Law Reform Commission of Canada
Commission de réforme du droit du Canada

CRIMINAL LAW

classification of offences

Working Paper 54

Canada

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130 Albert St., 7th Floor
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K1A 0L6

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H3B 2N2

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Law Reform Commission
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Working Paper 54

CLASSIFICATION OF OFFENCES

1986

Notice

In this Working Paper, the Commission proposes a framework for a new Code of Criminal Procedure. The Commission examines the deficiencies of the present scheme of classification of offences contained in the *Criminal Code* and other federal statutes. It then recommends a new classification scheme to remedy those deficiencies and outlines the implications of adopting the proposed scheme.

The Commission seeks responses from all members of the judiciary, legal profession, legislative bodies and the public at large.

The Commission intends to report to Parliament on this subject after considering the public response to this Working Paper. Depending upon that public response, the Commission may recommend to Parliament that the subject-matter of this Working Paper may be appropriate for immediate implementation even in the absence of a new Criminal Code.

The Commission will be grateful to receive comments addressed in writing to:

Secretary
Law Reform Commission of Canada
130 Albert Street
Ottawa, Canada
K1A 0L6

Commission

Mr. Justice Allen M. Linden, President
Mr. Gilles Létourneau, Vice-President
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Mr. John Frecker, Commissioner

Secretary

François Handfield, B.A., LL.L.

Co-ordinator, Criminal Procedure

Stanley A. Cohen, B.A., LL.B., LL.M.

Principal Consultants

Eugene Oscapella, B.A., LL.B., LL.M.
Vincent Del Buono, B.A., M.A., LL.B., LL.M.**

Consultant

Stephanie Robinson, B.A., LL.B., LL.M.

* Was a member of the Commission when this document was approved.
** Was a consultant with the Commission from 1980 to 1982.

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CHAPTER ONE

Introduction

The Law Reform Commission of Canada is developing a new Criminal Code that will rationalize our substantive criminal law with the intention of replacing the present *Criminal Code*.[1] The Commission at the same time recognizes the need to develop a comprehensive Code of Criminal Procedure to complement the new Criminal Code. Such a Code of Criminal Procedure will organize the many procedures, rules and practices which govern the treatment of persons suspected of, and charged with, the commission of offences.

The framework of that Code of Criminal Procedure will be a revised system of classification of offences. The present system of classification in our *Criminal Code* is unnecessarily complex and full of anomalies. Its structure is based more on the accidents of history than on any rational plan. The inconsistencies of the present system militate substantially against its utility. To date we have failed to adhere to any model providing for the systematic assignment of procedures to different classes of offences. The present scheme is not well understood, even by lawyers. This has led to confusion, which in turn has led to gamesmanship among lawyers in dealing with criminal procedure. We wish to avoid the perpetuation of this situation in our new Code of Criminal Procedure. To do this we require a classification system that is logical, useful and as simple as possible to understand and apply.

This Working Paper begins with a review of the evolution of our present system of classifying offences in the *Criminal Code*. It then examines its deficiencies and proposes a more workable and more comprehensible system of classification — one that will apply to all crimes enacted by the Parliament of Canada.

While our proposed system of classification is intended to complement a revised Criminal Code, the system could be implemented even within the present *Criminal Code*, rendering it less anomalous and less complex. Parliament could enact our proposals immediately if it so wished.

Under our proposed scheme of classification, all federal offences would be classed either as "crimes" or "infractions." Only crimes would be punishable by a term of imprisonment. Crimes would either be punishable by more than two years imprisonment

1. *Criminal Code*, R.S.C. 1970, c. 34 [hereinafter *Criminal Code*]. Volume I of the Commission's proposed Code has just recently been published and volume II is expected in the spring. See Law Reform Commission of Canada, *Recodifying Criminal Law*, vol. I (Report 30) (Ottawa: LRCC, 1986).

or by two years or less imprisonment. Infractions would not carry the penalty of imprisonment, save in the most exceptional circumstances such as where there has been a wilful refusal to pay a fine or comply with a court order. Infractions should not be dealt with in a Code of Criminal Procedure. Instead, we believe that they should be dealt with in a separate federal enactment, perhaps an Infractions Procedure Act.

Each offence would be identifiable by the maximum sentence permitted. No offence would fall into a discretionary or neutral zone. The practice of creating "hybrid" offences would be abolished. (Hybrid offences possess a dual nature, that is, minor and serious manifestations, and are prosecuted according to an option or election exercised by the prosecutor. Different penalties and procedures result from this exercise of prosecutorial discretion.) Parliament would decide when it created an offence whether the offence was to be an infraction or a crime. If Parliament decided to call it a crime, it would also decide whether the crime is punishable by two years imprisonment or less, or punishable by more than two years imprisonment. It would also set the precise penalty for the offence (for example, five years imprisonment, a fine of $5,000, or both). Existing hybrid offences would be reclassified into one and only one of the two classes, according to present penalty structures.

Our classification scheme would also promote the alignment of procedures with classifications (for example, arrest, pretrial release, right to jury trial) so that procedures no longer occur randomly, as they now often do. We proceed upon the basic premise that offences within the same class should, except in clearly circumscribed instances, share the same procedures. This is not to say that the same procedures could not apply to both classes. The present paper indicates what realignments of procedures are necessary.

This Working Paper concludes with two appendices. The first lists the offences contained in the *Criminal Code*, along with the major procedures that apply to each offence, while the second lists selected sentencing data for some hybrid offences with possible maximum penalties of five years or more.

Our objectives in this exercise are modest. We are not seeking to transform the existing system radically. Our search is for a rational, coherent and intelligible scheme, one which is consistent with the practical expectations of those who daily grapple with the intricacies of the present system. The scheme which we propose should prove attractive to those familiar with the present arrangement, since our proposals are respectful of that which already works. While new, our scheme will not appear foreign. Since we have fashioned it so as to weed out anomalies and inconsistencies, practitioners will have a surer grasp of its content than is possible under the present organization of the *Criminal Code*.

Inevitably, this paper has its limitations. It is premised on existing offences, powers, rules and practices. When these are changed in the future, the recommendations contained in this Working Paper will have to be modified accordingly. No inferences should therefore be drawn from the discussion of the implementation of the classification

scheme as to the Commission's view about the eventual desirability of retaining any specific offence, power, rule or practice unless our view is explicitly stated. Notwithstanding these limitations, the principal recommendations of our proposed scheme will form the framework of a new Code of Criminal Procedure and will act as a foundation for future procedural changes.

Before we examine in detail the nature of our proposed system of classification, we think it useful to outline the inadequacies of the classification mechanism in our present *Criminal Code*.

CHAPTER TWO

Classification under the Present *Criminal Code*

Our present system of classification labels offences as punishable on indictment ("indictable offences"), punishable on summary conviction ("summary conviction offences"), or punishable by either indictment or summary conviction. These latter "hybrid" or "dual procedure" offences may, at the option of the Attorney General, be prosecuted either by indictment or by summary conviction.[2]

Indictable offences carry maximum sentences of imprisonment of two years, five years, ten years, fourteen years, or life. Most indictable offences may be tried in one of three ways: by judge and jury; by judge alone; or by provincial court judge. Certain indictable offences must be tried only by a superior court judge with a jury (*Criminal Code*, section 427); others may only be heard by a provincial court judge alone (section 483); while the residual group of indictable offences may, at the option of the accused, be tried in any of the three ways. Almost all indictable offences are not subject to any limitation period. The only exceptions are certain treasons and certain sexual offences. Different powers of arrest and release from custody (bail) exist depending upon whether the offence is classified as summary conviction or indictable. The initial decision about the pretrial release of a person charged with an indictable offence may be made either by the constable who comes into initial contact with the accused, by the officer in charge of the lock-up to which the accused is brought, by a justice or by a judge.

The initial decision about the pretrial release of a person charged with a summary conviction offence is made by the peace officer who first comes into contact with the accused. Summary conviction offences carry a maximum sentence of imprisonment for a period of six months, a fine of up to $2,000, or both. They are tried by a provincial court judge and are subject to a limitation period of six months.

Designating an offence as punishable by indictment or as punishable by summary conviction determines the nature of many, but not all, of the procedures that apply to the offence. It determines powers of arrest without warrant,[3] the mode and routing of

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2. For a comprehensive listing of the hybrid offences contained in the *Criminal Code*, the reader is referred to Appendix A, *infra*: all offences designated as "ID" (punishable on indictment/dual procedure) and "SD" (punishable on summary conviction/dual procedure) under the heading, "Procedures."

3. *Criminal Code*, s. 450.

appeals,[4] the period which a person must wait before applying for a pardon,[5] and the applicability of the *Identification of Criminals Act*.[6] The permissible length of the sentence (an aspect not presently regarded as a classifying feature), however, plays an almost equally important role in aligning procedures. The length of the maximum possible sentence determines the number of challenges which the accused has in a jury trial,[7] and whether a fine may be imposed in addition to imprisonment or in lieu of imprisonment.[8] The length of the sentence handed down by a court determines whether it will be served in a penitentiary or in a provincial correctional institution.[9]

Certain other aspects of procedure fit neither class of offence, nor are they coincidental with any other procedure. The charging document on which the accused is tried (called an information and an indictment) depends on whether the accused has a right of election and, if so, on what election he makes.[10] Two other procedures which do not coincide neatly with the indictable/summary conviction distinction or with the maximum possible length of the sentence are the accused's right to elect his mode and forum of trial[11] and the accused's right to pretrial release.[12]

Other procedures occur in the *Criminal Code* without any apparent reference to any other procedures — mandatory minimum sentences,[13] whether the consent of the Attorney General is required to initiate a prosecution,[14] and whether the offence is one for which an authorization to wiretap can be obtained.[15]

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4. *Criminal Code*, ss. 601 to 624 inclusive, if the offence is indictable; ss. 747 to 771 inclusive, if the offence is punishable on summary conviction.

5. *Criminal Records Act*, R.S.C. 1970, c. 12 (1st Supp.), s. 4(2).

6. R.S.C. 1970, c. I-1 [hereinafter *Identification of Criminals Act*].

7. *Criminal Code*, s. 562.

8. *Criminal Code*, s. 646.

9. *Criminal Code*, s. 659.

10. The document of process is the information if the offence is punishable on summary conviction, a section 483 offence, or an indictable offence which the accused elects to have tried by provincial court judge. For any other offence the document of process is the indictment.

11. See *Criminal Code*, ss. 427, 464, 483.

12. *Criminal Code*, ss. 450(2), 453, 457(1), 457.7.

13. *Criminal Code*: s. 47(1), high treason; s. 83, use of firearm during commission of offence; s. 186, betting, pool-selling, book-making; s. 187, placing bets on behalf of others; s. 218, murder; ss. 237 and 239(1), operating a motor vehicle, vessel or aircraft while impaired or over 0.08; ss. 237 and 239(2), impaired operation where injury; ss. 237 and 239(3), impaired operation where death; ss. 238(5) and 239(1), refusal to provide breath or blood sample.

14. *Criminal Code*: s. 54, assisting a deserter; s. 108, acceptance by judge or attempt to obtain bribe; s. 124, witness giving contradictory evidence with intent to mislead; s. 162, restriction on publication of reports of judicial proceedings; s. 168, corrupting children; s. 170, nudity; s. 235, unseaworthy vessel and unsafe aircraft; s. 250.2, abducting where no custody order; s. 281.1, advocating genocide; s. 281.2(2), wilful promotion of hatred; s. 343, fraudulent concealment or use of title documents; s. 380, criminal breach of contract.

15. For a list of offences in respect of which wiretapping is permitted, see *Criminal Code*, s. 178.1.

As this bare tracing of the present system reveals, our present method of classifying offences does not afford a very useful guide for determining what procedures apply in any given instance. If one examines the present *Criminal Code* indictable offences for simply the following variables: maximum sentence, whether there is a designated mode of trial or a right of election, and who may make the initial decision concerning the pretrial release of the accused — a multitude of different groupings of offences results. Additional variables, such as the absence or presence of limitation periods, the requirement for the consent of the Attorney General to prosecute and whether a wiretap may be authorized to investigate the offence, significantly increase the number of groupings.

Could indictable offences not be arranged in fewer, more manageable groupings? For example, why must some offences which carry a maximum penalty of life imprisonment be tried only by a superior court judge with or without jury, while other offences with the same possible penalty give the accused the right to elect to be tried by judge and jury, by judge alone, or by provincial court judge?[16]

Offences under *Criminal Code* section 427 permit only a superior court judge to grant judicial interim release, while judicial interim release for other offences with equally severe penalties (fourteen years, life) is not restricted in the same fashion. Could some of these distinctions not be eliminated in the interests of greater intelligibility and manageability?

Anomalies arise with indictable offences tried summarily. Indictable offences are tried summarily if tried before a provincial court judge (formerly described in the *Criminal Code* as a magistrate). Section 483 of the *Criminal Code* lists those offences that must be tried before a provincial court judge. In addition, an accused may elect to be tried by a provincial court judge for most other indictable offences.

The differences between the summary trial of an accused charged with an indictable offence and that of an accused charged with a summary conviction offence are not readily apparent. (As is evident, even the terminology "summary trial of an indictable offence" as contrasted with "summary conviction offence," breeds confusion.) The document of trial in both cases is an information, and the trial is held before a provincial court judge. In both cases, there is no right to jury. If the indictable offence must, by virtue of section 483 of the *Criminal Code*, be tried summarily, the

16. For example, murder (*Criminal Code*, s. 218) and the treason offences contained in section 47 which are punishable by life, must be tried by a superior court judge and jury or, with the consent of the Attorney General, by a superior court judge sitting alone. Yet where a person breaches a duty of care with respect to explosives and death results (s. 78(*a*)), the maximum penalty is life; the accused may nonetheless elect, under section 464, to be tried by a provincial court judge. Other examples where life sentences may be imposed, yet an election is permitted under section 464, include: s. 76.1, hijacking; s. 76.2, endangering the safety of an aircraft in flight; s. 203, criminal negligence causing death; s. 219, manslaughter; s. 221, killing an unborn child in the act of birth; s. 222, attempted murder; s. 246.3, aggravated sexual assault; s. 247(1), kidnapping; s. 247.1, hostage taking; s. 251(1), procuring miscarriage; s. 303, robbery; s. 304, stopping mail with intent; s. 305, extortion; and s. 306, breaking and entering a dwelling-house with intent.

peace officer coming into contact with the accused makes the decision as to pretrial release. The same rule applies for summary conviction offences. If, instead, an indictable offence may be tried summarily only when the accused so elects *and* if the maximum penalty on indictment is five years or less, the initial decision about pretrial release is made by the officer in charge of the lock-up to which the accused must be brought.

A peace officer may release, pursuant to *Criminal Code* subsection 450(2), an accused whom he finds in possession of a credit card which he knows was stolen (a hybrid offence under paragraph 301.1(1)(*c*)). If prosecuted by indictment, the offence carries a maximum penalty of *ten years*. Yet to take a similar example, the officer cannot release, but rather must bring before an officer in charge, an accused whom he finds in possession of instruments for breaking into coin-operated or currency exchange devices (an indictable offence under section 310 carrying a maximum penalty of only *two years* imprisonment).

Some variation in the procedures attaching to specific offences within the same class may be justifiable on grounds of "public policy." Our recent Working Paper 47, *Electronic Surveillance*,[17] expressed our belief that the intrusiveness of wiretaps justifies their use only for the most serious offences and only where it may be extremely difficult otherwise to obtain evidence. Hence, their use might be limited to serious indictable offences, while the investigation of other indictable offences cannot be the subject of wiretaps. Such a distinction is justifiable as a measure to limit intrusive behaviour by the state. Nevertheless we recognize that such exceptions detract from the simplicity that a system of offence classification should provide. This type of distinction within a class of offences, along with the almost random assignment of other procedures resulting from amendments to the *Criminal Code* over the last ninety years, permeates the entire *Criminal Code*.

Some distinctions among procedures within a class, such as the restrictions pertaining to the power to wiretap, should necessarily survive, even in a revised Code of Criminal Procedure. Our goal, however, is to limit to the extent possible those variations within a particular class of offence that destroy the utility of a classification system.

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17. Law Reform Commission of Canada, *Electronic Surveillance* (Working Paper 47) (Ottawa: LRCC, 1986).

CHAPTER THREE

An Historical Note

Our present scheme of classification of offences is more the result of historical accumulation than of any particular design. The history of classification began with the introduction of the categories of "felony" and "misdemeanour" into English criminal law. The meaning of neither was ever exactly defined, though a sense of both terms came to be fixed over time. With some exceptions, "felony" was the term appropriated for crimes punishable by death. "Misdemeanour" was the term used to describe all minor crimes.

Several important procedural differences attached, depending on whether the offence charged was a felony or a misdemeanour. A person could not be arrested for a misdemeanour without a warrant. A person committed for trial for a misdemeanour was generally entitled to be bailed, whereas a person accused of felony was not. On a trial for a misdemeanour, the prisoner was not entitled to any peremptory challenges, whereas on a trial for felony he was.[18]

The *English Draft Code* of 1879[19] recommended the abolition of these categories. To understand this recommendation, it is important to trace the development of punishments in English criminal law to that date.[20]

Following the English Civil War, English criminal law was in an extremely crude state. The law, which consisted primarily of common law offences, lacked sufficient punishments for numerous acts of fraud, mischief, and violence. To remedy this situation, Parliament enacted a large number of statutory offences in the eighteenth and

18. Sir James Fitzjames Stephen, *A History of the Criminal Law of England* (1883, Reprint, New York: Franklin, 1964), vol. 2 at 192-3.

19. Sir James Fitzjames Stephen, *English Draft Code*, Report of the Royal Commission Appointed to Consider the Law Relating to Indictable Offences with an Appendix Containing a Draft Code Embodying the Suggestions of the Commissioners (London: HMSO, 1879).

20. R.S. Wright, a contemporary of Stephen, produced *Drafts of a Criminal Code and a Code of Criminal Procedure for the Island of Jamaica* (London: HMSO, 1877), immediately prior to Stephen's. Stephen is reported to have "borrowed extensively" from Wright's Code, having revised the first Draft of Wright's Code in 1874-75.

Wright in his Code maintained the distinction between felony and misdemeanour. Section 21 states:

> A crime on conviction on indictment for which a person can, without proof of his having been previously convicted of crime, be sentenced to death or to penal servitude, is a felony, whether it be actually prosecuted summarily or on indictment; and any crime whether punishable summarily or on indictment which is not a felony, is a misdemeanour.

early nineteenth centuries.[21] Many were statutory misdemeanours, but the largest number were designated as "felonies without benefit of clergy."

As Blackstone commented:

> [A]mong the variety of actions which men are daily liable to commit, no less than an hundred and sixty are declared by Act of Parliament to be felonies without benefit of clergy, or, in other words, to be worthy of instant death.[22]

This excessive legislative severity of the eighteenth and early nineteenth centuries spawned a counter-reaction. At common law, a court had a discretion to impose as light a sentence as it thought fit in the case of a misdemeanour. However, there was no discretion at all in sentencing for felonies, all of which remained capital offences until the reign of George III.

Gradually, steps were taken to give a judge the power to commute the punishment of death after passing sentence. Somewhat later, judges could abstain from passing the sentence of death at all. Ultimately, they were permitted to exercise an unlimited discretion to be lenient.[23] With this reduction in the incidence of capital punishment, the *raison d'être* for the distinction between felonies and misdemeanours largely disappeared.

Nonetheless, the plethora of procedures which had grown up around the distinction remained. As Stephen stated:

> [T]he practical importance of the distinction has reference entirely to matters of procedure, every part of which is more or less affected by it. A felon may in all cases be arrested without warrant, and is in no case absolutely entitled to be bailed, whereas a misdemeanant cannot be arrested without warrant except in cases specially provided for by statute, and is entitled to be bailed in all cases in which special statutory enactments do not modify his right. A misdemeanant has, and a felon has not, a right to a copy of the indictment. In an indictment for felony one offence only can practically be charged. In an indictment for misdemeanour any number of offences may be charged in different counts. There are, moreover, many distinctions as to the trial of felonies and misdemeanours. The only one of much practical importance is that a person accused of felony has, whereas a person accused of misdemeanour has not, the right of peremptory challenge.[24]

Further distinctions developed with respect to the joinder of counts. The right to charge any number of felonies in the same indictment was subject to the doctrine of election, a doctrine introduced simply by the practice of the courts.[25] No such rule applied to misdemeanours.[26]

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21. *Supra*, note 18, vol. 2 at 212.

22. Blackstone, *Commentaries*, vol. iv at 18, cited in Stephen, *supra*, note 18, vol. 2 at 215.

23. *Ibid.*, vol. 2 at 88.

24. *Ibid.*, vol. 1 at 508.

25. *Ibid.*, vol. 1 at 291.

26. *Ibid.*

There were as well some distinctions in the prosecution of felonies and misdemeanours. In the Dominion of Canada, it was the practice with felonies, but not with misdemeanours, to try the defendant at the same assizes. A prisoner would, however, be tried at the same assizes in the case of misdemeanour if the parties consented or if the defendant was in jail. Accordingly, a defendant charged with a misdemeanour could usually postpone his trial, whereas he could not if charged with a felony.[27]

Along with the growth in English criminal law of statutory crimes, felonies and misdemeanours, a number of statutes were enacted enabling magistrates to deal with matters of small importance — for example, abetting nuisances and prohibiting disturbances of good order such as swearing, spitting, or working on Sundays. Few of these Acts provided procedures by which the offences were to be prosecuted. Gradually, a series of Acts were passed providing some procedures, but this deficiency was not finally regulated until legislation was passed in 1848. Stephen said of the 1848 enactment:

> The procedure was thus reduced to system before the courts to which it applied were formally constituted as courts. The magistrates acting under these statutes formed in fact criminal courts, though they were not so described by statute till very lately. But the extent of their jurisdiction was increased by modern legislation and as a formal procedure was established they came to be invested with the name of courts of summary jurisdiction.[28]

Immediately prior to the time that Stephen wrote the above passage, the procedure of these courts of summary jurisdiction had been further fixed by the *Summary Jurisdiction Act, 1879*.[29] By 1883 the limit of the magistrates' powers to inflict punishment was in most cases three months imprisonment and hard labour.[30]

Such was the state of the law when Stephen produced his *English Draft Code* in 1879[31] and *A History of the Criminal Law of England* in 1883.[32] Stephen was clear as to what he thought the purpose of criminal procedure to be:

> The law of criminal procedure consists of a body of regulations intended to procure the punishment of certain specified acts, and its merits depend entirely on the degree to which, and the expense of all kinds at which it attains those objects.[33]

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27. H.E. Taschereau, *The Criminal Code of Canada, as amended in 1893* (Toronto: Carswell, 1980) at 710.

28. *Supra*, note 18, vol. 1 at 123-4.

29. 42-43 Vict., c. 49.

30. See Stephen, *supra*, note 18, vol. 1 at 125. Stephen states at pages 125-6, that "[i]n the case of adults pleading guilty, it was six months' imprisonment and hard labour. In the case of children under twelve, one month's imprisonment, and in the case of boys under sixteen and twelve, whipping to the extent of twelve and six strokes of a birch respectively."

31. *Supra*, note 19.

32. *Supra*, note 18.

33. *Ibid.*, vol. 2 at 75.

About the classification of offences, Stephen said:

> It is remarkable that the classification of crimes as felonies and misdemeanours should be the only one known to the law of England. ... [U]pon the whole it may be said that no classification of crimes exists in our law except one, which has become antiquated and unmeaning.[34]

Stephen decided after "much consideration of the matter" that the classification of crimes as felonies or misdemeanours was no longer desirable.[35]

It has been the conventional view, at least in Canada, that the *English Draft Code* of 1879[36] and its derivative, *The Criminal Code, 1892*,[37] established a new classification scheme which divided offences into those punishable by indictment and those punishable on summary conviction. The conventional view is based in large part on the statement by Stephen that "[t]here is no practical use in any classification of crimes unless the nature of the subject is such that it is possible to make the same provisions for all crimes which belong to each class."[38]

This quotation, however, has been taken out of context. It was not intended as an assertion, but rather as a conclusion that Stephen had reached based on his belief that the same provisions could not be made for all crimes belonging to each class. As he said:

> There are four points in which crimes must differ from each other. They are as follows:
> 1. Different crimes must be tried in different courts.
> 2. Different crimes must be subjected to different maximum punishments.
> 3. Some crimes ought and some ought not to render the offender liable to arrest without warrant.
> 4. Persons charged with some crimes ought, and persons tried for other crimes ought not to have a right to be bailed till trial.
>
> Each of these four distinctions depends upon a different principle, so that a crime may as to some of these distinctions belong to what might be called the higher, and as to the others to the lower class.[39]

Stephen gave examples of various instances where the treatment of certain acts could not be uniform and concluded that:

> A classification which had different general names for the various combinations which might be made out of the various distinctions mentioned would be extremely intricate and

34. *Ibid.*, vol. 2 at 193-4.

35. *Ibid.*, vol. 2 at 194.

36. *Supra*, note 19.

37. 55-56 Vict., c. 29 [hereinafter 1892 *Code*].

38. *Supra*, note 18, vol. 2 at 194.

39. *Ibid.*, vol. 2 at 194-5.

> technical. A classification which did not recognize them would be of little use. Hence, the most convenient course in practice is to have no classification at all.[40]

Stephen noted further:

> In the Draft Criminal Code the distinction between felony and misdemeanour was omitted, and whenever an offence was defined it was expressly stated whether the offender was to be entitled to be bailed and was liable to be arrested without warrant.[41]

Accordingly, each crime was to have its major procedures set out. In our present *Criminal Code*, the particularization of the penalty for indictable offences is the most notable vestige of this idea.

It is significant that Stephen did not think of offences punishable by summary conviction as a particularly distinct category of offence: "For this class of offences which are extremely numerous in our law we have no distinct name."[42]

Offences punishable by summary conviction would not necessarily have been thought of as crimes in Stephen's time, and whether they were or were not was entirely irrelevant to him, as he was drafting a Code for a unitary state. Only in the Canadian constitutional context has the issue of whether an offence is a crime or not become significant. It is in this latter context that offences punishable on summary conviction came to be thought of as a distinct category or class of crimes.

Although Stephen's *English Draft Code*[43] was not adopted in the United Kingdom, it was adopted in large part in Canada by the Dominion Parliament in 1892 and was proclaimed in force in 1893.[44] The *English Draft Code* of 1879 had proposed that each offence should be designated as liable to summary arrest or not and bailable at discretion only or not.[45] All trials were to be conducted in the same manner, however, and the provisions on indictments were to apply to all offences alike.

An examination of the more important provisions of the 1892 *Code* reveals that they reflected Stephen's original intention that there was to be no system of classification of offences. Section 538 (now section 426) provided that every superior court had the power to try any indictable offence. The limitation as to indictable offences only is significant because only indictable offences would have been considered

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40. *Ibid.*, vol. 2 at 196.

41. *Ibid.*, vol. 2 at 194; see also vol. 1 at 508.

42. *Ibid.*, vol. 2 at 194; see also vol. 1 at 3-4.

43. *Supra*, note 19.

44. G.W. Burbidge, *A Digest of the Criminal Law of Canada* (Toronto: Carswell, 1890) at art. 15.

45. *Supra*, note 19 at 15.

as "crimes" by Stephen.[46] Provisions on limitation periods are equally illustrative. Although the present *Criminal Code* provides for very few limitation periods for indictable offences,[47] this was not the case with the original 1892 *Code*. A close reading of section 551 of the 1892 *Code* indicates that the existence of limitation periods was not tied to any other procedure or categorization.[48] Nor was the distinction between offences punishable by indictment and those punishable by summary conviction relevant; a six-month limitation period applied to unlawful drilling (section 87) and being unlawfully drilled (section 88), both punishable by indictment, whereas a three-year limitation period applied to falsely representing that goods were made by a person holding a royal warrant (section 451), which was punishable on summary conviction.

The 1892 *Code* maintained Stephen's original intention to provide specifically for the incidents of arrest with respect to each offence. It listed the offences for which a person could be arrested without warrant. In addition to the specific lists set out in subsections 552(1) and 552(2), subsections 552(3) to 552(7) provided more general provisions.[48] The 1892 *Code* was not, however, true to Stephen's original intention about bail provisions. Bail procedures were not differentiated among offences. The only distinctions made were with respect to treasons, offences punishable by death, and other offences against the Queen's authority and person. In these cases, bail could be granted only by a superior court.

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46. 1892 *Code*, *supra*, note 37, s. 540 [now *Criminal Code*, s. 427] enumerated those offences which were in the exclusive jurisdiction of the superior courts.

47. The following are the limitation periods for indictable offences set out in the present *Criminal Code*.

    Three years: ss. 46(2)(*a*) and 48(1), treason involving use of force or violence.

    One year: s. 151, seduction of female between sixteen and eighteen; s. 152, seduction under promise of marriage; s. 153, sexual intercourse with female employee; s. 166, parent or guardian procuring defilement; s. 167, householder permitting defilement; s. 168, corrupting children; s. 195, procuring.

    Six days: ss. 47 and 48(2)(*a*), treason by openly spoken words.

48. The following are the limitation periods set out in section 551 of the 1892 *Code*.

    Three years: s. 65, treason; s. 69, treasonable offences; Part XXXIII, fraudulent marking.

    Two years: s. 133, fraud upon the government; s. 136, corrupt practice in municipal affairs; s. 279, unlawfully solemnizing marriage.

    One year: s. 83, opposing reading of Riot Act and assembling after proclamation; s. 113, refusing to deliver weapon to justice; s. 114, coming armed near public meeting; s. 115, lying in wait near public meeting; s. 181, seduction of girl under sixteen; s. 182, seduction under promise of marriage; s. 183, seduction of a ward, etc.; s. 185, unlawfully defiling women; s. 186, parent or guardian procuring defilement of girl; s. 187, householders permitting defilement of girls on their premises.

    Six months: s. 87, unlawful drilling; s. 88, being unlawfully drilled; s. 102, having possession of arms for purposes dangerous to the public peace; s. 157(*d*), proprietor of newspaper publishing advertisement offering reward for recovery of stolen property.

    Three months: ss. 512 and 513, cruelty to animals; s. 514, railways violating provisions relating to conveyance of cattle; s. 515, refusing peace officer admission to car, etc.

    One month: s. 103, and ss. 105-111 inclusive, improper use of offensive weapons.

    Six days: ss. 65 and 69, treason by word.

Section 783 of the 1892 *Code* was a precursor to our present section 483, which provides for the summary trial of indictable offences. Section 783 contained a list of those offences which could be tried summarily.[49] Section 787 provided that if a person was convicted of a paragraph 783(*a*) or (*b*) offence, the magistrate could sentence him to up to six months imprisonment. For any other section 783 offence the maximum penalty was six months, a $100 fine, or both.

For the most part, the 1892 *Code* followed Stephen's conviction that offences not be subject to any classification scheme. The division of offences that now exists has been grafted onto our *Criminal Code* and is due in large part to the constitutional realities of Canada. This division was not a natural outgrowth of the original 1892 *Code*.

What the Commission now proposes is a classification scheme consistent with the general development of the *Criminal Code*, but free from the historical anomalies that have made it so unnecessarily complex. Unlike Stephen, we are not convinced of the futility of constructing a system of classification. We explain elsewhere in this Working Paper that an intelligent classification system can align procedures with classes of crime in a way that greatly simplifies the application of those procedures. As a result, criminal procedure can become less anomalous, more comprehensible.

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49. "783. Whenever any person is charged before a magistrate,

(*a*) with having committed theft, or obtained money or property by false pretenses, or unlawfully received stolen property, and the value of the property alleged to have been stolen, obtained or received, does not, in the judgment of the magistrate, exceed ten dollars; or

(*b*) with having attempted to commit theft; or

(*c*) with having committed an aggravated assault by unlawfully and maliciously inflicting upon any other person, either with or without a weapon or instrument, any grievous bodily harm, or by unlawfully and maliciously wounding any other person; or

(*d*) with having committed an assault upon any female whatsoever, or upon any male child whose age does not, in the opinion of the magistrate, exceed fourteen years, such assault being of a nature which cannot, in the opinion of the magistrate, be sufficiently punished by a summary conviction before him under any other part of this Act, and such assault, if upon a female, not amounting, in his opinion, to an assault with intent to commit a rape; or

(*e*) with having assaulted, obstructed, molested or hindered *any peace officer or public officer* in the lawful performance of his duty, or with intent to prevent the performance thereof; or

(*f*) with keeping or being an inmate, or habitual frequenter of any disorderly house, house of ill-fame or bawdy-house; or

(*g*) with using or knowingly allowing any part of any premises under his control to be used —

(i) for the purpose of recording or registering any bet or wager, or selling any pool; or

(ii) keeping, exhibiting, or employing, or knowingly allowing to be kept, exhibited or employed, any device or apparatus for the purpose of recording or registering any bet or wager, or selling any pool; or

(*h*) becoming the custodian or depositary of any money, property, or valuable thing staked, wagered or pledged; or

(*i*) recording or registering any bet or wager, or selling any pool, upon the result of any political or municipal election, or of any race, or of any contest or trial of skill or endurance of man or beast —

the magistrate may, subject to the provisions hereinafter made, hear and determine the charge in a summary way. R.S.C., c. 176, s. 3." [Emphasis added]

I. Summary Trial of Indictable Offences: A Brief History

The summary trial of indictable offences was first made possible by the *Administration of Criminal Justice Act, 1855*.[50] If the accused consented, certain indictable offences could be tried summarily. The number of such offences was increased by the *Summary Jurisdiction Act, 1879*.[51]

In the 1892 *Code*, relatively few offences could be tried summarily. They were listed in section 783. They included theft, obtaining money or property by false pretences, unlawfully receiving stolen property where the value of the property was not more than ten dollars, attempted theft, aggravated assault, assaulting a female, assaulting a male minor, obstructing a peace officer, keeping or being an inmate of a bawdy-house, keeping a gaming-house, betting or holding wagers. The jurisdiction of the magistrate was absolute — not dependent on an accused's consent — where the person was charged with keeping or being an inmate or *habitué* of any disorderly house, house of ill-fame, or bawdy-house, or where the accused was a seafaring person and only transiently in Canada. In addition, the magistrate's jurisdiction was absolute in all cases in Prince Edward Island or in the district of Keewatin. Section 784, which established such absolute jurisdiction, was the precursor of our present section 483.

The absolute jurisdiction of a magistrate over offences which could be tried summarily expanded gradually across Canada. By 1906, section 776 of the *Code* provided that the jurisdiction of a magistrate in the provinces of British Columbia, Prince Edward Island, Saskatchewan, Alberta, the Northwest Territories and the Yukon Territory was absolute over the listed offences for which the accused could be tried summarily.[52] In all other provinces, the magistrate required the consent of the accused to try the offence. There was one exception. The magistrate had absolute jurisdiction if he was in a city with a population of not less than 25,000 and if the accused was charged with theft, obtaining property by false pretences, or receiving stolen property of ten dollars' value or less.

There was an advantage to the accused in being tried summarily. He could be sentenced only to a maximum of six months imprisonment and, where the offence was not a theft offence, a fine.

In the sixty years prior to the 1953-54 revision of the *Criminal Code*,[53] only two additions were made to the list of offences within the absolute jurisdiction of the magistrate. In 1920, offences with respect to frauds in regard to collections of fares

50. (U.K.), 18 & 19 Vict., c. 126.

51. (U.K.), 42 & 43 Vict., c. 49, First Schedule.

52. *Criminal Code*, R.S.C. 1906, c. 146, s. 776.

53. S.C. 1953-54, c. 51, s. 467.

and tolls were added.[54] In 1921, the *Criminal Code* made the playing of "three-card monte" an offence.[55]

The 1953-54 revision of the *Criminal Code* reorganized the list of offences falling within the absolute jurisdiction of the magistrate. The list now included obstructing public or peace officers, keeping a gaming or betting house, offences with respect to book-making, pool-selling and lotteries, cheating at play, keeping a common bawdy-house, assaults, assaulting a public or peace officer, and frauds in relation to fares. Indecent assault offences, which had been in the absolute jurisdiction of the magistrate, were removed.[56]

The 1953-54 revision effected two other important changes. The absolute jurisdiction of magistrates over the "listed" offences was extended across Canada. The more important change lay in the removal of the previous limitations on the magistrate's powers to sentence. The fact that the trial was summary no longer limited the magistrate to pronouncing a maximum penalty of six months imprisonment, a fine, or both. This substantially increased the potential penalties for indictable offences tried summarily.[57]

Since 1953-54 the only additions to the list of offences which could be tried summarily were: driving while disqualified, introduced by the 1960-61 amendments;[58] and mischief in relation to property other than property that is a testamentary instrument or the value of which exceeds one thousand dollars. This latter offence (a hybrid, not an "absolute jurisdiction" indictable offence) was introduced by the *Criminal Law Amendment Act, 1985*,[59] and modified an earlier mischief offence contained in section 387 of the *Criminal Code*. The offences of assault and assaulting a peace officer were removed from the list by the 1972 amendments.[60] Such offences are now tried before a provincial court judge.

II. Hybrid Offences: A Brief History

Hybrid offences developed in England during the 1800s, although as Thomas observes:

> It is difficult to identify the exact point in history at which the hybrid offence ... emerged, but it probably appeared not long after the trend towards summary trial of

54. S.C. 1920, c. 43, s. 9(1).

55. S.C. 1921, c. 25, s. 7(1).

56. S.C. 1953-54, c. 51, s. 467.

57. S.C. 1953-54, c. 51, s. 467.

58. S.C. 1960-61, c. 43, s. 4.

59. S.C. 1985, c. 19, s. 58(2).

60. S.C. 1972, c. 13, s. 40.

> indictable offences began [in 1855]. Certainly a fair number of hybrid offences can be found in statutes of the 1870s and 1880s and the device is well established by the turn of the century.[61]

As it was derived from Stephen's *English Draft Code*,[62] the 1892 *Code* saw certain offences designated as hybrids. Yet both in England and Canada, no specific procedure was provided for choosing the mode of trial. The procedure developed differently in each country.

A. The Development in England

In England the matter was first regulated by section 28 of the *Criminal Justice Act, 1948*.[63] Where a person was charged with a hybrid offence, the court could decide whether to try the case summarily only if the prosecutor so applied at the outset of the case.

The court could, in addition, embark on a summary trial at any time during the hearing if it appeared to the court, having regard both to representations made by both parties and the nature of the case, that it was proper to do so.

The English court's central position in deciding how an offence should be tried was maintained with the reclassification of offences in 1977,[64] following the report of the James Committee.[65] A new class of offences was established, called offences "triable either way." With such offences, the court affords the prosecution and then the accused an opportunity to make representations about the appropriate mode of trial, a markedly different approach from that prevalent in Canada. The court looks at the nature of the case, the seriousness of the circumstances, the adequacy of the punishment a magistrate could inflict, and any other circumstances. If the court decides that the offence is more suited to trial on indictment, it must tell the accused and proceed to inquire. If it decides otherwise, it must explain to the accused that he can consent to be tried summarily or that, if he wishes, he can be tried by a judge and jury.[66]

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61. D.A. Thomas, "Committals for Trial and Sentence: The Case for Simplification" [1972] Crim. L.R. 477 at 484.

62. *Supra*, note 19.

63. (U.K.), 12 & 13 Geo. 6, c. 58.

64. *Criminal Law Act 1977*, (U.K.), 1977, c. 45, s. 15.

65. U.K., H.O., "The Distribution of Criminal Business between the Crown Court and Magistrate's Courts: Report of the Interdepartmental Committee," Cmnd. 6323 (London: HMSO, 1975).

66. *Criminal Law Act 1977*, (U.K.), 1977, c. 45.

B. The Development in Canada

Canada developed a different method for regulating the power to proceed by indictment or by summary conviction. In Canada, the choice over mode of trial resides solely within the control of the prosecutor. The first reported comment on the use of the power in Canada was in *R.* v. *Court of Sessions of the Peace, ex parte Lafleur*. The Québec Court of Appeal reasoned:

> If an authority such as the Attorney-General can have the right to decide whether or not a person shall be prosecuted, surely he may, if authorized by statute, have the right to decide what form the prosecution shall take.[67]

This reasoning, although explicitly approved of by the Supreme Court of Canada in *Smythe* v. *R.*,[68] ignored the historical development of the power in England. It also ignored substantial fetters which had been placed on its use there.

The profusion of hybrids in our *Criminal Code* is a relatively recent phenomenon. There were relatively few hybrids in the 1892 *Code*. Fewer still were created in the next sixty years. There were only twelve hybrids in the *Code* immediately prior to the 1953-54 revision. The 1953-54 *Code* increased that number by eight. A further five hybrid offences were added over the next thirteen years.[69]

The number of hybrids has exploded since 1968. Many *Code* offences or groups of offences have been created or converted into hybrids since that date, far in excess of the number of hybrids created in the previous seventy-five years.

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67. (1966), [1967] 3 C.C.C. 244 at 248.

68. (1971), [1971] S.C.R. 680, 3 C.C.C. (2d) 366 [hereinafter *Smythe*].

69. See Appendix A, *infra*.

CHAPTER FOUR

Classification Theory and a New Classification Scheme

Classification is a part of everyday life. The *Encyclopaedia Britannica*, in discussing classification theory, notes that most practical activities involve classification — buying commodities, for example. Equally, classification may be involved in an attempt at a theoretical understanding of aspects of reality. Classification provides a means to exhibit relations that are helpful in locating information.

The *Encyclopaedia* continues:

> [... a classification of a domain of things] coincides with what, in the mathematical theory of sets, is called a "partition": a division of a set of objects into subsets is a partition if and only if
>
> 1. no two subsets have any element in common and
>
> 2. all of the subsets together contain all of the members of the partitioned set;
>
> ...
>
> A criterion for class membership may be either a simple characteristic ... or a compound characteristic ... so that possession of the characteristic is a necessary and sufficient condition for an object's membership in the class.[70]

Our present *Criminal Code* contains an arrangement which might loosely be called a classification scheme. The scheme is composed of three classes — summary conviction offences, indictable offences and hybrid offences.

However, this classification scheme does not comply with the principles outlined above (the classes are not mutually exclusive or mutually exhaustive). There is little *utility* to the scheme. Ideally a classification scheme should enable us to ascertain what procedures apply to offences within a given class. Yet, under the present *Criminal Code* arrangement, many procedures apply differentially to offences within the same class; our criminal procedure is riddled with exceptions and anomalies.

To say that an offence is indictable does not, on that basis alone, permit a determination of all the criminal procedures that apply. For example, we cannot determine the applicable procedures governing arrest or pretrial release. Nor can we determine if the arrested person will have a right to jury trial or not, or whether he must be tried before a provincial court judge.

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70. *Encyclopaedia Britannica*, 15th ed., vol. 4 at 691, s.v. "Classification Theory."

This is the fundamental failing of our present system of classification. It fails as a means of establishing order in the application of procedures. It leaves too much uncertainty about the procedures that apply to crimes within a given class. It is not *useful* as a means of exhibiting the relationship between crimes and procedures.

In part, the fault lies with the system of classification. To a greater degree, fault lies with our system of criminal procedure. The solution is twofold: revise the system of classification, and rid procedure of unnecessary distinctions in its application to crimes of a given class.

In ideal terms, we should assign crimes to a given class because of some shared characteristic or group of characteristics (for example, all crimes with maximum penalties of two years or less would fall into one class; all crimes with maximum penalties above two years would fall into another). We could then use this class system as a basis for assigning procedures. One class might permit trial by jury and the holding of a preliminary inquiry for each offence within the class. The other class might permit no preliminary inquiry and no trial by jury. Thus, simply by identifying a crime as a member of a class, we would know the procedures that apply to the crime, from arrest through to disposition of the convicted offender.

However, theory must accommodate the requirements of a less perfect world. Differences in procedure may be required, even within a given class. Some crimes might, for reasons such as federal/provincial competency, lead us in some cases to require trial by superior court judge, while the majority of crimes in the class would nonetheless be triable by a provincial court judge. Similarly, other pragmatic considerations may lead us to recommend that wiretapping might be permitted to investigate some crimes within a class, but not others.

Instead of allowing for substantial variations of procedure within a class, we could, in order to preserve the integrity of our classification system, enlarge the number of classes. Serious crimes which ought to require trial by superior court judge might be placed in a separate class. However, too many classes could conceivably create as much confusion as could the application of different procedures within one class.

A middle ground exists. It rests on subjective assumptions about where the balance should rest between the number of classes and the consistent application of procedures to all crimes within a class.

We favour keeping the number of classes to a minimum. We propose a two-class system of crimes. This entails two different levels of procedure. We temper this theoretical construct, however, by accepting that in carefully circumscribed situations procedures may vary even within a class. It is not a perfect classification system, but it is a compromise that will enhance the comprehensibility of our criminal procedure.

Our classification system will make it clear how an offence falling within a certain classification will be dealt with at all stages of the criminal process. In this chapter, the

Commission proposes such a system. The classification scheme applies to all crimes enacted by the Parliament of Canada. It is systematic in that, while it provides for a different manner of disposing of each category of crime, as nearly as possible, it treats all crimes in each category in the same way. It is simpler to understand and explain, and is more easily applied to the classification of any new crime than is the classification system in our present *Criminal Code*.

Since we focus initially upon two classes of *crimes*, it is important that there be a shared understanding of what is and what is not a "crime." The Commission in Report 3, *Our Criminal Law*, attempted to draw a distinction between those acts or omissions that should be termed criminal and those which should not:

> In principle the criminal law's concern is with seriously wrongful acts violating common standards of decency and humanity. In practice only a minority of criminal offences fall under this heading. The majority, which total more than 20,000, are not necessarily wrong in themselves but prohibited for expediency. Such acts have to do with commerce, trade, industry and other matters which must be regulated in the general interest of society; and criminal prohibition is a well-tried and useful method of regulation. The regulatory offence, therefore, is here to stay. Nor have we any objection to it. What we do object to is diluting criminal law's basic message by jumbling together wrongful acts and acts merely prohibited for convenience. Once [we] treat the regulatory sector as seriously as the Criminal Code, ... we may end up thinking real crimes no more important than mere regulatory offences. The two must be distinguished, ...[71]

The Commission went on to affirm the scope of criminal law:

> If criminal law's function is to reaffirm fundamental values, then it must concern itself with "real crimes" only and not with the plethora of "regulatory offences" found throughout our laws. Our Criminal Code should contain only such acts as are not only punishable but also *wrong* — acts contravening fundamental values. All other offences must remain outside the Code.
>
> Nor is this classification a mere formality. It is not just calling some offences "crimes" and putting them in the Code and calling others "violations" or some other name and putting them somewhere else. Rather, it means dealing with the two under two distinct régimes. Real crimes need a criminal régime, violations a non-criminal régime.
>
> The criminal régime bears three basic features. First, conviction of a crime carries *stigma*: the offender is condemned for doing wrong. Second, the inquiry into guilt or innocence is a serious, solemn matter — the sort of trial quite out of place for minor offences and for violations. Third, only real crimes deserve the pre-eminently shameful punishment of imprisonment; prison should be excluded from the list of penalties prescribed for violations. Stigma, the possibility of solemn trial, imprisonment — these are the hallmarks of the criminal régime. They have to be reserved for real crimes.[72]

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71. Law Reform Commission of Canada, *Our Criminal Law* (Report 3) (Ottawa: Information Canada, 1976) at 11. The Commission meant the term "criminal" in the sense of "penal" and not in the sense of an act or omission prohibited by the *Criminal Code*.

72. *Ibid.* at 19-20.

The Commission did not detail which offences are real crimes and which are not. It did, however, specify the three characteristics that any criminal régime should possess and maintained that the régimes for real crimes and other offences be separate.

The nature of Canadian Confederation adds a constitutional dimension to the question of what is a "crime." At the time that the Commission reported to Parliament in *Our Criminal Law*,[73] it was generally assumed[74] that a series of penal enactments including the *Narcotic Control Act*[75] and the *Food and Drugs Act*[76] were enacted by Parliament pursuant to its constitutional head of power with respect to criminal law and procedure — subsection 91(27) of the *Constitution Act, 1867*.[77] That was the position until Mr. Justice Pigeon's judgment for the majority in *R. v. Hauser*,[78] which dealt with the *Narcotic Control Act*:

> However, as is made abundantly clear by head 29 of s. 91, there can be no doubt as to the existence of federal power to provide for the imposition of penalties for the violation of any federal legislation, entirely apart from the authority over criminal law. That a distinction is to be made, appears clearly from the many cases holding that the criminal law power is really not unlimited, that it cannot be used as a device for any purpose.[79]

Mr. Justice Pigeon traced the development of drug abuse and concluded that:

> In my view, the most important consideration for classifying the *Narcotic Control Act* as legislation enacted under the general residual federal power, is that this is essentially legislation adopted to deal with a genuinely new problem which did not exist at the time of Confederation .... The subject-matter of this legislation is thus properly to be dealt with on the same footing as such other new developments as aviation ... and radio communications ....[80]

This position was buttressed in 1983 by the same court in *A.G. of Canada* v. *Canadian National Transportation*.[81] Argument centred on whether the constitutional validity of paragraph 32(1)(*c*) of the *Combines Investigation Act*[82] depended on the criminal law power stated in subsection 91(27) of the *Constitution Act, 1867*.

Chief Justice Laskin, speaking for the majority, assumed that the validity of paragraph 32(1)(*c*) of the *Combines Investigation Act* rested only on the federal criminal

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73. *Supra*, note 71.

74. See *Industrial Acceptance Corp.* v. *The Queen* (1953), [1953] 2 S.C.R. 273, [1953] 4 D.L.R. 369, 107 C.C.C. 1.

75. R.S.C. 1970, c. N-1.

76. R.S.C. 1970, c. F-27.

77. 30 & 31 Vict., c. 3 [hereinafter *Constitution Act, 1867*].

78. *R.* v. *Hauser* (1979), [1979] 1 S.C.R. 984, 98 D.L.R. (3d) 193, [1979] 5 W.W.R. 1, 46 C.C.C. (2d) 481, 8 C.R. (3d) 89 [hereinafter *Hauser* cited to S.C.R.].

79. *Ibid.* at 996.

80. *Ibid.* at 1000-1.

81. (1983), [1983] 2 S.C.R. 206, 38 C.R. (3d) 97 [hereinafter *Canadian National Transportation*].

82. R.S.C. 1970, c. C-23 [hereinafter *Combines Investigation Act*].

law power under subsection 91(27) of the *Constitution Act, 1867*. Mr. Justice Dickson concluded, however, that paragraph 32(1)(*c*) of the *Act* was valid under subsection 91(27), *and* under the federal trade and commerce power set forth in subsection 91(2) of the *Constitution Act, 1867*. Mr. Justice Beetz and Mr. Justice Lamer agreed that paragraph 32(1)(*c*) of the *Combines Investigation Act* was validly enacted under the subsection 91(2) trade and commerce power. They did not address whether paragraph 32(1)(*c*) was also valid under subsection 91(27).

It is clearly arguable, on the basis of *Hauser* and the minority views in *Canadian National Transportation*, that a number of offences which might otherwise be termed "real crimes" have been enacted by the Parliament of Canada pursuant to heads of power other than subsection 91(27).

The Commission is presently devising a mechanism to give effect to the recommendation contained in Working Paper 2, *The Meaning of Guilt: Strict Liability*

> [T]hat all serious, obvious and general criminal offences should be contained in the Criminal Code, and should require *mens rea*, and only for these should imprisonment be a possible penalty; and that all offences outside the Criminal Code should as a minimum allow due diligence as a defence and for these in general imprisonment should be excluded.[83]

It is now envisioned that the Commission's proposed code of substantive criminal law will not be *literally* all-encompassing, although all substantive offences (that is, all real crimes) will be referrable to, and governed by, the *Criminal Code*.[84] The new system, therefore, will make provision for the possibility that although all offences contained in the *Criminal Code* would be "real crimes," other "real crimes" could be contained in statutes other than the *Criminal Code*.

The criteria for determining whether an offence would be subject to the régime outlined for crimes in the Code of Criminal Procedure are those contained in the recommendations of our Report 3, *Our Criminal Law*[85] — stigmatization, solemn trial and imprisonment. Of these, the possibility of imprisonment is the most important of the three factors.

In light of the foregoing, the Commission therefore makes the following recommendations:

1. That all offences enacted by the Parliament of Canada be classified as either crimes or infractions.

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83. Law Reform Commission of Canada, *The Meaning of Guilt: Strict Liability* (Working Paper 2) (Ottawa: Information Canada, 1974) at 38.

84. See *supra*, note 1.

85. *Supra*, note 71.

2. That all offences for which a person may, if convicted, be liable to be sentenced to a term of imprisonment as punishment for the offence be termed "crimes."

3. That all other offences for which a person would, if convicted, only be liable to a fine, civil disability, or imprisonment in default of payment of the fine, be termed "infractions."

4. That the Code of Criminal Procedure constitute a régime for the disposition of persons suspected of, or subsequently charged with, the commission of a crime.

5. That a separate régime, an Infractions Procedure Act, be established to provide for the disposition of persons charged with infractions.

The United States Code, the ALI Model Penal Code, the French Penal Code and Code of Criminal Procedure, and certain other codes all assign offences to a particular class on the basis of the penalty which has been legislatively prescribed for the offence. We propose to do so as well.

Penalties are assigned for all *Criminal Code* offences. Their universality means that one will always be able to use the sentence to classify a crime. The penalty is easily capable of measurement; distinguishing classes on the basis of maximum penalties is therefore very simple. The penalty assigned to a crime is arguably one of its most central characteristics. It seems appropriate to use the penalty or sentence prescribed by law as the central reference point for classifying crimes.

A further argument for using the maximum prescribed penalty as the central reference point lies with the inadequacy of other characteristics. Such characteristics might include the type of conduct proscribed (one could, for example, differentiate classes on whether the conduct involved harm to the person or harm to property), difficulties in proof or investigation, or the type of offender. While each characteristic may be valid in distinguishing crimes, none is as fundamentally central as the penalty. It may also be argued that these other characteristics are not always readily identifiable. Furthermore, some of these characteristics are not universal to all crimes. It might therefore be impossible to decide upon the appropriate classification. For example, if one were to distinguish classes of crimes on whether bodily harm or harm to property occurred, how would one classify impaired driving that does not result in accident or injury?

The maximum penalty prescribed by law remains the simplest, most readily ascertainable reference point for constructing a system of classification.

Once Parliament has determined the penalty for a crime (for example, ten years imprisonment), the procedures for the disposition of persons charged should be those provided for that class to which crimes with that penalty belong. Parliament should,

when enacting a crime, refrain from enacting special procedures which would conflict with the procedures provided for that class of crime. If not, the integrity of any system of classification will be compromised.

RECOMMENDATION

6. That the legislatively prescribed maximum penalty determine the class to which a crime belongs.

I. How Many Classifications?

Ideally, a person charged with any criminal offence should have available to him or her all of the procedural advantages and protections which a system of criminal procedure can confer. This, however, would conceivably strain the resources allocated to any system of criminal justice to the breaking-point. (For example, consider the implications for the criminal justice system as a whole, were the elaborate formality of trial by jury mandated every time an individual was charged with shoplifting or petty theft.) Instead, systems of criminal procedure typically afford all of the procedural protections of the criminal justice system only to those individuals in jeopardy of receiving the maximum penalties which the system can impose. A different order of procedural advantages and protections is provided where the penalties are lower. The protections involved remain substantial, whatever the class to which the offence belongs. Also, it is important to note that whatever the level of seriousness of the crime, the protections guaranteed by the *Canadian Charter of Rights and Freedoms*[86] apply. Constitutional protections are not shelved, no matter how "minor" the crime.

At present, the *Criminal Code* provides for six categories of maximum penalties — life imprisonment, fourteen years imprisonment, ten years imprisonment, five years imprisonment, two years imprisonment, and six months imprisonment or a fine, or both. Not all of these various maxima give rise to different procedural consequences, nor is there any reason why each should. A useful classification system would group and differentiate offences into a more limited number of categories.

We suggest two classes of crimes. Our first class encompasses and groups the most serious forms of prohibited conduct. An accused charged with one of these crimes would be entitled to the full panoply of procedural protections which the *Criminal Code* could provide. This class would contain those crimes which are at present punishable by more than two years imprisonment. (Parliament may wish to examine and reassess the classification of these crimes which results from the use of the two-year bench-mark. However, we make no specific recommendations for the alteration of

86. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11 [hereinafter *Charter*].

existing maxima for specific offences in this Working Paper.) Crimes punishable by a maximum of five years, ten years, fourteen years, or life, would all fall within this class of crimes punishable by more than two years imprisonment.

A second class would contain less serious crimes and would provide for a lower period of imprisonment than that reserved for more serious crimes. This class should carry a maximum penalty of two years or less imprisonment. Parliament would still be at liberty to assign to some crimes in this class a maximum penalty, for example, of one year or six months.

The second class of crimes, that is, those punishable by two years or less would contain all existing summary conviction offences punishable by a maximum of six months imprisonment, as well as indictable and hybrid offences carrying a maximum penalty of two years. The class might eventually come to include certain existing hybrid and indictable offences punishable by as much as five years or more where the present penalty is seen by Parliament to be inordinately high and where it could be reduced to fit into the class of less serious crimes. We make no specific recommendation as to the possible reclassification, as crimes punishable by two years or less, of hybrid offences and indictable offences presently carrying maximum punishments in excess of two years. Additional research into the question of the adequacy of sentencing maxima is required before such judgments can be made. In this regard we note endeavours of the Canadian Sentencing Commission which has been expressly empowered to conduct such research and is expected to advise Parliament on these very questions in a forthcoming Report to be tabled early in the new year.

We chose the two-year "cut-off" point for two reasons. A two-year sentence represents the point where an accused at present is sent to a penitentiary, rather than to a provincial facility. A two-year maximum sentence also reflects an important distinction at present between indictable and summary conviction offences. No indictable offence has a maximum possible penalty of less than two years.

Under our proposed scheme, subject to qualification, an offender could not be sentenced to a federal penitentiary upon conviction for a less serious crime. Only where an offender commits a crime falling within our more serious class *and* is sentenced to a term of more than two years would he be placed in a penitentiary. This will require amending section 659 of the *Criminal Code*. Paragraph 659(1)(*b*) provides that a term of *two years or more* shall be served in a penitentiary. The section should be amended so that only sentences of *more than* two years are served in a penitentiary.

In addition, there remains the important question of the appropriate treatment of a person sentenced for two or more crimes. If the sentences are to be served one after the other, they may total more than two years imprisonment. Under the present *Criminal Code* provision (section 659) an offender would be placed in a penitentiary. This is a matter of sentencing policy and requires further study. For the present, we see no convincing reason for altering the law in this regard.

RECOMMENDATIONS

7. That there be two classes of "crimes." The first class would consist of crimes which carry a maximum penalty of more than two years imprisonment. The second class would consist of crimes which carry a maximum penalty of two years or less imprisonment.

8. That those crimes for which an accused, if convicted, is liable to a maximum term of imprisonment of more than two years be termed "crimes punishable by more than two years imprisonment." That those crimes for which an accused, if convicted, is liable to a maximum term of imprisonment of two years or less be termed "crimes punishable by two years or less imprisonment."

9. That imprisonment in a penitentiary be imposed only where an offender has been convicted of a crime punishable by more than two years imprisonment *and* has been sentenced to imprisonment for more than two years (subject to further study on the issue of consecutive sentences for two or more crimes).

In arriving at the nomenclature to be used to describe the new classes of crimes, the Commission examined a variety of possible choices. The terms "felony" and "misdemeanour" were examined. Although initially appealing because of their historical context and their currency in American states, use of the terms was rejected because they might invite historical or comparative analogies possibly inconsistent with the meaning intended to be assigned to them. For similar reasons we rejected using our present "indictable–summary conviction" nomenclature.

II. Infractions

All offences enacted by Parliament for which the penalty provided is not imprisonment, but a fine or other disability, would be termed "infractions." The term "infraction" has been adopted because it is a generally accepted term describing the "least" serious category of offences — those which are not crimes. Since it is intended that all offences in the *Criminal Code* be "crimes" in that they are punishable by at least some term of imprisonment, infractions would be created and governed by federal legislation other than the *Criminal Code*. Infractions would primarily be used to enforce federal regulatory legislation.

A régime contained in a federal Infractions Procedure Act[87] could be modelled upon legislation presently in force in Ontario and British Columbia — the *Provincial Offences Act*,[88] and the *Offence Act*[89] respectively. Both deal with the procedures for the disposition of provincially created offences.

87. See *supra*, Recommendation 5 at 26, and discussion at 29-30.

88. R.S.O. 1980, c. 400.

89. R.S.B.C. 1979, c. 305.

The Ontario *Provincial Offences Act* clearly establishes a non-criminal régime in subsection 2(1):

> The purpose of this Act is to replace the summary conviction procedure for the prosecution of provincial offences, including the provisions adopted by reference to the *Criminal Code* (Canada), with a new procedure that reflects the distinction between provincial offences and criminal offences.[90]

A description of the detailed provisions of a proposed federal infractions enactment is beyond the scope of this Working Paper. However, the major features of the provincial models which merit emulation are well known.

As infractions would not be subject to the sanction of imprisonment and thus are subject to a lower order of penalty, less elaborate procedural requirements would be necessary. An Infractions Procedure Act[91] could conceivably contain provisions requiring the defendant to dispute the allegations contained in the notice or "certificate of offence." If there were no dispute as to liability or quantum of penalty, the court could enter a conviction in the absence of the accused as is done under provincial law. The Act could also adhere to the provincial models and contain specific provisions dealing with the burden of proving exceptions and the awarding of costs. It could establish limitation periods and set out the procedures for appeal, the right to be represented by agent, and provisions for trial *de novo*. Such an Infractions Procedure Act would also have its own specific provisions with respect to arrest, bail and search.

III. Hybrid Offences

The present *Criminal Code* contains some sixty-five offences which may be prosecuted either upon indictment or by summary conviction at the discretion of the Attorney General or his agent.[92] Although the existence of the discretion has been held by the Supreme Court of Canada in *Smythe* not to violate the *Canadian Bill of Rights*[93] protection of equality under the law, there is no doubt that imprecision is introduced into the criminal law by the existence of such discretion. Hybrid offences may yet engender litigation based upon the contention that they violate the equality rights provision of the *Canadian Charter of Rights and Freedoms*.[94]

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90. R.S.O. 1980, c. 400.

91. See *supra*, note 87.

92. See *supra*, note 2.

93. S.C. 1960, c. 44, reprinted in R.S.C. 1970, App. III.

94. *Charter*, *supra*, note 86, s. 15.

As Professor Peter Barton stated in his comment on the *Smythe* case:

> The basic problem inherent in ... the sections in issue in the above cases [which create dual procedure offences] is that someone is authorized to treat a breach of a substantive criminal law as more or less serious, and no guide is given on which he can base his decision.[95]

The Supreme Court of Canada in *Smythe* suggested that the existence of an unfettered discretionary power was not of itself problematic. Yet, given the absence of ascertainable, objective standards (such as statutory criteria or regulations), it is impossible to determine whether the discretion is being exercised fairly or consistently, even within the same judicial district. The almost certainly disparate application of the discretion between individuals translates into a lack of uniformity in the application of the criminal law across Canada. It is questionable whether the criminal law, which is national in scope and was intended to be uniformly applied, should depend on a person's location when prosecuted or on the vagaries of unstructured discretion.

The Supreme Court of Canada in *Smythe* quoted with approval the Québec Court of Appeal's decision in *R.* v. *Court of Sessions of the Peace, ex parte Lafleur* about the historical origins of the power to proceed by indictment or by summary conviction:

> If an authority such as the Attorney-General can have the right to decide whether or not a person shall be prosecuted, surely he may, if authorized by statute, have the right to decide what form the prosecution shall take. I cannot see that the situation is altered because s. 132(2) [of the *Income Tax Act*] provides for a minimum term of imprisonment.[96]

The Supreme Court's view, like that of the Québec Court of Appeal, has been criticized on the basis that it was historically inaccurate:

> In addition I am not at all sure that it is entirely accurate, since I was unable to find any examples in English practice where an Attorney-General or equivalent person had a choice to proceed by felony or misdemeanour for the same substantive offence. This type of decision, then, may not have been part of the discretion exercised in England.[97]

Because there is no oversight and also because there are no criteria, the decision to proceed by indictment or by summary conviction, it has been argued, "must be based on either expediency, politics, or a desire to treat a particular person harshly."[98]

In addition to enhancing the possibility of unfairness in individual cases, dual procedure offences interfere with the systemic integrity of any classification system. Obvious examples are two dual procedure offences which carry lengthy maximum terms of imprisonment when prosecuted by indictment. *Criminal Code* subsection 387(5) (mischief in relation to data) and section 301.1 (theft or forgery of a credit card)

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95. P.G. Barton, "The Power of the Crown to Proceed by Indictment or Summary Conviction" (1971-72) 14 Crim. L.Q. 86 at 90.

96. *Supra*, note 68 at 686.

97. Barton, *supra*, note 95 at 95.

98. *Ibid.* at 96.

are punishable by up to a maximum of ten years imprisonment if prosecuted by indictment. The maximum summary conviction penalty for these two offences cannot exceed six months imprisonment.

If Parliament contemplated that the higher penalty was to apply only when a particular set of aggravating circumstances existed, then Parliament should precisely define which aggravating circumstances it regards as necessary elements for prosecution by indictment. Not to do so in effect delegates legislative authority to the agent of the Attorney General, who is forced to make a determination in each case as to what elements must be present to warrant prosecution by indictment or by summary conviction.

Hybrid offences are also rendered unfair by the operation of limitation periods in our *Criminal Code*. A hybrid offence, when prosecuted by summary conviction, is subject to a limitation period of six months. There is no limitation period if the same conduct is prosecuted by indictment. It distorts the legitimate purposes for which a person charged with a hybrid might be prosecuted by indictment to have the Crown elect prosecution by indictment merely because the summary conviction limitation period has passed. Although it is impossible to say how often such a practice occurs, we have been advised in our consultations that the practice does occur, even if only infrequently. Its occurrence is antithetical to fairness in the administration of criminal justice.

It may perhaps be argued that the prosecutor's discretion over the mode of proceeding with the trial of a hybrid offence is an essential element of his or her work. By taking away this discretion, Crown counsel are less able to tailor the mode of the trial to the circumstances of the offence — by indictment, if the conduct involved is particularly heinous, or by summary conviction if the conduct is less so.

We do not believe that the elimination of hybrids will greatly restrict a Crown counsel's options. The implications of our proposal are not as severe as one might first think; a Crown counsel will retain the option, in some cases, to determine the nature of the proceeding by the charge that he chooses or that he advises the police to lay. Would the conduct of an accused, for example, warrant a charge of careless driving, dangerous operation of a motor vehicle where no bodily harm occurs, dangerous operation where bodily harm occurs, dangerous operation resulting in death, or criminal negligence causing death?

Our final comment as to the desirability of retaining hybrid offences relates to the practical application of the summary conviction or indictment election. As one practising assistant Crown attorney notes: "In practice, the election is often made after a hasty five-second glance at the accused's record and being told what to elect by a police officer."[99] In practice too, the maximum penalty is almost never given where the

99. D.V. MacDougall, "The Crown Election" (1979) 5 C.R. (3d) 315 at 323.

offence is proceeded with by indictment. Experience indicates that where hybrid offences are proceeded with by indictment, the sentence very frequently falls within the summary conviction range — less than six months imprisonment.[100]

RECOMMENDATION

10. That all crimes enacted by the Parliament of Canada fall into one and only one category and no crime could be designated as a Crown option, dual procedure, or hybrid crime.

One point requires clarification. The above recommendation proposes to eliminate hybrid offences. It does not seek to prohibit the creation of crimes that carry a maximum penalty of two years or less for a first conviction, but a greater penalty for a subsequent conviction. One example is the offence of careless use of a firearm (*Criminal Code*, section 84). The maximum penalty for a first offence is two years. The maximum penalty for a second offence is five years. The conduct proscribed in both the first and second occurrence of the crime is identical, yet the first offence would be reclassified as a crime punishable by two years or less. The second offence would be reclassified as a crime punishable by more than two years. Two separate crimes would be created. An element of the "more serious" crime would be a previous conviction for the "less serious" crime.

100. *Ibid.*

CHAPTER FIVE

Implications of the Proposed Scheme

I. General Comments

Adopting our proposed classification system has several implications. All summary conviction offences and all indictable offences punishable by a maximum of two years would be reclassified as crimes punishable by two years or less imprisonment. This would include indictable offences at present within the absolute jurisdiction of a provincial court judge. All indictable offences punishable by more than two years would be reclassified as crimes punishable by a maximum of more than two years. Hybrid offences would be redesignated either as crimes punishable by two years or less imprisonment or as offences punishable by more than two years. Procedures would be realigned to fit with the new categories of the classification scheme. Those procedures might include arrest, pretrial identification, limitation periods, private prosecutions, pretrial release, trial by jury, fines, minimum sentences and appeals. (The Commission has recently released Report 29, *Arrest*,[101] and is preparing another Report on the subject of Compelling the Appearance of an Accused, both Reports being consistent with these proposals.) This will largely eliminate the confusion engendered at present when different procedures apply to crimes falling within the same class.

Limiting the number of classes to two achieves economy of class structure. At the same time, it generally limits the grading of procedural incidents to two. For example, if it were felt necessary at all to differentiate powers of arrest between classes, a maximum of two powers of arrest would be permitted — one for more serious crimes, and one for less serious crimes.

We suggest that a two-class system can accommodate necessary differentiations in procedure. In some cases, the same procedure might apply to both classes of crimes — a "different if necessary, but not necessarily different" philosophy.

Where more than two variations appear necessary within a single procedure (for example, mode of trial), they would be permitted. They would, however, apply

101. Law Reform Commission of Canada, *Arrest* (Report 29) (Ottawa: LRCC, 1986).

uniformly to all crimes within one class or both classes, unless they formed carefully circumscribed exceptions to the classification scheme.

Under headings II to VI of this chapter, we outline the specific implications of adopting the proposed scheme for the present *Criminal Code*. The Commission does so not only to illustrate that the proposed scheme is practicable, but also to indicate what amendments will be required if Parliament chooses to implement the scheme immediately.

II. Reclassifying Absolute Jurisdiction Offences

At present, indictable offences are divided into three categories: those which must be tried by a superior court judge and jury; those which must be tried by a provincial court judge; and those which may according to the election of the accused be tried by a judge and jury, by a judge alone, or by a provincial court judge.

Section 483 indictable offences must be tried summarily by a provincial court judge (they are "absolute jurisdiction" offences) and carry no right to jury. They are an aberration in that all other indictable offences carry a right to a jury trial.

Under our proposed scheme, all crimes punishable by more than two years would carry a right to trial by jury. If we were to reclassify section 483 indictable offences as crimes punishable by more than two years, they would then attract that same right to trial by jury.

We recommend, however, that all section 483 indictable offences be reclassified as crimes punishable by two years or less. We take this position for several reasons. First, the maximum sentence for our proposed category of less serious crimes is identical to the maximum sentence applicable to section 483 offences (two years). Second, section 483 offences are at present tried summarily. There is thus no indictment and no right to jury. Reclassifying section 483 offences as crimes punishable by two years or less would do less violence to the procedures that apply to them at present than would classifying them as more serious crimes. Third, available sentencing data, to the extent that it is relevant in view of the present two-year maximum, suggests that classifying these offences as crimes punishable by two years or less will more closely reflect sentencing practices. Sentences at present generally fall substantially short of one year.

Finally, where doubt exists, we favour placing absolute jurisdiction offences in the class of less serious crimes. Only more serious crimes should be classified as punishable by two years or more. It will then be clear that the commission of one of the crimes in the "more than two years" category is among the most undesirable forms of anti-social conduct.

Absolute jurisdiction offences, once reclassified in this way, will no longer be anomalies. They will fall squarely within the class of less serious crimes. The procedures will be those applicable to less serious crimes. There will be none of the confusion that exists today when absolute jurisdiction offences are called indictable, but are treated procedurally as summary conviction offences.

III. Reclassifying Indictable Offences Not Covered by Section 483

We have recommended that section 483 indictable offences be reclassified as crimes punishable by two years or less imprisonment. Here, we address the appropriate treatment of other indictable offences.

The *Criminal Code* sets specific penalties for most indictable offences. Those penalties are two years, five years, ten years, fourteen years or life imprisonment. Where no specific penalty is provided, section 658 provides a maximum term of five years imprisonment.

A. Offences Punishable by Two Years

At present, offences punishable by two years carry a right to a jury trial, unless they fall within the absolute jurisdiction of a provincial court judge under section 483. Reclassifying these offences not covered by section 483 as crimes punishable by more than two years would retain the right to a jury trial. It would also bring into play the full range of procedural protections reserved for more serious crimes. Such a reclassification would permit the application of procedures similar to those applying generally to indictable offences at present. Nonetheless, such a reclassification might be seen as "elevating" the status of the offence.

Reclassifying these offences as less serious crimes, on the other hand, would remove the right to jury and reduce some procedural protections. Yet the sentence structure for our proposed lower class of crimes punishable by two years or less more accurately reflects the present sentence structure for indictable offences punishable by two years.

We are reluctant to place indictable offences punishable by two years in the class of more serious crimes (punishable by more than two years) in the absence of a demonstrated need to do so. We recommend classifying such offences as crimes punishable by two years or less. If Parliament, on the advice of the Canadian Sentencing Commission or some other body, feels a particular type of proscribed conduct to be sufficiently serious to warrant labelling it a more serious crime, it can reclassify the crime.

RECOMMENDATION

11. That all indictable offences punishable by a maximum of two years imprisonment be reclassified as crimes punishable by two years or less imprisonment.

B. Offences Punishable by More Than Two Years

Indictable offences punishable by more than two years are the most serious in the *Criminal Code* and accordingly should be considered the more serious crimes in our classification scheme. Current maximum penalties are a statement by Parliament that the conduct is seriously anti-social. An accused finds himself in great jeopardy when charged with such offences and should have the highest level of procedural protection available. (It would remain open to Parliament, of course, to reassess the perceived seriousness of the crime and to reclassify it as a less serious crime.)

RECOMMENDATION

12. That all indictable offences punishable by more than two years be reclassified as crimes punishable by more than two years imprisonment.

IV. Reclassifying Summary Conviction Offences

All summary conviction offences at present are punishable by a maximum sentence of six months imprisonment. There is no right to jury. The trial is conducted as a summary proceeding and takes place before a provincial court judge. The conduct proscribed is not as serious as that proscribed by indictable offences. Some summary conviction offences may even be sufficiently minor to be deleted from the *Criminal Code* and placed in a statute such as our proposed Infractions Procedure Act.[102] Clearly, summary conviction offences are most appropriately classified as less serious crimes punishable by two years or less imprisonment.

The maximum penalty attaching to these reclassified summary offences could range up to two years imprisonment. Parliament would assign the specific penalty for each crime.

RECOMMENDATION

13. That all summary conviction offences be reclassified as crimes punishable by two years or less imprisonment.

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102. *Supra*, note 87.

V. Reclassifying Hybrids

Our revised system of classification will have no hybrid offences. All hybrids should be reclassified so as to fall into the one or the other of our two classes of crime. Each offence thus will either be punishable by two years or less or punishable by more than two years imprisonment.

Except for one group of hybrid offences, discussed below, we take no position on the specific classification that is appropriate for crimes that were formerly hybrids. Some hybrid offences show extreme variations between the summary conviction penalty and the penalty on indictment. Mischief in relation to data, for example, attracts a maximum ten-year penalty if prosecuted by indictment, and only six months if prosecuted by summary conviction.

Our one exception relates to those hybrid offences punishable on indictment by two years — the maximum penalty we have established for our category of less serious crimes. All hybrids now punishable by a maximum of two years should be classified as crimes punishable by two years or less imprisonment.

RECOMMENDATION

14. That all hybrid offences punishable by a maximum of two years imprisonment be reclassified as crimes punishable by two years or less imprisonment.

The sentencing data contained in Appendix B shows that actual sentences for many hybrid offences fall within the range for summary conviction offences, even where the maximum possible penalty exceeds two years. Some hybrid offences with potential penalties greater than two years on indictment could with justification, therefore, also be reclassified as crimes punishable by two years or less. However, we make no recommendation on this point. Empirical data on sentencing practices is too scant to permit an informed decision. (We are advised that the Canadian Sentencing Commission is presently updating the statistical information in this area and is also improving the data base on sentencing practices generally. This will greatly assist in the task of determining the appropriate single classification for an offence.)

Also, many hybrid offences are relatively newly created. The fact of their enactment, and of their maxima when prosecuted on indictment, is testimony to Parliament's serious regard of them. However, the dearth of practical experience with them renders their reclassification on other than pure policy grounds difficult, if not impossible.

Furthermore, specific public policy considerations — for example, the need to restrict the sale and use of firearms — may militate against classifying a crime as "less serious" even where sentencing practices would otherwise warrant such a move.

With the reclassification of all hybrid offences, procedure will be simplified. The conduct will fall into, and be charged under, one of our two classes of crime. There will be no need for special procedures for a third shifting class of offences. One result of this will be that specific arrest and pretrial release provisions respecting hybrid offences in sections 450 to 455 inclusive will disappear. The ability to circumvent limitation periods by proceeding on indictment will also disappear. Either a two-year limitation period will apply, or no limitation period will apply. (We discuss limitation periods later in this Working Paper on page 44.) An accused will be certain, from the time that the charge is laid, whether he is being charged with a less serious or a more serious crime. He will know from the time of the charge whether he may, upon conviction, serve his sentence in a federal penitentiary or in a provincial facility.

VI. Realigning the Procedures

Under this heading, we address the implications for procedure of our new classification scheme. We do not address every type of procedure that applies to crimes. Rather, we examine a number of major procedures and indicate how these procedures apply to our revised classification scheme.

A. The General Rule

At present, subsection 115(1) of the *Criminal Code* provides that where there is no penalty or punishment specifically provided for the wilful violation of a federal Act, that violation constitutes an indictable offence and the accused is liable to imprisonment for two years. Section 658 provides that where the offence is classified as an indictable offence but no punishment is specifically provided, the accused is liable to imprisonment for five years. These provisions require modification under our scheme.

The Commission believes that Parliament should not create any offence without at the same time classifying it and specifically providing a penalty for it. *Criminal Code* offences should presumptively be crimes, but all other offences should presumptively be infractions in the absence of a classification, unless a possible penalty of imprisonment is expressly stipulated in the provision. If an offence carries the sanction of imprisonment it should presumptively be considered a crime. Where Parliament omits to specify a penalty for a crime punishable by more than two years, the penalty should be the minimum possible for that class — two years and one day. Where Parliament classifies an offence as a crime punishable by two years or less, but omits to provide a specific penalty, legislation should establish a maximum penalty of one year imprisonment. While somewhat arbitrary, this maximum sufficiently differentiates this general provision from that governing crimes punishable by more than two years imprisonment.

RECOMMENDATION

15. (1) That Parliament in enacting a statutory offence should state both the classification, that is, whether it is a crime or an infraction, and the applicable penalty. *Criminal Code* offences presumptively should be crimes.

(2) That where, because one is liable to imprisonment, a crime is created but no classification is stated and no specific maximum penalty is stated, the crime should be deemed to be one punishable by two years or less imprisonment and the penalty should be a maximum of one year imprisonment.

(3) That where a crime is classified as a crime punishable by two years or less imprisonment and no penalty is specifically provided, the penalty should be a maximum of one year imprisonment.

(4) That where a crime is classified as a crime punishable by more than two years imprisonment but no penalty is specifically provided, the penalty should be a maximum of two years and one day imprisonment.

B. Arrest

The history of *Criminal Code* provisions on arrest shows how the process of consolidation and codification has worked within the *Criminal Code*.

Section 552 of the 1892 *Code* listed all offences for which anyone could arrest without warrant. The list ran for three pages. No other provisions existed for arrest without warrant.

Three years later, the first modifications to the 1892 *Code* appeared. The first provision dealt with the powers of a peace officer:

> 3. A peace officer may arrest, without warrant, any one whom he finds committing any criminal offence, and any person may arrest, without warrant, any one whom he finds committing any criminal offence by night.[103]

A second provision spelled out the powers of a property owner:

> 5. The owner of any property on or with respect to which any person is found committing any offence, or any person authorized by such owner, may arrest, without warrant, the person so found, ...[104]

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103. 58 & 59 Vict., c. 40, s. 1.

104. 58 & 59 Vict., c. 40, s. 1.

The third provision dealt with the case of someone being pursued:

> 4. Any one may arrest without warrant a person whom he, on reasonable and probable grounds, believes to have committed an offence and to be escaping from, and to be freshly pursued by, those whom the person arresting, on reasonable and probable grounds, believes to have lawful authority to arrest such person.[105]

This same scheme of arrest without warrant was maintained until the 1953-54 revision, when a further consolidation of sections resulted in the present structure of arrest powers. Gone was the three-page list. Instead, a differentiation of powers was established, based in part on whether the offence was indictable or a summary offence, and on the time of the commission of the alleged offence in relation to the time of the proposed arrest.

The Commission, in Working Paper 41, *Arrest*, has recommended significant changes to *Criminal Code* powers of arrest. The Working Paper seeks to avoid the confusion engendered by differentiating police powers of arrest without warrant on the basis of the classification of the offence. The paper states:

> At issue here are the principle of restraint and the idea that people should only be arrested where it is necessary to do so to accomplish the purposes of arrest. Classification of offences is an inefficient means of accomplishing this end since its use requires so many exceptions and qualifications as to make the exercise more cumbersome and confusing than useful .... The classification of offences as serious or less serious by any name or criteria ought not to be invoked for purposes of defining police powers of arrest without warrant.[106]

Similarly, the Working Paper notes the problems with the intricacies of citizen powers of arrest:

> The present law allows citizens to arrest without warrant for indictable offences in some circumstances, and for both indictable and summary conviction offences in others. For the ordinary citizen who is reacting to an immediate crisis and who has no training in the intricacies of criminal procedure, these distinctions are surely meaningless as a guide to behaviour .... The problem can be solved by framing arrest power in the wording "reasonable grounds to believe that a *criminal* offence is being committed."[107]

We need not go into detail here about the nature of these changes proposed for the law of arrest other than to indicate that the changes which we have recommended in Working Paper 41, *Arrest*, and those contained in our recently tabled Report 29,[108] on the same subject, are wholly consistent with the approach adopted here in relation to the more general subject of classification of offences.

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105. 55 & 56 Vict., c. 29, s. 552.

106. Law Reform Commission of Canada, *Arrest* (Working Paper 41) (Ottawa: LRCC, 1985) at 77-8.

107. *Ibid.* at 86.

108. *Supra*, notes 101 and 106.

RECOMMENDATION

16. That to the extent possible, powers of arrest without warrant granted to peace officers be identical for both classes of crime, and powers of arrest without warrant granted to citizens be identical for both classes of crime.

We also recognize that the incidents of arrest powers may, in very carefully defined circumstances, need to vary within a class of crimes. The Working Paper proposes, for example, that the power to enter a private dwelling to arrest without warrant should be broader where the offender is committing or is about to commit an offence (of any classification) likely to endanger life or cause serious bodily harm. This might result in a differentiation of incidents (such as the power to enter a dwelling) attaching to arrest powers within a proposed classification of offences. A similar differentiation is proposed for the power of entry of premises other than a private dwelling.[109]

C. Pretrial Identification

At present, all persons charged with indictable offences are subject to the provisions of the *Identification of Criminals Act*. By virtue of section 27 of the *Interpretation Act*,[110] a hybrid offence is considered an indictable offence for the purposes of the *Identification of Criminals Act*.

The Commission recommends that the *Identification of Criminals Act* apply only to our proposed category of crimes punishable by more than two years imprisonment. We would, however, permit fingerprinting even for less serious criminal offences in one situation — where the *Code* provides for an enhanced penalty upon a second conviction.

This departs from our goal of having procedures apply uniformly within a given class. We think the departure proper, however, as this identification evidence can be vital for proving the commission of the first crime (a necessary prerequisite to obtaining a conviction for the enhanced penalty offence).

It may be argued that all *Criminal Code* offences should render the accused liable to fingerprinting. This argument, however, fails to acknowledge that some criminal offences are inherently less serious than others. Should a peace officer be permitted to detain a suspect for fingerprinting on a minor offence when the suspect might normally otherwise not be detained at all after the initial contact with the officer? We are also concerned about the proliferation of fingerprint records if fingerprinting is permitted

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109. *Supra*, note 106 at 116-7.

110. R.S.C. 1970, c. I-23.

and becomes routine in the investigation of minor crimes. Perhaps most important, allowing fingerprints to be taken for all criminal offences could substantially alter the balance in investigative powers, and might raise concerns related to the *Charter*.

Apart from the exceptional instance described above, only those charged with a more serious crime should be subject to fingerprinting.

RECOMMENDATION

17. (1) That persons charged with a crime punishable by more than two years imprisonment be subject to the provisions of the *Identification of Criminals Act*.

(2) That persons charged with a crime punishable by two years or less imprisonment not be subject to the *Identification of Criminals Act*, except where legislation provides for an enhanced penalty upon a second conviction.

D. Limitation Periods

At present, unlike in 1892, there are very few limitation periods for the prosecution of indictable offences. This makes Canadian criminal procedure substantially different from other systems of criminal procedure.

This general lack of limitation periods has caused little adverse comment. Given the seriousness of the crimes which are at present classified as indictable and which will be classified under our proposed scheme as criminal offences punishable by a maximum of more than two years imprisonment, the Commission at this time is not bringing forward recommendations pertaining to the imposition of limitation periods for crimes punishable by more than two years imprisonment.

Our proposed class of crimes punishable by two years or less imprisonment is an amalgam of several types of offences: offences punishable by summary conviction (proceedings with respect to these offences at present must be instituted not more than six months after the time when the subject-matter of the proceedings arose); indictable offences now triable summarily (not subject to any limitation period); certain hybrid offences (when prosecuted by indictment, not subject to any limitation period, but otherwise subject to the six-month summary conviction limitation); and generally, indictable offences punishable at present by a maximum of two years (no limitation period applies at present). We suggest that an appropriate compromise in our proposed classification system would be a one-year limitation period for all crimes punishable by two years or less imprisonment. Time would not begin to run for purposes of computing the limitation period until the identity of the offender had been ascertained by investigators. This scheme would be uniform. It would also reflect a compromise between the six-month limitation period which exists at present for some of the offences that will fall into this category, and the absence of limitation periods for those various

indictable and hybrid offences which will be classified under our new scheme as crimes punishable by two years or less.

It may be argued that there should be no limitation period for *any* crime, however classified. Perhaps the strongest response is that we do not wish to see individuals charged with minor criminal offences pushed "to the ends of the earth." The lack of limitation periods for less serious criminal offences might result in the prosecution of individuals long after the alleged misconduct and long after even proven felons have been rehabilitated. We question the value of keeping this part of our justice system open-ended. Accordingly, we propose a one-year limitation period for all crimes punishable by two years or less imprisonment. This period should be long enough, for example, to accommodate a prosecution for failing to stop at the scene of an accident (*Criminal Code*, section 236), where evidence might not surface for some time after the accident. (This crime would be classed as a minor or less serious crime under our proposed scheme.) The *Charter* guarantee of trial "within a reasonable time" (paragraph 11(*b*)) conceivably may also act as a further control even within that one-year period.

Our recommendation to impose a one-year limitation period on less serious crimes is premised on the rational removal altogether of some offences from the criminal law.

These represent our preliminary views on limitation periods. This topic will be addressed in greater detail in a subsequent Working Paper on Trial within a Reasonable Time.

RECOMMENDATIONS

18. That crimes punishable by more than two years imprisonment be subject to no limitation period.

19. That no proceedings in respect of a crime punishable by two years or less imprisonment be instituted more than one year after the time when the subject-matter of the proceedings arose and the identity of the offender has been ascertained by investigators.

E. Private Prosecutions

The Anglo-Canadian system of criminal procedure is unique in according a role to the private prosecutor, although lately the United States, France and Germany have begun to open their systems to recognize the role of private prosecutors.[111]

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111. See generally: P. Burns, "Private Prosecutions in Canada: The Law and a Proposal for Change" (1975) 21 McGill L.J. 269; F. Kaufman, "The Role of the Private Prosecutor: A Critical Analysis of the Complainant's Position in Criminal Cases" (1960-61) 7 McGill L.J. 102.

Canadian practice is derived from English law. The general rule in England is a very simple one:

> Under English law there is, I conclude, not the slightest doubt that a private prosecutor could, on 19th November 1858, and indeed can at the present day in the absence of intervention by the Crown, carry through all its stages a prosecution for any offence.[112]

Notwithstanding the clear English position, the position in Canada is not as clear. There is nothing in Part XXIV of the *Criminal Code*, dealing with summary conviction procedures, which bans the basic right derived from English law of a private citizen to conduct a private prosecution for a summary conviction offence. But the position of a private prosecutor is more qualified in the case of an indictable offence. The position may be summarized as follows:

(1) On summary trial before a magistrate, the private prosecutor is heard as of right.

(2) A preliminary hearing may be conducted by a private prosecutor.

(3) On "speedy trial" before a judge, the private prosecutor cannot be heard unless the court on written order allows the private prosecutor to prefer the charge.

(4) On trial by judge and jury, the private prosecutor may prefer an indictment provided that a written order of the court has been obtained.

These disparate rights result from an almost accidental interaction of sections of the *Criminal Code*. This accidental quality is illustrated by the fact that, although a private prosecutor may prosecute an indictable offence, he may not appeal from a verdict with respect thereto; only the person convicted or the Attorney General has standing to appeal to the court of appeal or to the Supreme Court of Canada.[113]

Whatever rights a private prosecutor may have to prosecute are subject to the Crown's right to "intervene." The Crown may intervene to exercise control over the prosecution at a public level.[114] There is probably no distinction between indictable and summary conviction offences in this regard.[115]

We suggest that private prosecutions continue to be permitted. Glanville Williams has stated that "[t]he power of private prosecution is undoubtedly right and necessary in that it enables the citizen to bring even the police or government officials before the criminal courts, where the government itself is unwilling to make the first move."[116]

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112. Wilson J. in *R.* v. *Schwerdt* (1957), 27 C.R. 35 at 38 (B.C. S.C.), citing Stephen.

113. See Part XVIII of the *Criminal Code* governing appeals.

114. See Burns, *supra*, note 111 at 283.

115. *Ibid.* at 284.

116. Glanville Williams, "The Power to Prosecute" [1955] Crim. L.R. 596 at 599.

The Commission's recommendations flow from its recently published Working Paper 52, *Private Prosecutions*.[117] The Working Paper recommends that the right to prosecute privately be retained and extended to those elements of the trial and appeal process where they are at present proscribed or restricted. As nearly as possible, the private prosecutor should have the same rights as a public prosecutor in carrying his case forward, both at trial and on appeal. The right to lay an information or an issue process in relation thereto ought to be unexceptional. This right, however, would continue to be subject to the ordinary law which governs all cases. Finally, the right to carry a charge forward to trial ought not to be affected by the private status of the prosecutor. Anomalous restrictions pertaining to indictable offences, such as obtaining the consent of the Attorney General, should be modified accordingly.

RECOMMENDATION

20. That private prosecutions be available for both classes of crimes, and that the rights of private prosecutors be those outlined in the Commission's Working Paper 52, *Private Prosecutions*.[118]

F. Pretrial Release

In our Report 29, *Arrest*,[119] we recommend that police powers of arrest be the same for any class of offence. Similarly, citizen powers of arrest, although more limited than police powers of arrest, would not differ according to the classification of the offence.

The Report further recommends that powers of pretrial release, upon arrest without warrant, be uniform for all offences, no matter what the classification of the offence. The Report recommends that:

> Where an arrest is made [arrest by peace officer or by citizen without warrant], a peace officer having custody of the arrested person shall release the person as soon as possible, unless the peace officer has reasonable grounds to believe that continued custody is necessary:
>
> (a) to ensure that the person will appear in court;
>
> (b) to establish the identity of the person;
>
> (c) to conduct investigative procedures authorized by statute;
>
> (d) to prevent interference with the administration of justice;
>
> (e) to prevent the continuation or repetition of a criminal offence; or
>
> (f) to ensure the protection or safety of the public.[120]

117. Law Reform Commission of Canada, *Private Prosecutions* (Working Paper 52) (Ottawa: LRCC, 1986).

118. *Ibid.*

119. See *supra* note 101 at 21. See also *supra*, note 106.

120. *Supra* note 101 at 21.

The Report does not, however, address what the appropriate pretrial release procedures might be where the person is kept in custody by the peace officer for one of the reasons enumerated above or where the accused is arrested pursuant to a warrant. We therefore make no recommendation about how pretrial release procedures might be aligned with offence classifications. The Commission will examine pretrial release procedures in detail in a forthcoming Working Paper on Compelling Appearance, Pretrial Detention and Interim Release.

One change will need to be made to *Criminal Code* section 453 if our proposed classification system is accepted, even if no other changes are made to the release provisions. Subsection 453(1) gives the officer in charge of the lock-up the power to release a person arrested for a section 483 indictable offence or for a hybrid offence. Our proposed system of classification has no hybrids and no section 483 indictable offences. Subsection 453(1) will therefore require amendment to reflect this.

G. Trial by Jury

Trial by jury has been thought to be the hallmark of the English system of criminal justice. We propose that trial by jury be available for all crimes punishable by a maximum of more than two years imprisonment. This would in large measure parallel present practice.

Instead of the present system of requiring trial by jury for some indictable offences,[121] while excluding it entirely for others[122] and giving the accused an election as to whether to be tried by jury or not for others still,[123] the Commission recommends that an accused have a right to choose trial by jury for all crimes punishable by a maximum of more than two years. An accused person should also have the right to elect that a preliminary inquiry be convened with reference to any crime which can be tried with a jury, save in the case where an indictment has been preferred (as is the case under the present law). There would be no right to trial by jury for crimes punishable by two years or less imprisonment.

We note that paragraph 11(*f*) of the *Canadian Charter of Rights and Freedoms* requires that trial by jury be available where the maximum punishment for the offence is "imprisonment for five years or a more severe punishment." If we were to follow the bare requirements of the *Charter*, we would recommend that not all crimes punishable by a maximum of two years or more be triable by jury, but only those with a punishment of five years or more. This would create different procedures within the same class of crime, something we are reluctant to do without a demonstrated need.

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121. *Criminal Code*, s. 427, subject to the exception stated in section 430.

122. *Criminal Code*, s. 483.

123. *Criminal Code*, s. 464.

We see no such demonstrated need here. Present practice permits trial by jury for almost all indictable offences, including those punishable by a maximum of two years (section 483 indictable offences have no right to jury). Furthermore, the jury is resorted to only infrequently; the practical effect of making jury trials available for crimes punishable by more than two years but less than five years would be minimal.

Finally, we stress the importance of the jury in our criminal process. In our Report 16, *The Jury*, we noted:

> We are pleased to report that among the many people we consulted on [the Working Paper on *The Jury*], there was almost unanimous support for the jury system in criminal cases. Indeed, among people who might agree on little else about our criminal justice system, there was agreement on the vital functions performed by the jury.[124]

For present purposes, we advocate the preservation of one nuance pertaining to the right to jury trial for more serious crimes. All crimes which at present *require* a jury trial (that is, the accused cannot elect any other mode of trial) — those offences listed in section 427 — would continue to mandate trial by jury. This is a subject to which we will return in a forthcoming Working Paper on Jurisdiction of Courts.

This exception detracts somewhat from the uniform matching of procedures to classes of crimes. Nonetheless, for reasons of history and because these crimes are among the most serious to be found within the criminal law, we endorse the retention of the compulsory use of a jury in their prosecution. We would preserve the one exception to this requirement which exists under section 430 of the *Criminal Code*, namely that where both the accused and the Attorney General consent to trial without a jury, the requirement of a jury may be waived. Whether the accused should be permitted unilaterally to dispense with the jury requirement is a question which merits further study. We will address this question in our forthcoming Working Paper on the Powers of the Attorney General.

RECOMMENDATION

21. That every person charged with a crime punishable by more than two years imprisonment have a right to trial by jury. A jury trial would be compulsory (subject to the exception in section 430) for all crimes listed at present in section 427. An accused person should also have the right to elect that a preliminary inquiry be convened with reference to any crime that is triable with a jury, save in the case where an indictment has been preferred. Crimes punishable by two years or less imprisonment would not be triable by jury.

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124. Law Reform Commission of Canada, *The Jury* (Report 16) (Ottawa: Supply and Services, 1982) at 5-6.

H. Fines

In Working Papers 5 and 6, entitled *Restitution and Compensation*, and *Fines*, the Commission recommended "that judges be given the discretion to impose a fine as the sanction for any Criminal Code offence, except those for which a mandatory sanction is specified, and that, in order to effect this recommendation, present Criminal Code restrictions on the use of the fine be removed."[125] The Commission reiterates its recommendation here and makes it applicable to any crime.

Section 646 of the present *Criminal Code* provides that an accused who is convicted of an indictable offence punishable by imprisonment for five years or less may be fined in addition to, or in lieu of, any other punishment that is authorized; if the indictable offence is punishable by imprisonment for more than five years, the accused can be fined in addition to, but not in lieu of, any other punishment authorized.

RECOMMENDATION

22. That judges be given the discretion to impose a fine in addition to, or in lieu of, any sanction provided for any crime except where a mandatory sanction is specified.

I. Appeals

At present all appeals from indictable offences are heard by the court of appeal of the province.[126] A verdict in a summary conviction proceeding may be appealed in one of three ways: on the record (sections 748 and 755); by way of transcript (section 762); or, in certain exceptional cases by way of trial *de novo* (for example, subsection 755(4)). The Commission is presently examining the question of whether the existence of three methods of appeal in summary conviction matters is necessary and beneficial and will report its findings in a Working Paper on the Appeal Process. Both summary and indictable offence procedures will be addressed in that document. Accordingly, we offer no recommendations on the subject of appeals in this Working Paper. We anticipate, however, that any mechanism for appeals will be consistent within a given class of offences.

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125. Law Reform Commission of Canada, *Restitution and Compensation* and *Fines* (Working Papers 5 and 6) (Ottawa: Information Canada, 1974) at 31.

126. See *Criminal Code*, Part XVIII.

CHAPTER SIX

Summary of Recommendations

1. That all offences enacted by the Parliament of Canada be classified as either crimes or infractions.

2. That all offences for which a person may, if convicted, be liable to be sentenced to a term of imprisonment as punishment for the offence be termed "crimes."

3. That all other offences for which a person would, if convicted, only be liable to a fine, civil disability, or imprisonment in default of payment of the fine, be termed "infractions."

4. That the Code of Criminal Procedure constitute a régime for the disposition of persons suspected of, or subsequently charged with, the commission of a crime.

5. That a separate régime, an Infractions Procedure Act, be established to provide for the disposition of persons charged with infractions.

6. That the legislatively prescribed maximum penalty determine the class to which a crime belongs.

7. That there be two classes of "crimes." The first class would consist of crimes which carry a maximum penalty of more than two years imprisonment. The second class would consist of crimes which carry a maximum penalty of two years or less imprisonment.

8. That those crimes for which an accused, if convicted, is liable to a maximum term of imprisonment of more than two years be termed "crimes punishable by more than two years imprisonment." That those crimes for which an accused, if convicted, is liable to a maximum term of imprisonment of two years or less be termed "crimes punishable by two years or less imprisonment."

9. That imprisonment in a penitentiary be imposed only where an offender has been convicted of a crime punishable by more than two years imprisonment *and* has been sentenced to imprisonment for more than two years (subject to further study on the issue of consecutive sentences for two or more crimes).

10. That all crimes enacted by the Parliament of Canada fall into one and only one category and no crime could be designated as a Crown option, dual procedure, or hybrid crime.

11. That all indictable offences punishable by a maximum of two years imprisonment be reclassified as crimes punishable by two years or less imprisonment.

12. That all indictable offences punishable by more than two years be reclassified as crimes punishable by more than two years imprisonment.

13. That all summary conviction offences be reclassified as crimes punishable by two years or less imprisonment.

14. That all hybrid offences punishable by a maximum of two years imprisonment be reclassified as crimes punishable by two years or less imprisonment.

15. (1) That Parliament in enacting a statutory offence should state both the classification, that is, whether it is a crime or an infraction, and the applicable penalty. *Criminal Code* offences presumptively should be crimes.

(2) That where, because one is liable to imprisonment, a crime is created but no classification is stated and no specific maximum penalty is stated, the crime should be deemed to be one punishable by two years or less imprisonment and the penalty should be a maximum of one year imprisonment.

(3) That where a crime is classified as a crime punishable by two years or less imprisonment and no penalty is specifically provided, the penalty should be a maximum of one year imprisonment.

(4) That where a crime is classified as a crime punishable by more than two years imprisonment but no penalty is specifically provided, the penalty should be a maximum of two years and one day imprisonment.

16. That to the extent possible, powers of arrest without warrant granted to peace officers be identical for both classes of crime, and powers of arrest without warrant granted to citizens be identical for both classes of crime.

17. (1) That persons charged with a crime punishable by more than two years imprisonment be subject to the provisions of the *Identification of Criminals Act*.

(2) That persons charged with a crime punishable by two years or less imprisonment not be subject to the *Identification of Criminals Act*, except where legislation provides for an enhanced penalty upon a second conviction.

18. That crimes punishable by more than two years imprisonment be subject to no limitation period.

19. That no proceedings in respect of a crime punishable by two years or less imprisonment be instituted more than one year after the time when the subject-matter of the proceedings arose and the identity of the offender has been ascertained by investigators.

20. That private prosecutions be available for both classes of crimes, and that the rights of private prosecutors be those outlined in the Commission's Working Paper 52, *Private Prosecutions*.

21. That every person charged with a crime punishable by more than two years imprisonment have a right to trial by jury. A jury trial would be compulsory (subject to the exception in section 430) for all crimes listed at present in section 427. An accused person should also have the right to elect that a preliminary inquiry be convened with reference to any crime that is triable with a jury, save in the case where an indictment has been preferred. Crimes punishable by two years or less imprisonment would not be triable by jury.

22. That judges be given the discretion to impose a fine in addition to, or in lieu of, any sanction provided for any crime except where a mandatory sanction is specified.

APPENDIX A
Criminal Code Offences and Procedures

Offence Description	Procedure[1]	Sentence Max.[2]	Sentence Min.[3]	Limitation Period[4]	Election[5]	Bail[6]	Comments[7]
s. 47(1) High treason	I	Life	Life		s. 427	s. 457.7	
s. 47(2)(*a*) Treason, rebellion/conspiracy to commit high treason/ attempted high treason	I	Life		3 yrs if Rebel-lion	s. 427	s. 457.7	Special limitation if treason by openly spoken words (s. 48(2)).
s. 47(2)(*b*) Passing secrets or conspiracy to do so *when at war*	I	Life			s. 427	s. 457.7	
s. 47(2)(*c*) Passing secrets or conspiring to do so *but no state of war*	I	14 yrs			s. 427	s. 457.7	

1. I, punishable on indictment; S, punishable on summary conviction; ID, punishable on indictment/dual procedure; SD, punishable on summary conviction/dual procedure. See also notes (a), (b), (c) and (d) at 87-88.

2. 6m/2000, 6 months imprisonment, $2,000 fine, or both. See also notes (e), (f) and (g) at 88.

3. Blank, no minimum term.

4. Blank, no limitation period.

5. S. 427, superior court (with jury) exclusive, except where accused elects superior court trial without jury with consent of Attorney General (s. 430); s. 483, no election, absolute jurisdiction of provincial court judge; S, no election, summary conviction offence; s. 464, accused may elect trial by judge and jury, judge alone, or provincial court judge. See also note (h) at 88.

6. S. 457.7, initial decision to release may only be made by superior court judge; s. 457(1), initial decision to release made by justice; s. 453, initial decision to release made by officer in charge or justice; s. 450(2), initial decision to release made by officer coming into initial contact with accused.

7. Special provisions and other relevant information.

Offence Description	Procedure	Sentence Max.	Sentence Min.	Limitation Period	Election	Bail	Comments
s. 49 Alarming Her Majesty/causing bodily harm	I	14 yrs			s. 427	s. 457.7	
s. 50 Assisting alien enemy to leave Canada/omitting to prevent treason	I	14 yrs			s. 464	s. 457(1)	
s. 51 Intimidating Parliament or legislature	I	14 yrs			s. 427	s. 457.7	
s. 52 Sabotage	I	10 yrs			s. 464	s. 457(1)	
s. 53 Inciting to mutiny	I	14 yrs			s. 427	s. 457.7	
s. 54 Assisting deserter	S	6m/2000		6m	S	s. 450(2)	Consent of Attorney General required.
s. 57 Counselling/concealing/aiding deserter from R.C.M.P.	S	6m/2000		6m	S	s. 450(2)	
s. 58(1) Forging passport/using forged passport	I	14 yrs			s. 464	s. 457(1)	
s. 58(2) False statement to procure passport	ID SD	2 yrs 6m/2000		6m	s. 464 S	s. 450(2)	
s. 58(3) Possession of forged passport	I	5 yrs			s. 464	s. 453	
s. 59 Fraudulent use of certificate of citizenship	I	2 yrs			s. 464	s. 453	

Offence Description	Procedure	Sentence Max.	Sentence Min.	Limitation Period	Election	Bail	Comments
s. 62 Seditious offences	I	14 yrs			s. 427	s. 457.7	
s. 63 Offences in relation to military forces	I	5 yrs			s. 464	s. 453	
s. 66 Riot	I	2 yrs			s. 464	s. 453	
s. 67 Unlawful assembly	S	6m/2000		6m	S	s. 450(2)	
s. 69 Offences related to proclamation	I	Life			s. 464	s. 457(1)	
s. 70 Police officer neglecting to suppress riot	I	2 yrs			s. 464	s. 453	
s. 71(3) Unlawful drilling	I	5 yrs			s. 464	s. 453	
s. 72 Duelling	I	2 yrs			s. 464	s. 453	
s. 74 Forcible entry and detainer	ID SD	2 yrs 6m/2000		6m	s. 464 S	s. 450(2)	
s. 75 Piracy	I	Life			s. 427	s. 457.7	
s. 76 Piratical acts	I	14 yrs			s. 427	s. 457.7	
s. 76.1 Hijacking	I	Life			s. 464	s. 457(1)	
s. 76.2 Endangering safety of aircraft in flight/rendering aircraft incapable of flight	I	Life			s. 464	s. 457(1)	

s. 76.3 Taking offensive weapon or explosive on board	I	14 yrs			s. 464	s. 457(1)	
s. 78(*a*) Breach of duty of care re explosives — causes death	I	Life			s. 464	s. 457(1)	
s. 78(*b*) Breach of duty of care re explosives — causes bodily harm	I	14 yrs			s. 464	s. 457(1)	
s. 79(1)(*a*) and (*b*) explosive substance — intent to cause death, bodily harm	I	Life			s. 464	s. 457(1)	
s. 79(1)(*c*) and (*d*) Placing explosive/making or/has in care and control — explosive substance	I	14 yrs			s. 464	s. 457(1)	
s. 80 Possessing explosive without lawful excuse	I	5 yrs			s. 464	s. 453	
s. 81 Engaging in prize fight	S	6m/2000		6m	S	s. 450(2)	
s. 83 Use of firearm during commission of offence	I	14 yrs* 14 yrs**	1 yr * 3 yrs**		s. 464 s. 464	s. 457(1) s. 457(1)	*For first offence. **For second offence. Sentence to be consecutive to any other imposed; s. 98(1) imposes additional restrictions on possession of firearms, ammunition, explosive substances.
s. 84(1) Pointing firearm	ID SD	5 yrs 6m/2000		 6m	s. 464 S	s. 450(2)	
s. 84(2) Careless use/storage	ID SD	2 yrs* 5 yrs** 6m/2000		 6m	s. 464 s. 464	s. 450(2) s. 450(2)	*For first offence. **For second offence.

Offence Description	Procedure	Sentence Max.	Sentence Min.	Limitation Period	Election	Bail	Comments
s. 85 Carrying weapon or imitation for dangerous purposes	I	10 yrs			s. 464	s. 457(1)	
s. 86 Weapon in possession, while attending public meeting	S	6m/2000		6m	S	s. 450(2)	
s. 87 Carrying concealed weapon — no permit	ID SD	5 yrs 6m/2000		 6m	s. 464 S	s. 450(2)	
s. 88(1) Possession of prohibited weapon	ID SD	5 yrs 6m/2000		 6m	s. 464 S	s. 450(2)	
s. 88(2) Occupant of motor vehicle — prohibited weapon	ID SD	5 yrs 6m/2000		 6m	s. 464 S	s. 450(2)	
s. 89(1) Possession of unregistered restricted weapon	ID SD	5 yrs 6m/2000		 6m	s. 464 S	s. 450(2)	
s. 89(2) Possession elsewhere than place authorized	ID SD	5 yrs 6m/2000		 6m	s. 464 S	s. 450(2)	
s. 89(3) Restricted weapon in motor vehicle	ID SD	5 yrs 6m/2000		 6m	s. 464 S	s. 450(2)	
s. 91 Transfer of firearm to person under 16	ID SD	2 yrs 6m/2000		 6m	s. 464 S	s. 450(2)	
s. 92 Wrongful delivery of firearms	ID SD	5 yrs 6m/2000		 6m	s. 464 S	s. 450(2)	
s. 93 Importing or delivering prohibited weapon	ID SD	5 yrs 6m/2000		 6m	s. 464 S	s. 450(2)	

s. 94(1) Delivery of restricted weapon to person without permit	ID SD	5 yrs 6m/2000	6m	s. 464 S	s. 450(2)
s. 94(3) Importation	ID SD	5 yrs 6m/2000	6m	s. 464 S	s. 450(2)
s. 95(1) Delivery of firearm to person without firearms acquisition certificate	ID SD	2 yrs 6m/2000	6m	s. 464 S	s. 450(2)
s. 95(3) Acquisition of firearm without firearms acquisition certificate	ID SD	2 yrs 6m/2000	6m	s. 464 S	s. 450(2)
s. 98(12) Possession of firearm, ammunition, etc., while prohibited by order	ID SD	5 yrs 6m/2000	6m	s. 464 S	s. 450(2)
s. 101(10) Possession of firearm, ammunition, while prohibited by order	ID SD	5 yrs 6m/2000	6m	s. 464 S	s. 450(2)
s. 102 Finding prohibited weapon/ lost weapon/tampering with serial number	ID SD	5 yrs 6m/2000	6m	s. 464 S	s. 450(2)
s. 103 Offences relating to business of firearms	ID SD	5 yrs 6m/2000	6m	s. 464 S	s. 450(2)
s. 106.5(1) False statements to procure firearms acquisition certificate, etc.	ID SD	2 yrs 6m/2000	6m	s. 464 S	s. 450(2)
s. 106.5(2) Tampering with firearms acquisition certificate	ID SD	2 yrs 6m/2000	6m	s. 464 S	s. 450(2)

Offence Description	Procedure	Sentence Max.	Sentence Min.	Limitation Period	Election	Bail	Comments
s. 106.5(3) Failing to comply with conditions of permit	ID SD	2 yrs 6m/2000		6m	s. 464 S	s. 450(2)	
s. 106.5(4) Failing to deliver up certificate	S	6m/2000		6m	S	s. 450(2)	
s. 108(1)(*a*) Acceptance of or attempt to obtain bribe by judge, etc.	I	14 yrs			s. 427	s. 457.7	Consent of Attorney General required.
s. 108(1)(*b*) Bribery of judicial officer, M.P., M.L.A.	I	14 yrs			s. 464	s. 457(1)	
s. 109 Bribery of officers	I	14 yrs			s. 464	s. 457(1)	
s. 110(1) Frauds upon the government	I	5 yrs			s. 464	s. 453	
s. 110(2) Contractor subscribing to election fund	I	5 yrs			s. 464	s. 453	
s. 111 Breach of trust by public officer	I	5 yrs			s. 464	s. 453	
s. 112(1) and (2) Municipal corruption and influencing municipal official	I	5 yrs			s. 464	s. 453	
s. 113 Selling or purchasing office	I	5 yrs			s. 464	s. 453	
s. 114 Influencing or negotiating appointments or dealing in offices	I	5 yrs			s. 464	s. 453	

s. 115 Disobeying a statute	I	2 yrs		s. 464	s. 453	
s. 116 Disobeying order of court	I	2 yrs		s. 464	s. 453	
s. 117 Misconduct of officers executing process	I	2 yrs		s. 464	s. 453	
s. 118 Offences relating to public or peace officer	ID SD	2 yrs 6m/2000	6m	s. 464 S	s. 450(2)	
s. 119 Personating peace officer	S	6m/2000	6m	S	s. 450(2)	
ss. 120, 121 Perjury	I	14 yrs		s. 464	s. 457(1)	Punishment to a maximum of life where perjury in respect of an offence punishable by death.
s. 122.1 False statement where not permitted or required to make statement	S	6m/2000	6m	S	s. 450(2)	
s. 124 Witness giving contradictory evidence with intent to mislead	I	14 yrs		s. 464	s. 457(1)	Consent of Attorney General required.
s. 125 Fabricating evidence	I	14 yrs		s. 464	s. 457(1)	
s. 126 Offences relating to affidavits	I	2 yrs		s. 464	s. 453	
s. 127(1) Obstructing justice	ID SD	2 yrs 6m/2000	6m	s. 464 S	s. 450(2)	
s. 127(2) Obstructing justice — offences other than in (1)	I	10 yrs		s. 464	s. 457(1)	

Offence Description	Procedure	Sentence Max.	Sentence Min.	Limitation Period	Election	Bail	Comments
s. 128 Public mischief	ID SD	5 yrs 6m/2000		6m	s. 464 S	s. 450(2)	
s. 129 Compounding indictable offence	I	2 yrs			s. 464	s. 453	
s. 130 Corruptly taking reward for recovery of goods	I	5 yrs			s. 464	s. 453	
s. 131 Advertising reward and immunity	S	6m/2000		6m	S	s. 450(2)	
s. 132 Prison breach	I	10 yrs			s. 464	s. 457(1)	
s. 133(1) Escape and being at large without excuse	ID SD	2 yrs 6m/2000		6m	s. 464	s. 450(2)	
s. 133(2) Failure to attend court when at large on undertaking or recognizance or failing to attend as required by court	ID SD	2 yrs 6m/2000		6m	s. 464 S	s. 450(2)	
s. 133(3) Failure to comply with condition of undertaking or recognizance	ID SD	6m/2000		2 yrs 6m	s. 464 S	s. 450(2)	
s. 133(4) Failure to appear with respect to summons	ID SD	2 yrs 6m/2000		6m	s. 464 S	s. 450(2)	
s. 133(5) Failing to appear/comply with appearance notice/promise to appear	ID SD	2 yrs 6m/2000		6m	s. 464 S	s. 450(2)	

s. 134 Permitting or assisting escape	I	2 yrs		s. 464	s. 453
s. 135 Rescue or permitting escape	I	5 yrs		s. 464	s. 453
s. 136 Assisting prisoner of war to escape	I	5 yrs		s. 464	s. 453
s. 146(1) Sexual intercourse with female under 14	I	Life		s. 464	s. 457(1)
s. 146(2) Sexual intercourse with female 14 to 16	I	5 yrs		s. 464	s. 453
s. 150 Incest	I	14 yrs		s. 464	s. 457(1)
s. 151 Seduction of female between 16 and 18	I	2 yrs	1 yr	s. 464	s. 453
s. 152 Seduction under promise of marriage	I	2 yrs	1 yr	s. 464	s. 453
s. 153(1)(*a*) Sexual intercourse with stepdaughter, etc.	I	2 yrs		s. 464	s. 453
s. 153(1)(*b*) Sexual intercourse with female employee	I	2 yrs	1 yr	s. 464	s. 453
s. 154 Seduction of female passengers on vessels	I	2 yrs		s. 464	s. 453
s. 155 Buggery or bestiality	I	14 yrs		s. 464	s. 457(1)

Offence Description	Procedure	Sentence Max.	Sentence Min.	Limitation Period	Election	Bail	Comments
s. 157 Acts of gross indecency	I	5 yrs			s. 464	s. 453	
s. 159 Corrupting morals	ID SD	2 yrs 6m/2000		 6m	s. 464 S	s. 450(2)	
s. 161 Tied sale for obscene publications	ID SD	2 yrs 6m/2000		 6m	s. 464 S	s. 450(2)	
s. 162 Restriction on publication of reports of judicial proceedings	ID SD	2 yrs 6m/2000		 6m	s. 464 S	s. 450(2)	Consent of Attorney General required.
s. 163 Immoral theatrical performance	ID SD	2 yrs 6m/2000		 6m	s. 464 S	s. 450(2)	
s. 164 Mailing obscene matter	ID SD	2 yrs 6m/2000		 6m	s. 464 S	s. 450(2)	
s. 166 Parent or guardian procuring defilement	I	14 yrs* 5 yrs**		1 yr 1 yr	s. 464 s. 464	s. 457(1) s. 453	*If victim is girl under 14. **If victim is girl 14 or over.
s. 167 Householder permitting defilement	I	5 yrs		1 yr	s. 464	s. 453	
s. 168 Corrupting children	I	2 yrs		1 yr	s. 464	s. 453	Consent of Attorney General or society for protection of children or officer of juvenile court required.
s. 169 Indecent acts	S	6m/2000		6m	S	s. 450(2)	
s. 170 Nudity/nude	S	6m/2000		6m	S	s. 450(2)	Consent of Attorney General required.

s. 171 Causing disturbance, indecent exhibition, loitering — evidence of peace officer	S	6m/2000	6m	S	s. 450(2)
s. 172(1) Obstructing or violence to or arrest of officiating clergyman	I	2 yrs		s. 464	s. 453
s. 172(2) and (3) Disturbing religious worship or certain meetings	S	6m/2000	6m	S	s. 450(2)
s. 173 Trespassing at night	S	6m/2000	6m	S	s. 450(2)
s. 174 Offensive volatile substance	S	6m/2000	6m	S	s. 450(2)
s. 175 Vagrancy — loitering, wandering in or near public areas	S	6m/2000	6m	S	s. 450(2)
s. 176 Common nuisance	I	2 yrs		s. 464	s. 453
s. 177 Spreading false news	I	2 yrs		s. 464	s. 453
s. 178 Offences with respect to dead body	I	5 yrs		s. 464	s. 453
s. 178.11 Interception of communication	I	5 yrs		s. 464	s. 453
s. 178.18 Possession of device	I	2 yrs		s. 464	s. 453
s. 178.2 Disclosure of information	I	2 yrs		s. 464	s. 453

Offence Description	Procedure	Sentence Max.	Sentence Min.	Limitation Period	Election	Bail	Comments
s. 185(1) Keeping a common gaming house or common betting house	I	2 yrs			s. 483	s. 450(2)	
s. 185(2) Person found in or owner of gaming house	S	6m/2000		6m	S	s. 450(2)	
s. 186 Betting, pool-selling, book-making, etc.	I	2 yrs* 2 yrs** 2 yrs***	* 14 days** 3m***		s. 483	s. 450(2)	*For first offence. **For second offence. ***For third offence.
s. 187 Placing bets on behalf of others	I	2 yrs* 2 yrs** 2 yrs***	* 14 days** 3m***		s. 483	s. 450(2)	*For first offence. **For second offence. ***For third offence.
s. 189(1) Offence in relation to lotteries and games of chance	I	2 yrs			s. 483	s. 450(2)	
s. 189(4) Purchaser of lot, ticket	S	6m/2000		6m	S	s. 450(2)	
s. 192 Cheating at play	I	2 yrs			s. 483	s. 450(2)	
s. 193(1) Keeping common bawdy-house	I	2 yrs			s. 483	s. 450(2)	
s. 193(2) Landlord, inmate of common bawdy-house	S	6m/2000		6m	S	s. 450(2)	
s. 194 Transporting person to bawdy-house	S	6m/2000		6m	S	s. 450(2)	
s. 195 Procuring	I	10 yrs		1 yr	s. 464	s. 457(1)	
s. 195.1 Soliciting	S	6m/2000		6m	S	s. 450(2)	

s. 197 Failing to provide necessities	ID SD	2 yrs 6m/2000		6m	s. 464 S	s. 450(2)	
s. 200 Abandoning child	I	2 yrs			s. 464	s. 453	
s. 203 Causing death by criminal negligence	I	Life			s. 464	s. 457(1)	
s. 204 Causing bodily harm by criminal negligence	I	10 yrs			s. 464	s. 457(1)	
ss. 212-214, 218 Murder	I	Life	Life*		s. 427	s. 457.7	*For the purposes of Part XX.
s. 219 Manslaughter	I	Life			s. 464	s. 457(1)	
s. 220 Infanticide	I	5 yrs			s. 464	s. 453	
s. 221 Killing unborn child in act of birth	I	Life			s. 464	s. 457(1)	
s. 222 Attempt to commit murder	I	Life			s. 464	s. 457(1)	
s. 223 Accessory after fact to murder	I	Life			s. 464	s. 457(1)	
s. 224 Counselling or aiding suicide	I	14 yrs			s. 464	s. 457(1)	
s. 226 Neglect to obtain assistance in childbirth	I	5 yrs			s. 464	s. 453	
s. 227 Concealing body of child	I	2 yrs			s. 464	s. 453	
s. 228 Causing bodily harm with intent	I	14 yrs			s. 464	s. 457(1)	

Offence Description	Procedure	Sentence Max.	Sentence Min.	Limitation Period	Election	Bail	Comments
s. 229 Administering noxious thing							
(*a*) intends harm or danger to life	I	14 yrs			s. 464	s. 457(1)	
(*b*) intends to annoy	I	2 yrs			s. 464	s. 453	
s. 230 Overcoming resistance to commission of offence	I	Life			s. 464	s. 457(1)	
s. 231 Traps likely to cause bodily harm	I	5 yrs			s. 464	s. 453	
s. 232 Interfering with transportation facilities	I	Life			s. 464	s. 457(1)	
s. 233(1) and (2) Dangerous operation of motor vehicle, vessel, aircraft — where no injury	ID SD	5 yrs 6m/2000		6m	s. 464 S	s. 450(2)	
s. 233(3) Dangerous operation of motor vehicle, vessel, aircraft — where bodily harm caused	I	10 yrs			s. 464	s. 457(1)	
s. 233(4) Dangerous operation of motor vehicle, vessel, aircraft — where death caused	I	14 yrs			s. 464	s. 457(1)	
s. 234 Failing to keep watch on person towed	S	6m/2000		6m	S	s. 450(2)	
s. 235 Sending unseaworthy vessel or aircraft	I	5 yrs			s. 464	s. 453	Consent of Attorney General required.

s. 236 Failure to stop at scene of accident	ID SD	2 yrs 6m/2000		6m	s. 464 S	s. 450(2)
ss. 237, 239(1) Operation of motor vehicle, vessel or aircraft while impaired — no bodily harm caused	ID	5 yrs* 5 yrs** 5 yrs***	$300* 14 days** 90 days***		s. 464	s. 450(2)
	SD	6m* 6m** 6m***	$300* 14 days** 90 days***	6m	S	
ss. 237, 239(2) Impaired operation — where bodily harm	I	10 yrs* 10 yrs** 10 yrs***	$300* 14 days** 90 days***		s. 464	s. 457(1)
ss. 237, 239(3) Impaired causing death	I	14 yrs* 14 yrs** 14 yrs***	$300* 14 days** 90 days***		s. 464	s. 457(1)
ss. 238(5), 239(1) Refusal to provide breath or blood sample	ID	5 yrs* 5 yrs** 5 yrs***	$300* 14 days** 90 days***		s. 464	s. 450(2)
	SD	6m* 6m** 6m***	$300* 14 days** 90 days***	6m	S	
s. 242(4) Operating motor vehicle, vessel, aircraft while disqualified	ID SD	2 yrs 6m/2000		6m	s. 483 S	s. 450(2)
s. 243.2 Impeding attempt to save life	I	10 yrs			s. 464	s. 457(1)
s. 243.3(3)(*c*) Failing to safeguard opening in ice or excavation on land	S	6m/2000		6m	S	s. 450(2)
s. 243.4(1)(*a*) Uttering threats to cause death or serious bodily harm	I SD	5 yrs 6m/2000			s. 464 S	s. 453

*For first offence.
**For second offence.
***For third offence.

Offence Description	Procedure	Sentence Max.	Sentence Min.	Limitation Period	Election	Bail	Comments
s. 243.4(1)(*b*) and (*c*) Uttering threats to damage property or injure or kill animal	ID	2 yrs		6m	s. 464	s. 450(2)	
s. 245 Assault	ID SD	5 yrs 6m/2000		6m	s. 464 S	s. 450(2) s. 450(2)	
s. 245.1(1) Assault causing bodily harm or with a weapon	I	10 yrs			s. 464	s. 457(1)	
s. 245.2(1) Aggravated assault	I	14 yrs			s. 464	s. 457(1)	
s. 245.3 Unlawfully causing bodily harm	I	10 yrs			s. 464	s. 457(1)	
s. 246 Assaulting peace officer/ resisting arrest/person executing process	ID SD	5 yrs 6m/2000		6m	s. 464 S	s. 450(2) s. 450(2)	
s. 246.1 Sexual assault	ID SD	10 yrs 6m/2000		6m	s. 464 S	s. 450(2) s. 450(2)	
s. 246.2 Sexual assault with weapon, threats, bodily harm	I	14 yrs			s. 464	s. 457(1)	
s. 246.3 Aggravated sexual assault	I	Life			s. 464	s. 457(1)	
s. 247(1) Kidnapping	I	Life			s. 464	s. 457(1)	
s. 247(2) Forcible confinement	I	10 yrs			s. 464	s. 457(1)	
s. 247.1 Hostage taking	I	Life			s. 464	s. 457(1)	

s. 249 Abduction of person under 16	I	5 yrs		s. 464	s. 453	
s. 250 Abduction of person under 14	I	10 yrs		s. 464	s. 457(1)	
s. 250.1 Abduction in contravention of custody order	ID SD	10 yrs 6m/2000	6m 6m	s. 464 S	s. 450(2)	
s. 250.2 Abduction where no custody order	ID SD	10 yrs 6m/2000	6m 6m	s. 464 S	s. 450(2)	Consent of Attorney General required for both ID and SD procedures.
s. 251(1) Procuring miscarriage	I	Life		s. 464	s. 457(1)	
s. 251(2) Woman procuring her own miscarriage	I	2 yrs		s. 464	s. 453	
s. 252 Supplying noxious things	I	2 yrs		s. 464	s. 453	
s. 255 Bigamy	I	5 yrs		s. 464	s. 453	
s. 256 Procuring feigned marriage	I	5 yrs		s. 464	s. 453	
s. 257 Polygamy	I	5 yrs		s. 464	s. 453	
s. 258 Pretending to solemnize marriage	I	2 yrs		s. 464	s. 453	
s. 259 Marriage contrary to law	I	2 yrs		s. 464	s. 453	
s. 260 Blasphemous libel	I	2 yrs		s. 464	s. 453	

Offence Description	Procedure	Sentence Max.	Sentence Min.	Limitation Period	Election	Bail	Comments
s. 264 Punishment of libel known to be false	I	5 yrs			s. 464	s. 453	
s. 265 Punishment for defamatory libel	I	2 yrs			s. 464	s. 453	
s. 266 Extortion by libel	I	5 yrs			s. 464	s. 453	
s. 281.1 Advocating genocide	I	5 yrs			s. 464	s. 453	Consent of Attorney General required.
s. 281.2 Inciting or wilfully promoting hatred	ID SD	2 yrs 6m/2000		6m	s. 464 S	s. 450(2)	Consent of Attorney General required for both ID and SD procedures.
s. 294(*a*) Theft over $1,000	I	10 yrs			s. 464	s. 457(1)	
s. 294(*b*) Theft under $1,000	ID SD	2 yrs 6m/2000		6m	s. 483 S	s. 450(2)	
s. 295 Taking motor vehicle without consent	S	6m/2000		6m	S	s. 450(2)	
s. 296 Criminal breach of trust	I	14 yrs			s. 464	s. 457(1)	
s. 297 Public servant refusing to deliver property	I	14 yrs			s. 464	s. 457(1)	
s. 298 Fraudulently taking cattle or defacing brand	I	5 yrs			s. 464	s. 453	
s. 299(1) Taking possession, etc., of drift timber	I	5 yrs			s. 464	s. 453	

s. 299(2) Dealer in second-hand goods	S	6m/2000	6m	S	s. 450(2)	
s. 300 Destroying documents of title	I	10 yrs		s. 464	s. 457(1)	
s. 301 Fraudulent concealment	I	2 yrs		s. 464	s. 453	
s. 301.1 Theft, forgery, etc., of credit card	ID SD	10 yrs 6m/2000	6m	s. 464 S	s. 450(2)	
s. 301.2 Unauthorized use of computer	ID SD	10 yrs 6m/2000	6m	s. 464 S	s. 450(2)	
s. 303 Robbery	I	Life		s. 464	s. 457(1)	
s. 304 Stopping mail with intent	I	Life		s. 464	s. 457(1)	
s. 305 Extortion	I	Life		s. 464	s. 457(1)	
s. 306 Breaking and entering with intent	I	Life* 14 yrs**		s. 464 s. 464	s. 457(1) s. 457(1)	*Dwelling. **Not dwelling.
s. 307 Being unlawfully in dwelling-house	I	10 yrs		s. 464	s. 457(1)	
s. 309(1) Possession of house-breaking instruments under suspicious circumstances	I	10 yrs		s. 464	s. 457(1)	
s. 309(2) Disguise with intent	I	10 yrs		s. 464	s. 457(1)	

Offence Description	Procedure	Sentence Max.	Sentence Min.	Limitation Period	Election	Bail	Comments
s. 310 Possession of instruments for breaking into coin-operated or currency exchange devices	I	2 yrs			s. 464	s. 453	
s. 311(1) Selling, etc., auto master key w/o licence	I	2 yrs			s. 464	s. 453	
s. 311(4) Failing to keep record of transaction in auto master keys	S	6m/2000		6m	S	s. 450(2)	
s. 313(*a*) Possession of property over $1,000 obtained by crime	I	10 yrs			s. 464	s. 457(1)	
s. 313(*b*) Possession of property under $1,000 obtained by crime	ID SD	2 yrs 6m/2000		6m	s. 483 S	s. 450(2)	
s. 314 Theft from mail	I	10 yrs			s. 464	s. 457(1)	
s. 315 Bringing into Canada property obtained by crime	I	10 yrs			s. 464	s. 457(1)	
s. 320(2)(*a*) False pretence leading to theft over $1,000	I	10 yrs			s. 464	s. 457(1)	
s. 320(2)(*b*) False pretence leading to theft under $1,000	ID SD	2 yrs 6m/2000		6m	s. 483 S	s. 450(2)	
s. 320(3) Obtaining credit by false pretence — false statement — knowing false statement made	I	10 yrs			s. 464	s. 457(1)	

s. 321 Obtaining execution of valuable security by fraud	I	5 yrs		s. 464	s. 453
s. 322(1) Fraudulently obtaining food and lodging	S	6m/2000	6m	S	s. 450(2)
s. 323 Pretending to practice witchcraft	S	6m/2000	6m	S	s. 450(2)
s. 325(1) Forgery	I	14 yrs		s. 464	s. 457(1)
s. 326(1) Uttering forged document	I	14 yrs		s. 464	s. 457(1)
s. 327 Exchequer bill paper, public seals, etc.	I	14 yrs		s. 464	s. 457(1)
s. 328 Counterfeit proclamation, etc.	I	5 yrs		s. 464	s. 453
s. 329 Telegram, etc., in false name	I	5 yrs		s. 464	s. 453
s. 330(1) False messages with intent to injure or alarm	I	2 yrs		s. 464	s. 453
s. 330(2) Indecent telephone calls	S	6m/2000	6m	S	s. 450(2)
s. 330(3) Harassing telephone calls	S	6m/2000	6m	S	s. 450(2)
s. 332 Drawing document without authority, etc.	I	14 yrs		s. 464	s. 457(1)
s. 333 Obtaining, etc., by instrument based on forged document	I	14 yrs		s. 464	s. 457(1)

Offence Description	Procedure	Sentence Max.	Sentence Min.	Limitation Period	Election	Bail	Comments
s. 334(1) Counterfeiting/possessing instrument to counterfeit stamps	I	14 yrs			s. 464	s. 457(1)	
s. 334(2) Making, use or selling of a mark without lawful authority	I	14 yrs			s. 464	s. 457(1)	
s. 335 Damaging documents	I	5 yrs			s. 464	s. 453	
s. 336 Offences in relation to registers	I	5 yrs			s. 464	s. 453	
s. 338(1)(*a*) Fraud over $1,000 or pertaining to a testamentary instrument	I	10 yrs			s. 464	s. 457(1)	
s. 338(1)(*b*) Fraud under $1,000	ID SD	2 yrs 6m/2000		6m	s. 483 S	s. 450(2)	
s. 338(2) Fraud affecting public market prices	I	10 yrs			s. 464	s. 457(1)	
s. 339 Using mails to defraud	I	2 yrs			s. 464	s. 453	
s. 340 Fraudulent manipulation of stock exchange transactions	I	5 yrs			s. 464	s. 453	
s. 341(1)(*a*) and (*b*) Gaming in stocks or merchandise	I	5 yrs			s. 464	s. 453	
s. 342 Broker reducing stock by selling for his own account	I	5 yrs			s. 464	s. 453	

s. 343 Fraudulent concealment or use of title documents	I	2 yrs		s. 464	s. 453	Consent of Attorney General required.
s. 344 Fraudulent registration of title	I	5 yrs		s. 464	s. 453	
s. 345 Fraudulent sale of real property	I	2 yrs		s. 464	s. 453	
s. 346 Misleading receipt	I	2 yrs		s. 464	s. 453	
s. 347 Fraudulent disposal of goods on which money advanced	I	2 yrs		s. 464	s. 453	
s. 348 Fraudulent receipts under the *Bank Act*	I	2 yrs		s. 464	s. 453	
s. 350 Disposal or acceptance of property to defraud creditors	I	2 yrs		s. 464	s. 453	
s. 351(1) Fraud in relation to fares, etc.	I	2 yrs		s. 483	s. 450(2)	
s. 351(2) Bribing fare collector	I	2 yrs		s. 483	s. 450(2)	
s. 351(3) Unlawfully obtaining transportation by land/ water/air	S	6m/2000	6m	S	s. 450(2)	
s. 352 Fraud in relation to minerals	I	5 yrs		s. 464	s. 453	
s. 354 Offences in relation to mines	I	10 yrs		s. 464	s. 457(1)	

Offence Description	Procedure	Sentence Max.	Sentence Min.	Limitation Period	Election	Bail	Comments
s. 355 Falsifying books or documents	I	5 yrs			s. 464	s. 453	
s. 356 Falsifying employment record	S	6m/2000		6m	S	s. 450(2)	
s. 357 False return by public officer	I	5 yrs			s. 464	s. 453	
s. 358 False prospectus, etc.	I	10 yrs			s. 464	s. 457(1)	
s. 359(1) Obtaining carriage by false billing	S	6m/2000		6m	S	s. 450(2)	
s. 360 Trader failing to keep accounts	I	2 yrs			s. 464	s. 453	
s. 361 Personation with intent	I	14 yrs			s. 464	s. 457(1)	
s. 362 Personation at examination	S	6m/2000		6m	S	s. 450(2)	
s. 363 Acknowledging instrument in false name	I	5 yrs			s. 464	s. 453	
s. 370 Offences with respect to trade marks/ *i.e.*, ss. 365, 366, 367, 368, 369	ID SD	2 yrs 6m/2000		6m	s. 464 S	s. 450(2)	
s. 371 Falsely claiming royal warrant	S	6m/2000		6m	S	s. 450(2)	
s. 373 Offences in relation to wreck	ID SD	2 yrs 6m/2000		6m	s. 464 S	s. 450(2)	

s. 375(1) Applying or removing distinguishing marks without authority	I	2 yrs		s. 464	s. 453	
s. 375(2) Reception, possession or delivery of public stores bearing a distinguishing mark	ID SD	2 yrs 6m/2000	6m	s. 464 S	s. 450(2)	
s. 376 Selling defective stores to Her Majesty/offences by officers and employees	I	14 yrs		s. 464	s. 457(1)	
s. 377 Unlawful use of military uniforms or certificates	S	6m/2000	6m	S	s. 450(2)	
s. 378 Military stores	ID SD	5 yrs 6m/2000	6m	s. 464 S	s. 450(2)	
s. 380 Criminal breach of contract	ID SD	5 yrs 6m/2000	6m	s. 464 S	s. 450(2)	Consent of Attorney General required for both ID and SD procedures.
s. 381 Intimidation	S	6m/2000	6m	S	s. 450(2)	
s. 381.1 Threat to commit offence against internationally protected person	I	5 yrs		s. 464	s. 453	
s. 382 Offences by employers	S	6m/2000	6m	S	s. 450(2)	
s. 383 Secret commissions (by agents and principals)	I	5 yrs		s. 464	s. 453	
s. 384(1) Issuing trading stamps	S	6m/2000	6m	S	s. 450(2)	

Offence Description	Procedure	Sentence Max.	Sentence Min.	Limitation Period	Election	Bail	Comments
s. 387(2) Wilful mischief causing danger to life	I	Life			s. 464	s. 457(1)	
s. 387(3) Wilful mischief in relation to testamentary instrument or property worth more than $1,000	ID SD	10 yrs 6m/2000		 6m	s. 464 S	s. 450(2)	
s. 387(4) Wilful mischief in relation to other property	ID SD	2 yrs 6m/2000		 6m	s. 483 S	s. 450(2)	
s. 387(5) Wilful mischief in relation to data	ID SD	10 yrs 6m/2000		 6m	s. 464 S	s. 450(2)	
s. 387(5.1) Wilful act or omission to act, where duty is to act, likely to cause actual danger to life or mischief to property or data	ID SD	5 yrs 6m/2000		 6m	s. 464 S	s. 450(2)	
s. 387.1 Attack on premises, residence or transport of internationally protected person	I	14 yrs			s. 464	s. 457(1)	
s. 389(1) and (2)					s. 464	s. 457(1)	
Arson (specific types)	I	14 yrs			s. 464	s. 453	
Arson (others)	I	5 yrs					
s. 390 Setting fire to substances not mentioned in s. 389	I	5 yrs			s. 464	s. 453	
s. 392(1) Setting a fire by negligence	I	5 yrs			s. 464	s. 453	

s. 393 False alarm of fire	ID SD	2 yrs 6m/2000	6m	s. 464 S	s. 450(2)
s. 394(1) Interfering with saving of wrecked vessel	I	5 yrs		s. 464	s. 453
s. 394(2) Interfering with saving of wreck	S	6m/2000	6m	S	s. 450(2)
s. 395(1) Interfering with marine signal, etc. (attaching boat to marker)	S	6m/2000	6m	S	s. 450(2)
s. 395(2) Wilful interference (altering, removing, concealing) with marine signals	I	10 yrs		s. 464	s. 457(1)
s. 396 Removing natural bar without permission	I	2 yrs		s. 464	s. 453
s. 397 Occupant injuring building to the prejudice of a mortgagee/owner	I	5 yrs		s. 464	s. 453
s. 398 Interfering with boundary lines	S	6m/2000	6m	S	s. 450(2)
s. 399 Interfering with international boundary marks, etc.	I	5 yrs		s. 464	s. 453
s. 400 Injuring or endangering cattle	I	5 yrs		s. 464	s. 453
s. 401 Injuring or endangering other animals	S	6m/2000	6m	S	s. 450(2)

Offence Description	Procedure	Sentence Max.	Sentence Min.	Limitation Period	Election	Bail	Comments
s. 402(2) Causing unnecessary suffering (to animals or birds)	S	6m/2000		6m	S	s. 450(2)	
s. 402(6) Ownership, custody or control of animal or bird when prohibited from doing so by court order	S	6m/2000		6m	S	s. 450(2)	
s. 403 Keeping cock-pit	S	6m/2000		6m	S	s. 450(2)	
s. 407 Making of counterfeit money	I	14 yrs			s. 464	s. 457(1)	
s. 408 Possession, buying or receiving or offering to buy or receive, counterfeit money	I	14 yrs			s. 464	s. 457(1)	
s. 409 Having clippings obtained from current gold or silver coins	I	5 yrs			s. 464	s. 453	
s. 410 Uttering, etc., counterfeit money	I	14 yrs			s. 464	s. 457(1)	
s. 411 Uttering coin	I	2 yrs			s. 464	s. 453	
s. 412 Manufacturing or possession of slugs and tokens	S	6m/2000		6m	S	s. 450(2)	
s. 413 Clipping and uttering clipped coin	I	14 yrs			s. 464	s. 457(1)	

s. 414 Defacing current coins	S	6m/2000	6m	S	s. 450(2)	
s. 415 Printing of circulars, etc., in likeness of notes	S	6m/2000	6m	S	s. 450(2)	
s. 416 Making, having or dealing in instruments for counterfeiting	I	14 yrs		s. 464	s. 457(1)	
s. 417 Conveying instruments for coining out of mint	I	14 yrs		s. 464	s. 457(1)	
s. 418 Advertising and dealing in counterfeit money, etc.	I	5 yrs		s. 464	s. 453	
s. 421(*a*) Attempts, accessories/ indictable, punishable death or life imprisonment	I	14 yrs		s. 464	s. 457(1) or s. 457.7	Election under ss. 427, 430 where attempt offence is listed in s. 427(*a*)(i) to (vii) or where accessory offence relates to high treason, treason or murder.
s. 421(*b*) Attempts, accessories/ indictable, punishable 14 yrs or less	I	*		same as offence	varies	*Maximum sentence is one-half of the maximum sentence for committing offence.
s. 421(*c*) Attempts, accessories/ summary offence, punishable on summary conviction	S	6m/2000	6m	S	s. 450(2)	
s. 421(*d*) Attempts, accessories/ hybrid offence	ID SD	* 6m/2000	 6m	s. 464 or s. 483 S	s. 450(2)	*Maximum sentence if prosecuted by indictment is one-half the maximum indictable sentence for the principal offence.

Offence Description	Procedure	Sentence Max.	Sentence Min.	Limitation Period	Election	Bail	Comments
s. 422(*a*) Counselling another person to commit an indictable offence/if offence is not committed	I	same as penalty for attempts			s. 464	varies	
s. 422(*b*) Counselling another person to commit an offence punishable on summary conviction/if offence is not committed	S	6m/2000		6m	S	s. 450(2)	
s. 423(1)(*a*) Conspiracy/murder	I	Life			s. 427	s. 457.7	
s. 423(1)(*b*)(i) Conspiracy to prosecute/ knowing that person innocent (if offence sentence is death, imprisonment for life or 14 yrs)	I	10 yrs			s. 464	s. 457(1)	
s. 423(1)(*b*)(ii) Conspiracy to prosecute/ knowing that person innocent (if offence sentence is less than 14 yrs)	I	5 yrs			s. 464	s. 453	
s. 423(1)(*d*) Conspiracy/general for an indictable offence	I	same as principal offence			same as principal offence	varies	
s. 423(1)(*e*) Conspiracy to commit summary conviction offence	S	6m/2000		6m	S	s. 450(2)	
s. 442(4) Breach of court order restricting public and publicity	S	6m/2000		6m	S	s. 450(2)	

s. 443.2 Publication concerning search, before charges laid	S	6m/2000	6m	S	s. 450(2)	
s. 457.2(2) Failure to comply with a court order directing matters not to be published for a specified period	S	6m/2000	6m	S	s. 450(2)	
s. 467(3) Failure to comply with order restricting publication of evidence taken at preliminary inquiry	S	6m/2000	6m	S	s. 450(2)	
s. 576.1 Failure to comply with a restriction on publication when a jury is not present at trial	S	6m/2000	6m	S	s. 450(2)	
s. 576.2 Disclosure of jury proceedings	S	6m/2000	6m	S	s. 450(2)	
s. 636 Contempt of court		90 days/ $100				Not all aspects of contempt of court are included in the table. Note partial statutory definitions of contempt in sections 533 and 636.
s. 666 Failure to comply with probation order	S	6m/2000	6m	S	s. 450(2)	
s. 746 Breach of recognizance	S	6m/2000	6m	S	s. 450(2)	

NOTES

(a) [S. 450(1)(*a*)] Peace officer may arrest without warrant a person who has committed or who, on reasonable and probable grounds, he believes has committed or is about to commit an indictable offence.

(b) If offence is indictable, mode and routing of appeal are those specified in Part XVIII (sections 601 to 624). Sections 747 to 771 specify mode and routing of appeal if offence punishable on summary conviction.

(c) No application may be made pursuant to subsection 4(2) of *Criminal Records Act* until — in case of imposition on the applicant of sentence of imprisonment, period of probation, or a fine — two years have elapsed if offence is a summary conviction; one or five years, if offence is an indictable one.

(d) All accused charged with indictable offences are subject to the provisions of *Identification of Criminals Act* whereas accused charged with summary conviction offences are not.

(e) [S. 562] If the offence is high treason or first degree murder, accused may challenge 20 jurors peremptorily. Other offences, if maximum sentence more than 5 years, 12 jurors. If maximum 5 years or less, 4 jurors.

(f) [S. 646] If maximum more than 5 years, court may impose fine only in addition to term of imprisonment. If maximum 5 years or less, court may impose fine in addition to, or in lieu of, term of imprisonment.

(g) [S. 659] Sentence of life, a term of two years or more, or two or more terms which aggregate to two years or more shall be served in penitentiary.

(h) Document of process is information if offence punishable on summary conviction, section 483 offence or indictable offence which accused elects to have tried by provincial court judge. Document of process is indictment for any other offence.

APPENDIX B

Selected *Criminal Code* Sentencing Data

In this Working Paper we recommend the reclassification of section 483 (absolute jurisdiction) indictable offences, and hybrid and indictable offences punishable by a maximum of two years. These offences would be reclassified as crimes punishable by two years imprisonment or less.

Some hybrid offences punishable on indictment by maximum penalties in excess of two years and other indictable offences carrying maxima exceeding two years might also be considered for reclassification as crimes punishable by two years or less. The limited sentencing data made available to us suggests that actual sentences fall far short of the maximum possible sentences for a number of hybrid offences. The sentences often fall within the penalty range for our class of minor or less serious crimes, even where the possible penalty on indictment exceeds five years. We make no recommendation about reclassifying such offences as crimes punishable by two years or less imprisonment. Nonetheless, we remind Parliament of the often significant disparity between maximum penalties and actual sentences. Some types of conduct that currently attract high potential penalties might therefore be considered for reclassification as crimes punishable by two years or less.

The following is sentencing data for selected hybrid offences that attract possible penalties of five years imprisonment or more. This data, provided by Statistics Canada, concerns sentences reported to it in the years 1971, 1972, 1973, 1978 and 1979. We recognize the inherent shortcomings in utilizing statistics pertaining to only some of the hybrids and of employing data which is not reflective of the experience of the past six years. Consequently, we have been very cautious in drawing conclusions based upon such data. Also, we wish to note that owing to the inadequate reporting of court statistics, the reports which we have gathered are, at best, partial. However, despite these deficiencies and despite the fact that different groups of courts reported in different years, the figures show a remarkable consistency. They thereby yield at least a tentative indication that, in the aggregate, in the period surveyed there has been a commonality of approach to the sentencing of these hybrid offences, both across provinces and across time.

Pointing a Firearm — Subsection 84(1) (possible maximum of five years imprisonment)

	Suspended sentence	Fine only	6m and under	Imprisonment over 6m under 15m	15m and over
1971	52%	20%	22%	4%	2%
1972	47%	24%	22%	4%	3%
1973	37%	23%	34%	5%	1%
1978	55%	18%	25%	2%	—
1979	36%	36%	19%	5%	4%

Carrying a Concealed Weapon — Section 87 (possible maximum of five years imprisonment)

	Suspended sentence	Fine only	6m and under	Imprisonment over 6m under 15m	15m and over
1971	31%	23%	37%	6%	3%
1972	29%	19%	40%	6%	6%
1973	19%	31%	37%	8%	5%
1978	39%	46%	15%	—	—
1979	39%	27%	27%	5%	2%

Possession of a Prohibited Weapon and Being the Occupant of a Motor Vehicle Knowing It Contains a Prohibited Weapon — Section 88 (possible maximum of five years imprisonment)

(a) *Possession of a Prohibited Weapon*

	Suspended sentence	Fine only	6m and under	Imprisonment over 6m under 15m	15m and over
1971	22%	48%	26%	4%	—
1972	32%	49%	16%	—	3%
1973	24%	19%	51%	—	6%
1978	16%	52%	19%	5%	8%
1979	19%	53%	21%	2%	5%

(b) *Occupant of Motor Vehicle*

	Suspended sentence	Fine only	6m and under	Imprisonment over 6m under 15m	15m and over
1971	20%	40%	40%	—	—
1972	33%	56%	11%	—	—
1978	16%	74%	10%	—	—
1979	29%	53%	18%	—	—

Possession of Unregistered Restricted Weapon — Subsection 89(1) (possible maximum of five years imprisonment)

	Suspended sentence	Fine only	6m and under	Imprisonment over 6m under 15m	15m and over
1971	20%	46%	20%	12%	2%
1972	27%	40%	22%	5%	6%
1973	18%	40%	30%	9%	3%
1978	20%	68%	8%	1%	3%
1979	31%	23%	23%	3%	20%

Public Mischief — Section 128 (possible maximum of five years imprisonment)

	Suspended sentence	Fine only	6m and under	Imprisonment over 6m under 15m	15m and over
1971	22%	57%	19%	1%	1%
1972	28%	58%	13%	1%	—
1973	24%	59%	16%	1%	1%
1978	23%	65%	11%	—	1%
1979	20%	62%	18%	—	—

Dangerous Operation of a Motor Vehicle, Vessel or Aircraft where No Injury — Subsection 233(1) (possible maximum of five years imprisonment)

This offence, new with the *Criminal Law Amendment Act, 1985*, replaces a number of offences — criminal negligence in the operation of a motor vehicle (formerly s. 233(1)), dangerous driving (formerly s. 233(4)) and dangerous operation of a vessel (formerly s. 240(1)). Here we show sentencing statistics for criminal negligence.

Criminal Negligence in the Operation of a Motor Vehicle

	Suspended sentence	Fine only	6m and under	Imprisonment over 6m under 15m	15m and over
1971	4%	44%	40%	4%	8%
1972	17%	8%	67%	—	8%
1973	33%	10%	33%	16%	8%
1978	12%	54%	29%	3%	2%
1979	11%	47%	36%	1%	5%

Assaulting a Peace Officer, Etc. — Subsection 246 (possible maximum of five years imprisonment)

	Suspended sentence	Fine only	6m and under	Imprisonment over 6m under 15m	15m and over
1971	16%	43%	38%	2%	2%
1972	16%	48%	33%	1%	2%
1973	19%	41%	36%	2%	2%
1978	22%	55%	21%	1%	1%
1979	17%	56%	26%	—	1%

Theft, Forgery of Credit Card — Section 301.1 (possible maximum of ten years imprisonment)

	Suspended sentence	Fine only	6m and under	Imprisonment over 6m under 15m	15m and over
1978	27%	7%	45%	7%	14%
1979	26%	5%	23%	44%	2%