APPENDIX

REPORT OF
ROYAL COMMISSION ON
REVISION OF CRIMINAL CODE

OTTAWA,
February 22, 1952.

To: The Honourable Stuart S. Garson, Q.C.
   Minister of Justice,
   Ottawa.

Your Commissioners, pursuant to their instructions, have the honour to
submit the annexed draft Bill to revise the Criminal Code which has been
prepared by them under the terms of reference appointing them, as contained
in Order in Council P.C. 2275 of the 10th day of May, 1951.

An examination and study of the Criminal Code was authorized by Order
in Council P.C. 527 of the 3rd day of February, 1949. This task was assigned to
a Commission consisting of Hon. W. M. Martin, Chief Justice of Saskatchewan,
Chairman; Mr. Justice Fauteux and Mr. F. P. Varcoe, Q.C., Deputy Minister of
Justice, with Mr. Arthur Slaght, Q.C., Toronto, as Counsel. The Commission
was to have the assistance of a Committee comprised of Mr. Robert Forsyth,
K.C., (now Judge Forsyth), Toronto, Mr. Fernand Choquette, K.C., (now Mr.
Justice Choquette), Quebec, H. J. Wilson, Q.C., Deputy Attorney General of
Alberta, Edmonton, Mr. J. J. Robinette, Q.C., Toronto, and Mr. Joseph Sedgwick,
Q.C., Toronto. The personnel of the Committee was subsequently increased
and Mr. W. C. Dunlop, Q.C., Halifax, Mr. H. P. Carter, Q.C., St John’s New-
foundland, and Mr T. D. MacDonald, Q.C., Ottawa, became members of the
Committee. As some members of the Commission and the Committee found
that judicial duties and other commitments made it impossible to devote the
time necessary to the revision and as the work had progressed to a stage where
it could be carried on by a smaller committee, the Committee was reorganized
by Order in Council P.C. 68/4583 of the 26th day of September, 1950. On the
10th day of May, 1951, as above stated, by Order in Council P.C. 2275, the
present Commission consisting of Hon. W. M. Martin, Chief Justice of Saskat-
chewan, Chairman; Hon. Mr. Justice Fernand Choquette, Quebec, His Honour
Judge Robert Forsyth, Toronto, Mr. H. J. Wilson, Q.C., Edmonton, Mr. Joseph
Sedgwick, Q.C., Toronto, and Mr. A. A. Moffat, Q.C., Ottawa, was appointed
and directed to prepare a draft Bill to revise the present Criminal Code.

The terms of reference were as follows:
(a) revise ambiguous and unclear provisions;
(b) adopt uniform language throughout;
(c) eliminate inconsistencies, legal anomalies or defects;
(d) rearrange provisions and Parts;
(e) seek to simplify by omitting and combining provisions;
(f) with the approval of the Statute Revision Commission, omit provisions
which should be transferred to other statutes;
(p) endeavour to make the Code exhaustive of the criminal law; and
(h) effect such procedural amendments as are deemed necessary for the
speedy and fair enforcement of the criminal law.

The Committee appointed by Order in Council in February 1949, and
reorganized by Order in Council of the 26th day of September, 1950, held, in
all, twelve meetings, each one occupying a period of about one week. Prior
to the reorganization of the Committee in September 1950, the Committee
worked in close co-operation with the Commission in making a general survey
of the Code and in laying the groundwork for the present draft Bill. Your
Commissioners have found the preliminary work done during this period of
great value and many of the decisions taken at that time have been incorporated
in the draft Bill. Your Commissioners feel that they would be remiss if they
did not express their appreciation of the very valuable work done by those who,
through judicial duties and other commitments, found that they could not
continue with the work of revision. They therefore take this opportunity to
express their sincere appreciation to
Hon. Mr. Justice Fauteux,
Mr. F. P. Varcoe, Q.C.,
Mr. J. J. Robinette, Q.C.,
Mr. W. C. Dunlop, Q.C.,
Mr. H. F. Carter, Q.C., and
Mr. T. D. MacDonald, Q.C.,

for the very valuable contribution which they made toward the work of revision.

The Commission appointed by Order in Council of the 10th day of May,
1951, has held four meetings, one in each of the months of June, September,
October and November, each meeting extending over a period of about one
week.

The Committee and the Commission have been of the opinion that the
views of the provincial authorities should be obtained in connection with certain
matters, particularly with respect to procedure. For this reason the provincial
authorities have from time to time been communicated with and meetings were
held with their representatives at Calgary in the month of August, 1949, prior
to the annual meeting of the Canadian Bar Association, and in September, 1951,
in the City of Toronto at the time of the meeting of the Criminal Law Section
of the Conference of Commissioners on Uniformity of Legislation in Canada.
The latter meeting was arranged to obtain the views of the provincial repre-
sentatives with respect to a proposed revision of Parts XV, XVI, XVIII and
XXI of the Code. Certain changes in procedure were suggested in order to
give effect to the following purposes:

(a) to simplify the summary trial procedure and to expedite the disposition
of cases;
(b) to attain greater uniformity in the procedure relating to summary
trials of offences, whether punishable by indictment or on summary
conviction;
(c) to provide uniform procedure with respect to the forfeiture of bail.

It is a matter of satisfaction to be able to report that there was general
approval by the provincial representatives of the suggested changes in
procedure.

EXTENT TO WHICH REVISED CODE IS EXHAUSTIVE OF THE CRIMINAL LAW

Under the terms of reference the Commission is directed to endeavour to
make the Code exhaustive of the criminal law. Sections 10, 11 and 12 of the
present Code make the criminal law of England applicable in the Provinces of
Ontario, British Columbia and Manitoba, as it existed on the 17th day of September, 1792, the 19th day of November, 1858, and the 15th day of July, 1870, respectively, in so far as it has not been repealed by any Act having the force of law in the respective provinces or by the Criminal Code or any other Act of the Parliament of Canada. There are no similar provisions in the Code with respect to any of the other provinces. As to the Province of Quebec, there can be no doubt that from the date of the Quebec Act, 1774, the English criminal law has been in force except as altered, varied or modified by competent authority. As to the Maritime Provinces there are no statutes, Imperial or Canadian, which expressly deal with the introduction of the criminal law of England, but that law is considered as having been adopted in so far as it is applicable to local conditions. Vide: Tremear, 5th Ed., p. 44, and cases there cited. As to Alberta and Saskatchewan, the Northwest Territories Act, 1886, c. 50, as amended by C. 28 of 1887, s. 4, provided that the laws of England relating to civil and criminal matters as they existed on July 13th, 1870, shall be in force in the Territories in so far as they are applicable, and in so far as they have not been altered, varied or modified by any Act of the Parliament of the United Kingdom applicable to the Territories or of the Parliament of Canada, or by any Ordinance of the Lieutenant-Governor in Council or of the Legislative Assembly. When the Provinces of Alberta and Saskatchewan were formed in 1905 it was provided by both the Alberta and Saskatchewan Acts that all laws existing before the coming into force of those Acts should continue in the new provinces in so far as they were not inconsistent with the Acts or where the Acts contained no provision intended as a substitute for them. In the Province of Newfoundland, broadly speaking, the law of England as to crime and offences in so far as it could be applied was in force when the province entered Confederation in 1949. The Criminal Code, however, was proclaimed in force in Newfoundland on August 1, 1950.

Your Commissioners are of the opinion that the Code should be exhaustive in so far as criminal offences are concerned, but that the criminal law of England, as presently in force, should be continued in respect of all other matters. In order to give effect to this opinion, clauses 7 and 8 have been placed in the draft Bill. These clauses are as follows:

"7. (1) The criminal law of England that was in force in a province immediately before the coming into force of this Act continues in force in the province except as altered, varied, modified or affected by this Act or any other Act of the Parliament of Canada.

(2) Every rule and principle of the common law that renders any circumstance a justification or excuse for an act or a defence to a charge continues in force and applies in respect of proceedings for an offence under this Act or any other Act of the Parliament of Canada, except insofar as they are altered by or are inconsistent with this Act or any other Act of the Parliament of Canada.

8. Notwithstanding anything in this Act or any other Act, no person shall be convicted

(a) of an offence at common law,

(b) of an offence under an Act of the Parliament of England, or of Great Britain, or of the United Kingdom of Great Britain and Ireland, or

Note: Where the reference is to a provision of the present Code, the word "section" is used. Where the reference is to a provision of the draft Bill, the word "clause" is used."
MAY 14, 1952

(c) of an offence under an Act or Ordinance in force in any province, territory or place before that province, territory or place became a province of Canada,

but nothing in this section affects the power, jurisdiction or authority that a court, judge, justice or magistrate had, immediately before the coming into force of this Act, to impose punishment for contempt of court."

Under these provisions the criminal law of England in so far as it relates to procedure in criminal matters, common law defences and the powers of a court to punish for contempt of court are preserved.

Your Commissioners recognize that the original Code was not intended to be a complete Code and that common law defences were still retained. However, we have come to the conclusion that by incorporating in the draft Bill all of the common law offences in respect of which charges are currently laid, all offences which should be adopted from the common law are included. The offences which have been incorporated are common law conspiracy (clause 408(d)), public mischief (clause 120), indemnification of bail (clause 119(2)(d)) and compounding a felony (clause 121). A specific punishment applies in respect of each offence. Certain common law offences are, in the opinion of your Commissioners, obsolete and archaic and are not retained, e.g., champery and maintenance, barratry, refusing to serve in office and being a common scold.

REARRANGEMENT AND CONSOLIDATION

The Criminal Code was first enacted in 1892 and was founded largely upon the draft Code prepared in 1873 by the Commissioners appointed by the Imperial Government for the purpose of drafting a Code of the English criminal law, and also upon Stephen's Digest of the criminal law. Since that time amendments and additions have been made at nearly every Session of Parliament. Some of the amendments and additions have not been placed in appropriate portions of the Code. Your Commissioners have consolidated and rearranged sections which deal with the same subject matter and have thus facilitated reference.

Having regard to the Appendices to this Report and the study which will be given to the draft Bill, your Commissioners do not consider it necessary to set out in detail the rearrangement and consolidation that has been made. However, as an indication of the manner in which this work has been done, a number of examples are given.

Rearrangement

The present Code allocates provisions under divisions based on subject matter. One result of this is, for instance, that rules of evidence whether of general application or related to a particular offence are gathered together under the heading of "evidence" in Part XIX. This arrangement is inconvenient because it necessitates not only reference to the provision creating the offence but also reference to Part XIX for the purpose of ascertaining whether or not there is a special rule of evidence relating to the particular offence. For example, section 394 of the Code deals with offences in respect of lumber and lumbering equipment. Section 990 provides that where the material which is the subject of a prosecution under section 394 bears a registered mark, this constitutes prima facie evidence that the material which is the subject of the charge belongs to the registered owner of the mark.

In the draft Bill, provisions which are of general application are continued in a Part that is of general application, while provisions which relate to a specific offence have been put with the section creating the offence. In as much
as section 990 is limited to an offence under section 394, it has been carried into clause 285 so that the special provision relating to offences under this section may be readily ascertained.

Other examples are cases in which corroboration is required or where there is a limitation of time for the commencement of a prosecution. In such cases the requirement of corroboration or the limitation of time is placed with the clause that creates the offence. In the case of forgery, the provision in section 1003 requiring corroboration is incorporated as subsection (2) of clause 310.

Consolidation

The work of consolidation is designed to do away with duplication and needless repetition, and provisions are drafted in a form that, where possible, eliminates particularization and reduces to a minimum the need for amendment. For example, the present Code contains provisions dealing with false entries in books of account. Section 413 makes it an offence for an officer of a corporation to make false entries. Section 414 makes it an offence for a clerk or servant to falsify books of account, etc. Section 418 makes it an offence to falsify books of account to defraud creditors. Sections 484 and 485 make it an offence to make false entries in books of account of a government or of a bank. In all these instances the gravamen of the offence is that it is done with an intent to defraud. In the consolidation of these provisions (clause 340) particularization is eliminated and it is made an offence with intent to defraud to falsify books of account, etc.

Another instance of consolidation to which attention is directed and which is intended to meet existing and future conditions, is to be found in Part X which deals with counterfeiting. The object of this Part is the protection of the currency. By a comprehensive definition of currency and the consolidation of provisions which dealt separately with the various kinds of coin and with paper money, a simple and complete code relating to this subject has been evolved.

Consolidation has also been carried out in matters of procedure. One instance of this is the creation of a separate Part (Part XIX) dealing with the calling of witnesses and the taking of evidence on commission. At present these matters are dealt with in the several procedural Parts. This has resulted in the enactment of a great number of provisions, each group designed to cover the subject for the purposes of the proceedings dealt with by the Part in which they appear.

Your Commissioners have therefore consolidated in one Part (Part XIX) all provisions relating to compelling the attendance of witnesses and the taking of evidence on commission.

It has been found that many sections of the Code relating to particular offences may be omitted because the offences are capable of being dealt with in one general provision. For example, sections 358-388 create many separate offences for different kinds of theft. These sections are dropped and only one offence of theft is created for which appropriate punishment is provided. It is pointed out that this is in conformity with the policy of Parliament as a similar step was recently taken in respect of the offence of forgery.

UNNECESSARY PROVISIONS.

Certain provisions are not retained because the same subject matter is dealt with in other Statutes of Canada. The following are examples:

Sec. 222A which deals with manufacture, importation and sale of living bacteria, is now dealt with by the Pest Control Products Act, R.S.C., 1927, c. 5, as amended by 1939, c. 21.
Sec. 224 which makes it an offence for a person to expose for sale articles which he knows are unfit for human food, is now adequately covered by the Food and Drugs Act, R.S.C., 1927, c. 76, as amended by 1948, c. 23, s. 2.

Sec. 504A dealing with moneylenders is also covered by provisions of the Small Loans Act, S.C., 1939, c. 23.

Sec. 506 dealing with offences in respect of copyrights is unnecessary in view of similar provisions in the Copyright Act, R.S.C., 1927, c. 32.

For the same reason we are of the opinion that the subject matter of clauses 411 and 412 (sections 498 and 498A) should be dealt with in the Combines Investigation Act. We do not feel free to omit these provisions from the draft Bill because we are informed that a Committee has been appointed by the Minister of Justice to study combines investigation legislation. In our opinion sections 1143-1148 inclusive of the Code relate to matters which should more properly be dealt with under provincial law. Section 1148 recognizes the validity of provincial law in relation to these matters and most provinces have expressly dealt with them. To avoid confusion and duplication these provisions are not retained.

In our opinion section 508 and subsections (4), (5) and (6) of section 515 are of doubtful validity. In any event they relate to matters which should more properly be dealt with under provincial law. They are in fact covered by statutory enactments in the provinces.

Section 1048 provides that the court may award as compensation to a person aggrieved an amount not exceeding one thousand dollars, which shall be deemed a judgment debt. This has been changed (clause 638) to provide that compensation may be awarded out of moneys found in the possession of an accused. The limitation in amount has been removed because the amount found in the possession of a convicted person sometimes exceeds one thousand dollars and a limitation might work injustice. The creation of a judgment debt is considered a civil matter and this portion of the present provision is not retained.

PROCEDURE

The major changes in procedure have been made in Parts XV, XVI, XVIII and XXI of the present Code.

Parts XVI and XVIII deal with the trial of indictable offences by magistrates and judges. These Parts readily lend themselves to consolidation and are combined in Part XVI of the draft Bill. The object of the consolidation is to provide a complete and expeditious procedure for the non-jury trial of indictable offences.

Under the proposed procedure the special jurisdiction conferred upon magistrates will be exercised only by those who are expressly appointed for that purpose. The requirement that magistrates must be expressly appointed to exercise jurisdiction under the Part is inserted in the expectation that the provinces will designate only qualified persons. The following is the definition of "magistrate":

"'magistrate' means a person appointed under the law of the province, by whatever title he may be designated, who is specially authorized by the terms of his appointment to exercise the jurisdiction conferred upon a magistrate by this Part, but does not include two or more justices of the peace sitting together."

Consideration was given to the extension of the absolute jurisdiction of magistrates and it was decided that certain minor extensions of this jurisdiction would be justified. It is therefore extended to include offences under
clause 178 which are cognate to those mentioned in clause 176 and over which a magistrate now has absolute jurisdiction. Clause 176 deals with betting, pool-selling and book-making. Clause 178 deals with lotteries. The absolute jurisdiction was further extended to include attempts to commit the offences of obtaining property by false pretences, receiving and retaining, where the value of the property does not exceed fifty dollars.

In view of the requirement that magistrates who are to exercise jurisdiction under the Part must be expressly appointed for the purpose, it was decided that the number of offences which should now be required to be tried by judge and jury should be reduced to include only treasonable offences, piracy and piratical acts, murder, manslaughter, combinations in restraint of trade, discrimination in trade, accessory after the fact to murder or treason, attempt to commit murder and conspiracy to murder (clause 413). The rights of an accused are in no way impaired as he is entitled to elect whether he will be tried by a judge and jury, by a judge alone, or by a magistrate.

Provision is made to enable an accused who is in custody in one province to have charges outstanding against him in another province disposed of if he wishes, but only where the accused admits his guilt and the Attorney General of the province in which the offences were committed consents. (clause 421 (3)).

The anomaly which presently exists with respect to sentences where a magistrate tries an offence mentioned in section 773, is abolished. Sentences which may be imposed for these offences will be the same whether the offence is tried summarily by a magistrate or is tried by a higher court.

Under Part XVI of the draft Bill no magistrate has absolute jurisdiction over any offence that is punishable by imprisonment for more than two years.

Summary Conviction Offences

With respect to Part XV (now Part XXIV of the draft Bill) which is the code of procedure for summary conviction offences, the purpose of the changes which are made is to bring about greater uniformity in procedure with respect to summary conviction offences and indictable offences.

The draft Bill provides that a proceeding under this Part must be commenced by an information under oath and that more offences than one may be included in an information as separate counts (clause 699). However, there is reserved to the court power to order a separate trial in respect of one or more of the counts where it is in the interests of justice so to do.

Under this Part the right of appeal is extended to permit appeals against sentence alone. Appeals are to be heard on the evidence taken at the trial and the powers of the court hearing an appeal in a summary conviction matter are similar to those of the courts which hear appeals in indictable offences. In order to ensure that the court will have before it all essential evidence, authority is given to hear witnesses called on the trial as well as additional witnesses.

Forfeiture of Bail

The provisions in respect of the forfeiture of bail contained in Part XXI of the present Code are not satisfactory. These provisions have been completely rewritten and are contained in Part XXII of the draft Bill. They provide a simple and uniform procedure for all the provinces.

Courts

In the draft Bill courts are specifically defined as superior courts of criminal jurisdiction or courts of criminal jurisdiction. The terminology of the present Code that involves references to such courts as Oyer and Terminer and General Goal Delivery is not retained.
SIMPLIFICATION

The provisions relating to arrest with or without warrant by a peace officer or other person are shortened and simplified. (Clauses 434-438.)

The provisions relating to justification for acts authorized by law to be done in the administration or enforcement of the law are combined in clauses 25 and 26.

SUBSTANTIVE CHANGES

Your Commissioners have made substantive changes in the criminal law which in their opinion eliminate certain inconsistencies, legal anomalies and defects in the law.

One example is that under the present Code on a charge of rape or indecent assault, the evidence of the complainant need not be corroborated. However, a rule of practice requires the trial judge to give a warning as to the danger of convicting on the complainant's evidence alone. This rule is codified and extended to cases of carnal knowledge (clause 134) with the result that under the draft Bill corroboration of the evidence of the complainant is no longer required in cases of carnal knowledge.

GAMING PROVISIONS

Your Commissioners have considered the gaming sections of the Code. While we are of the opinion that these sections contain certain inconsistencies and anomalies we have suggested no substantive changes because of the controversial nature of the matters involved.

SENTENCES

The sentences provided in the present Code follow no apparent pattern or principle and in our view are frequently not consonant with the gravity of the offences to which they relate.

Your Commissioners are of the opinion that there should be a few general divisions of punishment by imprisonment, each offence being assigned to one of the divisions. Accordingly, apart from the cases where the sentence of death may be imposed, maximum sentences of imprisonment are provided as follows:

(a) Life,
(b) 14 years,
(c) 10 years,
(d) 5 years,
(e) 2 years.

Suspended Sentence

The provisions relating to suspension of sentence contained in section 1081 of the Code are varied in clause 638 of the draft Bill. Under section 1081 where a person is convicted of any offence and no previous conviction is proved against him, the court may suspend the passing of sentence, but if the offence is punishable with more than two years' imprisonment, the concurrence of counsel acting for the Crown is required. It is the opinion of your Commissioners that the powers of the court to suspend the passing of sentence should not be subject to the consent of counsel for the Crown. It is a fundamental principle of the administration of justice that the law should be administered by a free and independent judiciary, and in determining whether a convicted person should be released on suspended sentence and thus be given an opportunity to rehabilitate himself, or should be sent to prison, the discretion of the judge should be unfettered. Under the provisions of clause 638 the court has power to suspend sentence in the case of any offence without the concur-
rence of counsel for the Crown, but the Crown is given an appeal against the suspension of sentence. (Clause 581 (a) ). The provisions with respect to previous convictions have been retained.

Fines

The provisions of the present Code empowering the imposition of fines in lieu of or in addition to any other punishment are retained.

Minimum Punishment

Your Commissioners consider that all minimum punishments should be abolished and none are continued in the draft Bill.

In 1878 Sir John Holker, then Attorney General of England, in introducing the original Draft Code in the House of Commons, said:

"Minimum punishments were a great evil, and I am happy to say that these punishments have been to a very considerable extent set aside by recent legislation; and now a very large discretion is confided to judges, and they are enabled, upon their view of the circumstances, to mitigate the punishment almost to any extent. I think that is right."

Chief Justice McKerue in Vol. 27 of the Canadian Bar Review (1949), p. 1003, writes in part as follows:

"It is much easier to justify a fixed punishment for murder, with all the safeguards of review that have been thrown around the execution of the sentence, than a minimum sentence for theft of a motor vehicle. An arbitrary law of the latter character tends to corrupt the administration of justice by creating a will to circumvent it. Even parliament itself has shown such a disposition by the enactment of section 285(c) of the Criminal Code which, although appearing to create a separate crime, defies the legal mind to distinguish it from theft properly defined."

Punishment for Summary Conviction Offences

In keeping with our desire for simplification, the draft Bill provides one general penalty for all summary conviction offences, namely, a fine of $500 or six months' imprisonment, or both.

Indeterminate Sentences

Your Commissioners have considered the question of indeterminate sentences and have consulted the provincial representatives in the matter. There was no general feeling in favour of such sentences, and while we believe they would have some merit, we think it would be impracticable to provide for such sentences until the requisite machinery, including a parole board, has been established.

GRAND JURY

Your Commissioners favour the abolition of the Grand Jury in the interests of uniformity. It has been abolished in every part of the British Commonwealth except in Canada where it is retained in five provinces, namely, Ontario, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland. However, the Grand Jury forms part of the judicial machinery for the enforcement of the law in those provinces where it has been retained. Moreover it has in the past been abolished only in those provinces that have asked for its abolition. In these circumstances we do not feel free to recommend its abolition without the support of the provinces concerned.
Criminal Negligence

We have considered the question as to the degree of negligence necessary to constitute a criminal offence.

A great deal of confusion has arisen, particularly in motor manslaughter cases, as to the degree of negligence required to sustain a conviction against an accused person. Much of the confusion arises by reason of the standard of care set forth in section 247 which reads as follows:

"247. Every one who has in his charge or under his control anything whatever, whether animate or inanimate, or who erects, makes or maintains anything whatever which, in the absence of precaution or care, may endanger human life, is under a legal duty to take reasonable precautions against, and use reasonable care to avoid, such danger, and is criminally responsible for the consequences of omitting, without lawful excuse, to perform such duty."

This definition appears to impose criminal liability for what might be termed civil negligence, yet the weight of judicial authority is to the effect that in order to sustain a conviction, it must be shown that the negligence of an accused person went beyond a mere matter of compensation and showed such disregard for the lives and safety of others as to amount to a crime against the state and conduct deserving punishment.

There is also the difficulty with respect to cases involving so-called involuntary manslaughter and particularly motor manslaughter in which the jury is reluctant to convict an accused person notwithstanding that he may have been guilty of reckless conduct amounting to criminal negligence. This difficulty gave rise to the enactment of section 951(3) of the Criminal Code which enabled a court, upon a charge of manslaughter arising out of the operation of a motor vehicle, to acquit the accused of manslaughter and find him guilty under section 285(6) notwithstanding that the degree of negligence required to warrant a conviction for the major or minor offence was the same. In order to resolve these difficulties we have dropped section 247 and also section 951(3) and have inserted a definition of criminal negligence in clause 191 of the draft Bill as follows:

"191. (1) Everyone is criminally negligent who shows a wanton or reckless disregard for the lives or safety of other persons

(a) by doing anything, or
(b) by omitting to do anything that it is his duty to do.

(2) For the purposes of this section, "duty" means

(a) a duty imposed by law, or
(b) a duty for the breach of which a person may be found liable in civil proceedings."

This definition is followed by clauses 192 and 193 which provide that everyone who by criminal negligence causes the death of another person is guilty of an indictable offence and is liable to imprisonment for life, and any person who by criminal negligence causes bodily injury to another person is guilty of an indictable offence and is liable to imprisonment for ten years.

The definition of criminal negligence in clause 191 is in accord with judicial authorities which state that wanton or reckless misconduct is required to support a charge involving criminal negligence: R. v. Bateman, 94 L.J.K.B. 791; Andrews
v. Director of Public Prosecutions, 106 L.J.K.B. 370; R. v. Greisman, 59 O.L.R. 166, and 46 C.C.C. 172; R. v. Baker, (1839) S.C.R. 354. In R. v. Bateman, supra, Lord Hewart stated that to support an indictment for manslaughter based on criminal negligence, the prosecution must prove the matters necessary to establish civil liability (except pecuniary loss) and in addition must satisfy the court that the negligence alleged "went beyond a mere matter of compensation and showed such disregard for the lives and safety of others as to amount to a crime against the state and conduct deserving punishment". See also the remarks of Lord Atkin in Andrews v. Director of Public Prosecutions, supra, and Tremear, 5th Ed., pp. 271 et seq.

It should be observed that under clause 192 any one who is convicted for causing the death of another person by criminal negligence in operating a motor vehicle is liable to life imprisonment.

In clause 194(5) it is provided that a person commits culpable homicide when he causes the death of a human being by criminal negligence. Under this provision any one who causes the death of another person by criminal negligence may be indicted for manslaughter, and if found guilty is liable under clause 207 to imprisonment for life.

In concluding the report on the subject of criminal negligence, attention should be called to the provisions of clause 221(1) which make it an offence to be criminally negligent in the operation of a motor vehicle whether or not such operation causes bodily injury to or death of another person. Because of this provision it has been unnecessary to retain subsections (1) and (6) of section 205.

PLACE OF TRIAL (NEWSPAPERS)

The Commission has considered that subsection (2) of clause 421 which provides that the proprietor, publisher, editor or other person charged with the publication of a defamatory libel in a newspaper or with conspiracy to publish a defamatory libel shall be dealt with, indicted, tried and punished in the province where he resides or in which the newspaper is printed. The majority of the Commission is of the opinion that the provision is contrary to the well established principle of the criminal law that an accused should be indicted, tried and punished where the offence is committed and that there appears to be no good reason under modern conditions why this principle should not be preserved in relation to newspapers. However, in view of the fact that this section was recently before Parliament, it is retained in the draft Bill.

CONCLUSION

Your Commissioners desire to state that as to some of the provisions of the draft Bill there was a difference of opinion. While the draft Bill presented reflects in some respects the view of the majority only, no useful purpose can be served by indicating specifically the matters in which differences of opinion were not fully resolved.

The following Appendices are attached hereto:

Appendix A—Table of Concordance showing disposition of sections of the present Code.

Appendix B—Table of Concordance showing origin of clauses in the draft Bill.

Appendix C—Table of Contents of the draft Bill.
MAY 14, 1952

In concluding this report your Commissioners wish to take this opportunity of expressing their appreciation of the valuable assistance and untiring service which they have received from the following personnel:

Mr. J. C. Martin, Q.C., who has acted as Counsel to the Committee and Commission;

Mr. A. J. MacLeod, of the Department of Justice for his assistance in the drafting of the Bill; and

Mr. L. J. Ryan, who acted as Secretary to the Committee and Commission.

Respectfully submitted.

(Sgd)  W. M. MARTIN, Chairman,
       ROBERT FORSYTH,
       FERNAND CHOQUETTE,
       H. J. WILSON,
       J. SEDGWICK,
       A. A. MOFFAT.

Ottawa,
January 22, 1952.
TABLE OF CONCORDANCE RESPECTING
SECTIONS OF PRESENT CODE

Ottawa,
January, 1952.

**TABLE OF CONCORDANCE**

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### Table Showing Origin of Clauses in Draft Bill

**Ottawa,**

**January, 1952.**

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**Part XIV**

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- This Part is derived from Part IX of the present Code. It has been completely revised.
- 2 (3), 546-548, 549, 555, 597, 601
- 496 and 497
- 2 (41) and 550
- 498A

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- 266 (c)
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APPENDIX C

The purpose of this Appendix is to indicate what matters are dealt with in the various Parts.

PART I
(Clauses 1-45)
General

Application of the Code and the extent to which the Law of England and especially the Common Law is retained—Parties to offences—Matters of justification or excuse—Protection of persons administering the Criminal Law—Defence of person or property—Protection of persons in authority.

PART II
(Clauses 46-98)

Offences Against Public Order
Treason and treasonable offences—Offences relating to passports—Sedition—Unlawful assembly and riots—Unlawful drilling—Forcible entry and detainer—Piracy—Offences relating to dangerous substances—Prize fights—Offensive weapons.

PART III
(Clauses 99-129)

Offences Against the Administration of Law and Justice

PART IV
(Clauses 130-167)

Sexual Offences, Public Morals and Disorderly Conduct

PART V
(Clauses 168-184)

Disorderly Houses, Gaming and Betting
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PART VI
(Clauses 185-287)
Offences against the person and reputation
Duties tending to preservation of life—Criminal negligence—Murder—Man-
slaughter—Infanticide—Concealment of birth—Suicide—Causing bodily
harm—Omissions causing danger to persons—Drunken driving—Driving
while faculties impaired—Assaults—Kidnapping and abduction—Abortion
—Offences against conjugal rights—Blasphemous libel—Defamatory libel

PART VII
(Clauses 288-321)
Offences against rights of property
Theft—Offences resembling theft—Criminal breach of trust—Robbery—Extor-
tion—Breaking and entering—Receiving and retaining—False pretences—
Witchcraft—Forgery and uttering—Offences resembling forgery—Threats.

PART VIII
(Clauses 322-369)
Fraudulent Transactions Relating to Contracts and Trade
Defrauding individuals or the public—Using the mails to defraud—Stock
market frauds—Frauds in respect of title to property—Frauds on creditors
—Falsification of books of account, public registers and documents—
Personation—Forgery of trade marks—False trade description of goods—
Secreting wreck—Offences relating to public stores—Offences relating to
breach of contract—Intimidation—Secret commissions—Trading stamps.

PART IX
(Clauses 370-390)
Wilful and Forbidden Acts in respect of Certain Property
Wilful damage to property—Rendering property dangerous—Obstructing use
of property—Arson and other fires—False alarms of fire—Interference
with signals and boundary marks—Cruelty to animals.

PART X
(Clauses 391-405)
Offences Relating to the Currency
Counterfeiting—Possession of counterfeit money—Uttering counterfeit money—
Defacing or impairing coins—Making or possessing instruments for
counterfeiting—Advertising or trafficking in counterfeit money or counter-
feit tokens of value—Forfeiture of counterfeit money and instruments for
counterfeiting.

PART XI
(Clauses 406-412)
Attempts, Conspiracies, Accessories
Attempts not otherwise provided for—Accessories after the fact—Counselling
or inciting—Conspiracy to murder—Conspiracy to bring false accusation—
Conspiracy to defile—Conspiracy at Common Law—Conspiracy to commit
indictable—Conspiracy in restraint of trade—Discrimination in trade.
SENATE

PART XII

(Clauses 413-424)

Jurisdiction

Offences triable by superior courts—Offences triable by courts of criminal jurisdiction—Special provisions regarding trade conspiracies and trials in Alberta—Jurisdiction over the person—Territorial jurisdiction—Extra-territorial jurisdiction—Rules of court.

PART XIII

(Clauses 425-433)

Special Procedure and Powers

Preserving order in courts—Trial of Juveniles to be without publicity—Search warrants—Seizure—Detention and disposal of things seized.

PART XIV

(Clauses 434-448)

Compelling Attendance of an Accused Before Justices

Arrest without warrant—Laying informations—Issuance of summons or warrants—Execution of warrant—Service of summons—Procuring attendance of a person who is in prison—Endorsement of warrants.

PART XV

(Clauses 449-465)

Procedure on Preliminary Inquiry

Jurisdiction of Justices—Remand to magistrate in cases where magistrate has absolute jurisdiction—Election before Justice—Powers of Justices on inquiry—Bail before committal for trial—Adjournment—Remand for observation as to mental condition—Taking evidence of witnesses—Right of accused to call evidence—Committal of witness refusing to be sworn or to testify—Committal for trial—Bail after committal for trial.

PART XVI

(Clauses 466-484)

Indictable Offences—Trial Without Jury

Absolute jurisdiction of magistrates—Jurisdiction of magistrates with consent—Jurisdiction of judges with consent—Election mode of trial—Right of accused to re-elect trial without jury—Preferring Indictment—Power to require trial by jury—Procedure where accused is a corporation.

PART XVII

(Clauses 485-580)

Indictable Offences—Trial by Jury

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PART XVIII
(Clauses 591-601)
Appeals: Indictable Offences

PART XIX
(Clauses 602-610)
Procuring Attendance of Witnesses
Subpoena or warrant—How issued—Execution or service—Effect—Procedure where witness absconds or makes default—Evidence on commission—Use of evidence previously taken.

PART XX
(Clauses 620-658)
Punishments, Fines, Forfeitures and Restitution of Property
Punishment in discretion of court—Cumulative punishments—Fines in lieu of or in addition to imprisonment—Punishment of corporations—Commence-ment of sentences—Part payment of fines—Who is to receive fines—Actions to recover penalties—Compensation and restitution of property—Where sentence of imprisonment to be served—Suspension sentence and binding over to keep the peace—Whipping—Capital punishment—Disabilities arising from sentence—Pardon and Commutation—Remission by Governor in Council.

PART XXI
(Clauses 659-667)
Preventive Detention
Habitual offenders—Criminal sexual psychopaths—Application for sentence of preventive detention—Procedure on application—Where sentences to be served—Periodic review by Minister of Justice—Appeal by accused or Attorney General.

PART XXII
(Clauses 668-679 and Schedule)
Effect and Enforcement of Recognizance
Responsibility of sureties—Duration of recognizances—Render of principal by sureties—Endorsement of default under recognizance—Procedure for forfeiture after default—Issue of writ of fieri facias—Committal of sureties when writ not satisfied—Remedial provision enabling release of sureties—Schedule of courts exercising powers under this part.

PART XXIII
(Clauses 680-691)
Extraordinary Remedies
Habeas Corpus—Appeal instead of successive applications—Certiorari—When it lies—Power of court on application—Mandamus—Prohibition—Appeal.
PART XXIV

(Clauses 692-744)

Procedure in Summary Conviction Matters
Proceedings to be commenced by information—Issuance of process—Inclusion of more than one matter of complaint—Amendment of information—Severance of counts—Adjournment—Right to make full answer and Defence—Bail—Trial—Adjudication—Penalty—Enforcing adjudication—Costs—Sureties to keep the peace—Appeal against conviction or sentence—Procedure on appeal—Appeal to be on evidence at trial—Powers of court on appeal—Security by appellant to prosecute appeal—Stated case—Procedure—Powers of court hearing stated case—Appeal to court of appeal in certain cases—Fees and allowances.

PART XXV

(Clauses 745-747)

Transitional

Repeal—Transitional—Coming into force.

PART XXV

(Clause 746)

Forms