Table of Contents

INTRODUCTION .................................................................................. 1

Part One:
The Present Canadian Law of Arrest

CHAPTER ONE: Arrest and the Constitution .................................................. 7

I. Introduction .......................................................................................... 7

II. Arrest, Detention and the Canadian Charter of Rights and Freedoms ........ 8
    A. Life, Liberty and Security of the Person ........................................... 9
    B. Arbitrary Detention or Imprisonment ............................................. 12
    C. Rights and Treatment on Arrest .................................................. 13

III. Federal and Provincial Arrest Powers ............................................... 15
    A. Provincial Arrest Powers .............................................................. 16
        (1) Arrest for Prosecution .......................................................... 16
        (2) Arrest to Keep the Peace ....................................................... 18
        (3) Arrest for Treatment ........................................................... 19
        (4) Arrest to Facilitate Process ................................................. 20
    B. Federal Non-Criminal Code Arrest Powers ................................ 21
        (1) Arrest for Prosecution .......................................................... 21
        (2) Arrest to Keep the Peace ....................................................... 23
        (3) Powers of Detention ............................................................ 23
        (4) Arrest to Facilitate Process ................................................. 24
        (5) Other Codes ......................................................................... 25
    C. Conclusion ...................................................................................... 25

CHAPTER TWO: Arrest in Criminal Law...................................................... 27

I. Introduction .......................................................................................... 27
Part Two: 
Reform of the Law of Arrest

CHAPTER FOUR: Principles, Purposes and Definitions ................. 67

I. Introduction ........................................................................... 67

II. The Purposes of Arrest ......................................................... 67

RECOMMENDATION 1 ................................................................. 69

III. The Definition of Arrest ....................................................... 69

RECOMMENDATIONS 2 and 3 .................................................... 72

CHAPTER FIVE: Arrest without Warrant ..................................... 73

I. Introduction ........................................................................... 73

II. Authority for Police Arrest without Warrant ......................... 74
   A. Conditions for Arrest relating to the Alleged Offence .......... 74
      (1) The Existence of an Alleged Offence ......................... 75
      (2) The Classification of Offences ................................. 77
      (3) Time of Commission of an Alleged Offence ............. 78
   B. Conditions for Release relating to the Alleged Offender .......... 79
      (1) Restraint and Police Arrest without Warrant .......... 79
      (2) Restraint and Documentary Notice of Proceedings ...... 81

RECOMMENDATIONS 4, 5 and 6 ................................................ 82

III. Authority for Citizen Arrest without Warrant ....................... 83
   A. Conditions for Arrest relating to the Alleged Offence .......... 85
      (1) The Existence of an Alleged Offence ......................... 85
      (2) The Classification of Offences ................................. 86
      (3) Time of Commission of an Alleged Offence ............. 86
      (4) Citizen Assistance to Peace Officers ....................... 87
   B. Conditions for Release relating to the Alleged Offender .......... 88

RECOMMENDATIONS 7, 8 and 9 ................................................ 88

IV. Breach of the Peace ............................................................. 88

RECOMMENDATION 10 .............................................................. 89
CHAPTER SIX: Judicial Process to Compel Appearance ......................... 91

I. Introduction ........................................................................................................... 91

II. Arrest with and without Warrant ................................................................. 91

III. Conditions for Issuance of Process to Compel Attendance ................. 93
    A. Conditions relating to the Alleged Offence .............................................. 93
    B. Conditions relating to the Alleged Offender ........................................... 94

IV. Procedure for Issuance of Judicial Process .................................................. 95

RECOMMENDATIONS 11, 12, 13, 14 and 15 ................................................. 97

CHAPTER SEVEN: Notice Requirements for a Lawful Arrest ......................... 99

I. Introduction ........................................................................................................... 99

II. Notice Requirements of a Lawful Arrest ...................................................... 100
    A. Self-Identification by the Arresting Person ............................................ 100
    B. Information on the Fact of and Reasons for Arrest ............................. 101
    C. Language and Translation ................................................................. 103

III. Justified Non-Compliance with Notice Requirements ......................... 104

IV. The Effect of Unjustified Non-Compliance .................................................. 105

RECOMMENDATIONS 16, 17, 18 and 19 .......................................................... 105

CHAPTER EIGHT: Spatial Limits on the Authority to Arrest ............................ 107

I. The Territorial Aspects of a Warrant for Arrest ......................................... 107
    A. The Tensions in Present Law and Practice ........................................... 108
    B. The Territorial Ambit of Arrest Warrants .......................................... 110

II. Entry on Private Property to Effect a Lawful Arrest .................................. 113
    A. Principles Governing Forcible Entry .................................................... 113
    B. Conditions of Lawful Entry upon Private Property to Effect Arrest .... 116

     (1) Forcible Entry upon a Private Dwelling ............................................ 116
     (2) Forcible Entry into Premises Other Than Dwellings .......................... 117
CHAPTER SIX: Judicial Process to Compel Appearance

I. Introduction

II. Arrest with and without Warrant

III. Conditions for Issuance of Process to Compel Attendance
   A. Conditions relating to the Alleged Offence
   B. Conditions relating to the Alleged Offender

IV. Procedure for Issuance of Judicial Process

RECOMMENDATIONS 11, 12, 13, 14 and 15

CHAPTER SEVEN: Notice Requirements for a Lawful Arrest

I. Introduction

II. Notice Requirements of a Lawful Arrest
   A. Self-Identification by the Arresting Person
   B. Information on the Fact of and Reasons for Arrest
   C. Language and Translation

III. Justified Non-Compliance with Notice Requirements

IV. The Effect of Unjustified Non-Compliance

RECOMMENDATIONS 16, 17, 18 and 19

CHAPTER EIGHT: Spatial Limits on the Authority to Arrest

I. The Territorial Aspects of a Warrant for Arrest
   A. The Tensions in Present Law and Practice
   B. The Territorial Ambit of Arrest Warrants

II. Entry on Private Property to Effect a Lawful Arrest
   A. Principles Governing Forcible Entry
   B. Conditions of Lawful Entry upon Private Property to Effect Arrest
      (1) Forcible Entry upon a Private Dwelling
      (2) Forcible Entry into Premises Other Than Dwellings