 1.8 Prerogative .....                                | 13 |
| 1.9 Conventions .....                                | 17 |
| (a) Definition .....                                 | 17 |
| (b) Conventions in the courts .....                  | 18 |
| (c) Convention and usage .....                       | 21 |
| (d) Convention and agreement .....                   | 23 |
| (e) Convention and law .....                         | 24 |
| <b>Chapter 2 Reception</b> .....                     | 27 |
| 2.1 Rules of reception .....                         | 27 |
| 2.2 Settled colonies .....                           | 29 |
| (a) Date of reception .....                          | 29 |
| (b) Unsuitable laws .....                            | 32 |
| (c) Amendment of received laws .....                 | 32 |
| 2.3 Conquered colonies .....                         | 33 |
| (a) General rules .....                              | 33 |
| (b) Ontario and Quebec .....                         | 33 |
| 2.4 Confederation .....                              | 36 |
| 2.5 Admission of new provinces and territories ..... | 38 |
| (a) Section 146 .....                                | 38 |

## CONTENTS

|                                                        |           |
|--------------------------------------------------------|-----------|
| (b) Territories and prairie provinces .....            | 38        |
| (c) British Columbia .....                             | 39        |
| (d) Prince Edward Island .....                         | 41        |
| (e) Newfoundland .....                                 | 41        |
| 2.6 Imperial statutes .....                            | 42        |
| <b>Chapter 3 Independence</b> .....                    | <b>45</b> |
| 3.1 Bonds of Empire .....                              | 45        |
| 3.2 Colonial Laws Validity Act, 1865 .....             | 47        |
| 3.3 Statute of Westminster, 1931 .....                 | 48        |
| 3.4 Canada Act 1982 .....                              | 51        |
| 3.5 Patriation of the Constitution .....               | 53        |
| (a) Definition .....                                   | 53        |
| (b) Canada Act 1982 .....                              | 53        |
| (c) Autochthony .....                                  | 54        |
| (d) Termination of imperial authority .....            | 55        |
| (e) Autonomy .....                                     | 57        |
| <b>Chapter 4 Amendment</b> .....                       | <b>61</b> |
| 4.1 History of amendment .....                         | 61        |
| (a) Imperial amendment .....                           | 61        |
| (b) The search for a domestic amending procedure ..... | 65        |
| (c) The failure to accommodate Quebec .....            | 67        |
| 4.2 Part V of the Constitution Act, 1982 .....         | 70        |
| (a) Summary .....                                      | 70        |
| (b) Comparison with Australia and United States .....  | 70        |
| (c) Constitution of Canada .....                       | 71        |
| (d) Charter of Rights .....                            | 72        |
| 4.3 General amending procedure (s. 38) .....           | 73        |
| (a) Section 38(1) .....                                | 73        |
| (b) Proclamation .....                                 | 74        |
| (c) Initiation .....                                   | 75        |
| (d) Opting out .....                                   | 75        |
| (e) Compensation for opting out .....                  | 76        |
| (f) Revocation of assent or dissent .....              | 78        |
| (g) Section 42 .....                                   | 78        |
| 4.4 Unanimity procedure (s. 41) .....                  | 80        |
| 4.5 Some-but-not-all-provinces procedure (s 43) .....  | 83        |
| 4.6 Federal Parliament alone (s. 44) .....             | 85        |
| 4.7 Provincial Legislature alone (s. 45) .....         | 86        |
| 4.8 Future amendments .....                            | 88        |
| (a) Forces of change .....                             | 88        |
| (b) Division of powers .....                           | 91        |
| (c) Central institutions .....                         | 92        |

## CONTENTS

|                  |                                                                    |            |
|------------------|--------------------------------------------------------------------|------------|
|                  | (d) Criticism of amending procedures .....                         | 93         |
| <b>Chapter 5</b> | <b>Federalism .....</b>                                            | <b>97</b>  |
| 5.1              | Distribution of governmental power .....                           | 98         |
|                  | (a) Federalism .....                                               | 98         |
|                  | (b) Confederation .....                                            | 101        |
|                  | (c) Legislative union .....                                        | 101        |
|                  | (d) Special status .....                                           | 102        |
|                  | (e) Dominion and provinces .....                                   | 104        |
|                  | (f) Regions .....                                                  | 106        |
| 5.2              | Reasons for federalism .....                                       | 107        |
| 5.3              | Federalism in Canada .....                                         | 108        |
|                  | (a) The terms of the Constitution .....                            | 108        |
|                  | (b) Early federal dominance .....                                  | 110        |
|                  | (c) Judicial interpretation of the distribution<br>of powers ..... | 110        |
|                  | (d) Federal-provincial financial arrangements .....                | 112        |
|                  | (e) Disallowance .....                                             | 112        |
|                  | (f) Appointment of Lieutenant Governors .....                      | 113        |
|                  | (g) Appointment of judges .....                                    | 113        |
|                  | (h) Education appeals .....                                        | 114        |
|                  | (i) Declaratory power .....                                        | 115        |
|                  | (j) Conclusion .....                                               | 115        |
| 5.4              | Supremacy of the Constitution .....                                | 115        |
| 5.5              | Role of the courts .....                                           | 116        |
|                  | (a) Development of judicial review .....                           | 116        |
|                  | (b) Limitations of judicial review .....                           | 119        |
|                  | (c) Alternatives to judicial review .....                          | 123        |
| 5.6              | Amending power .....                                               | 124        |
| 5.7              | Secession .....                                                    | 125        |
|                  | (a) The power to secede .....                                      | 125        |
|                  | (b) Secession by amendment .....                                   | 126        |
|                  | (c) Secession by unilateral act .....                              | 128        |
| 5.8              | Cooperative federalism .....                                       | 130        |
| <b>Chapter 6</b> | <b>Financial Arrangements .....</b>                                | <b>135</b> |
| 6.1              | Confederation arrangements .....                                   | 135        |
| 6.2              | Development of direct taxation .....                               | 136        |
| 6.3              | Tax rental agreements: 1941-1962 .....                             | 137        |
| 6.4              | Tax collection agreements: 1962-present .....                      | 138        |
| 6.5              | Tax abatements .....                                               | 139        |
| 6.6              | Equalization payments .....                                        | 141        |
| 6.7              | Conditional federal grants .....                                   | 145        |
| 6.8              | Spending power .....                                               | 149        |
|                  | (a) Federal power .....                                            | 149        |

## CONTENTS

|                                                                |            |
|----------------------------------------------------------------|------------|
| (b) Provincial power .....                                     | 154        |
| 6.9 Conclusions .....                                          | 155        |
| <b>Chapter 7 Courts</b> .....                                  | <b>161</b> |
| 7.1 Provincial courts .....                                    | 161        |
| (a) Establishment of provincial courts .....                   | 161        |
| (b) Appointment and payment of provincial judges .....         | 164        |
| (c) Tenure of provincial judges: s. 99 .....                   | 167        |
| (d) Tenure of provincial judges: s. 11(d) .....                | 170        |
| (e) Inferior courts .....                                      | 170        |
| (f) Court martial .....                                        | 172        |
| (g) Jury .....                                                 | 173        |
| 7.2 Federal courts .....                                       | 173        |
| (a) Supreme Court of Canada .....                              | 173        |
| (b) Federal Court of Canada .....                              | 174        |
| (c) Tax Court of Canada .....                                  | 182        |
| (d) Territorial courts .....                                   | 182        |
| (e) Appointment, payment and tenure of<br>federal judges ..... | 182        |
| 7.3 Implications of Constitution's judicature sections .....   | 184        |
| (a) Separation of powers .....                                 | 184        |
| (b) Inferior courts .....                                      | 186        |
| (c) County or district courts .....                            | 189        |
| (d) Superior courts .....                                      | 189        |
| (e) Administrative tribunals .....                             | 190        |
| (f) Privative clauses .....                                    | 196        |
| <b>Chapter 8 Supreme Court of Canada</b> .....                 | <b>201</b> |
| 8.1 Establishment of Court .....                               | 201        |
| 8.2 Abolition of Privy Council appeals .....                   | 202        |
| 8.3 Composition of Court .....                                 | 205        |
| 8.4 Appointment of judges .....                                | 206        |
| 8.5 Appellate jurisdiction .....                               | 207        |
| (a) Constitutional basis .....                                 | 207        |
| (b) Civil appeals .....                                        | 211        |
| (c) Criminal appeals .....                                     | 213        |
| 8.6 Reference jurisdiction .....                               | 214        |
| (a) Federal references .....                                   | 214        |
| (b) Provincial references .....                                | 215        |
| (c) Constitutional basis .....                                 | 215        |
| (d) Advisory character .....                                   | 217        |
| (e) Proof of facts .....                                       | 219        |
| 8.7 Precedent .....                                            | 219        |
| 8.8 Reform of Court .....                                      | 222        |
| <b>Chapter 9 Responsible Government</b> .....                  | <b>227</b> |

## CONTENTS

|                             |                                                  |            |
|-----------------------------|--------------------------------------------------|------------|
| 9.1                         | History                                          | 227        |
| 9.2                         | Law and convention                               | 229        |
| 9.3                         | The executive branch                             | 232        |
|                             | (a) The ministry                                 | 232        |
|                             | (b) The cabinet and the Privy Council            | 234        |
|                             | (c) The Prime Minister                           | 235        |
|                             | (d) Ministerial responsibility                   | 236        |
| 9.4                         | The legislative branch                           | 238        |
|                             | (a) The Parliament                               | 238        |
|                             | (b) The House of Commons                         | 238        |
|                             | (c) The Senate                                   | 240        |
|                             | (d) The Governor General                         | 243        |
|                             | (e) The cabinet                                  | 243        |
| 9.5                         | Defeat of the government                         | 244        |
|                             | (a) Withdrawal of confidence                     | 244        |
|                             | (b) Dissolution of Parliament                    | 245        |
|                             | (c) Resignation or dismissal                     | 246        |
| 9.6                         | The Governor General's personal prerogatives     | 246        |
|                             | (a) The principle                                | 246        |
|                             | (b) Appointment of Prime Minister                | 247        |
|                             | (c) Dismissal of Prime Minister                  | 249        |
|                             | (d) Dissolution of Parliament                    | 251        |
|                             | (e) Appointments to Senate and bench             | 252        |
|                             | (f) The justification for a formal head of state | 253        |
|                             | (g) The monarchy                                 | 254        |
| <b>Chapter 10 The Crown</b> |                                                  | <b>257</b> |
| 10.1                        | Definition                                       | 257        |
| 10.2                        | Crown agency                                     | 260        |
|                             | (a) The issue                                    | 260        |
|                             | (b) At common law                                | 260        |
|                             | (c) By statute                                   | 262        |
| 10.3                        | Proceedings against the Crown                    | 273        |
| 10.4                        | Crown privilege                                  | 264        |
|                             | (a) Definition                                   | 264        |
|                             | (b) Judicial review                              | 265        |
|                             | (c) Class claims                                 | 265        |
|                             | (d) Oral testimony                               | 266        |
| 10.5                        | Liability in contract                            | 267        |
| 10.6                        | Crown servants                                   | 268        |
| 10.7                        | Liability in tort                                | 268        |
| 10.8                        | Statutes                                         | 269        |
|                             | (a) Common law immunity                          | 269        |
|                             | (b) Effect of Interpretation Acts                | 271        |

## CONTENTS

|                                                         |            |
|---------------------------------------------------------|------------|
| (c) Exceptions to immunity .....                        | 272        |
| 10.9 Federal complications .....                        | 273        |
| (a) Scope of presumption .....                          | 273        |
| (b) Meaning of the Crown .....                          | 274        |
| (c) Constitutional limitations .....                    | 275        |
| (d) Provincial laws binding federal Crown .....         | 275        |
| (e) Provincial laws binding other provinces .....       | 276        |
| (f) Federal laws binding provincial Crown .....         | 277        |
| <b>Chapter 11 Treaties .....</b>                        | <b>281</b> |
| 11.1 Definition of treaty .....                         | 281        |
| 11.2 Power to make treaties .....                       | 282        |
| 11.3 Procedure for making treaties .....                | 283        |
| (a) Signing .....                                       | 283        |
| (b) Ratification .....                                  | 284        |
| (c) Role of Parliament .....                            | 284        |
| 11.4 Implementing treaties .....                        | 285        |
| (a) The need for legislation .....                      | 285        |
| (b) The federal problem .....                           | 287        |
| (c) The United States .....                             | 288        |
| (d) Australia .....                                     | 288        |
| 11.5 Implementing treaties in Canada .....              | 290        |
| (a) Section 132 .....                                   | 290        |
| (b) Labour Conventions case .....                       | 291        |
| (c) Evaluation of Labour Conventions case .....         | 292        |
| 11.6 Provincial treaty-making .....                     | 297        |
| <b>Chapter 12 Parliamentary Sovereignty .....</b>       | <b>301</b> |
| 12.1 Sovereignty in the United Kingdom .....            | 301        |
| 12.2 Sovereignty in Canada .....                        | 302        |
| (a) Federalism .....                                    | 302        |
| (b) Charter of Rights .....                             | 304        |
| (c) Constitutional amendment .....                      | 305        |
| (d) Extraterritorial competence .....                   | 305        |
| (e) Delegation .....                                    | 306        |
| (f) Retroactive legislation .....                       | 306        |
| (g) Wisdom or policy of legislation .....               | 306        |
| 12.3 Self-imposed restraints on legislative power ..... | 307        |
| (a) Substance of future laws .....                      | 307        |
| (b) Manner and form of future laws .....                | 309        |
| <b>Chapter 13 Extraterritorial Competence .....</b>     | <b>315</b> |
| 13.1 The issue .....                                    | 315        |
| 13.2 Federal Parliament .....                           | 316        |
| 13.3 Provincial Legislatures .....                      | 318        |

## CONTENTS

|                   |                                                                |            |
|-------------------|----------------------------------------------------------------|------------|
|                   | (a) Territorial limitation .....                               | 318        |
|                   | (b) Territory of province .....                                | 318        |
|                   | (c) Impairment of extraprovincial rights .....                 | 320        |
|                   | (d) Regulation of extraprovincial activity .....               | 323        |
|                   | (e) Conferral of extraprovincial capacity .....                | 326        |
| 13.4              | The Crown .....                                                | 327        |
| 13.5              | Courts .....                                                   | 327        |
|                   | (a) Conflict of laws and the Constitution .....                | 327        |
|                   | (b) Jurisdiction .....                                         | 328        |
|                   | (c) Recognition of judgments .....                             | 332        |
|                   | (d) Choice of law .....                                        | 335        |
| <b>Chapter 14</b> | <b>Delegation .....</b>                                        | <b>339</b> |
| 14.1              | Power of delegation .....                                      | 339        |
|                   | (a) Introduction .....                                         | 339        |
|                   | (b) United Kingdom Parliament .....                            | 340        |
|                   | (c) Provincial Legislatures .....                              | 340        |
|                   | (d) Federal Parliament .....                                   | 341        |
| 14.2              | Limitations imposed by Constitution .....                      | 343        |
|                   | (a) Delegation of legislative power .....                      | 343        |
|                   | (b) Delegation of judicial power .....                         | 345        |
|                   | (c) Classification of laws .....                               | 345        |
|                   | (d) Office of Lieutenant Governor or Governor<br>General ..... | 347        |
|                   | (e) Requirement of a Legislature or Parliament .....           | 350        |
| 14.3              | Federal inter-delegation .....                                 | 353        |
|                   | (a) Legislative inter-delegation .....                         | 353        |
|                   | (b) Administrative inter-delegation .....                      | 356        |
| 14.4              | Referential legislation .....                                  | 359        |
|                   | (a) Incorporation by reference .....                           | 359        |
|                   | (b) Anticipatory incorporation by reference .....              | 359        |
|                   | (c) Independent validity of incorporated law .....             | 361        |
| 14.5              | Conditional legislation .....                                  | 363        |
|                   | (a) Conditions as delegations .....                            | 363        |
|                   | (b) Conditions as administrative inter-delegations .....       | 364        |
|                   | (c) Conditions as legislative inter-delegations .....          | 364        |
| 14.6              | Conclusions on federal inter-delegation .....                  | 367        |

## PART II

### DISTRIBUTION OF POWERS

|                   |                                                    |            |
|-------------------|----------------------------------------------------|------------|
| <b>Chapter 15</b> | <b>Judicial Review on Federal Grounds .....</b>    | <b>371</b> |
| 15.1              | Scope of chapter .....                             | 371        |
| 15.2              | Priority between federal and Charter grounds ..... | 372        |
| 15.3              | Procedure .....                                    | 375        |
| 15.4              | Reasoning .....                                    | 375        |

## CONTENTS

|                                                           |                                            |            |
|-----------------------------------------------------------|--------------------------------------------|------------|
| 15.5                                                      | Characterization of laws .....             | 377        |
|                                                           | (a) "Matter" .....                         | 377        |
|                                                           | (b) Singling out .....                     | 380        |
|                                                           | (c) Double aspect .....                    | 381        |
|                                                           | (d) Purpose .....                          | 383        |
|                                                           | (e) Effect .....                           | 385        |
|                                                           | (f) Colourability .....                    | 387        |
|                                                           | (g) Criteria of choice .....               | 388        |
|                                                           | (h) Presumption of constitutionality ..... | 390        |
| 15.6                                                      | Severance .....                            | 391        |
| 15.7                                                      | Reading down .....                         | 393        |
| 15.8                                                      | Interjurisdictional immunity .....         | 395        |
|                                                           | (a) Definition .....                       | 395        |
|                                                           | (b) Federally-incorporated companies ..... | 396        |
|                                                           | (c) Federally-regulated undertakings ..... | 396        |
|                                                           | (d) Other federal matters .....            | 400        |
|                                                           | (e) Rationale of immunity .....            | 400        |
|                                                           | (f) Provincial entities .....              | 403        |
| 15.9                                                      | Interpretation of Constitution .....       | 403        |
|                                                           | (a) Relevance .....                        | 403        |
|                                                           | (b) Exclusiveness .....                    | 404        |
|                                                           | (c) Ancillary power .....                  | 405        |
|                                                           | (d) Concurrence .....                      | 409        |
|                                                           | (e) Exhaustiveness .....                   | 411        |
|                                                           | (f) Progressive interpretation .....       | 413        |
|                                                           | (g) Legislative history .....              | 415        |
|                                                           | (h) Precedent .....                        | 415        |
| <b>Chapter 16 Paramourncy .....</b>                       |                                            | <b>417</b> |
| 16.1                                                      | Problem of inconsistency .....             | 417        |
| 16.2                                                      | Definition of inconsistency .....          | 419        |
| 16.3                                                      | Express contradiction .....                | 420        |
|                                                           | (a) Impossibility of dual compliance ..... | 420        |
|                                                           | (b) Secondary rules .....                  | 421        |
| 16.4                                                      | Negative implication .....                 | 423        |
|                                                           | (a) Covering the field .....               | 423        |
|                                                           | (b) Express extension of paramourncy ..... | 429        |
| 16.5                                                      | Overlap and duplication .....              | 430        |
|                                                           | (a) Constitutional significance .....      | 430        |
|                                                           | (b) Double criminal liability .....        | 432        |
|                                                           | (c) Double civil liability .....           | 433        |
| 16.6                                                      | Effect of inconsistency .....              | 434        |
| <b>Chapter 17 Peace, Order, and Good Government .....</b> |                                            | <b>435</b> |
| 17.1                                                      | Residuary nature of power .....            | 435        |



## CONTENTS

|                                          |                                                              |            |
|------------------------------------------|--------------------------------------------------------------|------------|
| 17.2                                     | The “gap” branch .....                                       | 439        |
| 17.3                                     | The “national concern” branch .....                          | 441        |
|                                          | (a) History .....                                            | 441        |
|                                          | (b) Definition of national concern .....                     | 446        |
|                                          | (c) Distinctness .....                                       | 448        |
|                                          | (d) Newness .....                                            | 450        |
| 17.4                                     | The “emergency” branch .....                                 | 452        |
|                                          | (a) The non-emergency cases .....                            | 452        |
|                                          | (b) War .....                                                | 456        |
|                                          | (c) Apprehended insurrection .....                           | 458        |
|                                          | (d) Inflation .....                                          | 459        |
|                                          | (e) Temporary character of law .....                         | 461        |
| 17.5                                     | Relationship between national concern and<br>emergency ..... | 462        |
| <b>Chapter 18 Criminal Law .....</b>     |                                                              | <b>467</b> |
| 18.1                                     | Distribution of powers .....                                 | 467        |
| 18.2                                     | Definition of criminal law .....                             | 469        |
| 18.3                                     | Food and drugs .....                                         | 473        |
|                                          | (a) Food and drug standards .....                            | 473        |
|                                          | (b) Illicit drugs .....                                      | 475        |
| 18.4                                     | Health .....                                                 | 476        |
| 18.5                                     | Abortion .....                                               | 477        |
| 18.6                                     | Competition law .....                                        | 478        |
| 18.7                                     | Sunday observance law .....                                  | 482        |
|                                          | (a) Federal power .....                                      | 482        |
|                                          | (b) Provincial power .....                                   | 483        |
| 18.8                                     | Prevention of crime .....                                    | 484        |
|                                          | (a) Prevention in general .....                              | 484        |
|                                          | (b) Young offenders .....                                    | 485        |
| 18.9                                     | Criminal law and civil remedy .....                          | 486        |
|                                          | (a) Federal power generally to create civil remedies .....   | 486        |
|                                          | (b) Criminal law power to create civil remedies .....        | 488        |
| 18.10                                    | Criminal law and regulatory authority .....                  | 490        |
| 18.11                                    | Provincial power to enact penal laws .....                   | 492        |
| <b>Chapter 19 Criminal Justice .....</b> |                                                              | <b>497</b> |
| 19.1                                     | Distribution of power .....                                  | 497        |
| 19.2                                     | Courts of criminal jurisdiction .....                        | 498        |
|                                          | (a) Establishment of criminal court .....                    | 498        |
|                                          | (b) Investment with criminal jurisdiction .....              | 498        |
|                                          | (c) Application of s. 96 to indictable offences .....        | 499        |
|                                          | (d) Application of s. 96 to Parliament .....                 | 502        |
| 19.3                                     | Procedure .....                                              | 503        |
| 19.4                                     | Evidence .....                                               | 504        |

## CONTENTS

|                                                   |                                                           |            |
|---------------------------------------------------|-----------------------------------------------------------|------------|
| 19.5                                              | Policing .....                                            | 504        |
|                                                   | (a) Provincial power .....                                | 504        |
|                                                   | (b) Provincial police forces .....                        | 506        |
|                                                   | (c) R.C.M.P. policing contracts .....                     | 506        |
|                                                   | (d) R.C.M.P. policing of territories .....                | 508        |
|                                                   | (e) R.C.M.P. policing of national security .....          | 508        |
|                                                   | (f) R.C.M.P. policing of federal statutes .....           | 509        |
| 19.6                                              | Prosecution .....                                         | 510        |
|                                                   | (a) Provincial power .....                                | 510        |
|                                                   | (b) Federal power .....                                   | 511        |
| 19.7                                              | Public inquiries .....                                    | 515        |
| 19.8                                              | Punishment .....                                          | 516        |
|                                                   | (a) Distribution of powers .....                          | 516        |
|                                                   | (b) Imprisonment .....                                    | 517        |
|                                                   | (c) Parole .....                                          | 518        |
|                                                   | (d) Probation .....                                       | 519        |
| <b>Chapter 20 Trade and Commerce .....</b>        |                                                           | <b>521</b> |
| 20.1                                              | Relationship to property and civil rights .....           | 521        |
| 20.2                                              | Interprovincial or international trade and commerce ..... | 523        |
|                                                   | (a) In the Privy Council .....                            | 523        |
|                                                   | (b) In the Supreme Court of Canada .....                  | 525        |
| 20.3                                              | General trade and commerce .....                          | 530        |
| 20.4                                              | Specific topics .....                                     | 536        |
| <b>Chapter 21 Property and Civil Rights .....</b> |                                                           | <b>537</b> |
| 21.1                                              | Importance .....                                          | 537        |
| 21.2                                              | History .....                                             | 538        |
| 21.3                                              | Civil liberties .....                                     | 539        |
| 21.4                                              | Local or private matters .....                            | 540        |
| 21.5                                              | Insurance .....                                           | 541        |
|                                                   | (a) Reasons for regulation .....                          | 541        |
|                                                   | (b) Provincial power .....                                | 542        |
|                                                   | (c) Federal power .....                                   | 543        |
| 21.6                                              | Business in general .....                                 | 544        |
| 21.7                                              | Professions and trades .....                              | 546        |
| 21.8                                              | Labour relations .....                                    | 546        |
|                                                   | (a) Provincial power .....                                | 546        |
|                                                   | (b) Federal power .....                                   | 548        |
| 21.9                                              | Marketing .....                                           | 552        |
|                                                   | (a) Reasons for regulation .....                          | 552        |
|                                                   | (b) Federal power .....                                   | 552        |
|                                                   | (c) Provincial power .....                                | 553        |
| 21.10                                             | Securities regulation .....                               | 559        |
|                                                   | (a) Provincial power .....                                | 559        |

## CONTENTS

|                                                          |            |
|----------------------------------------------------------|------------|
| (b) Federal power .....                                  | 561        |
| 21.11 Property .....                                     | 561        |
| (a) General .....                                        | 561        |
| (b) Foreign ownership .....                              | 562        |
| 21.12 Debt adjustment .....                              | 563        |
| 21.13 Consumer protection .....                          | 564        |
| 21.14 Extraterritorial competence .....                  | 564        |
| <b>Chapter 22 Transportation and Communication .....</b> | <b>565</b> |
| 22.1 Distribution of powers .....                        | 566        |
| 22.2 Works and undertakings .....                        | 568        |
| 22.3 Transportation and communication .....              | 569        |
| 22.4 Connection with another province .....              | 569        |
| 22.5 Undivided jurisdiction .....                        | 571        |
| 22.6 Continuous and regular service .....                | 573        |
| 22.7 Related undertakings .....                          | 575        |
| (a) Common ownership .....                               | 575        |
| (b) Common management .....                              | 576        |
| (c) Dependency .....                                     | 577        |
| 22.8 Works for the general advantage of Canada .....     | 579        |
| 22.9 Transportation by land .....                        | 582        |
| 22.10 Transportation by water .....                      | 583        |
| 22.11 Transportation by air .....                        | 584        |
| (a) Basis of legislative jurisdiction .....              | 584        |
| (b) Intraprovincial aeronautics .....                    | 586        |
| (c) Provincial jurisdiction .....                        | 587        |
| 22.12 Communication by radio .....                       | 588        |
| (a) Basis of legislative jurisdiction .....              | 588        |
| (b) Intraprovincial broadcasting .....                   | 591        |
| (c) Content regulation .....                             | 591        |
| 22.13 Communication by television .....                  | 594        |
| (a) Broadcast television .....                           | 594        |
| (b) Cable television .....                               | 594        |
| (c) Pay television .....                                 | 597        |
| 22.14 Communication by telephone .....                   | 598        |
| (a) Bell Canada .....                                    | 598        |
| (b) Other major carriers .....                           | 598        |
| (c) Local carriers .....                                 | 599        |
| 22.15 Communication by other means .....                 | 600        |
| (a) Film .....                                           | 600        |
| (b) Theatre .....                                        | 601        |
| (c) Literature .....                                     | 601        |
| <b>Chapter 23 Companies .....</b>                        | <b>603</b> |
| 23.1 Incorporation of companies .....                    | 603        |

## CONTENTS

|                                                            |            |
|------------------------------------------------------------|------------|
| (a) Distribution of powers .....                           | 603        |
| (b) Territorial limitation .....                           | 604        |
| (c) Functional limitation .....                            | 606        |
| (d) Federal power .....                                    | 607        |
| (e) Conclusion .....                                       | 609        |
| 23.2 Regulation of corporate activity .....                | 610        |
| 23.3 The "status and essential powers" immunity .....      | 612        |
| (a) Scope of immunity .....                                | 612        |
| (b) Taking a federal company's assets .....                | 617        |
| (c) Immunity of provincial companies .....                 | 619        |
| <b>Chapter 24 Financial Institutions .....</b>             | <b>623</b> |
| 24.1 Federal power over banking .....                      | 623        |
| 24.2 Definition of banking .....                           | 623        |
| (a) Functional test .....                                  | 623        |
| (b) Institutional test .....                               | 625        |
| 24.3 Provincial regulation of financial institutions ..... | 627        |
| (a) Banks .....                                            | 627        |
| (b) Non-bank financial institutions .....                  | 628        |
| 24.4 Incorporation of banks .....                          | 630        |
| 24.5 Incorporation of other financial institutions .....   | 630        |
| <b>Chapter 25 Bankruptcy and Insolvency .....</b>          | <b>631</b> |
| 25.1 Section 91(21) .....                                  | 631        |
| 25.2 Bankruptcy legislation .....                          | 632        |
| 25.3 Meaning of bankruptcy .....                           | 632        |
| 25.4 Meaning of insolvency .....                           | 633        |
| 25.5 Adjustment of debts .....                             | 633        |
| (a) Federal power .....                                    | 633        |
| (b) Provincial power .....                                 | 634        |
| (c) Interest adjustment .....                              | 635        |
| (d) Principal and interest adjustment .....                | 637        |
| (e) Moratorium .....                                       | 637        |
| 25.6 Priority of debts .....                               | 638        |
| (a) Federal power .....                                    | 638        |
| (b) Statutory lien .....                                   | 639        |
| (c) Statutory trust .....                                  | 640        |
| 25.7 Voluntary assignments .....                           | 641        |
| 25.8 Fraudulent preferences .....                          | 642        |
| <b>Chapter 26 The Family .....</b>                         | <b>645</b> |
| 26.1 Distribution of powers .....                          | 645        |
| 26.2 Crime and delinquency .....                           | 646        |
| 26.3 Marriage .....                                        | 647        |
| (a) Formation of marriage .....                            | 647        |

## CONTENTS

|                                            |                                                                        |            |
|--------------------------------------------|------------------------------------------------------------------------|------------|
|                                            | (b) Consequences of marriage .....                                     | 648        |
| 26.4                                       | Divorce .....                                                          | 649        |
| 26.5                                       | Custody and support of children .....                                  | 649        |
|                                            | (a) Custody of children .....                                          | 649        |
|                                            | (b) Support of children .....                                          | 651        |
| 26.6                                       | Support of spouse .....                                                | 652        |
| 26.7                                       | Division of property .....                                             | 652        |
| 26.8                                       | Conflict between orders made under federal and provincial law .....    | 653        |
|                                            | (a) General principles .....                                           | 653        |
|                                            | (b) Variation under provincial law of orders under Divorce Act .....   | 655        |
|                                            | (c) Orders under provincial law where no order under Divorce Act ..... | 657        |
|                                            | (d) Variation under Divorce Act of orders under provincial law .....   | 658        |
| 26.9                                       | Jurisdiction of Family Courts .....                                    | 659        |
|                                            | (a) Fragmentation of jurisdiction .....                                | 659        |
|                                            | (b) Federal courts .....                                               | 660        |
|                                            | (c) Provincial courts invested by province .....                       | 660        |
|                                            | (d) Provincial courts invested by Dominion .....                       | 661        |
| <b>Chapter 27 Aboriginal Peoples .....</b> |                                                                        | <b>663</b> |
| 27.1                                       | Federal legislative power .....                                        | 664        |
|                                            | (a) Section 91(24) .....                                               | 664        |
|                                            | (b) Indians .....                                                      | 665        |
|                                            | (c) Lands reserved for the Indians .....                               | 667        |
|                                            | (d) Canadian Bill of Rights .....                                      | 668        |
|                                            | (e) Charter of Rights .....                                            | 669        |
|                                            | (f) Treaties .....                                                     | 670        |
| 27.2                                       | Provincial legislative power .....                                     | 671        |
|                                            | (a) General rule .....                                                 | 671        |
|                                            | (b) First exception: singling out .....                                | 672        |
|                                            | (d) Second exception: Indianness .....                                 | 672        |
|                                            | (d) Third exception: paramountcy .....                                 | 674        |
|                                            | (e) Fourth exception: Natural Resources Agreements .....               | 674        |
|                                            | (f) Fifth exception: section 35 .....                                  | 674        |
| 27.3                                       | Section 88 of the Indian Act .....                                     | 675        |
|                                            | (a) Text of s. 88 .....                                                | 675        |
|                                            | (b) Laws of general application .....                                  | 675        |
|                                            | (c) Paramountcy exception .....                                        | 677        |
|                                            | (d) Treaty exception .....                                             | 677        |
| 27.4                                       | Natural Resources Agreements .....                                     | 678        |
| 27.5                                       | Aboriginal rights .....                                                | 679        |

## CONTENTS

|                                                        |            |
|--------------------------------------------------------|------------|
| (a) Definition of aboriginal rights .....              | 679        |
| (b) Recognition of aboriginal rights .....             | 680        |
| (c) Extinguishment of aboriginal rights .....          | 681        |
| 27.6 Treaty rights .....                               | 682        |
| (a) Introduction .....                                 | 682        |
| (b) History .....                                      | 682        |
| (c) Definition of treaty .....                         | 684        |
| (d) Extinguishment of treaty rights .....              | 686        |
| 27.7 The need for constitutional protection .....      | 686        |
| 27.8 Section 35 .....                                  | 687        |
| (a) Text of s. 35 .....                                | 687        |
| (b) Outside Charter of Rights .....                    | 688        |
| (c) "Aboriginal peoples of Canada" .....               | 688        |
| (d) "Aboriginal and treaty rights" .....               | 689        |
| (e) "Existing" .....                                   | 689        |
| (f) "Recognized and affirmed" .....                    | 691        |
| (g) Application to treaty rights .....                 | 692        |
| (h) Application to extinguishment .....                | 692        |
| (i) Application to provincial laws .....               | 693        |
| 27.9 Section 25 .....                                  | 693        |
| 27.10 Section 35.1 .....                               | 694        |
| <b>Chapter 28 Public Property .....</b>                | <b>697</b> |
| 28.1 Distribution of public property .....             | 697        |
| 28.2 Legislative power over public property .....      | 698        |
| 28.3 Executive power over public property .....        | 699        |
| 28.4 Legislative power and proprietary interests ..... | 701        |
| 28.5 Expropriation .....                               | 703        |
| (a) Federal power .....                                | 703        |
| (b) Provincial power .....                             | 704        |
| (c) Crown property .....                               | 705        |
| (d) Compensation .....                                 | 705        |
| <b>Chapter 29 Natural Resources .....</b>              | <b>711</b> |
| 29.1 Onshore minerals: provincial powers .....         | 712        |
| (a) Provincial public property .....                   | 712        |
| (b) Private property .....                             | 713        |
| (c) Pipelines .....                                    | 713        |
| 29.2 Onshore minerals: federal powers .....            | 714        |
| (a) Federal public property .....                      | 714        |
| (b) Private property .....                             | 714        |
| (c) Peace, order, and good government .....            | 714        |
| (d) Trade and commerce .....                           | 714        |
| (e) Works and undertakings .....                       | 715        |
| (f) Taxation .....                                     | 715        |

## CONTENTS

|                                  |                                                    |            |
|----------------------------------|----------------------------------------------------|------------|
|                                  | (g) Uranium .....                                  | 715        |
| 29.3                             | Offshore minerals .....                            | 716        |
|                                  | (a) International law and constitutional law ..... | 716        |
|                                  | (b) B.C. Offshore Reference .....                  | 717        |
|                                  | (c) Newfoundland Offshore Reference .....          | 718        |
|                                  | (d) Basis of federal jurisdiction .....            | 719        |
| 29.4                             | Forestry .....                                     | 720        |
|                                  | (a) Facts .....                                    | 720        |
|                                  | (b) Provincial public property .....               | 721        |
|                                  | (c) Federal public property .....                  | 721        |
|                                  | (d) Private property .....                         | 722        |
|                                  | (e) Navigation conflicts .....                     | 722        |
|                                  | (f) Fisheries conflicts .....                      | 722        |
| 29.5                             | Fisheries .....                                    | 723        |
|                                  | (a) Section 91(12) .....                           | 723        |
|                                  | (b) The right to fish .....                        | 723        |
|                                  | (c) Provincial public property .....               | 725        |
|                                  | (d) Federal public property .....                  | 725        |
|                                  | (e) Private property .....                         | 726        |
|                                  | (f) Preservation of fish .....                     | 726        |
|                                  | (g) Marketing of fish .....                        | 727        |
| 29.6                             | Electricity .....                                  | 727        |
|                                  | (a) Hydro-electricity .....                        | 727        |
|                                  | (b) Other kinds of electricity .....               | 728        |
|                                  | (c) Section 92A .....                              | 729        |
| 29.7                             | Environmental protection .....                     | 730        |
|                                  | (a) Introduction .....                             | 730        |
|                                  | (b) Federal power .....                            | 730        |
|                                  | (c) Provincial power .....                         | 733        |
| <b>Chapter 30 Taxation .....</b> |                                                    | <b>735</b> |
| 30.1                             | Distribution of powers .....                       | 736        |
|                                  | (a) The primary powers .....                       | 736        |
|                                  | (b) For provincial purposes .....                  | 737        |
|                                  | (c) The provincial licensing power .....           | 738        |
|                                  | (d) Limitations on the powers .....                | 739        |
|                                  | (e) Paramountcy .....                              | 739        |
| 30.2                             | The meaning of direct taxation .....               | 740        |
|                                  | (a) Mill's definition .....                        | 740        |
|                                  | (b) Rationale .....                                | 741        |
| 30.3                             | Customs and excise duties .....                    | 742        |
| 30.4                             | Income taxes .....                                 | 743        |
| 30.5                             | Business Taxes .....                               | 743        |
| 30.6                             | Property taxes .....                               | 743        |

## CONTENTS

|       |                                                        |     |
|-------|--------------------------------------------------------|-----|
| 30.7  | Sales taxes .....                                      | 744 |
| 30.8  | Death taxes .....                                      | 746 |
| 30.9  | Resource taxes .....                                   | 747 |
| 30.10 | Taxes and charges .....                                | 749 |
|       | (a) Proprietary charges .....                          | 749 |
|       | (b) Regulatory charges .....                           | 749 |
| 30.11 | Territorial limitation .....                           | 751 |
|       | (a) General .....                                      | 751 |
|       | (b) Persons .....                                      | 752 |
|       | (c) Property .....                                     | 754 |
|       | (d) Transactions and benefits .....                    | 755 |
| 30.12 | Interjurisdictional taxation .....                     | 756 |
|       | (a) The Crown .....                                    | 756 |
|       | (b) Ministers, officials, judges .....                 | 756 |
|       | (c) Business activity outside regulatory control ..... | 757 |
| 30.13 | Section 125 .....                                      | 758 |
|       | (a) General .....                                      | 758 |
|       | (b) Taxation .....                                     | 759 |
|       | (c) Lands or property .....                            | 760 |
|       | (d) Commercial activity .....                          | 760 |
| 30.14 | Unconstitutional taxes .....                           | 762 |

### PART III CIVIL LIBERTIES

|                   |                                            |     |
|-------------------|--------------------------------------------|-----|
| <i>Chapter 31</i> | <b>Civil Liberties</b> .....               | 765 |
|                   | 31.1 Definition .....                      | 765 |
|                   | 31.2 Common law .....                      | 766 |
|                   | 31.3 Statute .....                         | 770 |
|                   | (a) Human rights codes .....               | 770 |
|                   | (b) Statutory bills of rights .....        | 771 |
|                   | 31.4 Constitution Act, 1867 .....          | 772 |
|                   | (a) Express guarantees .....               | 772 |
|                   | (b) Distribution of powers .....           | 773 |
|                   | (c) Implied bill of rights .....           | 774 |
|                   | 31.5 Constitution Act, 1982 .....          | 777 |
| <i>Chapter 32</i> | <b>Canadian Bill of Rights</b> .....       | 779 |
|                   | 32.1 History .....                         | 779 |
|                   | 32.2 Application to federal laws .....     | 781 |
|                   | 32.3 Effect on inconsistent statutes ..... | 781 |
|                   | (a) Meaning of s. 2 .....                  | 781 |
|                   | (b) Effect on earlier statutes .....       | 785 |
|                   | (c) Effect on later statutes .....         | 786 |
|                   | (d) Conclusions .....                      | 787 |
|                   | 32.4 Contents .....                        | 787 |



## CONTENTS

|                   |                                                    |            |
|-------------------|----------------------------------------------------|------------|
| 32.5              | Judicial interpretation .....                      | 788        |
| 32.6              | Scrutiny by Minister of Justice .....              | 790        |
| <b>Chapter 33</b> | <b>Charter of Rights .....</b>                     | <b>793</b> |
| 33.1              | History of Charter .....                           | 793        |
| 33.2              | Protection of civil liberties .....                | 795        |
| 33.3              | Enhancement of national unity .....                | 796        |
| 33.4              | Expansion of judicial review .....                 | 797        |
| (a)               | New grounds of review .....                        | 797        |
| (b)               | Vagueness of concepts .....                        | 797        |
| (c)               | Role of s. 1 .....                                 | 801        |
| (d)               | Role of s. 33 .....                                | 802        |
| 33.5              | Political questions .....                          | 803        |
| 33.6              | Characterization of laws .....                     | 805        |
| (a)               | Comparison with federalism review .....            | 805        |
| (b)               | Purpose or effect .....                            | 806        |
| (c)               | Trivial effects .....                              | 807        |
| (d)               | Severance .....                                    | 808        |
| (e)               | Reading down .....                                 | 809        |
| 33.7              | Interpretation of Charter .....                    | 809        |
| (a)               | Progressive interpretation .....                   | 809        |
| (b)               | Generous interpretation .....                      | 811        |
| (c)               | Purposive interpretation .....                     | 814        |
| (d)               | Process as purpose of .....                        | 815        |
| (e)               | Hierarchy of rights of .....                       | 817        |
| (f)               | Conflict between rights of .....                   | 817        |
| (g)               | English-French discrepancies .....                 | 819        |
| 33.8              | Sources of interpretation .....                    | 820        |
| (a)               | Pre-Charter cases .....                            | 820        |
| (b)               | American cases .....                               | 821        |
| (c)               | International sources .....                        | 822        |
| (d)               | Legislative history .....                          | 824        |
| 33.9              | Priority between federal and Charter grounds ..... | 825        |
| 33.10             | Commencement of Charter .....                      | 825        |
| 33.11             | Undeclared rights .....                            | 826        |
| <b>Chapter 34</b> | <b>Application of Charter .....</b>                | <b>829</b> |
| 34.1              | Benefit of rights .....                            | 829        |
| (a)               | The issue .....                                    | 829        |
| (b)               | Everyone, anyone, any person .....                 | 829        |
| (c)               | Individual .....                                   | 831        |
| (d)               | Citizen .....                                      | 832        |
| (e)               | Permanent resident .....                           | 834        |
| 34.2              | Burden of rights .....                             | 835        |
| (a)               | Both levels of government .....                    | 835        |

## CONTENTS

|                                                  |            |
|--------------------------------------------------|------------|
| (b) Parliament or Legislature .....              | 836        |
| (c) Amending procedures .....                    | 839        |
| (d) Government .....                             | 840        |
| (e) Courts .....                                 | 842        |
| (f) Common law .....                             | 845        |
| (g) Private action .....                         | 847        |
| <b>Chapter 35 Limitation of Rights .....</b>     | <b>851</b> |
| 35.1 Introduction to s. 1 .....                  | 852        |
| 35.2 Rationale of s. 1 .....                     | 854        |
| 35.3 Relationship between s. 1 and rights .....  | 856        |
| 35.4 Burden of proof .....                       | 857        |
| 35.5 Presumption of constitutionality .....      | 859        |
| 35.6 Limits .....                                | 860        |
| 35.7 Prescribed by law .....                     | 861        |
| (a) Definition .....                             | 861        |
| (b) Discretion .....                             | 863        |
| (c) Vagueness .....                              | 864        |
| 35.8 Reasonable and demonstrably justified ..... | 866        |
| (a) Introduction .....                           | 866        |
| (b) Oakes test .....                             | 866        |
| 35.9 Sufficiently important objective .....      | 867        |
| (a) Identification of objective .....            | 867        |
| (b) Importance of objective .....                | 869        |
| (c) Quebec's distinct society .....              | 870        |
| (d) Inadmissible objectives .....                | 872        |
| (e) Cost .....                                   | 873        |
| 35.10 Rational connection .....                  | 875        |
| 35.11 Least drastic means .....                  | 877        |
| (a) Definition .....                             | 877        |
| (b) Margin of appreciation .....                 | 878        |
| 35.12 Proportionate effect .....                 | 882        |
| 35.13 Application to equality rights .....       | 884        |
| 35.14 Application to qualified rights .....      | 885        |
| (a) Scope of s. 1 .....                          | 885        |
| (b) Section 7 .....                              | 885        |
| (c) Section 8 .....                              | 886        |
| (d) Section 9 .....                              | 887        |
| (e) Section 11 .....                             | 887        |
| (f) Section 12 .....                             | 888        |
| 35.15 Application to common law .....            | 888        |
| 35.16 Emergency measures .....                   | 889        |
| <b>Chapter 36 Override of Rights .....</b>       | <b>891</b> |
| 36.1 Section 33 .....                            | 891        |

## CONTENTS

|                                               |                                                    |            |
|-----------------------------------------------|----------------------------------------------------|------------|
| 36.2                                          | History of s. 33 .....                             | 892        |
| 36.3                                          | Rights that may be overridden .....                | 894        |
| 36.4                                          | Five-year limit .....                              | 894        |
| 36.5                                          | Specificity of declaration .....                   | 895        |
| 36.6                                          | Retroactive effect .....                           | 896        |
| 36.7                                          | Judicial review .....                              | 897        |
| 36.8                                          | Evaluation of s. 33 .....                          | 898        |
| <b>Chapter 37 Enforcement of Rights .....</b> |                                                    | <b>903</b> |
| 37.1                                          | Supremacy clause .....                             | 903        |
|                                               | (a) Section 52(1) .....                            | 903        |
|                                               | (b) Section 24(1) compared .....                   | 904        |
|                                               | (c) Nullification .....                            | 905        |
|                                               | (d) Severance .....                                | 905        |
|                                               | (e) Reading down .....                             | 906        |
|                                               | (f) Reconstruction .....                           | 906        |
|                                               | (g) Constitutional exemption .....                 | 909        |
|                                               | (h) Extension .....                                | 910        |
|                                               | (i) Temporary validity .....                       | 912        |
| 37.2                                          | Remedy clause .....                                | 915        |
|                                               | (a) Section 24(1) .....                            | 915        |
|                                               | (b) Applicable to Charter only .....               | 915        |
|                                               | (c) Non-exclusive remedy .....                     | 915        |
|                                               | (d) Standing .....                                 | 916        |
|                                               | (e) Apprehended infringements .....                | 917        |
|                                               | (f) Court of competent jurisdiction .....          | 918        |
|                                               | (g) Range of remedies .....                        | 921        |
|                                               | (h) Appeals .....                                  | 922        |
| 37.3                                          | Administrative tribunals .....                     | 923        |
|                                               | (a) With power to decide questions of law .....    | 923        |
|                                               | (b) Without power to decide questions of law ..... | 925        |
|                                               | (c) Preliminary inquiry judge .....                | 927        |
| 37.4                                          | Scrutiny by Minister of Justice .....              | 928        |
| 37.5                                          | Legislative enforcement .....                      | 928        |
| <b>Chapter 38 Exclusion of Evidence .....</b> |                                                    | <b>931</b> |
| 38.1                                          | Scope of chapter .....                             | 931        |
| 38.2                                          | Origin of s. 24(2) .....                           | 931        |
| 38.3                                          | Text of s. 24(2) .....                             | 932        |
| 38.4                                          | Causation .....                                    | 934        |
| 38.5                                          | Burden of proof .....                              | 935        |
| 38.6                                          | Reasonable person test .....                       | 936        |
| 38.7                                          | Definition of disrepute .....                      | 937        |
| 38.8                                          | Nature of evidence .....                           | 937        |
|                                               | (a) Unreliable evidence .....                      | 937        |

## CONTENTS

|                                    |                                            |            |
|------------------------------------|--------------------------------------------|------------|
|                                    | (b) Independent of Charter violation ..... | 937        |
|                                    | (c) Created by Charter violation .....     | 938        |
| 38.9                               | Nature of official conduct .....           | 939        |
|                                    | (a) Deliberate violations .....            | 939        |
|                                    | (b) Extenuating circumstances .....        | 939        |
|                                    | (c) Good faith .....                       | 940        |
| 38.10                              | Effect of excluding evidence .....         | 943        |
| 38.11                              | Conclusion .....                           | 943        |
| <b>Chapter 39 Religion .....</b>   |                                            | <b>945</b> |
| 39.1                               | Distribution of powers .....               | 945        |
| 39.2                               | Section 2(a) of the Charter .....          | 947        |
| 39.3                               | Freedom of conscience .....                | 947        |
| 39.4                               | Freedom of religion .....                  | 948        |
| 39.5                               | Sunday observance .....                    | 948        |
| 39.6                               | Other religious practices .....            | 950        |
| 39.7                               | Religion in public schools .....           | 951        |
| 39.8                               | Denominational schools .....               | 952        |
| <b>Chapter 40 Expression .....</b> |                                            | <b>955</b> |
| 40.1                               | Distribution of powers .....               | 956        |
|                                    | (a) Introduction .....                     | 956        |
|                                    | (b) Political speech .....                 | 956        |
|                                    | (c) Provincial power .....                 | 958        |
|                                    | (d) Federal power .....                    | 959        |
| 40.2                               | Section 2(b) of the Charter .....          | 960        |
| 40.3                               | Comparison with first amendment .....      | 960        |
| 40.4                               | Reasons for protecting expression .....    | 961        |
| 40.5                               | Meaning of expression .....                | 963        |
|                                    | (a) Definition .....                       | 963        |
|                                    | (b) Criminal expression .....              | 964        |
|                                    | (c) Violence .....                         | 964        |
|                                    | (d) Content neutrality .....               | 964        |
| 40.6                               | Ways of limiting expression .....          | 965        |
|                                    | (a) Prior restraint .....                  | 965        |
|                                    | (b) Penal prohibition .....                | 966        |
|                                    | (c) Civil prohibition .....                | 967        |
|                                    | (d) Forced expression .....                | 967        |
|                                    | (e) Language requirement .....             | 968        |
|                                    | (f) Search of press premises .....         | 968        |
|                                    | (g) Time, manner and place .....           | 969        |
| 40.7                               | Commercial expression .....                | 969        |
|                                    | (a) Introduction .....                     | 969        |
|                                    | (b) Language requirements .....            | 970        |
|                                    | (c) Advertising restrictions .....         | 970        |

## CONTENTS

|                                                  |             |
|--------------------------------------------------|-------------|
| (d) Prostitution .....                           | 972         |
| 40.8 Picketing .....                             | 972         |
| 40.9 Hate propaganda .....                       | 974         |
| 40.10 Defamation .....                           | 975         |
| 40.11 Pornography .....                          | 977         |
| 40.12 Access to public property .....            | 979         |
| 40.13 Access to courts .....                     | 982         |
| (a) Competing values .....                       | 982         |
| (b) Restrictions on reporting .....              | 982         |
| (c) Restrictions on access .....                 | 983         |
| 40.14 Access to legislative assembly .....       | 984         |
| 40.15 Contempt of court .....                    | 984         |
| 40.16 Public service .....                       | 986         |
| 40.17 Mandatory letters of reference .....       | 987         |
| 40.18 Election expenditures .....                | 987         |
| <b>Chapter 41 Assembly and Association .....</b> | <b>989</b>  |
| 41.1 Distribution of powers .....                | 989         |
| 41.2 Freedom of assembly .....                   | 990         |
| 41.3 Freedom of association .....                | 991         |
| (a) Section 2(d) of Charter .....                | 991         |
| (b) Formation of association .....               | 991         |
| (c) Purpose of association .....                 | 991         |
| (d) Exercise of constitutional rights .....      | 992         |
| (e) Exercise of non-constitutional rights .....  | 993         |
| (f) Freedom not to associate .....               | 994         |
| <b>Chapter 42 Voting .....</b>                   | <b>997</b>  |
| 42.1 Voting .....                                | 997         |
| (a) Pre-Charter law .....                        | 997         |
| (b) Section 3 of Charter .....                   | 998         |
| (c) One person, one vote .....                   | 999         |
| 42.2 Candidacy .....                             | 1001        |
| 42.3 Duration of legislative bodies .....        | 1002        |
| 42.4 Annual sittings of legislative bodies ..... | 1003        |
| <b>Chapter 43 Mobility .....</b>                 | <b>1005</b> |
| 43.1 Persons .....                               | 1005        |
| (a) Section 6(1) of Charter .....                | 1005        |
| (b) International movement .....                 | 1006        |
| (c) Interprovincial movement .....               | 1008        |
| (d) Gaining a livelihood .....                   | 1010        |
| (e) Property ownership .....                     | 1014        |
| (f) Corporations .....                           | 1014        |
| 43.2 Goods .....                                 | 1014        |

## CONTENTS

|                   |                                                                 |             |
|-------------------|-----------------------------------------------------------------|-------------|
|                   | (a) Section 6(2) of Charter .....                               | 1014        |
|                   | (b) Section 121 of Constitution Act, 1867 .....                 | 1015        |
|                   | (c) Interprovincial transportation, trade and<br>commerce ..... | 1015        |
|                   | (d) Product standards .....                                     | 1016        |
| 43.3              | Services .....                                                  | 1017        |
| 43.4              | Capital .....                                                   | 1018        |
|                   | (a) Section 6(2) of Charter .....                               | 1018        |
|                   | (b) Federal powers over capital .....                           | 1018        |
|                   | (c) Restrictions on mobility .....                              | 1018        |
|                   | (d) Conclusions .....                                           | 1019        |
| <b>Chapter 44</b> | <b>Fundamental Justice .....</b>                                | <b>1021</b> |
| 44.1              | Distribution of powers over legal rights .....                  | 1021        |
| 44.2              | Section 7 of Charter .....                                      | 1022        |
| 44.3              | Application of s. 1 .....                                       | 1024        |
| 44.4              | Benefit of s. 7 .....                                           | 1024        |
|                   | (a) Corporations .....                                          | 1024        |
|                   | (b) Immigrants .....                                            | 1025        |
|                   | (c) Foetus .....                                                | 1025        |
| 44.5              | Burden of s. 7 .....                                            | 1026        |
| 44.6              | Life .....                                                      | 1026        |
| 44.7              | Liberty .....                                                   | 1026        |
|                   | (a) Physical liberty .....                                      | 1026        |
|                   | (b) Economic liberty .....                                      | 1027        |
|                   | (c) Political liberty .....                                     | 1028        |
| 44.8              | Security of the person .....                                    | 1029        |
| 44.9              | Property .....                                                  | 1030        |
| 44.10             | Fundamental justice .....                                       | 1032        |
|                   | (a) Procedure and substance .....                               | 1032        |
|                   | (b) Definition of fundamental justice .....                     | 1035        |
| 44.11             | Absolute and strict liability .....                             | 1038        |
| 44.12             | Murder .....                                                    | 1041        |
| 44.13             | Vague laws .....                                                | 1045        |
| 44.14             | Wrong laws .....                                                | 1046        |
| 44.15             | Right to silence .....                                          | 1047        |
| 44.16             | Fair trial .....                                                | 1048        |
| 44.17             | Fair administrative procedures .....                            | 1050        |
| <b>Chapter 45</b> | <b>Unreasonable Search or Seizure .....</b>                     | <b>1051</b> |
| 45.1              | Section 8 of Charter .....                                      | 1051        |
| 45.2              | Common law .....                                                | 1052        |
| 45.3              | Fourth amendment of U.S. Constitution .....                     | 1053        |
| 45.4              | Search or seizure .....                                         | 1054        |
|                   | (a) Definitions .....                                           | 1054        |

## CONTENTS

|                                                             |                                                |             |
|-------------------------------------------------------------|------------------------------------------------|-------------|
|                                                             | (b) From property to privacy .....             | 1055        |
|                                                             | (c) Gathering evidence .....                   | 1056        |
| 45.5                                                        | Electronic surveillance .....                  | 1057        |
|                                                             | (a) Third party surveillance .....             | 1057        |
|                                                             | (b) Participant surveillance .....             | 1057        |
| 45.6                                                        | Production of documents .....                  | 1060        |
|                                                             | (a) Licences and permits .....                 | 1060        |
|                                                             | (b) Business records .....                     | 1061        |
| 45.7                                                        | Reasonableness .....                           | 1062        |
|                                                             | (a) Requirement of warrant .....               | 1062        |
|                                                             | (b) Warrantless searches .....                 | 1063        |
|                                                             | (c) Border searches .....                      | 1064        |
|                                                             | (d) Regulatory inspections .....               | 1065        |
|                                                             | (e) Writs of assistance .....                  | 1066        |
|                                                             | (f) Illegal searches .....                     | 1067        |
| 45.8                                                        | Remedy for breach .....                        | 1067        |
|                                                             | (a) Exclusion of evidence .....                | 1067        |
|                                                             | (b) Return of property .....                   | 1068        |
| <b>Chapter 46 Arbitrary Detention or Imprisonment .....</b> |                                                | <b>1069</b> |
| 46.1                                                        | Section 9 of Charter .....                     | 1069        |
| 46.2                                                        | Detention or imprisonment .....                | 1070        |
| 46.3                                                        | Arbitrariness .....                            | 1070        |
|                                                             | (a) Requirement of standards .....             | 1070        |
|                                                             | (b) Illegality .....                           | 1073        |
|                                                             | (c) Procedural unfairness .....                | 1073        |
|                                                             | (d) Duration of imprisonment .....             | 1074        |
| <b>Chapter 47 Rights on Arrest or Detention .....</b>       |                                                | <b>1075</b> |
| 47.1                                                        | Section 10 of Charter .....                    | 1075        |
| 47.2                                                        | Arrest or detention .....                      | 1076        |
|                                                             | (a) Requirement of compulsion .....            | 1076        |
|                                                             | (b) Requirement of restraint .....             | 1076        |
| 47.3                                                        | Right to reasons .....                         | 1080        |
| 47.4                                                        | Right to counsel .....                         | 1080        |
|                                                             | (a) Section 10(b) of Charter .....             | 1080        |
|                                                             | (b) Fifth amendment of U.S. Constitution ..... | 1081        |
|                                                             | (c) Timeliness of warning .....                | 1081        |
|                                                             | (d) Comprehension of warning .....             | 1082        |
|                                                             | (e) Comprehension of extent of jeopardy .....  | 1082        |
|                                                             | (f) Opportunity to exercise right .....        | 1083        |
|                                                             | (g) Duty to refrain from questioning .....     | 1083        |
|                                                             | (h) Waiver of right .....                      | 1084        |
|                                                             | (i) Choice of counsel .....                    | 1085        |
|                                                             | (j) Legal aid .....                            | 1085        |

## CONTENTS

|                                                      |             |
|------------------------------------------------------|-------------|
| (k) Exclusion of evidence .....                      | 1087        |
| 47.5 Right to habeas corpus .....                    | 1087        |
| <b>Chapter 48 Rights on being Charged .....</b>      | <b>1089</b> |
| 48.1 Person charged with an offence .....            | 1090        |
| (a) Opening words of s. 11 .....                     | 1090        |
| (b) Charged .....                                    | 1090        |
| (c) Offence .....                                    | 1091        |
| 48.2 Specific information (s. 11(a)) .....           | 1094        |
| 48.3 Trial within reasonable time (s. 11(b)) .....   | 1095        |
| 48.4 Non-compellability (s. 11(c)) .....             | 1095        |
| (a) Section 11(c) .....                              | 1095        |
| (b) Rule against self-incrimination .....            | 1096        |
| (c) Adverse inference from accused's silence .....   | 1096        |
| (d) Compulsion of other evidence .....               | 1097        |
| (e) Compulsion in other proceedings .....            | 1097        |
| (f) Application to corporations .....                | 1098        |
| (g) Application of s. 7 to compelled testimony ..... | 1099        |
| 48.5 Presumption of innocence (s. 11(d)) .....       | 1100        |
| (a) Section 11(d) .....                              | 1100        |
| (b) Reverse onus clauses .....                       | 1100        |
| (c) Fair and public hearing .....                    | 1104        |
| (d) Independent and impartial tribunal .....         | 1104        |
| 48.6 Reasonable bail (s. 11(e)) .....                | 1105        |
| 48.7 Trial by jury (s. 11(f)) .....                  | 1106        |
| (a) Section 11(f) .....                              | 1106        |
| (b) Punishment .....                                 | 1107        |
| (c) Application to corporations .....                | 1107        |
| (d) Waiver of right .....                            | 1108        |
| (e) Jury .....                                       | 1109        |
| (f) Offence under military law .....                 | 1109        |
| 48.8 Retroactive offences (s. 11(g)) .....           | 1110        |
| 48.9 Double jeopardy (s. 11(h)) .....                | 1111        |
| (a) Section 11(h) .....                              | 1111        |
| (b) Two offences .....                               | 1112        |
| (c) Previous acquittal or conviction .....           | 1113        |
| (d) Identity of offences .....                       | 1114        |
| 48.10 Variation of penalty (s. 11(i)) .....          | 1114        |
| <b>Chapter 49 Trial within Reasonable Time .....</b> | <b>1117</b> |
| 49.1 Section 11(b) of Charter .....                  | 1117        |
| 49.2 Purpose of right .....                          | 1118        |
| 49.3 Application to corporations .....               | 1119        |
| 49.4 Application to regulatory offences .....        | 1120        |
| 49.5 Reasonableness of delay .....                   | 1121        |



## CONTENTS

|                                                      |                                        |      |
|------------------------------------------------------|----------------------------------------|------|
| 49.6                                                 | Length of delay .....                  | 1122 |
|                                                      | (a) Pre-charge delay .....             | 1122 |
|                                                      | (b) Appellate delay .....              | 1122 |
| 49.7                                                 | Waiver of delay .....                  | 1123 |
| 49.8                                                 | Reasons for delay .....                | 1124 |
|                                                      | (a) Types of delay .....               | 1124 |
|                                                      | (b) Inherent delay .....               | 1124 |
|                                                      | (c) Crown delay .....                  | 1124 |
|                                                      | (d) Defence delay .....                | 1124 |
|                                                      | (e) Systemic delay .....               | 1125 |
| 49.9                                                 | Prejudice to accused .....             | 1126 |
| 49.10                                                | Remedy for delay .....                 | 1127 |
| <b>Chapter 50 Cruel and Unusual Punishment .....</b> |                                        | 1129 |
| 50.1                                                 | Section 12 of Charter .....            | 1129 |
| 50.2                                                 | Treatment or punishment .....          | 1130 |
| 50.3                                                 | Cruel and unusual .....                | 1130 |
| 50.4                                                 | Minimum sentence .....                 | 1131 |
| 50.5                                                 | Indeterminate sentence .....           | 1135 |
| 50.6                                                 | Prison conditions .....                | 1136 |
| 50.7                                                 | Death penalty .....                    | 1137 |
| <b>Chapter 51 Self-incrimination .....</b>           |                                        | 1139 |
| 51.1                                                 | Section 13 .....                       | 1139 |
| 51.2                                                 | Invoking the right .....               | 1140 |
| 51.3                                                 | Application to accused .....           | 1141 |
| 51.4                                                 | Compelled and voluntary evidence ..... | 1141 |
| 51.5                                                 | Incriminating evidence .....           | 1141 |
| 51.6                                                 | Other proceedings .....                | 1142 |
|                                                      | (a) Non-criminal proceedings .....     | 1142 |
|                                                      | (b) Re-trial .....                     | 1142 |
| 51.7                                                 | Cross-examination .....                | 1143 |
| 51.8                                                 | Perjury .....                          | 1144 |
| <b>Chapter 52 Equality .....</b>                     |                                        | 1147 |
| 52.1                                                 | Distribution of powers .....           | 1148 |
| 52.2                                                 | Canadian Bill of Rights .....          | 1149 |
| 52.3                                                 | American Bill of Rights .....          | 1152 |
| 52.4                                                 | Section 15 of Charter .....            | 1154 |
| 52.5                                                 | Application of s. 15 .....             | 1155 |
|                                                      | (a) Individual .....                   | 1155 |
|                                                      | (b) "Law" in s. 15 .....               | 1156 |
|                                                      | (c) Private action .....               | 1157 |
| 52.6                                                 | Equality .....                         | 1158 |
|                                                      | (a) Four equalities of s. 15 .....     | 1158 |

## CONTENTS

|                   |                                                                           |      |
|-------------------|---------------------------------------------------------------------------|------|
|                   | (b) Absolute equality .....                                               | 1159 |
|                   | (c) Aristotle's definition .....                                          | 1159 |
|                   | (d) Similarly situated .....                                              | 1160 |
|                   | (e) Reasonable classification .....                                       | 1161 |
|                   | (f) Valid federal objective .....                                         | 1162 |
|                   | (g) Early applications of s. 15 .....                                     | 1162 |
| 52.7              | Discrimination .....                                                      | 1163 |
|                   | (a) Discrimination is the operative concept .....                         | 1163 |
|                   | (b) Must be on listed or analogous grounds .....                          | 1164 |
|                   | (c) May be justified only under s. 1 .....                                | 1165 |
|                   | (d) Need not be invidious .....                                           | 1166 |
|                   | (e) Analogous grounds involve immutable personal<br>characteristics ..... | 1167 |
|                   | (f) Particular disadvantage is required .....                             | 1171 |
|                   | (g) General disadvantage is not required .....                            | 1173 |
|                   | (h) May be unintended .....                                               | 1176 |
|                   | (i) May be systemic .....                                                 | 1178 |
|                   | (j) May require reasonable accommodation .....                            | 1178 |
|                   | (k) Need not appear on face of law .....                                  | 1179 |
| 52.8              | Affirmative action .....                                                  | 1180 |
| 52.9              | Discrimination permitted by Constitution .....                            | 1181 |
|                   | (a) Age in ss. 23, 39, 99 .....                                           | 1181 |
|                   | (b) Race in s. 91(24) .....                                               | 1181 |
|                   | (c) Religion in s. 93 .....                                               | 1182 |
|                   | (d) Province of residence in ss. 91, 92 .....                             | 1183 |
|                   | (e) Citizenship in s. 6 .....                                             | 1184 |
|                   | (f) Language in ss. 16-23 .....                                           | 1184 |
| 52.10             | Race .....                                                                | 1184 |
| 52.11             | Religion .....                                                            | 1185 |
| 52.12             | Sex .....                                                                 | 1186 |
|                   | (a) Direct discrimination .....                                           | 1186 |
|                   | (b) Systemic discrimination .....                                         | 1187 |
|                   | (c) Section 28 .....                                                      | 1188 |
| 52.13             | Age .....                                                                 | 1188 |
| 52.14             | Mental or physical disability .....                                       | 1192 |
| 52.15             | Citizenship .....                                                         | 1192 |
| 52.16             | Place of residence .....                                                  | 1192 |
| <i>Chapter 53</i> | <i>Language</i> .....                                                     | 1197 |
| 53.1              | Introduction .....                                                        | 1197 |
| 53.2              | Distribution of powers .....                                              | 1198 |
| 53.3              | Language of Constitution .....                                            | 1201 |
| 53.4              | Language of statutes .....                                                | 1203 |
|                   | (a) Constitutional requirements .....                                     | 1203 |

## CONTENTS

|                   |                                                       |             |
|-------------------|-------------------------------------------------------|-------------|
|                   | (b) Quebec's Charter of the French Language .....     | 1204        |
|                   | (c) Manitoba's Official Language Act .....            | 1205        |
|                   | (d) Incorporation by reference .....                  | 1208        |
|                   | (e) Delegated legislation .....                       | 1210        |
| 53.5              | Language of courts .....                              | 1212        |
|                   | (a) Constitutional requirements .....                 | 1212        |
|                   | (b) Definition of courts .....                        | 1212        |
|                   | (c) Language of process .....                         | 1213        |
|                   | (d) Language of proceedings .....                     | 1214        |
|                   | (e) Right to interpreter .....                        | 1215        |
| 53.6              | Language of government .....                          | 1216        |
|                   | (a) Section 16 of Charter .....                       | 1216        |
|                   | (b) Section 20 of Charter .....                       | 1217        |
| 53.7              | Language of commerce .....                            | 1218        |
| 53.8              | Language of education .....                           | 1219        |
|                   | (a) Section 93 of Constitution Act, 1867 .....        | 1219        |
|                   | (b) Mackell case .....                                | 1220        |
|                   | (c) Section 23 of Charter .....                       | 1221        |
|                   | (d) Mother tongue of parent .....                     | 1222        |
|                   | (e) Language of instruction of parent in Canada ..... | 1223        |
|                   | (f) Language of instruction of child in Canada .....  | 1224        |
|                   | (g) Where numbers warrant .....                       | 1224        |
|                   | (h) Denominational schools .....                      | 1226        |
| <b>Chapter 54</b> | <b>Education .....</b>                                | <b>1227</b> |
| 54.1              | Provincial power .....                                | 1227        |
| 54.2              | Federal power to enact remedial laws .....            | 1229        |
| 54.3              | Protected rights and privileges .....                 | 1230        |
| 54.4              | Prejudicial effect .....                              | 1233        |
|                   | (a) Benign laws .....                                 | 1233        |
|                   | (b) Neutral laws .....                                | 1233        |
|                   | (c) Regulation .....                                  | 1233        |
|                   | (d) Withdrawal of management .....                    | 1235        |
|                   | (e) Withdrawal of exclusivity .....                   | 1236        |
|                   | (f) Reduction in funding .....                        | 1237        |
| <b>PART IV</b>    |                                                       |             |
| <b>PRACTICE</b>   |                                                       |             |
| <b>Chapter 55</b> | <b>Effect of Unconstitutional Law .....</b>           | <b>1241</b> |
| 55.1              | Invalidity of unconstitutional law .....              | 1241        |
| 55.2              | Notice requirements in litigation .....               | 1243        |
| 55.3              | Acts done under unconstitutional law .....            | 1244        |
| 55.4              | Res judicata .....                                    | 1247        |
| 55.5              | De facto officers .....                               | 1248        |
| 55.6              | Unconstitutional taxes .....                          | 1250        |

## CONTENTS

|                                   |                                                    |             |
|-----------------------------------|----------------------------------------------------|-------------|
| 55.7                              | Wholesale invalidation of laws .....               | 1254        |
|                                   | (a) The Manitoba Language Rights Reference .....   | 1254        |
|                                   | (b) The Bilodeau case .....                        | 1258        |
|                                   | (c) The Mercure case .....                         | 1258        |
|                                   | (d) The Paquette case .....                        | 1259        |
|                                   | (e) The Sinclair case .....                        | 1260        |
| <b>Chapter 56 Procedure .....</b> |                                                    | <b>1261</b> |
| 56.1                              | Procedure .....                                    | 1261        |
| 56.2                              | Standing .....                                     | 1263        |
|                                   | (a) Definition .....                               | 1263        |
|                                   | (b) Exceptional prejudice .....                    | 1264        |
|                                   | (c) Role of Attorney General .....                 | 1265        |
|                                   | (d) Discretionary public interest standing .....   | 1266        |
|                                   | (e) Enforcing other people's rights .....          | 1269        |
| 56.3                              | Mootness .....                                     | 1275        |
|                                   | (a) Definition .....                               | 1275        |
|                                   | (b) General rule .....                             | 1275        |
|                                   | (c) Discretion to decide .....                     | 1276        |
| 56.4                              | Ripeness .....                                     | 1277        |
| 56.5                              | Alternative grounds .....                          | 1278        |
| 56.6                              | Intervention .....                                 | 1279        |
|                                   | (a) By Attorney General .....                      | 1279        |
|                                   | (b) By private party .....                         | 1281        |
| <b>Chapter 57 Proof .....</b>     |                                                    | <b>1283</b> |
| 57.1                              | Legislative history .....                          | 1283        |
|                                   | (a) Definition .....                               | 1283        |
|                                   | (b) Classification of statutes .....               | 1284        |
|                                   | (c) Interpretation of Constitution Act, 1867 ..... | 1286        |
|                                   | (d) Interpretation of Constitution Act, 1982 ..... | 1287        |
|                                   | (e) Originalism .....                              | 1288        |
|                                   | (f) Progressive interpretation .....               | 1290        |
|                                   | (g) Weight of legislative history .....            | 1291        |
| 57.2                              | Evidence .....                                     | 1292        |
|                                   | (a) Modes of proof .....                           | 1292        |
|                                   | (b) Brandeis briefs in the United States .....     | 1293        |
|                                   | (c) Social-science briefs in references .....      | 1294        |
|                                   | (d) Social-science briefs in appeals .....         | 1295        |
|                                   | (e) Social-science briefs in trials .....          | 1295        |
|                                   | (f) Standard of proof .....                        | 1296        |

CONTENTS

APPENDICES

|                     |                                                                                    |      |
|---------------------|------------------------------------------------------------------------------------|------|
| <i>Appendix I</i>   | Constitution Act, 1867 .....                                                       | 1301 |
| <i>Appendix II</i>  | Canada Act 1982 .....                                                              | 1333 |
| <i>Appendix III</i> | Constitution Act, 1982 .....                                                       | 1335 |
| <i>Appendix IV</i>  | Canadian Bill of Rights .....                                                      | 1369 |
| <i>Appendix V</i>   | American Bill of Rights .....                                                      | 1373 |
| <i>Appendix VI</i>  | International Covenant on Civil and Political Rights                               | 1377 |
| <i>Appendix VII</i> | Optional Protocol to International Covenant on Civil and<br>Political Rights ..... | 1387 |
| Bibliography .....  |                                                                                    | 1389 |
| Index .....         |                                                                                    | 1403 |