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SPEAKER: Hon. Élie Beauregard

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I ELIZABETH II**

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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 Newfoundland, 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. 68/4633 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 Saskatchewan, 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 authorized 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;

- (g) 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. P. 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 representatives 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 1897, s. 4, provided that the laws of England relating to civil and criminal matters as they existed on July 15th, 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.

(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 offences 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., champerty 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 1878 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 1002 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 1946, 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 179 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 179 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 696). 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 Gaol 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 (d)). 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 McRuer 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 any thing 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. 156, and 46 C.C.C. 172; *R. v. Baker*, (1929) 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 285.

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

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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.

CRIMINAL CODE REVISION

"A"

TABLE OF CONCORDANCE RESPECTING
SECTIONS OF PRESENT CODEOttawa,
January, 1952.

TABLE OF CONCORDANCE

Present Code Section	Clause in Draft Bill	Present Code Section	Clause in Draft Bill
1	1	6	3 (5)
2 (1)	(1)	7	3 (6)
(2)	(2)	8	4
(3)	dropped	9	6
(4)	(3)	10 } 11 } 12 }	covered by 7
(4) (a)	(4)	13	9
(5)	(5)	14	dropped
(6)	dropped	15	10
(7)	(9)	16	7 (2)
(8)	391 (d)	17	12
(9)	dropped	18	13
(10) (a)	168 (1) (e) not required be- cause of definition of territorial divi- sion.	19	16
(11)	(12)	20	17
(12)	(13)	21	18
(13)	(15)	22	19
(14)	(16)	23 } 24 } 25 }	25
(15)	(17)	26 } 27 }	
(16)	dropped	28	28
(16) (a)	(19)	29	25
(17)	(20) and (8)	30 } 31 } 32 }	
(18)	dropped	33	25
(19)	(21)	34	
(20)	dropped	35	
(20) (a)	(23)	36	
(21)	(24)	37	
(22)	(26)		
(23)	247 and 421 (4)		
(24)	(28) and (11)		
(25)	(29)		
(26)	dropped		
(27)	(30)		
(28)	(22)		
(29)	(31)		
(30)	81 (2)		
(31)	(32)		
(32)	(34)		
(33)	(35)		
(34)	(36)		
(35)	dropped		
(36)	(43)		
(37)	dropped		
(38)	(38)		
(39)	(39)		
(40)	(40)		
(41)	410 (2)		
(42)	(41)		
(43)	(42)		
(44)	(43)		
(45)	(44)		
(2)	3 (1)	38	dropped
3	3 (2)	39	25
4	3 (3)	40	29
5	3 (4) and 435		

Present Code Section	Clause in Draft Bill	Present Code Section	Clause in Draft Bill
41 } 42 } 43 } 44 } 45 }	25	84	57
46	30	87	64
47	31	88	65
48 } 49 } 50 } 51 }	32	89	67
52	27	90	66
53 (1) and (2) (3)	34 36	91	68
54 (1) (2)	35 36	92	69
55	37	93	33
56	38	94	70
57 } 58 }	39	95	110
59 } 60 }	40	96 } 97 }	372
61	41	99	71
62	42	100	See 160
63	43	101	72
64	44	102	73
65	45	103	74
66	26	104	dropped
67	14	105 } 106 }	81(1)
68	15	107 } 108 } 109 } 110 }	dropped
69	21 and 407	111	77
70	22	112	78
71	23	113	79
72	24	114	80
74 (1) (2)	46(1) and (2) 47(1)	115	82
75	46(3)	116	83
76	50	117	84
77	46(1)	118	85
78	46(1)	119	86
79	51	120	88
80	52	121	89
81	53	122	90
82	54	123	91
83	56	124	93
		125	94
		126	95
		127	96

Present Code Section	Clause in Draft Bill	Present Code Section	Clause in Draft Bill
128	97	182	122
129	98	183	123
130 } 131 } 132 }	dropped	184	dropped
132A	63	185	125
133 } 133A }	60	186	128
134	61	187 } 188 }	124
135	62	189	125
136	166	190	125
137	75	191 } 192 }	127
138	76	193 } 194 } 195 }	126
139	75	196	129
140	dropped	197	130
155	99	198	246
156	100 (1)	199 } 200 } 201 }	161
157	101	202	147
158	102	203	dropped
159	654	204	142
160	103	205	158
161	104	205A (1) (2)	159 dropped
162	105 and 654	206	149
163	106	207	150
164	107	207A	151
165	108	208	152
166	109	209 (a) and (b) (c)	153 324
167 } 168 }	110	210	131 (3)
169	111	211 (1) (2) (3)	143 131 (4) dropped
170	99 and 112	212	144
171	99	213 (1) (2)	145 131 (4)
172	113 (1)	214 (1) (2)	146 131 (2)
173	114	215 (1) (2)-(6) (7)	155 157 133
174	113 (1)	216	184 (1) and (2)
175 } 176 }	114	217	156
177	117		
178	408 (b)		
179	118		
180	119		
181	dropped		

Present Code Section	Clause in Draft Bill	Present Code Section	Clause in Draft Bill
218	408 (c)	247	covered by 191
219	140	248	188
220	dropped	249	190
221 } 222 }	165	250	194 (1)
222A	dropped	251	195
222B	160 (a)	252	194 (2) — (5)
223	dropped	253	194 (6)
224	dropped	254	198
225	168 (1) (b)	255	200
226 } 227 }	168 (1) (c), (d), (h) and (i) and 168 (2) and (4)	256	199
228	176 (2), 182 (2)	257	196
229 (1) (2) (3) (4) (5) (6) (7) (8)	176 (1) 182, 176 168 (1) (h) 182 (2) dropped 182 (4) 182 (3) 183	258	197
230	175	259	201
231	326 (1)	260	202
231A	327	261	203
232 } 233 }	dropped	262 (1) (2)	205 204
234	180	263	206
235 (1) (2)—(6)	177 178	264	210
236	179	265	316
237	167	266 (a) (b)	408 (a) 407
238 (a) (b) (c) (d) (e) (g) (h) (i) (j) (k)	164 (a) dropped 160 (b) 164 (b) 160 (c) 160 (d) 372 164 (c) 164 (d) 164 (e)	267	211
239	164 (2)	268	207
240	185	268A	208
241 } 242 }	186	269	212
243	180	270	213
244	186 and 190	271	214
245	189	272	215
246	187	273	216
		274	231 (2)
		275	dropped
		276	218
		277 } 278 }	217
		279	77
		280	78
		281	219
		282	220
		283 } 284 }	covered by 193

Present Code Section	Clause in Draft Bill	Present Code Section	Clause in Draft Bill
285 (1) and (2)	221 (2) and (3)	318	249
(3)	281	319	262
(4)	222	320	255
(4a)	223	321	256
(4b) -- (4e)	224	322	257
(5)	226	323	258
(6)	221 (1)	324	259
(7) and (8)	225	325	260
(9)	2 (18)	326	265
286	227	327	263
287	228	328	264
288 } 289 }	229 (1) and (2)	329	253
290	230	330	254
291	231 (1)	331	261
292 (a) and (b)	141 (1)	332	252
(c)	231 (2)	333	250
293	147	334	251
294	132	335 (1) (a), (b) and (c)	dropped
295	231 (2)	(d)	268 (a)
296	232	(e), (f)	dropped
297	233	(g)	2 (14)
298 (1)	135	(h)	268 (b)
(2)	139	(i)	dropped
299	136	(j), (k), (l)	268 (c), (d), (e)
300	137	(m)	322 (a)
301 (4)	138	(n)	351 (4) (a)
	131 (4)	(o)	322 (b)
302	dropped	(p), (q), (r)	dropped
303 } 304 }	237	(s)	268 (f)
305	238	(t), (u)	dropped
306	209	(v)	322 (c)
307	239	(w)	351 (4) (b)
308	240	(x)	322 (d)
309 (1)	241 (1)	(y)	322 (e)
(2)	242	336	351 (3)
310	243 (1)	337	dropped
311	244	338	dropped
312	245	339	2 (14)
313	234	340	294
314	dropped	341 } 342 }	covered by 351
315	235	343	dropped
316	236	344	269
317	248	345	269 (5)
		346	270 (1)
		347	269 (1) -- (4)
		348	271

Present Code Section	Clause in Draft Bill	Present Code Section	Clause in Draft Bill
349 (1) (2)	272 dropped	398	299
350	dropped	399	296, 297
351	273	400	298 (1)
352	274	401	dropped
353	dropped	402	300
354	275	403	dropped
355	276	404	303
356	277	405 (1) (2) (3)	304 (1) (a) 304 (1) (b) 304 (3)
357	278	405A	58
358 } 359 } 360 } 361 } 362 } 363 }	dropped	405B	59
364 } 365 }	298 (1)	405C	58
366 } 367 } 368 } 369 } 370 } 371 } 372 } 373 } 374 } 375 } 376 } 377 }	dropped	406 (1) (2) (3)	305 306 (1) and (2) 306 (3) and (4)
378 (1) (2)	dropped 279	407 (1) (2) (a) (b) (3)	dropped 304 (1) (c) 304 (1) (d) 307
379 } 380 } 381 } 382 } 383 } 384 } 385 }	dropped	408	346
386 } 387 }	covered by 280	409	347
388	dropped	410	346
389	dropped	411	348
390	282	412 (1) and (2) (3)	336 344
391	283	413	340
392	284 (1)	414	343
393	covered by 386	415	340
394	285 (1) and (6)	415A (b) and (v) balance	341 dropped
395	dropped	416	342
396	286	417 (a) and (b) (c)	335 345
397	287	418	340
		419	328
		420	329
		421	330
		422 } 423 }	dropped
		424 (1) and (6) (2)-(5)	337 dropped
		424A	339
		425	331
		426	312

Present Code Section	Clause in Draft Bill	Present Code Section	Clause in Draft Bill
427	333	474	313
428	334	475	314
429	dropped	476	315
430	358	477	317
431 (1)-(3) (4)	dropped 285 (2)	478	318
432	359	479	319
433	360	480 } 481 } 482 } 483 }	320 and 321
434	361 and 654	484	340
435	362	485	340
436	363	486	349
437 } 438 } 439 } 440 }	dropped	487	350
441	dropped	488	351, 352
442 (a) (b)	181 179	489	351
443	308	490	353
444	323	490A	354
444A	325	491	355
445 } 446 }	288	492	356
447	289	493	dropped
448	288	494	352
449	290	495	dropped
450 } 451 } 452 } 453 } 454 }	291	496 } 497 }	409
455 } 456 } 457 } 458 } 459 } 460 } 461 }	292	498	411
46	203	498A	412
463	82	499	365
464	295	500	dropped
465	dropped	501 } 501 }	366
466	309	502A	367
467	311	503	dropped
468	310 (1)	504	368
471 } 472 } 473 }	312	504A	dropped
		505	369
		506	dropped
		508	dropped
		509	371 (1)
		509A	49
		510	372

Present Code Section	Clause in Draft Bill	Present Code Section	Clause in Draft Bill
510A	163	546	
511	374	547	
512	375	548	
513	374	549	
514	375	550	
515 (1) and (2) balance	377 dropped	551	
516	316	552	
516A	378	553	
516a	372	554	
517		555	
518		556	Part X
519		557	
520	372	558	
521		559	
522		560	
523	covered by 372, 406	561	
524	379	562	
525	372	563	
526	380	564	
527	381	565	
528	320 and 321	567	
529	382	568	dropped
530	383	569	Part X
531		570	
532	384	571	405 and 407
533		572	
534	372	573	408 (e)
535		574	406
536	385	575	
537 (1) (a) and (b) (c) (2)	386 316 dropped	575A	659
538	316	575B	660
539	373	575C (1) (2) (3) and (4)	660 dropped 662
540	dropped	575D	663
541	371 (2) and (3) and 376	575E	667
542	387	575F	664
543	388	575G (1) (2) and (3)	664 665
544	389	575H	666
545	390	576	424
545A	419	577	414
		578	dropped
		579	554
		580 (1) (2)	413 (1) 418
		581	416
		581A	417
		582	413 (2)
		583	413 (2)
		584	419
		585	422

Present Code Section	Clause in Draft Bill	Present Code Section	Clause in Draft Bill
586 } 587 }	423	645	428
588	dropped	646	434
589	dropped	647	435
590	410 (1)	648	435
591	420 (2)	649	436
592	dropped	650	437
593	100 (2)	652	435 pt. 438 pt.
594	dropped	653	439
595	229 (3)	654	439
596 } 597 } 598 } 599 } 600 } 601 } 602 } 603 }	dropped	655 (1), (2) and (4) (3)	440 (1)-(3) Part XIX
604	425	656	dropped
604a	Part XIX	658 (1) (2) (3) (4) (5)	441 (1) 441 (2) 440 (4) 441 (3) 441 (6)
605	dropped	659 (1) (2)	442 (3) 440 (4)
606	426	660 (1) (2) and (3) (4) and (5)	443 442 (1) and (2) 444
607	dropped	661 (1) and (2) (3)	445 20
619 } 620 } 621 } 623 } 624 } 625 } 626 } 627 } 628 }	dropped	662 (1)-(3) (4)-(6)	447 and 429 446
629	429	663	Part XIX
630	430	664	442 (1) (c)
631	432 (1) and (2)	665 (1) (2) and (3)	dropped 456
632	covered by 405	666	456
633	433	667	448
634	96	668	449
635	355 (2)	669	458
636	dropped	670	459
637	338	671 } 672 } 673 } 674 } 675 } 676 } 677 }	Part XIX
638	285 (3)	678	457
640	172	679 } 680 } 681 }	451
641	171 and 173	682 } 683 }	453
642	174		
643	dropped		
644	427		

Present Code Section	Clause in Draft Bill	Present Code Section	Clause in Draft Bill
684	453 and 454	721A	712
685	455	722	710
686	454	723	701
687	460	724	704
688	dropped	725	703
689	dropped	726	711
690	460	727	713
691	512	728	714
692	461	729	dropped
693	Part XIX	730	715
694	461	731	dropped
695 (1)	462	732	699
695 (2)	508	733 }	dropped
695 (3) and (4)	514	734 }	
697 }	463	735 }	
698 }		736 }	716
699	464	737 }	
700	463	738 }	
701	465	739	694
702	463	740	621 and 373
703	672	741 }	
704	636	742 }	dropped
705 (a) -- (d)	692	743 }	
705 (e)	733	744 }	
706	692 (d), 693	745 }	
707	692 (a), 705	746	621
708 (1)	695 (2)	747	dropped
708 (2) -- (4)	697	748 (1)	637
708 (5)	692 (a)	748 (2) -- (5)	717
709	699	749	719, 720 and 721
710	695, 696	750	721, 722, 724 and 725
711 }		751 (1)	727
712 }	Part XIX	751 (2)	731 (2)
713 }	and 700	751 (3)	728
714	428	751 (4) and (5)	dropped
715	709	752	covered by 727
716 (1)	709 (3)	753	727
716 (2) -- (4)	Part XIX	754	727 and 732
717	702	755	730
718	710 (3)	756	732 (2)
719	706	757 (1)	726 (1)
720	707	757 (2)	725 (2)
721	708	757 (3)	712 (4)
		757 (4)	732 (3)
		758	731 (1)
		759	731 (3) and (4)

Present Code Section	Clause in Draft Bill	Present Code Section	Clause in Draft Bill
760	729, 730	841 }	
761	731	842 }	Part XIX
762 (1) — (3)	735	843 }	
(4) and (5)	736	844 }	491
763	737	845 (1) and (2)	491
764	738	(3)	510
765 }		846	dropped
766 }	740	847 (1)	55 and 492
767	741	(2)	510
768	739	848	dropped
769	742	849	502 and 503
769A	743	850	dropped
770	744	851	572
771 }		852 }	
772 }	Part XVI	853 }	492
773 }		854	500
774 }		855 (1)	493
775 }		(2)	492
776 }		856	499, 501
776A		857 }	501
777		858 }	
778	Part XVI	859 }	497
779		860 }	
780		861	494
781	441 (4) and (5)	862	405
781A	470	863	406
782 (1)		864 (a) — (d)	dropped
(2) and (3)		(e)	270 (2)
783 }		865	498
784 }	Part XVI	866 }	
785 }		867 }	dropped
786 }		868 }	
787 }		869 (1)	298 (2)
788 }		(2)	dropped
789 }	Part XIX	870	dropped
790 }		871	dropped
791 }		872	486
792 }	Part XVI	873 (1) — (3)	487
793 }		(4)	488
794 }		(5) — (7)	489
795 }	630	874 }	504
796	450	875 }	
797 }		876	505
798 }	Part XVI	877	506
799 }		878	dropped
822 }		879	507
823 }			
824 }			
825 }			
826 }			
827 }			
828 }			
829 }			
830 }			
831 }	Part XVI		
832 }			
833 }			
834 }			
834A }			
835 }			
836 }			
837 }			
838 }			
839 }			
840 }			

Present Code Section	Clause in Draft Bill	Present Code Section	Clause in Draft Bill
880 } 881 } 882 }	dropped	923	535
883	446	924	536
884 } 885 }	508	925	538
886 (1) 886 (2)	609 609	926	539
887	508	927	540 and 541
888	421 (1) and (2)	928	550
889 } 890 }	510	929	552
891	500	929A	553
892	dropped	930 } 931 }	549
893	510	932	542
894 } 895 } 896 }	512	933	543
897	513	933A	541
898	510	934	546
899 (2)	537	935	547
900 901 (1) and (2) }	515	936	548
902 } 903 } 904 }	dropped	937	544
905 (1) 905 (2)	516 522	938	545
906	516	939	551
907	518	940	488
908	517	941	446
909	519	942	557
910	520	943 (1)	557
911	521	944	558
912 } 913 }	266	945 (1), (2), (6) (3) — (5)	554 556
914	532	946	556
915	533	947	266
916	528	948	243 (2)
917	dropped	949	567
918	529	950	568
919	530	951 (1), (2)	569
920	531	952	569
921	534	953	dropped
922	dropped	954	503
		955	404
		956	267
		957	405
		958	559
		959	556

Present Code Section	Clause in Draft Bill	Present Code Section	Clause in Draft Bill
960	560	1002—(Conc.)	
961	561	(c)	131 (1), 184 (3)
962	490	(d)	242 (2)
963	572	(e)	310 (2)
964	573	1003 (1)	dropped
965	580	(2)	566
966	523	(3)	99 (f)
967	524	1004	575
968	525	1005	576
969	526	1006	covered by 634
970	527	1007	dropped
971 } 972 } 973 } 974 } 975 } 976 }	Part XIX	1008 } 1009 }	577
977	446	1010	578
978	562	1011	579
979	113 (2)	1012	581
980	dropped	1013 (1), (2) pt. (2), (4), (5) pt. (3) (6) (5) pt.	563 584 582 585 592
981	403	1014	592
982	574	1015	593
983	dropped	1016	592
984	565	1017	424, 595
985	169	1018	586, 594
986 (1) — (3) (4)	169 170	1019	587
987	328 (2)	1020	424, 588
988	563	1021 (1) — (3) (4) and (5) (6) pt. (7) (10) (11), (13) — (18) (8)	424, 589 590 594 591 424 589
989	284 (2), (3)	1022 (2)	596
990	285 (4), (5)	1023 (1) (2) pt. (3) (4)	597 (1) 597 598 599
991	364	1024	600
992	357	1025 (1) (2)	597, 598 599
993	301	1025A	dropped
994	302	1026	640
995 } 996 } 997 } 998 } 999 } 1000 }	Part XIX	1027	5 (1)
1001	564	1028 } 1029 }	621
1002 (a) (b)	47 (2) 115	1030 } 1031 } 1032 } 1033 }	5 (1) (b)

Present Code Section	Clause in Draft Bill	Present Code Section	Clause in Draft Bill
1034	654	1072	649
1035 (1) and (2)	622	1073	651
(3)	623	1074	652
(4)	621	1075	653
1035a	625	1076	655
1036 }	626	1077	656
1037 }		1078	dropped
1038	627	1079	dropped
1039	355 (2)	1080	657
1040	dropped	1081	638
1044	dropped	1082	dropped
1045	631	1083	639
1046 }	dropped	1084 }	658
1047 }		1085 }	
1048	628	1086 }	
1049	629	1087 }	Part XXII
1050	630	1088 }	
1051	5 (1) (b)	1089 }	
1052 (1)	623	1090 }	
(2)	694 (1)	1091 }	
1053	dropped	1092 }	
1054	621	1093 }	
1054A (1) -- (3) and (5)	661	1094 }	
(4)	662	1095 }	
(6)	665 (2)	1096 }	
(7)	666	1097 }	
(8)	659	1098 }	
1054b	624	1099 }	
1055	621	1100 }	
1056	634	1101 }	
1057	dropped	1102 }	
1058 }	637	1103 }	
1059 }		1104 }	Part XXII
1060	641	1105 }	
1061	dropped	1106 }	
1062	642	1107 }	
1063	643	1108 }	
1064	644	1109 }	
1065 }		1110 }	
1066 }	645	1111 }	
1067 }		1112 }	
1068	646	1113 }	
1069	647	1114 }	
1070	648	1115 }	
1071	650	1116 }	
		1117 }	
		1118 }	
		1119 }	
		1120	681
		1121 }	682
		1122 }	
		1123	dropped
		1124	683
		1125	684
		1126	685
		1127	686

Present Code Section	Clause in Draft Bill	Present Code Section	Clause in Draft Bill
1128	687	1142	693 (2)
1129	682	1143	dropped
1130	688	1144	
1131	689	1145	
		1146	
		1147	
1140	(1) (a) (i) and (ii) 48 (1)	1150	dropped
	(1) (c) — (v) to (z) 133, 184 (4)	1151	dropped
	(2) 48 (2)	1152	748
1141	627		

CRIMINAL CODE REVISION

"B"

TABLE SHOWING ORIGIN OF CLAUSES IN DRAFT BILL

Ottawa,
January, 1952.

Clause No.	R.S.C. 1927, c. 36	Clause No.	R.S.C. 1927, c. 36
PART I			
1	1	6	9
2 (1)	2 (1)	7 (1)	new
(2)	(2)	(2)	16
(3)	(4)	8	new
(4)	(4) (c)	9	13
(5)	(5)	10	15
(6)	new	11	new
(7)	new	12	17
(8)	(17)	13	18
(9)	(7)	14	67
(10)	new	15	68
(11)	(24)	16	19
(12)	(11)	17	20
(13)	(12)	18	21
(14)	335 (g) and 339 pt.	19	22
(15)	(13)	20	661 (3)
(16)	(14)	21	69
(17)	(15)	22	70
(18)	285 (9)	23	71
(19)	(16) (a)	24	72
(20)	(17)	25	23 to 27, 29, 30 to 37, 39, 41 to 45
(21)	(19)	26	66
(22)	(28)	27	52
(23)	(20) (a)	28	28
(24)	(21)	29	40
(25)	new	30	46
(26)	(22)	31	47
(27)	new	32	48, 49, 50, 51
(28)	(24)	33	93
(29)	(25)	34	53 (1) and (2)
(30)	(27)	35	54 (1)
(31)	(29)		
(32)	(31)		
(33)	new		
(34)	(32)		
(35)	(33)		
(36)	(34)		
(37)	new		
(38)	(38)		
(39)	(39)		
(40)	(40)		
(41)	(41) put in 410 (2)		
(42)	(42)		
(43)	(43)		
(44)	(44) and 36		
(45)	(45)		
3 (1)	2 (2)		
(2)	3		
(3)	4		
(4)	5 (1) (b) and (2)		
(5)	6		
(6)	7		
4	8		
5 (1) (a)	1027		
(b)	1030-1033 and 1051		
(2)	new		

Clause No.	R.S.C. 1927, c. 36	Clause No.	R.S.C. 1927, c. 36
108	165	143	211 (1)
109	166	144	212
110	95, 167 and 168	145	213 (1)
111	169	146	214 (1)
112	170	147	202
113 (1)	172 and 174	148	203
(2)	979	149	206
114	173, 175 and 176	150	207
115	1002	151	207A
116	new	152	208
117	177	153	209 (a) and (b)
118	179	154	new
119	180	155	215 (1)
120	new	156	217
121	new	157	215 (2) — (6)
122	182	158	205
123	183	159	205A (1)
124	187 and 188	160	100, 222A and 238
125	185, 189 and 190	161	199, 200 and 201
126	193, 194 and 195	162	new
127	191 and 192	163	510A
128	186	164	238 (a), (d), (i), (j), (k) and 239
129	196	165	221 and 222
	PART IV	166	136
130	197	167	237
131 (1)	1002		PART V
(2)	214 (2)	168 (1) (a)	new
(3)	210	(b)	225
(4)	211 (2), 213 (2) and 301 (4)	(c)	227
132	294	(d)	226
133	215 (7) and 1140 (1) (c)	(e)	2 (9a)
134	new	(f)	new
135	298 (1)	(g)	new
136	299	(h)	227 (2) and 229 (3)
137	300	(i)	227 (2)
138	301	(2)	226 (1) (b) (ii)
139	298 (2)	(3)	new
140	219	(4)	226 (2)
141	292 (a) and (b)	169	985 and 986 (1), (2) and (3)
142	294	170	986 (4)
		171	641
		172	640
		173	641 (1)

Clause No.	R.S.C. 1927, c. 36	Clause No.	R.S.C. 1927, c. 36
174	642	205	262 (1)
175	230	206	263
176	228 and 229	207	268
177	235 (1)	208	268A
178	235 (2) — (6)	209	306
179	236 and 442 (b)	210	264
180	234	211	267
181	442 (a)	212	269
182 (1)	229 (2)	213	270
(2)	228 (1) and (2)	214	271
(3)	and 229 (4)	215	272
(4)	229 (7)	216	273
183	229 (8)	217	277 and 278
184 (1) and (2)	216	218	276
(3)	1002	219	281
(4)	1140 (1) (c)	220	282
PART VI			
185 (a), (c), (d)	240	221 (1)	new
(b)	new	(2) and (3)	285 (2)
186	241, 242 and 244	222	285 (4)
187	246	223	285 (4) (e)
188	248	224	285 (4) (b) — (4) (e)
189	245	225	285 (7) and (8)
190	243, 244 and 249	226	285 (5)
191	new	227	286
192	new	228	287
193	283, 284 and new	229	288, 289, 295
194 (1)	250	230	290
(2)	252 (1)	231	274, 291 and 295
(3)	252 (4)	232	296
(4)	252 (3)	233	297
(5)	252 (2)	234	313
(6)	253	235	315
195	251	236	316
196	257	237	303, 304
197	258	238	305
198	254	239	307
199	256	240	308
200	255	241 (1)	309 (1)
201	259	(2)	new
202	260		
203	261		
204	262 (2)		

Clause No.	R.S.C. 1927, c. 36	Clause No.	R.S.C. 1927, c. 36
242 (1) (2)	309 (2) 1002 (d)	278	357
243 (1) (2)	310 948	279	378 (2)
244	311	280	new
245	312	281	285 (3)
246	198	282	390
247	2 (23)	283	391
248	317	284 (1) (2) (3)	302 980 980
249	318	285 (1) and (6) (2) (3) (4) and (5)	394 431 (4) 638 990
250	333	286	396
251	334	287	307
252	332	288	445 and 446, 448
253	329	289	447
254	330	290	449
255	320	291	450-454
256	321	292	455-461
257	322	293	462
258	323	294	340
259	324	295	464
260	325	296	399
261	331	297	399
262	319	298 (1) (2)	364, 365 and 400 869 (1)
263	327	299	398
264	328	300	402
265	326	301	993
266	912, 913, 947	302	994
267	956	303	404
	Part VII	304	405 and 407 (2)
268	335 (d), (h), (j), (k), (l), (e)	305	406 (1)
269	345 and 347	306	406 (2) and (3)
270	346 and 864 (e)	307	407 (3)
271	348	308	443
272	349 (1)	309	466
273	351	310 (1) (2)	468 1002
274	352	311	467
275	354	312	471, 472 and 473
276	355		
277	356		

Clause No.	R.S.C. 1927, c. 36	Clause No.	R.S.C. 1927, c. 36
313	474	351 (1)	488 (1) pt. and 489
314	475	(2)	488 (2)
315	476	(3)	336
316	265, 516, 537 (1c) and 538	(4) (a and b)	335 (1) (n) and (w), 341 and 342
317	477	352	488 (1) and 494
318	478	353	490
319	470	354	490A
320 } 321 }	480 — 483 and 528	355	491, 635 and 1039
		356	492
		357	992
	Part VIII	358	430
322	835 (1) (m) (o) (v) (z) and (y)	359	432
323	444	360	433
324	209 (c)	361	434
325	444A	362	435
326	231 and 987	363	436
327	231A	364	991
328	419	365	499
329	420	366	501 and 502
330	421	367	502A
331	425	368	504
332	426	369	505
333	427		
334	428		Part IX
335	417 (a) and (b)	370	new
336	412 (1) and (2)	371	509 and 541
337	424 (1) and (6)	372 consolidation of	96 97 238 (h) 510 516a 517 518 519 (a) 520 521 522 525 533 534 535
338	637		
339	424A	373 (1), (2), (3)	539
340	413, 415, 418, 464 and 485	(4)	740 (1) pt.
341	415A (b) and (c)	374	511 and 513
342	416	375	512 and 514
343	414	376	541 (2)
344	412 (3)	377	515 (1) and (2)
345	417 (c)	378	516a
346	408 and 410		
347	409		
348	411		
349	486		
350	487		

Clause No.	R.S.C. 1927, c. 36	Clause No.	R.S.C. 1927, c. 36
PART XV		492	847 (1) pt. 852, 853, 855 (2)
448	667	493	855 (1)
449	668	494	861
450	796 and new	495	862
451	679, 680 and 681	496	863
452	new	497	859 and 860
453	682, 683, 684 (1) pt.	498	865
454	684 and 686 (1)	499	856 pt.
455	685	500	854 and 891
456	665 (2) and (3) and 666	501	856 pt., 857 and 858
457	678	502	840 (1) pt.
458	669	503	840 (1) pt., (2) pt., and 954
459	670	504	874 and 875
460	687 and 690	505	878
461	692 and 694	506	877
462	695 (1)	507	879
463	697, 698, 700 and 702	508	695 (2), 894, 895 and 887
464	699	509	886 (1)
465	701	510	845 (3), 847 (2), 889, 890, 893, 898
PART XVI		511	new
466	This Part is derived from Parts XVI and XVIII of the present Code. It is a complete revision of those Parts.	512	691, 894, 895 and 896
467		513	897
468		514	695 (3) and (4)
469		515	900, 901 (1) and (2)
470		516	905 (1) and 906
471		517	908
472		518	907
473		519	909
474		520	910
475		521	911
476		522	905 (2)
477		523	966
478		524	967
479		525	968
480		526	969
481		527	970
482			
483			
484			
PART XVII			
485	5 (1) (a)		
486	872		
487	873 (1) — (3)		
488	873 (4), 940 and new		
489	873 (5), (6) and (7)		
490	962		
491	843, 844, 845 (1) and (2)		

Clause No.	R.S.C. 1927, c. 36	Clause No.	R.S.C. 1927, c. 36
528	916	567	949
529	918	568	950
530	919	569	951 (1) and (2), 952
531	920	570	new
532	914	571	new
533	915	572	851, 963 and new
534	921	573	964
535	923	574	982
536	924	575	1004
537	899 (2)	576	1005
538	925	577	1008 and 1009
539	926	578	1010
540	927	579	1011
541	933A, 927 (6)	580	965
542	932		PART XVIII
543	933	581	1012
544	937	582	1013 (3)
545	938	583	1013 (1) and (2)
546	934	584	1013 (2), (4) and (5)
547	935	585	1013 (6)
548	936	586	1018
549	930 and 931	587	1019
550	928	588	1020 (1) -- (4)
551	939	589	1021 (1) and (3)
552	929	590	1021 (4)
553	929A	591	1021 (10)
554	579, 945 (1), (2) and (6)	592	1013 (5) pt. 1014 (1) (a), (b) and (c) (3) and (4) and 1016 (3) and (4)
555	new	593	1015
556	945 (3), (4), (5), 946 and 959	594	1018 (1) pt. 1021 (6) pt. and (7)
557	942 and 943 (1)	595	1017
558 (1), (2), (3), (4) (5)	944 new	596	1022 (2)
559	958	597	1023 (1) and (2) 1025 (1) pt.
560	960	598	1023 (3) and 1025 (1) pt.
561	961	599	1023 (4) and 1025 (2)
562	978	600	1024
563	988	601	new
564	1001		
565	984		
566	1003 (2)		

Clause No.	R.S.C. 1927, c. 36	Clause No.	R.S.C. 1927, c. 36
686	1127	719\	
687	1128	720}	749 (1)
688	1130	721	749 (1)
689	1131	722	750 (b)
690	new	723	new
691	new	724	750 (c)
		725 (1)	750 (g)
		(2)	757 (2)
	PART XXIV	726 (1)	757 (1)
692	705, 706, 707, 708 (5) and new	(2) and (3)	new
693 (1)	706	727	753
(2)	1142		754 and new
694 (1)	1052 (2)	728	751 (3)
(2) and (3)	739	729	760 pt.
695	708 (1) and 710 pt.	730	755 (1) pt. and 760 pt.
696	710 pt. and new	731 (1)	758
697	708 (2), (3) and (4)	(2)	751 (2)
698	new	(3)	759 (1)
699	709 and 732	(4)	759 (2)
700	711	732	754 (2) and (3) 756 and 757 (4)
701	723	733	705 (e)
702	717	734	761
703	725	735	762 (1), (2) and (3)
704	724	736	762 (4) and (5)
705	707	737	763
706	719	738	764
707	720	739	768
708	721	740	765 and 766
709	715 and 716 (1)	741	767
710	718 and 722	742	769
711	726	743	760A
712	721A	744	770
713	727	745	new
714	729	746	new
715	730	747	new
716	735-738	748	1152
717	748 (2) to (5)		
718	new		

CRIMINAL CODE REVISION

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

Judicial corruption—Bribery of officers enforcing the Criminal Law—Corruption in connection with government contracts and public offices—Municipal corruption—Obstructing justice—Perjury—False oaths and fabrication of evidence—Escapes and rescues—Public mischief.

PART IV

(Clauses 130-167)

Sexual Offences, Public Morals and Disorderly Conduct

Rape—Carnal knowledge—Indecent assaults—Seduction—Acts of gross indecency—Incest—Printing or publishing obscene matter and crime comics—Permitting defilement—Disorderly conduct—Vagrancy—Disturbing religious services—Nuisances.

PART V

(Clauses 168-184)

Disorderly Houses, Gaming and Betting

Betting houses—Gaming houses—Gaming in public conveyances—Pool selling and book-making—Lotteries—Cheating at play—Bawdy houses—Procuring—Search of disorderly houses.

PART VI

(Clauses 185-267)

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 268-321)

Offences against rights of property

Theft—Offences resembling theft—Criminal breach of trust—Robbery—Extortion—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 counterfeit 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—Electing 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

Preferring indictments—Contents of counts—Particulars—Joinder and severance of counts—Joinder of offences—Procedure before grand jury—Change of venue—Amendment of indictment—Inspection of documents—Pleas—Trial of issue of insanity—Safe custody of persons found insane—Procedure where accused is a corporation—Qualification of jurors—Mixed juries—Challenge to array—Empanelling jury—Challenging jurors—Trial—Rights of accused at trial—Evidence—Previous convictions—Verdicts—Imposition of sentence—Saving clauses.

PART XVIII

(Clauses 581-601)

Appeals: Indictable Offences

Right of appeal to provincial court of appeal—Notice of appeal—Judge's report—Power of court to order production of documents and to call witnesses—Powers of court on hearing of appeal—Power of Minister of Justice to order new trial or refer question to court of appeal—Right of appeal to supreme court of Canada—Powers of that court on hearing of appeal—Judgment final—Right of appeal of Attorney-General of Canada.

PART XIX

(Clauses 602-619)

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—Commencement 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—Suspended 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.

SENATE

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 748)

Forms