



Law Reform Commission
of Canada

Commission de réforme du droit
du Canada

REPORT

recodifying criminal law

Volume I

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Volume I

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Catalogue No. J31-50/1-1986
ISBN 0-662-54732-2
Reprinted 1987

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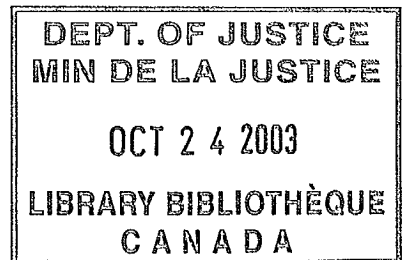
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RECODIFYING

CRIMINAL

LAW

Volume I



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Introduction

When the Law Reform Commission of Canada was created in 1971, it was asked to undertake a deep philosophical probe of the whole criminal law of Canada. The Commission embraced that task with enthusiasm, engaging in several in-depth studies of substantive criminal law, criminal procedure, evidence and sentencing.

In the area of substantive criminal law, with which this Report is concerned, the Commission studied, in the early years, the aims and purposes of criminal law and produced two Working Papers, *The Meaning of Guilt: Strict Liability* (1974), *Limits of Criminal Law: Obscenity: A Test Case* (1975), and a Report to Parliament, *Our Criminal Law* (1976).¹ This Report, with its recommendations that criminal law be seen as an instrument of last resort, be used with restraint and be concerned with “real” crimes requiring *mens rea* and involving serious violations of important values in our society, has been officially accepted by the federal government as the starting-point for criminal law reform and as the basis of our criminal justice policy.²

Following this fundamental rethinking of the substantive criminal law, the Commission published a number of Working Papers and Reports to Parliament on particular aspects of the law which were consistent with the philosophy developed in the initial studies: sexual offences (1978), theft and fraud (1979), the General Part (1982), contempt of court (1982), homicide (1984), vandalism (1984), defamatory libel (1984), arson (1984), extraterritorial jurisdiction (1984), assault (1984), bigamy (1985), crimes against the environment (1985), secondary liability (1985), omissions, negligence and endangering (1985), criminal intrusion (1986), hate propaganda (1986) and crimes against the state (1986).³

1. Law Reform Commission of Canada, *The Meaning of Guilt: Strict Liability* [Working Paper 2] (Ottawa: Information Canada, 1974); *Limits of Criminal Law — Obscenity: A Test Case* [Working Paper 10] (Ottawa: Information Canada, 1975); *Our Criminal Law* [Report 3] (Ottawa: Information Canada, 1976).
2. Government of Canada, *The Criminal Law in Canadian Society* (Ottawa: Supply and Services Canada, 1982).
3. Law Reform Commission of Canada, *Sexual Offences* [Working Paper 22] (Ottawa: Supply and Services Canada, 1978); *Theft and Fraud* [Report 12] (Ottawa: Supply and Services Canada, 1979); *The General Part: Liability and Defences* [Working Paper 29] (Ottawa: Supply and Services Canada, 1982); *Contempt of Court* [Report 17] (Ottawa: Supply and Services Canada, 1982); *Damage to Property: Vandalism* [Working Paper 31] (Ottawa: Supply and Services Canada, 1984); *Homicide* [Working Paper 33] (Ottawa: Supply and Services Canada, 1984); *Defamatory Libel* [Working Paper 35] (Ottawa: Supply and Services Canada, 1984); *Damage to Property: Arson* [Working Paper 36] (Ottawa: Supply and Services Canada, 1984); *Extraterritorial Jurisdiction* [Working Paper 37] (Ottawa: Supply and Services Canada, 1984); *Assault* [Working Paper 38] (Ottawa: Supply and Services Canada, 1984); *Bigamy* [Working Paper 42] (Ottawa: LRCC, 1985); *Crimes against the Environment* [Working Paper 44] (Ottawa: LRCC, 1985); *Secondary Liability — Participation in Crime and Inchoate Offences* [Working Paper 45] (Ottawa: LRCC, 1985); *Omissions, Negligence and Endangering* [Working Paper 46] (Ottawa: LRCC, 1985); *Criminal Intrusion* [Working Paper 48] (Ottawa: LRCC, 1986); *Crimes against the State* [Working Paper 49] (Ottawa: LRCC, 1986); *Hate Propaganda* [Working Paper 50] (Ottawa: LRCC, 1986).

In producing this work, we have profited enormously from the burst of judicial creativity, led by the Supreme Court of Canada, which has illuminated Canadian criminal law in recent years. We have also benefitted from the flowering of criminal law scholarship which has seen six new general textbooks published in this country, two of them in French,⁴ and four in English,⁵ along with scores of significant articles and monographs.

Most of our recent work was part of the Accelerated Criminal Law Review, a co-operative effort of the Law Reform Commission, the Department of Justice and the Department of the Solicitor General, with the assistance of the provincial governments, between 1981 and 1986. During this period, the initial research work and consultations on the various papers were done by the Law Reform Commission in Phase I. The Departments of Justice and the Solicitor General then engaged in Phase II, doing further study and consultation on the Law Reform Commission's material. Phase III is to be the legislative enactment and implementation phase, which is the task of Parliament.

It became apparent to us during the course of this work that Canada needed a new Criminal Code. The present *Code*⁶ has served us well for nearly a century, but it is now obsolete. Enacted originally in 1892, revised in 1955 and amended on many occasions over the decades, it shows the wear and tear of many years of heavy use. In 1979 the then Minister of Justice, Senator Jacques Flynn, announced the need for a fundamental review of the *Criminal Code*, declaring:

... I believe that the time has come to undertake a fundamental review of the Criminal Code. The Code has become unwieldy, very difficult to follow and outdated in many of its provisions. It has come to deal with questions which, I believe, do not belong to criminal law. We must be aware of the limits of the criminal law role in dealing with purely local or temporary problems.

The Law Reform Commission has, in many of its reports, urged that our criminal laws be modernized, that we stop tinkering with the Code. Provincial Attorneys-General have urged that we develop a new Code. I agree.⁷

Archaic sections dealing with witchcraft, duelling, cockpits, three-card monte and other similar hoary relics of the past remain in force. As Vincent Del Buono has recently written: "To wander through the present Code is to stare into the face of the ghosts of all the social evils thought, at one time, to threaten the very fabric of Canadian society."⁸

4. J. Fortin and L. Viau, *Traité de droit pénal général* (Montréal: Éditions Thémis, 1982); G. Côté-Harper and A. Manganas, *Droit pénal canadien* (Cowansville: Éditions Yvon Blais, 1984).

5. D. R. Stuart, *Canadian Criminal Law: A Treatise* (Toronto: Carswell, 1982); G. Parker, *An Introduction to Criminal Law* (Toronto: Methuen, 1983); A. Mewett and M. Manning, *Criminal Law*, 2nd ed. (Toronto: Butterworths, 1985); E. Colvin, *Principles of Criminal Law* (Toronto: Carswell, 1986).

6. *Criminal Code*, R.S.C. 1970, c. C-34, as amended.

7. [1979] *Canadian Bar Yearbook and 61 Proceedings Annual Meeting* 119.

8. V. M. Del Buono, "Towards a New Criminal Code for Canada" (1986) 28 *Crim. L.Q.* 370, p. 370.

Our current *Code* lacks a comprehensive General Part, which has required our courts to fashion, without legislative guidance, many of the basic principles of criminal law dealing with *mens rea*, drunkenness, necessity, causation and other matters. It is incoherent and inconsistent. It is sometimes illogical. Its organization leaves much to be desired.

Our present *Code* is overly complicated and, hence, hard to understand. It uses language that is not familiar to ordinary people, which makes it difficult for them to obey, and, as jurors, hard for them to apply.

Some of the provisions of the present *Code* may not be in harmony with the *Canadian Charter of Rights and Freedoms*.⁹ And, most importantly, much of it is no longer responsive to the needs and values of Canadians. It requires restraining in some areas and strengthening in others. Some acts which are now criminal ought not to be and others that are not should be.

The Commission has, therefore, decided to propose a new Criminal Code for Canada. We recognize that our draft Code is only a first step in a long process which we hope will ultimately lead to a new Criminal Code being enacted which is made in Canada, by Canadians, for Canadians and reflecting more accurately our identity as a nation and our common values as a people.

Building on our previous work, and taking into account the criticisms of it communicated to us, the Commission has developed a new Code which aims to be intelligible to all Canadians. It is drafted in a straightforward manner, with a minimum of technical terms, avoiding complex sentence structure and excess detail. It speaks in terms of general principles instead of needless specifics and *ad hoc* enumerations. Finally, it avoids deeming provisions, piggybacking and other indirect forms of expression, on the basis that the direct way of saying anything is the simplest, the clearest and the most readily understandable. Our new Code is comprehensive, logical, organized, coherent and consistent. It is in harmony with the Charter and responsive to the needs of modern Canada.

The new Code is not revolutionary but evolutionary. It is not dissimilar in structure to the present *Code*, except that we begin with crimes against the person, not, as the present *Code* does, with crimes against the state. Our Code is divided into a General Part containing rules of general application and a Special Part defining the particular crimes. In the General Part are the general principles of criminal liability, the defences and modes of involvement in crimes. In the Special Part, crimes are categorized under six major headings:

- Crimes against the Person,
- Crimes against Property,
- Crimes against the Natural Order,

9. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, which is Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11.

- Crimes against the Social Order,
- Crimes against the Political Order,
- Crimes against the International Order.

In this Report, we set out the first half of the proposed Code, including commentaries and an outline of the table of contents for the remainder of the Code. This Report comprises the General Part, and the first two sections of the Special Part, namely, Crimes against the Person and Crimes against Property. In another Report, to be released shortly, we shall present the balance of the proposed Code and commentaries.

Taken together, the two volumes will provide a comprehensive compilation of our substantive criminal law. There will still remain many other penal provisions in various Acts of Parliament. Because of this, and the need for consistency, the new Code provides that its General Part will govern all federal penal provisions carrying a sentence of imprisonment, regardless of where they are found.

Our proposed new Code is not yet in the form of a Bill to be presented to Parliament; rather it is a proposal for a new statute. This legislatively drafted version of our proposal indicates what it would look like in statutory form (see Appendix A).

Even though we have engaged in much consultation with experts from across Canada and abroad, and even though our work has undergone at least six major revisions, and as many as two dozen minor adjustments, we are conscious of the fact that it is still neither perfect nor complete. First, there are no provisions relating to the sentences to be attached to the various crimes (except for some indication about aggravation of sentences), because the Canadian Sentencing Commission has been assigned the task of rethinking our sentencing system. We expect that our earlier work on sentencing¹⁰ will be of assistance to that Commission, as will the several meetings we held with them. Second, there is no coverage of criminal procedure in this Code. We are preparing a separate Code of Criminal Procedure, containing a comprehensive statement of our recommended procedure regime, which we plan to complete in 1987. Third, we have not dealt with abortion or sexual assault which topics need further work by us.

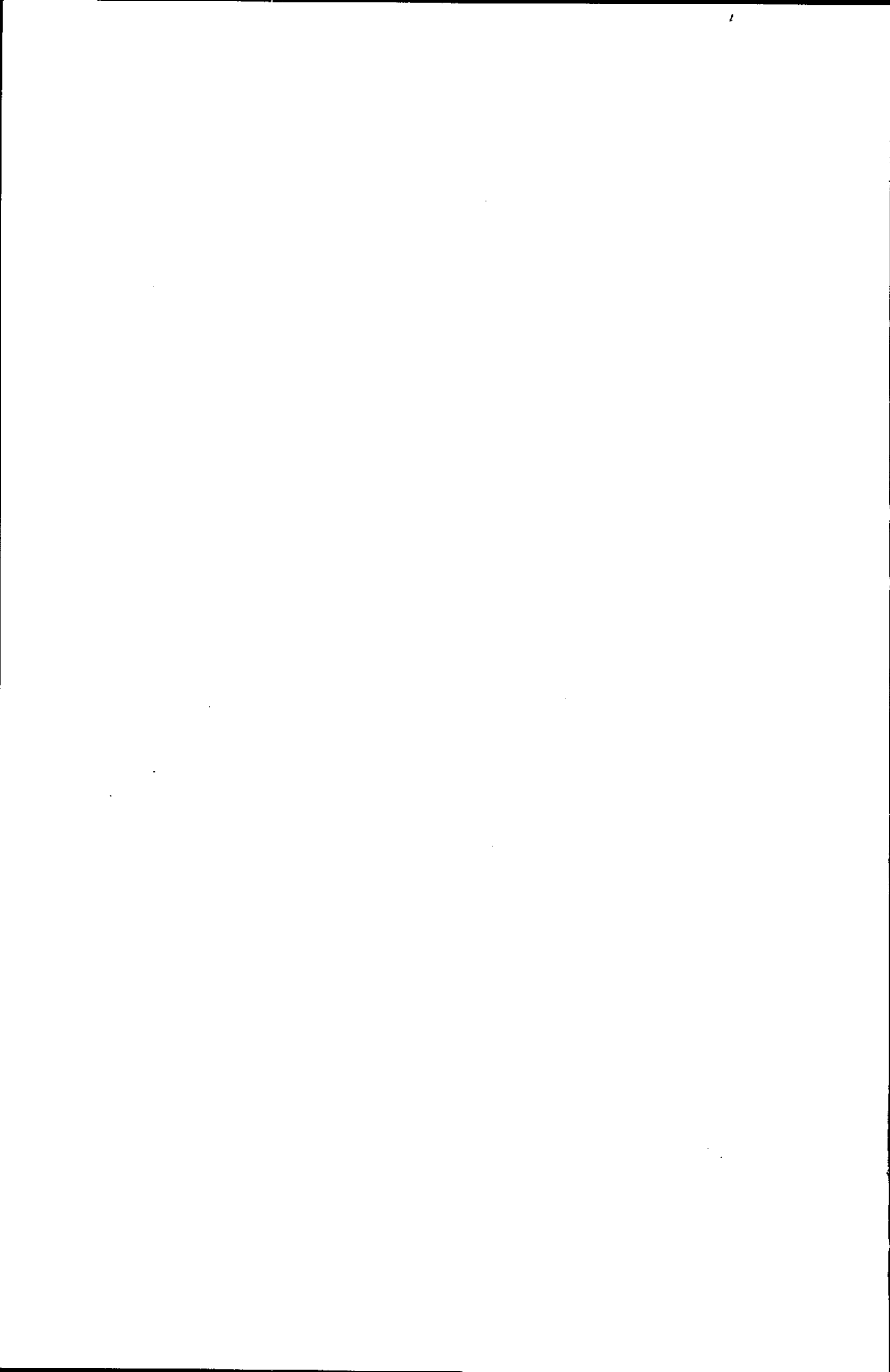
The Law Reform Commission of Canada is proud to be a part of an international movement towards the codification or recodification of the criminal law, which is being done or has been done in the United Kingdom, the United States, France, Germany, New Zealand and many other countries.

We are not suggesting a recodification merely for the sake of recodifying; we believe that it is necessary to articulate our criminal law comprehensively, clearly and logically. We are not suggesting changing the law for the sake of change; we believe

10. LRCC, *Guidelines: Dispositions and Sentences in the Criminal Process* [Report 2] (Ottawa: Information Canada, 1976).

that changes are needed to bring our criminal law up to date. We are not urging that we fix something that is not broken; we believe that many aspects of our criminal law are in need of major repair.

This Report, therefore, is presented as our contribution to the process of recodifying Canadian criminal law. We hope that, over the next few years, it will stimulate further study and work by Parliament, ultimately leading to the enactment of a new Criminal Code for Canada which is modern, logical, clear, comprehensive, restrained where possible, and strong where necessary, reflecting the fundamental values of justice, humanity and freedom inherent in Canadian society.



RECODIFYING CRIMINAL LAW

Recommendations and Commentaries

[Preamble]

Comment

One item on which we failed to reach a consensus was the preamble. A minority of the Commissioners felt that a preamble and a declaration of principles would assist interpretation of the Code in difficult cases. The majority felt that preambles and declarations of principles were unnecessary and inadvisable.

The majority view, then, is that a preamble is unnecessary in a well-drafted Act. In such an Act the object and purpose should be readily discernible from the specific provisions themselves, and from the Act as a whole. Besides, a preamble is undesirable because its vagueness may lead to ambiguity and because it may be used to narrow or broaden specific provisions in ways never intended by the legislator. In addition, a declaration of principles, specially such as the one suggested by the minority, becomes a yardstick against which any subsequent criminal law provision will be measured. It will bring about endless litigation as to whether there are other adequate and appropriate means of dealing with the same issue. It implies an unnecessary and unwarranted transfer to the court of a responsibility that properly belongs to Parliament and its elected representatives, a responsibility that so far Parliament has assumed satisfactorily.

The minority, on the other hand, sees a definite role for a preamble in this Code. First, it may clarify the essential aim of the Code as well as its specific provisions — a role particularly important in a new Code with a principled and logical arrangement. Second, it links the new Code to, and shows it to be a continuation of, the *Constitution Act, 1982* with its *Canadian Charter of Rights and Freedoms*.¹¹ Finally, it signals that this is not an ordinary statute but a comprehensive and distinctly Canadian statement of the law that most concerns our own society's fundamental values.

Accordingly, the minority would have wished to include the following:

[PREAMBLE]

WHEREAS the Canadian Charter of Rights and Freedoms enshrined in the Constitution guarantees all Canadians their individual rights and freedoms subject only

11. *Supra*, note 9.

to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society;

AND WHEREAS the criminal law is designed to reinforce fundamental social values, to maintain social order and to protect individual rights and freedoms;

AND WHEREAS the criminal law should fulfil this function by prohibiting and punishing culpable conduct which causes or threatens serious harm, while at the same time allowing excuses, justifications and exemptions consistent with fundamental social values;

AND WHEREAS it is desirable that the criminal law of Canada should now be set out in a new, systematic, understandable, restrained and comprehensive Code made in Canada by Canadians for Canadians;

DECLARATION OF PRINCIPLES

This Code is based upon the following principles:

- (a) the criminal law should be used only in circumstances where other means of social control are inadequate or inappropriate;*
- (b) the criminal law should be used in a manner which interferes no more than necessary with individual rights and freedoms;*
- (c) the criminal law should set out clearly and understandably
 - (i) what conduct is declared criminal, and*
 - (ii) what culpability is required for a finding of criminal liability.]**

THE GENERAL PART

THE GENERAL PART

TITLE I. General Principles

Chapter 1: Principles of General Application and Interpretation

1(1) Title. This Act may be cited as the Criminal Code.

1(2) Definitions.

“Agent” includes an employee.

“Another’s premises” means premises in the lawful occupation of that other person.

“Another’s property” means property that another owns or has any legally protected interest in.

“Appropriate” means to take, borrow, use or convert.

“Canada” includes the land territory, the internal and inland waters, the territorial sea of Canada, the airspace above the territory and the seabed and subsoil below it.

“Canadian aircraft” means an aircraft registered in Canada under the *Aeronautics Act* or an aircraft of the Canadian Forces.

“Canadian ship” means a ship registered in Canada under the *Canada Shipping Act* or a vessel of the Canadian Forces.

“Consent” means consent given by a competent person and not obtained by force, threat or deceit.

“Criminal rate” means an annual rate of interest exceeding sixty per cent on the principal advanced.

“Document” means any writing, recording or marking capable of being read or understood by people or machines.

“Dwelling-house” means:

- (a) premises used as a residence;
- (b) a building communicating with or connected to such premises; or
- (c) a mobile unit used as a residence.

“Enters” means a person enters as soon as any part of his body or any part of an instrument that he uses is within anything that is being entered.

“Exclusive economic zone of Canada” means the exclusive economic zone as defined in Article 55 of the *United Nations Convention on the Law of the Sea, 1982*.

“Fishing zones of Canada” means the fishing zones of Canada as defined in section 4 of the *Territorial Sea and Fishing Zones Act*.

“Forge” means:

- (a) to make a document purport to be made by a person who did not exist or did not make it or did not authorize it to be made; or
- (b) to tamper with a document by making some material alteration, addition, erasure or obliteration.

“Harm” means to impair the body or its functions permanently or temporarily.

“Hurt” means to inflict physical pain.

“Inland waters” are the rivers, lakes and other fresh waters in Canada and include the St. Lawrence River as far seaward as the straight lines drawn:

- (a) from Cap-des-Rosiers to the westernmost point of Anticosti Island; and
- (b) from Anticosti Island to the north shore of the St. Lawrence River along the meridian of longitude sixty-three degrees west.

“Internal waters of Canada” include any areas of the sea that are on the landward side of the baselines of the territorial sea of Canada and any areas of the sea other than the territorial sea, in respect of which Canada has an historic or other title of sovereignty.

“Non-disclosure” means failure to perform a duty to disclose arising from:

- (a) a special relationship entitling the victim to rely on the defendant; or
- (b) conduct by the defendant or another person acting with him, creating or reinforcing a false impression in the victim’s mind or preventing him from acquiring information.

“Optical device” means any device or mechanism capable of permitting surreptitious viewing of persons, things or places.

“Peace officer” includes:

- (a) a sheriff, deputy sheriff, sheriff’s officer and justice of the peace;
- (b) a warden, deputy warden, instructor, keeper, gaoler, guard and any other officer or permanent employee of a prison;

- (c) a police officer, police constable, bailiff, constable, or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process;
- (d) an officer or person having the powers of a customs or excise officer when performing any duty in the administration of the *Customs Act* or the *Excise Act*;
- (e) a person appointed or designated as a fishery officer under the *Fisheries Act* when performing any of his duties or functions pursuant to that Act;
- (f) officers and non-commissioned members of the Canadian Forces who are
 - (i) appointed for the purposes of section 134 of the *National Defence Act*, or
 - (ii) employed in duties that the Governor in Council, through regulations made under the *National Defence Act* for the purposes of this paragraph, has prescribed to be of such a kind as to necessitate that the officers and non-commissioned members performing them have the powers of peace officers;
- (g) the pilot in command of an aircraft
 - (i) registered in Canada under regulations made under the *Aeronautics Act*, or
 - (ii) leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as owner of an aircraft registered in Canada under those regulations,

while the aircraft is in flight.

“Person” means a person already born by having completely proceeded in a living state from the mother’s body and includes, where applicable, a corporation.

“Premises” means:

- (a) any building or part thereof; or
- (b) any part of a structure, vehicle, vessel or aircraft used
 - (i) for overnight accommodation, or
 - (ii) for business.

“Private communication” means any oral communication or any telecommunication made under circumstances in which it is reasonable for any party to it to expect that it will not be intercepted by any surveillance device.

“Property” includes electricity, gas, water, telephone, telecommunication and computer services.

“Representation” means a representation whether express or implied (including impersonation) as to a past, present or future fact, but does not include exaggerated statements of opinion concerning the attributes or quality of anything.

“Surveillance device” means a device or apparatus capable of being used to intercept a private communication.

“Territorial sea of Canada” means the territorial sea of Canada as determined in accordance with the *Territorial Sea and Fishing Zones Act*.

“Valuable security” means any order or security giving title or evidence of title to property.

“Weapon” (This term will be defined in Volume II in the context of firearm offences.)

1(3) Interpretation.

- (a) The provisions of this Code shall be interpreted and applied according to the ordinary meaning of the words used read in the context of the Code.**
- (b) Where a provision of this Code is unclear and is capable of more than one interpretation it shall be interpreted in favour of the accused.**

Comment

Clause 1(3) in one sense departs from, but in another sense returns to, the position under present law. In theory that position is that like all other statutes, the *Criminal Code* should be interpreted in accordance with section 11 of the *Interpretation Act*, which lays down that “every enactment shall be deemed remedial, and given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.”¹² In practice, and especially when construing offence-creating sections, our courts for the most part interpret it according to the “literal rule” which requires that the meaning of a statute be gathered from the plain and ordinary meaning of the words used taken in context.¹³ By adopting the literal rule, clause 1(3)(a) brings the rule of interpretation in line with present judicial practice and signals that the new Code is not so much a remedial statute as a comprehensive statement of the law.

Clause 1(3)(b) deals with cases of ambiguity. In such cases, a literal rule could work to the disadvantage of an accused. While a strict interpretation of the definition of an offence would confine that offence to what that definition clearly covers, a strict interpretation of a defence or an exception would likewise restrict that defence or that

12. R.S.C. 1970, c. I-23, s. 11.

13. See Fortin and Viau, *supra*, note 4, p. 31.

exception to what that provision clearly covers. By providing that in all cases of ambiguity the Code shall be interpreted in favour of the accused, clause 1(3)(b) brings the new Code into line with traditional common law principle.

1(4) Application in Law.

- (a) This Title applies to any crime defined by this Code or any other Act of the Parliament of Canada.**
- (b) An offence defined by any other Act of the Parliament of Canada is a crime if the person who committed it is liable to be sentenced to a term of imprisonment as punishment.**

Comment

While all the major crimes will be contained in the new Code, Parliament under its criminal law jurisdiction has created, and will no doubt continue to create, criminal offences in other statutes. User convenience dictates that many such offences, for example under the *Bankruptcy Act*,¹⁴ remain in those particular statutes and not be transferred to the Code. Principle requires that all offences serious enough to carry a sentence of imprisonment be governed by the new Code's General Part so that those accused of non-Code crimes receive the same protection as those accused of Code crimes. This is provided by clause 1(4).

Chapter 2: Principles of Liability

Comment

This chapter, and the following chapter on Defences, form the heart of the General Part. The function of that General Part is threefold: to avoid repetition in the Special Part, to systematize the criminal law, and to articulate its basic premises. These premises — the necessary conditions for criminal liability — are at present left to the common law. Their inclusion in the new Code is dictated by the need for comprehensiveness.

The fundamental premises of criminal liability are grounded in ordinary notions of morality and justice. Basically there are three such notions. First, no one can justly be held to blame for contravening a rule unless it was in place at the time of the alleged contravention. Second, no one can fairly be held to blame except for his own conduct, for what he himself does (or in some cases does not do). Third, no one can legitimately be held to blame for mere behaviour, for conduct unaccompanied by some kind of personal culpability such as carelessness, recklessness or wrongful intention.

14. *Bankruptcy Act*, R.S.C. 1970, c. B-3.

These notions are developed in the following four clauses. Clause 2(1) articulates the requirement for criminal law to be already in effect before there can be criminal liability for its contravention — the principle of legality. Clause 2(2) specifies that both conduct and culpability are prerequisites for such liability. Clause 2(3) spells out what amounts to conduct, and clause 2(4) what amounts to culpability.

2(1) Principle of Legality. No one is liable except for conduct defined at the time of its occurrence as a crime by this Code or by some other Act of the Parliament of Canada.

Comment

The principle of legality rules out conviction and punishment for acts which were not crimes when committed: *nulla poena sine lege*. The rationale is that in such cases conviction and punishment would be unjust, self-contradictory and pointless: unjust because no punishment is deserved, self-contradictory because it stigmatizes as wrongdoers those who clearly are not, and pointless because no one can be deterred from doing what is not as yet against the law. For this reason, *nulla poena* has been recognized as an ideal by common law writers, included in international and other documents on human rights, and expressly articulated in paragraph 11(g) of the Charter which provides that any person charged with an offence has the right "not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law, or was criminal according to the general principles of law recognized by the community of nations."¹⁵ Clause 2(1) incorporates this provision and further defines it by requiring that, so far as concerns criminal liability, the offence must be already defined in the new Code or in some other federal statute.

2(2) Conduct and Culpability. No one is liable for a crime without engaging in the conduct and having the level of culpability specified by its definition.

Comment

Central to common law doctrine is the notion that criminal liability requires both conduct and culpability on the part of the accused. As that doctrine puts it, a crime has both a physical and a mental element: *actus reus* and *mens rea*. Explicit articulations of this can be found in writings of scholars on criminal law from Stephen on, and in case-law¹⁶ but not in the present *Criminal Code* itself. Such an articulation is put up front in the new Code not only to highlight the central premise of the criminal law, but

15. *Supra*, note 9, paragraph 11(g).

16. See *R. v. Tolson* (1889), 23 Q.B.D. 168; *R. v. Corporation of Sault Ste. Marie*, [1978] 2 S.C.R. 1299; (1978), 40 C.C.C. (2d) 353; *Reference Re Section 94(2) of the Motor Vehicle Act*, [1985] 2 S.C.R. 486, p. 513; (1985), 23 C.C.C. (3d) 289.

also to show that in any given case the question whether the facts proved add up to the conduct and culpability required by the definition of a crime, is essentially a question of interpreting that definition.

2(3) Conduct.

- (a) **General Rule. Unless otherwise provided in the definition of a crime, a person is only liable for an act or omission performed by that person.**

Comment

Basic to criminal law tradition is the idea that liability is only for acts and omissions performed by the accused himself and not for acts of God, acts of others or "non-acts" like twitches. This idea, enshrined in the doctrine that there must be an *actus reus*, is well recognized by writings of scholars, by decided cases¹⁷ and by several other Criminal Codes, but is not articulated in our own *Criminal Code*. Explicit articulation is given, therefore, in this clause. As to conduct outside an accused's control see clause 3(1) (Lack of Control). The words "[u]nless otherwise provided" recognize that a person may be liable, through the rules on involvement in crime, for acts or omissions performed by others. It is to be noted that while traditionally crimes have been divided into acts, omissions and states (for example possession), the last of the three can readily be included under the rubric of "act" since a person has to do something to put or keep himself in the state in question.

(b) **Omissions. No one is liable for an omission unless:**

- (i) **it is defined as a crime by this Code or by some other Act of the Parliament of Canada; or**
- (ii) **it consists of a failure to perform a duty specified in this clause.**

Comment

Generally speaking, our criminal law imposes liability for acting rather than not acting. Most crimes require the commission of a positive act. This can be seen from decided cases, from writings on criminal law and from the majority of statutory definitions of offences in the *Criminal Code* and elsewhere.

Criminal liability may be imposed for not acting, however, in three different ways. First, not acting may itself form part of a wider whole consisting of acting, for example failure to keep a proper look-out on the road which is part of driving

17. See *R. v. Tolson*, *supra*, note 16. See also *Leary v. R.*, [1978] 1 S.C.R. 29; (1977), 37 C.R.N.S. 60; *R. v. King*, [1962] S.C.R. 746; (1962), 38 C.R. 52; and *Perka v. R.*, [1984] 2 S.C.R. 232; (1984), 13 D.L.R. (4th) 1; [1984] 6 W.W.R. 289; 14 C.C.C. (3d) 385; 42 C.R. (3d) 113.

dangerously. Whether in any such case the accused's conduct is more appropriately to be regarded as doing or not doing must be decided in the particular circumstances by the trier of fact. Second, not acting may be specifically prohibited as a crime, for example not stopping at the scene of an accident (*Criminal Code*, section 236). Third, where a crime consists expressly or impliedly in causing a result, for example death, damage, danger, that result can be caused by an omission provided that there is a legal duty to act — "commission by omission."¹⁸

Clause 2(3)(b) explicitly recognizes the general principle about liability for omissions. It makes the criminal law on omissions wholly subject to the new Code. It does so by explicitly allowing for two of the above exceptions: specific omission crimes and result crimes involving failure to perform a legal duty. Result crimes are crimes of homicide, bodily harm, endangering, vandalism and arson — crimes consisting in the effecting of some harm, damage or risk. It is to be noted that in certain situations, then, a person could commit the crime of endangering (clause 10(1)) by omission. In this regard the new Code is wider than Working Paper 46, which took the more traditional approach of restricting this crime to endangering by acts. It noted, however, that many of the present specific endangering offences, such as dangerous driving, can be committed by omission.¹⁹ On reflection it was thought that these specific provisions were a better policy guide than traditional doctrine concerning result crimes.

In addition, it requires that in the case of result crimes the duty breached be a duty specified in the following clause (clause 2(3)(c)). This is a departure from the present *Criminal Code* which provides in subsection 202(2) that so far as concerns criminal negligence "duty" means "a duty imposed by law." Since "law" extends to provincial law, a person's liability for criminal negligence may vary from province to province.²⁰ To remedy this and render the criminal law of homicide uniform across Canada, clause 2(3)(b) restricts liability to failure to perform a duty "specified in this clause."

(c) Duties. Everyone has a duty to take reasonable steps, where failure to do so endangers life, to:

(i) provide necessities to

- (A) his spouse,**
- (B) his children under eighteen years of age,**
- (C) other family members living in the same household, or**
- (D) anyone under his care**

if such person is unable to provide himself with necessities of life;

(ii) carry out an undertaking he has given or assumed;

18. See LRCC, *Omissions, Negligence and Endangering*, *supra*, note 3, p. 12.

19. *Idem.*, p. 39.

20. *R. v. Fortier*, November 17, 1980, File No. 500-01-00501-805, *Superior Court*, Longueuil, Québec.

- (iii) assist those in a shared hazardous and lawful enterprise with him;
and**
 - (iv) rectify dangers of his own creation or within his control.**
- (d) Medical Treatment Exception. No one has a duty to provide or continue medical treatment which is therapeutically useless or for which informed consent is expressly refused or withdrawn.**

Comment

Common law divided general duties such as those specified by clause 2(3)(c) into natural (owed by parents to children) and assumed (for example by nurses towards their patients). The present *Criminal Code* enacted them in the Part on Offences against the Person and Reputation in sections 197, 198 and 199. Section 197 imposes on parents and others in charge of children a duty to provide necessities; section 198 imposes a duty of reasonable skill and care on surgeons and others undertaking acts dangerous to life; and section 199 imposes on everyone undertaking an act a duty to do it if its omission is dangerous to life. It is nowhere explicitly stated in the *Criminal Code* that liability for omissions requires either a specific provision or else breach of an actual legal duty.

The new Code clarifies, rearranges and to some degree extends the present rules. First, clause 2(3)(b) clarifies that liability requires breach of an actual legal duty specified in clause 2(3)(c) of the General Part. Second, clause 2(3)(c) imposes a duty in four situations subject to two qualifications. The qualifications restrict the duty to that of taking reasonable steps to do the things required in each situation and of doing so only if failure to do so endangers life.

Clause 2(3)(c)(i) replaces section 197 and articulates the duty to provide necessities to children under eighteen (this being generally the age of majority in Canada) and spouses but extends it to other family members living in the same household and to anyone in that person's care where these persons are unable to provide themselves with necessities. Clause 2(3)(c)(ii) replaces sections 198 (medical treatment) and 199 (dangerous acts). This clause would cover foster-parents, guardians and others undertaking to look after children, and also doctors, nurses and others undertaking the care of patients, except when ceasing to give therapeutically useless medical treatment (see clause 2(3)(d)). Clauses 2(3)(c)(iii) and (iv) extend the law: (iii) relates to people such as fellow mountaineers engaged in shared hazardous and lawful enterprises; and (iv) generalizes specific provisions such as *Criminal Code* subsection 243.3(1) (duty to safeguard opening in ice). So, for example, a person who made a dangerous opening in ice or whose land had a dangerous hole in it would be under a duty imposed by clause 2(3)(c)(iv) to take reasonable steps to rectify such dangers. If others were killed, injured or endangered as a result, he would then commit the crime of negligent homicide (clause 6(1)), assault by harming through negligence (clause 7(2)(c)) or endangering through negligence (clause 10(1)(c)).

2(4) Requirements for Culpability.

Comment

This clause articulates in detail the common law principle that a person is not liable for his conduct unless he has some fault or blameworthiness: *actus non facit reum, nisi mens sit rea*. This principle is evidenced in the specific definitions of crimes, in the case-law,²¹ and in the writings of scholars in criminal law. Clause 2(4) incorporates the principle in the General Part in order to manifest its centrality to criminal law, to obviate repetition in the Special Part definitions and to clarify the meaning of the various *mens rea* (or culpability) words used in the new Code.

The provision is structured as follows. Clause 2(4)(a) gives general rules of interpretation for definitions requiring purpose, recklessness and negligence. Clause 2(4)(b) defines the terms “purposely,” “recklessly” and “negligently.” Clause 2(4)(c) clarifies that a charge involving one level of culpability is satisfied by proof of a higher level. Clause 2(4)(d) provides a general rule of interpretation for definitions which are silent as to culpability.

(a) General Requirements As to Level of Culpability. Unless otherwise provided:

- (i) where the definition of a crime requires purpose, no one is liable unless as concerns its elements he acts**
 - (A) purposely as to the conduct specified by that definition,**
 - (B) purposely as to the consequences, if any, so specified, and**
 - (C) knowingly or recklessly as to the circumstances, if any, so specified;**

Comment

In the new Code “intent” is replaced by “purpose” because of the difficulties surrounding the former term. These stem largely from the blurring in the case-law of the distinction between intention (often called “specific intent”) and recklessness (often called “general intent”).²²

To be liable for a “purpose” crime under the new Code a person must do the initiating act, for example pull the trigger of a gun, on purpose; mere carelessness, and *a fortiori* accident, is not enough. Where the crime by definition involves consequences, for example death or damage, those consequences must be part of the defendant’s purpose; mere foresight is not enough. This is the common law tradition.

21. See *supra*, note 16.

22. See LRCC, *The General Part: Liability and Defences*, *supra*, note 3, p. 32.

The same is not wholly true of circumstances. As to circumstances specified by the definition of a crime the accused at one time had to know of them; for example he had to know in an assault case that the victim did not consent. Recent authorities are tending to the position that mere recklessness will suffice; for example in an assault case, it is enough to be reckless whether the victim consents or not.²³ However, as to circumstances not specified in the definition (for example that the gun was loaded or the drink was poisoned), mere recklessness is not enough. In "purpose" offences, nothing less than actual knowledge of such facts will do.

- (ii) where the definition of a crime requires recklessness, no one is liable unless as concerns its elements he acts**
 - (A) purposely as to the conduct specified by that definition,**
 - (B) recklessly as to the consequences, if any, so specified, and**
 - (C) recklessly as to the circumstances, if any, so specified;**

Comment

Where the definition of a crime requires recklessness, the position is as follows. (A) The initiating act must still be done on purpose, as in "purpose" crimes, because "recklessly" (unlike "on purpose" and "negligently") has no obvious application to acts in the narrow sense of muscular contractions. (B) Recklessness as to consequences suffices, in contrast to the requirement in "purpose" crimes that there be purpose as to consequences. (C) Recklessness as to circumstances also suffices. Recklessness as to circumstances specified in the definition of the crime suffices, as it does in "purpose" crimes. But recklessness as to other circumstances also suffices, in contrast to the requirement in "purpose" crimes for knowledge as to such circumstances. A person who does not actually know, for instance, that the gun is loaded cannot logically be said *purposely* to kill someone with it, but can only be said to do so recklessly.

Accordingly, the difference between "reckless" and "purpose" crimes relates to consequences and circumstances not specified in the definition.

- (iii) where the definition of a crime requires negligence, no one is liable unless as concerns its elements he acts**
 - (A) negligently as to the conduct specified by that definition,**
 - (B) negligently as to the consequences, if any, so specified, and**
 - (C) negligently as to the circumstances, if any, so specified.**

23. See Stuart, *supra*, note 5, p. 130.

Comment

In negligence crimes the minimum requirements are a negligent initiating act, negligence as to the consequences, and negligence as to the circumstances. An accused not even negligent as regards any one of these will not be liable for a crime of negligence. An accused negligent as to one or more of these requirements, but reckless or purposeful as to the others, will still be liable only for a crime of negligence (see clause 2(4)(c)).

(b) Definitions.

“Purposely”

- (i) A person acts purposely as to conduct if he means to engage in such conduct, and, in the case of an omission, if he also knows the circumstances giving rise to the duty to act or is reckless as to their existence.
- (ii) A person acts purposely as to a consequence if he acts in order to effect:
 - (A) that consequence; or
 - (B) another consequence which he knows involves that consequence.

Comment

As applied to conduct, that is, the initiating act, the definition of “purposely” is straightforward: the accused must do the act on purpose, or mean to do it. In the case of an omission, he must also know the facts giving rise to the duty to act or be reckless as to their existence — negligence is not sufficient. As applied to consequences, the term “purposely” covers not only the usual case where the consequence is what the accused aims at but also cases (sometimes termed cases of oblique or indirect intent) where his aim is not that consequence but some other result which, to his knowledge, will entail it: for example if D destroys an aircraft in flight, thereby killing the pilot V, in order to recover the insurance money on the aircraft, D will still be guilty of killing V on purpose although this was not in fact his aim.

“Recklessly” A person is reckless as to consequences or circumstances (whether the circumstances specified in the definition of a crime or, in the case of an omission, the circumstances giving rise to the duty to act) if, in acting as he does, he is conscious that such consequences will probably result or that such circumstances probably obtain.

[Alternative — A person is reckless as to consequences or circumstances (whether the circumstances specified in the definition of a crime or, in the case of an omission, the circumstances giving rise to the duty to act) if, in acting as he

does, he consciously takes a risk, which in the circumstances known to him is highly unreasonable to take, that such circumstances may obtain or that such consequences may result.]

Comment

Both formulations are in line with traditional understanding of the word “recklessly” in criminal law rather than with recent House of Lords jurisprudence.²⁴ The first formulation of “recklessly” locates the central meaning of the term in the notion of consciousness of probability. The accused need not aim at the consequences but need only know that they are probable; he must foresee their likelihood. Likewise he need not know of the existence of the circumstances specified by the definition but need only know that they probably exist; he must realize their likelihood.

The alternative formulation defines “recklessly” as a function of two factors: (1) the risk consciously taken, and (2) the objective unreasonableness of taking it in the circumstances known to the accused. A risk may be one of less than fifty per cent but may still be most unreasonable and therefore reckless: if D deliberately points a loaded gun at V, this would generally be regarded as reckless despite a less than fifty per cent chance of the gun going off. Conversely, there may be high probability of a consequence without recklessness if the risk is not unreasonable in the circumstances: a surgeon performing an operation with more than a fifty per cent chance of death will not necessarily be reckless, as when, for example, he performs a dangerous operation on a consenting patient, to save his sight, hearing or other faculty.

“Negligently” A person is negligent as to conduct, circumstances or consequences if it is a marked departure from the ordinary standard of reasonable care to engage in such conduct, to take the risk (conscious or otherwise) that such consequences will result, or to take the risk (conscious or otherwise) that such circumstances obtain.

Comment

The essence of civil negligence is departure from the standard of reasonable care. Criminal negligence, as opposed to civil negligence, however, requires more than a simple departure from the standard of reasonable care; it needs what in recent case-law has come to be termed “a marked departure.” As to the initiating act, or conduct, it means behaving without due care rather than intentionally or accidentally. As to the circumstances and consequences, it means taking a risk, consciously or otherwise, which one ought not to take. Where the risk is taken consciously, the difference between negligence and recklessness is that, in the latter instance, it is much more unreasonable to take it; this calls for a value judgment in each individual case.

24. See *R. v. Lawrence* [1981], 1 All E.R. 974 and *R. v. Caldwell* [1981], 1 All E.R. 961.

(c) Greater Culpability Requirement Satisfies Lesser.

- (i) Where the definition of a crime requires negligence, a person may be liable if he acts or omits to act purposely or recklessly as to one or more of the elements in that definition.**
- (ii) Where the definition of a crime requires recklessness, a person may be liable if he acts or omits to act purposely as to one or more of the elements in that definition.**

Comment

This provision simply prevents the avoidance of liability by the defendant's actually having a higher level of culpability than that charged. A person charged with negligent killing will not escape conviction because he kills on purpose.

- (d) Residual Rule. Where the definition of a crime does not explicitly specify the requisite level of culpability, it shall be interpreted as requiring purpose.**

Comment

Where nothing is said in the definition of a crime, that definition is to be taken as creating a "purpose" crime. This rule avoids the repetition of culpability requirements in "purpose" crimes, but of course necessitates it in "reckless" and "negligent" crimes.

2(5) Corporate Liability.

- (a) With respect to crimes requiring purpose or recklessness, a corporation is liable for conduct committed on its behalf by its directors, officers or employees acting within the scope of their authority and identifiable as persons with authority over the formulation or implementation of corporate policy.**

Comment

This clause is intended to articulate and clarify the criteria for imposing corporate criminal liability. The present *Code* simply states in section 2 that "person" includes bodies corporate, without attempting to articulate the criteria for imposing criminal liability on a corporate entity.

At common law, a corporation may be held criminally liable for acts or omissions committed on behalf of the corporation by its officers, agents or employees who can be

identified as part of the corporation's "directing mind and will." The new Code retains this identification doctrine as the basis for corporate criminal liability but clarifies its scope. It provides that a corporation may be held criminally liable for the conduct of directors, officers or employees identifiable as persons with managerial or supervisory authority over the formulation or implementation of corporate policy, acting on behalf of the corporation and not exclusively on their own behalf or in fraud of the corporation.

- (b) With respect to crimes requiring negligence a corporation is liable as above, notwithstanding that no director, officer or employee may be held individually liable for the same offence.**

Comment

The sort of harm prohibited by criminal law may well result from corporate activity involving negligence in the organizational process rather than in the conduct of any single individual. It may result from the collective participation of numerous directors, officers or employees, no one of whom may himself have had the requisite culpability. For this reason the new Code provides that a corporation may be liable for "negligence" crimes on account of the conduct of its directors, officers or employees even if no such person is individually liable.

[Alternative

2(5) A corporation is liable for conduct committed on its behalf by its directors, officers or employees acting within the scope of their authority and identifiable as persons with authority over the formulation or implementation of corporate policy, notwithstanding that no director, officer or employee may be held individually liable for the same offence.]

Comment

The alternative provision widens the proviso in clause 2(5)(b) to apply to all crimes, on the ground that collective participation may well lead in similar circumstances to commission of a "purpose" or "recklessness" crime. One director might do the *actus reus*, another might have the *mens rea*, but neither might be liable. If the corporation were a real person, the *actus* and *mens* would combine. The alternative provision puts the fictitious person constituting the corporation on the same footing as such a real person.

There are two situations, however, which are not addressed by this clause. First is the more general problem of group collective participation in a crime. Clause 2(5) limits liability to corporations. However, there is the larger question — When should the collective be liable for actions taken in its name? It may be that liability should

extend to other kinds of collective action, such as partnerships, joint ventures and non-profit organizations.

Another problem arising out of collective group action is that of the diffusion of the elements of a crime between members of the group. For example, one member of a partnership might do the *actus reus*, another might have the *mens rea* but neither might be liable. Similarly, in a joint venture of individuals, partnerships, corporations or some mix thereof the elements of a crime may be spread out among the different members. Although these situations may warrant criminal liability this notion of collective responsibility for group action is very complex and as we have not completed our consultations on the implications of such liability, we have not included any recommendations in our proposed Code.

The second situation not addressed by clause 2(5) nor indeed anywhere in the proposed Code is how far an employer should be liable for the criminal acts of his employee. It is clear that an employer cannot be held responsible for the acts of an employee who goes off on a tack of his own, unbeknownst to the employer. Much less clear though is the situation where the employer who has control over the employee knows of the employee's criminal activities, but stands to benefit from them and acquiesces in them for the purpose of obtaining the benefit. Should there be a positive duty on an employer to prevent such a crime? Or should the employer be liable as a furtherer? This is an issue deserving of further careful consideration.

2(6) Causation. Everyone causes a result when his conduct substantially contributes to its occurrence and no other unforeseen and unforeseeable cause supersedes it.

Comment

Though usually a question of fact and evidence, causation can raise questions of law. Given that D did X and consequently V suffered Y, was D's doing of X really the cause of V's suffering Y? D injures V, V is taken to hospital, a nurse very negligently (maybe deliberately) maltreats V and V dies. Has D caused V's death? This sort of question receives no general answer in the *Criminal Code*, but rather a set of specific answers in sections 205(6), 207 to 209 and 211. For a more general answer one must look to the case-law, to the writings of scholars and, of course, to common sense.²⁵ What these suggest, although each case has to be judged on its own facts, is: (1) that there must be a significant or substantial link between the accused's conduct and the result, that is to say, his conduct must not be a mere *sine qua non* or necessary condition (otherwise marriage has to be seen as a cause of divorce); and (2) that there must not be any other unforeseeable cause intervening to snap the chain of causation.

25. For case-law and writings on the subject refer to *Smithers v. R.* (1977), 34 C.C.C. (2d) 427; *Jordan* (1956), 40 Cr. App. R. 152 (C.C.A.); *R. v. Smith*, [1959] 2 Q.B. 35; Mewett and Manning, *supra*, note 5, pp. 530-1; Stuart, *supra*, note 5, pp. 96-111; Glanville Williams, *Textbook of Criminal Law* (London: Stevens and Sons, 1978), pp. 325-48; and "Causation in Homicide" (1957) *Crim. L.R.* 429.

Whether rules about causation have any greater place in a Criminal Code than rules of logic, mathematics or science is open to question. But if they do, their place is surely not in the Part on Homicide but rather in our proposed General Part.

Chapter 3: Defences

Comment

A person accused of a crime will be free from criminal liability if he did not really commit the crime charged; if he did “commit it” but is for special reasons exempt from liability; or if he did do the act charged but did so for special reasons qualifying as an excuse or justification. These three kinds of general defence, which were worked out over the years by common law, are mostly, but not entirely, contained in the present *Criminal Code*. The new Code aims to include them all in the interest of comprehensiveness. Defences of a procedural nature, however, such as entrapment are left to be dealt with in the Code of Criminal Procedure. Meanwhile, it remains open to the courts to develop other defences insofar as is required by the reference to “principles of fundamental justice” in section 7 of the Charter.²⁶

Absence of Conduct or State of Mind Necessary for Culpability

Comment

Since Chapter 2 has already spelled out the need for conduct and culpability as prerequisites for criminal liability, a separate division on absence of conduct (compulsion, impossibility and automatism) and on culpability (mistake) is strictly speaking unnecessary. The clauses on automatism, mistake and intoxication with their special policy restrictions could have been inserted under the appropriate conduct and culpability clauses. They have been set out as defences, however, in accordance with criminal law tradition.

3(1) Lack of Control.

- (a) Compulsion, Impossibility, Automatism. No one is liable for conduct which is beyond his control by reason of:**
 - (i) physical compulsion by another person;**
 - (ii) in the case of an omission, physical impossibility to perform the act required; or**

²⁶. See *supra*, note 9.

(iii) factors, other than loss of temper or mental disorder, which would similarly affect an ordinary person in the circumstances.

(b) Exception: Negligence. This clause shall not apply as a defence to a crime that can be committed by negligence where the lack of control is due to the defendant's negligence.

Comment

Clause 2(3)(a) defines "conduct" as an act or omission "performed by that person." Clause 3(1) deals with lack of control arising from three special causes. None of these are dealt with in the present *Criminal Code*,²⁷ but common law clearly recognizes physical compulsion,²⁸ and automatism²⁹ and perhaps impossibility in cases of omission (*lex non cogit ad impossibilia*).

Automatism, which has generated many cases recently, presents a special problem. On the one hand, a person is not generally liable for involuntary behaviour, that is, behaviour outside his control, and an involuntary actor certainly cannot be censured for intentional wrongdoing. On the other hand, the law has to consider two other factors: (1) a person may be to blame for being in a state where his behaviour is beyond his control and (2) even if he is not blameworthy, he may still be a danger to society.

Clause 3(1)(a) deals with these factors as follows. First, it excludes the defence altogether (1) in cases where the lack of control results from rage or loss of temper, and (2) by virtue of clause 3(1)(b), in cases where it results from negligence and the crime charged is one of negligence. So, where D through negligence fails to take his medicine and as a result gets into a state of automatism in which he kills or harms V, he will be liable for causing death or harm, as the case may be, by negligence.

Second, clause 3(1)(a)(iii) excludes the defence from cases where the accused is mentally disordered or where he is affected by the factors in question in a way in which an ordinary person would not be affected. In both these cases the accused, though not to blame, remains a possible social danger. In the case of mental disorder, therefore, he must be dealt with under the mental disorder provision of clause 3(6). In the case of undue sensitivity to the affecting factor (for example a susceptibility to be overcome by strobe lights that would have no effect on the average person) he remains straightforwardly criminally liable and has no defence under clause 3(1)(a)(iii). In such case, if it thinks fit, a court may remand the defendant for medical or psychiatric investigation.

27. It is to be noted that "compulsion" as used in section 17 of the *Criminal Code* refers to duress.

28. See Sir Matthew Hale, *The History of the Pleas of the Crown* (1736, reprinted London: Professional Books, 1971), vol. 1, p. 434.

29. See *R. v. Rabey*, [1980] 2 S.C.R. 513.

3(2) Lack of Knowledge.

- (a) **Mistake of Fact.** No one is liable for a crime committed through lack of knowledge which is due to mistake or ignorance as to the relevant circumstances; but where on the facts as he believed them he would have committed an included crime or a different crime from that charged, he shall be liable for committing that included crime or attempting that different crime.
- (b) **Exception: Recklessness and Negligence.** This clause shall not apply as a defence to crimes that can be committed by recklessness or negligence where the lack of knowledge is due to the defendant's recklessness or negligence as the case may be.

Comment

Mistake of fact, which of course in purpose and reckless crimes may negative *mens rea*, is well known to common law if not to the present *Criminal Code*. Present law, however, is unsatisfactory in two respects. First, it has not fully solved the problem of the accused who mistakenly thinks he is committing, not the crime charged, but some different offence. Sometimes such a mistake results in complete acquittal although the accused thinks he was engaged in crime; sometimes it results in conviction for the crime charged although he lacks *mens rea* for it.³⁰ Clause 3(2) provides that in such cases the accused is liable for attempting to commit the crime he thinks he is committing.

Second, present law has not completely solved the problem of the accused who is mistaken but is to blame for his mistake. Sometimes such culpable mistakes result unjustly in a complete acquittal, sometimes illogically, on the ground that mistake must be reasonable to be a defence, in a conviction for the crime charged despite lack of purpose or knowledge. Clause 3(2)(b) provides that, in such cases, if the crime charged can be committed by recklessness or negligence, the accused may be convicted if his mistake arose through recklessness or negligence, as the case may be.

3(3) Intoxication.

- (a) **General Rule.** No one is liable for a crime for which, by reason of intoxication, he fails to satisfy the culpability requirements specified by its definition.
- (b) **Proviso: Criminal Intoxication.** Notwithstanding clauses 2(2) and 3(3)(a):
 - (i) unless the intoxication is due to fraud, duress, compulsion or reasonable mistake, everyone falling under clause 3(3)(a) who satisfies all the other elements in the definition of a crime is liable,

30. *R. v. Kundeus*, [1976] 2 S.C.R. 272.

except in the case of killing, for committing that crime while intoxicated;

- (ii) everyone who kills another person while intoxicated, and who falls under clause 3(3)(a), is liable for manslaughter while intoxicated and subject to the same penalty as for manslaughter.

[Alternative

3(3) Intoxication.

- (a) *General Rule.* No one is liable for a crime for which, by reason of intoxication, he fails to satisfy the culpability requirements specified by its definition.
- (b) *Exception.* This clause shall not apply as a defence to a crime that can be committed through negligence unless the intoxication arose through fraud, duress, compulsion or reasonable mistake.]

Comment

Lack of control or culpability may arise through intoxication. Where such intoxication is not the defendant's fault, he has no criminal liability; there simply is no *actus reus* or *mens rea* as the case may be. Hence at common law it was recognized that involuntary intoxication is a complete defence. Where the intoxication is the defendant's fault, the position is more complex. There may or may not be a defence.

Whether there is a defence or not depends on whether the crime is one of "general" or "specific intent." In "general intent" offences such as manslaughter and assault, intoxication will be no defence. In "specific intent" offences, such as murder and theft, it will be a defence. Much court time has been devoted to the attempt to articulate the distinction between the two categories of offence, a distinction condemned by Dickson J. in *Leary*³¹ and acknowledged as illogical by Lord Salmon in *Majewski*.³²

The problem is similar to that posed by automatism. The accused may through intoxication lack the purpose required for the crime charged (for example murder) but still be to blame, because the intoxication was his fault, and that person may also be dangerous, because he has caused harm (for example another's death). Logic precludes conviction, and policy and principle preclude complete acquittal.

To avoid this problem, clause 3(3) adopts the following approach. It starts with a general rule, which is strictly speaking unnecessary, stating that lack of culpability owing to intoxication excludes liability. There follows a proviso that where the intoxication is the accused's fault, he is (with one exception) liable for "committing

31. *Leary v. R.*, *supra*, note 17.

32. See *Director of Public Prosecutions v. Majewski*, [1976] 2 All E.R. 142 (H.L.).

that crime while intoxicated.” The exception relates to killing and provides that everyone killing another while intoxicated is liable for manslaughter.

A minority of the Commissioners preferred a simpler, more straightforward approach. Keeping the same general rule, they would then provide an exception, namely, that if the intoxication is the accused’s own fault, that is, if it arose for some reason other than fraud, duress, compulsion or reasonable mistake, it is no defence to a crime that can be committed by negligence. So, a person charged with murder but lacking purpose on account of self-induced intoxication could be convicted of negligent killing. To ensure conviction in similar circumstances for arson and vandalism, negligence would have to be included as a level of culpability for these two crimes.

Exemptions

Comment

Persons who commit crimes may be exempt from criminal liability because they are not, in the full sense, moral agents. Two obvious categories of such persons are the very young and the mentally disordered. Both are recognized as such by the present *Criminal Code*.

3(4) Immaturity. No one is liable for conduct committed when he was under twelve years of age.

Comment

The present law is contained in section 12 of the *Criminal Code* which provides that no one can be convicted for an act or omission on his part while he was under the age of twelve years. The exact age, if any, at which a child attains the age of reason, or becomes responsible, will vary from child to child. For criminal law a general rule is needed, and common law followed Christian tradition in fixing the age at seven. Recently, after much investigation and research, the age was raised to twelve. The present rule is reproduced in clause 3(4).

3(5) Unfitness to Plead. Any person who, at any stage of the proceedings, is incapable of understanding the nature, object or consequences of the proceedings against him, or of communicating with counsel owing to disease or defect of the mind which renders him unfit to stand trial, shall not be tried until declared fit.

Comment

This is the only procedural defence included in this chapter. It does not appear in the appended legislative draft (see Appendix A) since it is more properly to be regarded

as a matter for the Code of Criminal Procedure. The reason for its tentative inclusion here is its close relation to the defence of mental disorder.

Justice, and indeed paragraph 11(d) of the Charter, requires that no one be convicted and punished without fair trial. But fair trial requires, among other things, that the accused be able to understand the proceedings and answer the charge. This is impossible for someone mentally disordered.

Sections 543, 544 and 545 of the *Criminal Code* deal with this problem in detail and basically require a court that finds an accused unfit to plead, not to try him, but to order him to be detained at the lieutenant governor's pleasure. Clause 3(5) roughly continues present law but leaves matters of procedure to the forthcoming Code of Criminal Procedure.

3(6) Mental Disorder. No one is liable for his conduct if, through disease or defect of the mind, he was at the time incapable of appreciating the nature, consequences or legal wrongfulness of such conduct [or believed what he was doing was morally right].

Comment

Those not in their right mind and therefore not responsible for their actions should not be punished. Insanity, therefore, has long been recognized as a defence at common law. What counted as insanity was spelled out in the M'Naughten Rules in 1843.³³ Those rules were largely reproduced in section 16 of the *Criminal Code*.

That section does four things. It provides a general rule against convicting the insane. It gives a definition of insanity. It has a special rule about insane delusions. Finally, it places the burden of proof on the person wishing to prove insanity.

Clause 3(6) largely follows section 16 of the *Criminal Code* except in three aspects. It has nothing corresponding to the insane delusion provision, a provision seldom applied but frequently criticized because as Maudsley pointed out "it compels the lunatic to be reasonable in his unreason, sane in his insanity"³⁴ and because the idea of partial insanity is not in accordance with modern medical opinion. It says nothing about presumptions of sanity or burden of proof, but leaves this, along with other evidential matters, to evidence provisions. Finally, while keeping the definition of "insanity" contained in section 16, it replaces that word by "mental disorder," a term more in line with modern medical and social attitudes.

33. In G. Williams, *Criminal Law — The General Part*, 2nd ed. (London: Stevens and Sons, 1961), pp. 441-2.

34. *Ibid.*, p. 504.

A minority of the Commissioners wished to add the words which are in brackets. To them it seemed that although in general a person cannot be allowed to substitute his views of right and wrong for those contained in the law, nevertheless a mentally disordered person who acts as he does because he thinks it morally right to do so, merits treatment rather than punishment. The words in brackets were drafted to allow for this but at the same time to prevent exemption for the psychopath, who acts as he does not because he thinks it right to do so, but rather because he is indifferent to right and wrong.

Justifications and Excuses

Comment

A person responsible for both the conduct and the culpability requisite for a crime may still escape liability on account of special circumstances excusing or justifying his behaviour. They justify it when it is right for him or anyone else in those same circumstances to act that way. They excuse it when, though the act itself is wrong, he should not be censured or convicted for doing it on account of special pressures liable to make any other ordinary person do the very same. As has been pointed out, justifications and excuses overlap and one and the same defence, for example necessity, may operate now as an excuse, now as a justification.³⁵ For this reason, no attempt has been made to categorize each defence as either one or the other.

Many of these defences are based on the principle that it is right, when necessary, to choose the lesser of two evils. Some of them, for example duress, self-defence and advancement of law, are simply specific instances of that principle. Then there is the residual defence of necessity to deal with cases not covered by specific provisions. Most of them are contained in the present *Criminal Code*. Some, for example necessity, are presently left to case-law. However, all currently recognized substantive defences are included in this Code for the sake of completeness.

3(7) Mistake or Ignorance of Law. No one is liable for a crime committed by reason of mistake or ignorance of law:

(a) concerning private rights relevant to that crime; or

(b) reasonably resulting from

- (i) non-publication of the law in question,**
- (ii) reliance on a decision of a court of appeal in the province having jurisdiction over the crime charged, or**
- (iii) reliance on competent administrative authority.**

35. See Colvin, *supra*, note 5, pp. 178-9.

Comment

Mistake of law in general is no defence. This is the position at common law, under section 19 of the *Criminal Code* and under clause 3(7) of this Code. It is up to the citizen to find out what the law is and comply with it.

On the other hand no one can fairly be punished for breaking a law which he has no reasonable chance of ascertaining. For this reason present law has created two exceptions to the general rule. Ignorance of law owing to non-publication of regulations is a defence.³⁶ Mistake of law resulting from officially induced error may also be a defence.³⁷

Clause 3(7)(b) codifies these two exceptions, extending one of them and adding another. It extends the first exception to non-publication of any law. It adds an exception in the case of mistake resulting from reliance on the law as stated by the court of appeal in the province where the charge is tried. No one can reasonably be expected to be wiser than the highest court in his jurisdiction; rather he is entitled to assume the law is what that court says it is until the Supreme Court of Canada states otherwise.

In addition there are certain crimes, such as theft and fraud, where honest but erroneous belief in a claim of right negatives criminal liability. Insofar as such belief is based on error of law, mistake of law will operate as a defence. This is the position under present law and also under clause 3(7)(a) of this Code.

Clause 3(7)(b) then provides three exceptions to the general rule, but all three relate solely to mistakes *reasonably* resulting from the factors specified.

3(8) Duress. No one is liable for committing a crime in reasonable response to threats of immediate serious harm to himself or another person unless he himself purposely kills or seriously harms another person.

Comment

One's duty to obey the law may conflict with pressure stemming from the threats of others. Where the pressure is great and the breach of duty relatively small, the breach becomes unfit for punishment. This is the thrust of the criminal law defence of duress.

The defence of duress is presently contained partly in section 17 of the *Criminal Code* and partly in the common law. According to the case-law, the section concerns

36. See *Statutory Instruments Act*, S.C. 1970-71-72, c. 38, s. 11(2).

37. See *R. v. MacDougall*, [1982] 2 S.C.R. 605; (1982), 18 M.V.R. 180; 31 C.R. (3d); 44 N.R. 560.

the position of the actual committer; the common law that of other parties.³⁸ Section 17 allows the defence only where there is a threat of immediate death or bodily harm from a person present, where the accused is not a party to a conspiracy subjecting him to the duress and where the crime committed is not one of those listed in the section. The common law is less strict and detailed, does not require the threatener to be present, has no rule on conspiracy and excludes duress only in the case of murder by an actual committer.

Clause 3(8) simplifies and modifies the law in four ways. First, it specifies that the accused's response to the threat must be reasonable. Second, it provides the same rule for all parties. Third, it drops the need for the threatener's presence at the crime and the accused's absence from a conspiracy, on the ground that both are factors going ultimately to the reasonableness or otherwise of the accused's response. Finally, it abandons the *ad hoc* list of excluded crimes and replaces it with a general exclusion for an accused who himself purposely kills or seriously harms another person, the principle being that no one may put his own well-being before the life and bodily integrity of another innocent person.

3(9) Necessity.

(a) General Rule. No one is liable if:

- (i) he acted to avoid immediate serious harm to person(s) or damage to property;**
- (ii) such harm or damage substantially outweighed the harm or damage resulting from that crime; and**
- (iii) such harm or damage could not effectively have been avoided by any lesser means.**

(b) Exception. This clause does not apply to anyone who himself purposely kills or seriously harms another person.

Comment

The duty to obey the law may conflict with pressure stemming from natural forces or from some other source not covered by the more specific defences known to law. Such cases may be covered by the residual defence of necessity. Though not included in the present *Criminal Code*, it is well recognized by case-law and has been clarified recently by the Supreme Court of Canada.³⁹ For the sake of comprehensiveness, clause 3(9) incorporates and codifies the rule laid down there.

The application of the defence in any given case involves a judgment call. The trier of fact must consider whether the harm to be avoided was immediate; necessity

38. *Paquette v. The Queen*, [1977] 2 S.C.R. 189; (1977), 30 C.C.C. (2d) 417; 39 C.R.N.S. 257.

39. *Perka v. R.*, *supra*, note 17.

relates only to emergencies. He must decide whether the harm avoided substantially outweighed the harm done, once again a matter for assessment.

At common law it was clear that necessity was no defence to murder. This Code replaces that restriction with a more general one parallel to that used in duress and based on the same principle. The defence will not therefore avail one who himself purposely kills or seriously harms another person.

3(10) Defence of the Person.

- (a) General Rule. No one is liable if he acted as he did to protect himself or another person against unlawful force by using such force as was reasonably necessary to avoid the harm and hurt apprehended.**
- (b) Exception: Law Enforcement. This clause does not apply to anyone who uses force against a person reasonably identifiable as a peace officer executing a warrant of arrest or anyone present, acting under his authority.**

Comment

The paramount value set on life and bodily integrity underlies both the prohibitions against crimes of violence and many of the defences in this chapter, especially that of defence of the person. The present law is contained in sections 34 to 37 and subsection 215(4) of the *Criminal Code*, in somewhat complex fashion. Section 34 rules out force meant to kill or cause bodily harm; sections 35 and 36 restrict the amount of force permissible to an aggressor in self-defence; section 37 states the general rule allowing unlawful force to be repelled by necessary proportionate force; and subsection 215(4) restricts the right of self-defence against illegal arrest.

Clause 3(10) roughly retains the law but sets it out more simply in one rule with one exception. Clause 3(10)(a) articulates the right to use reasonably necessary force against unlawful force, providing therefore an objective test and restricting the defence to cases of unlawful force; no force may lawfully be used to repel lawful force, for example lawful arrest or justifiable measures of self-defence. Details about force intended to cause death and about self-defence by an aggressor are omitted as relating in reality to the question of reasonable necessity. Finally, the defence is extended to cover protection not only of a person under the accused's protection, but of any other person.

The exception relates to self-defence against unlawful force used in law enforcement. Clause 3(10)(b) excludes force altogether against arrest, made in good faith but in fact under a defective warrant, by a person who is clearly a peace officer. The policy is to restrict violence, to render it as far as possible a state monopoly and to make the arrestee submit at the time and have the matter sorted out later by authority.

3(11) Protection of Movable Property. No one in peaceable possession of movable property is liable for using such force, not amounting to purposely killing or seriously harming, as is reasonably necessary to prevent another person from unlawfully taking it, or to recover it from another person who has just unlawfully taken it.

Comment

A society recognizing a right to property must allow protection of that right. This is provided in sections 38 and 39 of the *Criminal Code*. Subsection 38(1) provides that peaceable possessors may defend their property against trespassers. Section 39 provides that a peaceable possessor with a claim of right may defend the property even against a person lawfully entitled to it. Subsection 38(2) provides that a trespasser resisting a peaceable possessor commits an assault.

Clause 3(11) retains but simplifies the present law. It allows a peaceable possessor (including one who has just lost possession), whether or not with a claim of right, to defend his property by reasonable force against anyone trying, whether or not with a claim of right, to take it. Any force used against the peaceable possessor by the latter will not be lawful, and will therefore automatically qualify as an assault. Thus the special provision contained in subsection 38(2) is neither necessary nor desirable; offences should not be defined in defence provisions. Insofar as clause 3(11) extends the defence of protection to peaceable possessors without claim of right and against takers with claim of right, it is based on the policy of restricting the use of force to change the *status quo* and of compelling non-possessors to look to authority rather than to use self-help.

The exclusion of force amounting to purposely killing or seriously harming reflects the higher values set on persons than on property.

“Peaceable possession” is left undefined under the new Code as under the present Code. It means possession in circumstances unlikely to lead to violence resulting in personal injury or property damage.

3(12) Protection of Immovable Property.

- (a) General Rule. No one in peaceable possession of immovable property is liable for using such force, not amounting to purposely killing or seriously harming, as is reasonably necessary to prevent trespass, to remove a trespasser or to defend the property against another person unlawfully taking possession of it.**
- (b) Exception. This clause does not apply to a peaceable possessor without a claim of right who uses force against a person who he knows is legally entitled to possession and who enters peaceably to take possession of that property.**

Comment

Land and buildings differ from goods and chattels in that the occupier's right can be seriously infringed by mere trespass; trespass to goods is rarely harmful in itself. For this reason slightly different rules are needed for their protection. These are presently contained in sections 40 to 42 of the *Criminal Code*. Section 40 gives a right of defence of a dwelling-house against forcible break-in or entry; section 41 gives a right of protection of real property against trespass and makes the trespasser's resistance an assault; and section 42 gives a right to a person entitled to real property to enter peaceably by day.

Clause 3(12) simplifies the law as follows. First, it provides one rule for all immovable property; the fact that the property is a dwelling-house may affect the degree of force that can reasonably be used. Second, it uses the term "immovable" as the logical contrast to "movable"; "real" contrasts not with "movable" but with "personal." Third, like clause 3(11) and for the same reasons, clause 3(12) avoids categorizing resistance as assault. Fourth, it denies the right to use force to a peaceable possessor without claim of right against a non-possessor lawfully entitled to possession and entering peaceably to take possession.

3(13) Protection of Persons Acting under Legal Authority.

(a) General Rule. No one is liable for:

- (i) using such force as is reasonably necessary to prevent a crime likely to cause death, serious harm to the person or serious damage to property;**
- (ii) using such force as is reasonably necessary to effect an arrest authorized by law; or**
- (iii) performing an act required or authorized by or under federal or provincial statute or for using such force as is reasonably necessary to do so.**

- (b) Exception. This clause does not apply to anyone who purposely kills or seriously harms another person except where reasonably necessary to arrest, to prevent the escape of, or to recapture one who is dangerous to life.**

Comment

Clearly, a person would be put in an impossible position if one provision of law (federal or provincial) required him to do something while another forbade him to do it. To avoid such an eventuality the present law in subsection 25(1) of the *Criminal Code* states the general rule that anyone required or authorized by law to do anything in the administration or enforcement of the law is justified, if he acts on reasonable and probable grounds, in doing what he is required or authorized to do and in using as much force as is necessary for that purpose. Subsection 25(2) protects people in good

faith executing a process or carrying out a sentence which is in fact defective. Subsections 25(3) and 25(4) limit the degree of force permissible; force intended or likely to cause death or grievous bodily harm is ruled out except when necessary for protection of the person or to effect arrest for an offence for which a person may be arrested without warrant. Section 27 allows force to be used to prevent offences. Sections 28, 29, 31, 449 and 450 deal with arrest, section 30 with preventing breach of the peace and sections 32 and 33 with suppression of riots.

Clause 3(13) continues present law in a simplified form. Clause 3(13)(a) states the general rule that no one is liable for doing any act which he is legally required or authorized to do. This of course refers to particular acts specifically required or authorized and not to general authorization such as a peace officer's lawful execution of his duty, continuing the law in *O'Donnell and Cluett*.⁴⁰ In addition to the general rule, clause 3(13)(a) specifically refers to use of force for prevention of serious crimes and for lawful arrest. While not strictly necessary, since they are covered by the general rule, they have been inserted for extra clarity. The reference to prevention of crime replaces the provisions in sections 27 and 30 of the *Criminal Code*. The reference to lawful arrest serves to link this clause with the Code of Criminal Procedure. No detailed provisions are included about powers of arrest, suppressing riots and so on because these are more appropriate for the Code of Criminal Procedure.

In addition to the sections referred to above, the present *Criminal Code* has numerous provisions making it a crime to do something "without lawful authority or excuse" (or words to that effect). For example, subsection 247(2) of the *Code* states that "[e]very one who, without lawful authority, confines, imprisons or forcibly seizes another person is guilty of an indictable offence" Clause 3(13)(a)(iii) is a general provision covering such crimes and making it unnecessary to repeat "without lawful authority or excuse" in each specific provision. The *Criminal Code* does not define "lawful," but "law" has been defined in other contexts, for example in such provisions on omission as subsection 202(2) of the *Code*, to refer to all law in Canada.⁴¹ Reasonably so, since for example authority to confine those suffering from mental disorder is typically provided by provincial statutes. To reproduce this result and to avoid exposing the law enforcer or ordinary citizen to a conflict of legal requirements, clause 3(13)(a)(iii) uses the words "federal or provincial statute." Clause 3(13) then relates not just to law enforcement, as does section 25 of the *Code*, but also to acts done "with lawful authority."

3(14) Authority over Children. No one is liable who, being a parent, foster-parent or guardian or having the express permission of such a person, touches, hurts, threatens to hurt or confines a child in his custody in the reasonable exercise of authority over such child.

40. See *R. v. O'Donnell, R. v. Cluett* (1982), 55 N.S.R. (2d) 6; 114 A.P.R. 6; 3 C.C.C. (3d) 333 (N.S. C.A.).

41. See *R. v. Coyne* (1958), 124 C.C.C. 176 (N.B. S.C., appeal division).

[Alternative — A minority of Commissioners would not provide for such a defence.]

Comment

Section 43 of the *Criminal Code* justifies use of reasonable force by every schoolteacher, parent or person standing in a parent's position by way of correction toward a pupil or child under his care. Section 44 of the *Code* justifies use of reasonable force by the master of a ship to maintain good order and discipline.

The new Code abandons the provisions regarding both teachers and masters of ships. Teachers may only use force if given express permission by parents so to do. In addition, they may in appropriate cases rely on a defence of necessity (clause 3(9)). Ship captains also, in appropriate cases, may rely on necessity and even perhaps on law enforcement (clause 3(13)(a)).

As for parents, the Commission was divided. A minority felt that a provision such as clause 3(14) blunts the message of the criminal law in its outlawing of force, and that to single out children in this way is to deprive them of security of the person and of equal protection. The majority felt that such a provision should be retained to prevent the intrusion of law enforcement into the privacy of the home for every trivial slap or spanking.

3(15) Superior Orders. No one bound by military law is liable for anything done out of obedience to his superior officer's orders unless those orders are manifestly unlawful.

Comment

Military personnel can be put in a specially difficult position. On the one hand, their superior may order them to do a certain act, while on the other hand, the criminal law may forbid it. If they do the act, they may commit a crime and incur criminal liability. If they do not, they may be liable for disobeying the lawful command of their superior, an offence punishable under section 73 of the *National Defence Act* with up to life imprisonment.

The present legal position is uncertain. Subsection 32(2) of the *Code* justifies those bound by military law in obeying the command of their superior for suppression of a riot unless the order is manifestly unlawful. Apart from this, the *Code* leaves the matter to common law in which there are few precedents.

Clause 3(15) widens subsection 32(2) of the *Code* to cover obedience to all orders not manifestly unlawful. Whether an order is manifestly unlawful will often involve questions of fact as well as law, and the individual soldier's perception of the facts will

usually be much influenced by the issue of the order itself. But this will have to be decided in each situation on a case-by-case basis.

3(16) Mistaken Belief As to Defence.

- (a) General Rule. No one is liable if on the facts as he believed them he would have had a defence other than an exemption under clauses 3(4), 3(5) and 3(6).**
- (b) Exception. This clause does not apply where the accused is charged with a crime that can be committed through negligence and the mistaken belief arose through his negligence.**

Comment

Generally, people should be judged on the facts as they perceive them. Where they are mistaken as to facts relevant to the culpability requirement, this result follows from the present law on *mens rea*, reproduced in clause 3(2)(a) (Lack of Knowledge: Mistake of Fact). Where they are mistaken as to facts grounding an excuse or justification, the present law is unclear; but perhaps mistake as to the former will suffice if genuine, and mistake as to the latter, only if reasonable.⁴² If so the law is oddly inconsistent. On the one hand, justification is a more powerful plea than excuse because it claims that what was done was not just excusable, but in fact right. On the other hand, mistaken belief in a justification seems less powerful than belief in an excuse because the mistake must not only be genuine, but also reasonable.

Accordingly, clause 3(16) provides that in general a mistaken belief that one is justified or excused negates liability. Mistaken belief in a justification, then, will operate as an excuse. Mistaken belief in an excuse will itself be an excuse. Actually, the position under the new Code is simplified by the fact that defences are not rigidly separated into justifications and excuses. In addition, by virtue of this clause together with clause 3(13)(a)(iii), a mistake as to a specific defence provided in the Special Part of this Code or by the statute creating the crime will also operate as an excuse.

Where the mistake arises through the accused's criminal negligence and the offence charged is one that can be committed by criminal negligence, then under clause 3(16)(b) he can be convicted of negligent commission of that crime. To this extent an unreasonable belief is no defence.

42. See Colvin, *supra*, note 5, p. 167.

Chapter 4: Involvement in Crime

Comment

When a crime is committed, liability should attach not only to the person actually committing it, but also to secondary offenders who help or encourage its commission, or who try to commit it or get others to commit it. Present law, therefore, has rules imposing liability on: (1) parties to offences; and (2) those committing inchoate offences. Parties incur derivative liability, that is, liability deriving from that of the actual committer. Inchoate offenders essentially (for the rules on conspiracy provide an exception) incur original liability, that is, liability incurred solely on account of what they do themselves.

The new scheme in Chapter 4 attempts to unify this area of law. It imposes original liability on committers, other parties and inchoate offenders. It therefore makes secondary offenders basically liable for what they do themselves, subject to one exception concerning conspiracy and provided by clause 4(6)(c). It thus provides a mini-Code regarding secondary liability and criminal involvement.

The scheme is as follows. First, involvement is divided into involvement in complete crimes and involvement in incomplete crimes. Second, except in the case of conspiracy, under each heading a distinction is drawn between the prime mover and others: in complete crimes between committing and furthering, for example by helping; and in incomplete crimes between attempting to commit and attempted furthering, for example by trying to help. Third, there are supplementary rules about alternative convictions and related matters.

Involvement in Complete Crimes

Comment

Present law is contained in sections 21 and 22 of the *Criminal Code*. Section 21 defines a party to an offence as a person who (a) actually commits it, (b) aids another to commit it or (c) abets another to commit it. Section 22 qualifies as a party to an offence a person who counsels another to be a party to it. But curiously, in the Special Part of the *Criminal Code*, liability is explicitly imposed only on those committing offences. Clauses 4(1) and 4(2) divide involvement in complete crimes into (1) committing and (2) furthering.

4(1) Committing. A crime may be committed:

- (a) solely, where the committer is the only person doing the conduct defined as that crime; or

- (b) jointly, where the committer and another person (or other persons) together do the conduct so defined.**

Comment

Clause 4(1) articulates the different ways known to common law (not expressed in the *Criminal Code*) of actually committing a crime. A crime is committed by two (or more) people jointly when both do the *actus reus* together (for example D1 and D2 together beat up V) or where one does one part of it and the other, another (for example D1 and D2 rob V, D1 holding the gun on him while D2 takes the money from his pocket). Contrast the case of helping where the helper does no part of the act defined as a crime, but leaves this entirely to the committer. No special provision is made regarding crimes committed through an innocent agent (for example where D gets X, a child under twelve, to steal for him or D gets Y unknowingly to give V a poisoned drink). Under the new Code, such situations are covered by clause 4(2) which provides that a person who urges, incites or uses another to commit a crime is guilty of furthering, even though the doer of the wrongful act has no culpability and thus no liability.

4(2) Furthering.

- (a) General Rule. Everyone is liable for furthering a crime and is subject to the penalty for it if he helps, advises, encourages, urges, incites or uses another person to commit that crime and that person completely performs the conduct specified by its definition.**
- (b) Exception. No one is liable under clause 4(2)(a) where the person who performs the conduct has a defence other than one under clauses 3(1) to 3(4), 3(6) to 3(8) and 3(16).**

Comment

As already mentioned, present law on parties is contained in sections 21 and 22 of the *Code*. In addition, certain other sections prohibit specific kinds of furthering (for example section 402, assisting cruelty to animals). But the *Criminal Code* is silent as to the *mens rea* required for aiding or abetting.

Clause 4(2) provides one rule to cover all types of furthering crimes that are completed, but spells out the different ways of furthering. Like section 21 of the *Code*, it makes furtherers all liable to the same penalty as the committer on the basis that a secondary party may often be as culpable as the actual committer and sometimes more so.

Furtherers, of course, like those who commit more specific crimes, will benefit from all the defences in the General Part. When D helps X to administer poison to Y, D will not be liable for furthering if he is unaware that the poison is in fact poison. Then D has a defence of mistake of fact applying to D himself.

In addition furtherers will also benefit from defences which apply not to themselves but to the actual committer. Where D helps X to reasonably resist an attack on him by Y, X has a defence of self-defence and commits no crime. It follows that D cannot be liable for furthering a crime.

Sometimes, however, a furtherer will not benefit from a defence available to the committer. Suppose the committer labours under a mistake of fact such as to prevent him having the requisite culpability for the crime or such as to lead him to think his act is justified, in such a case the liability of the furtherer will depend, not on whether the committer was mistaken, but on whether he himself knew the true facts. D incites X to administer poison to Y, X is unaware that the poison is poison but D is aware of this fact; X is not liable for murder or causing harm, as the case may be, but D is liable. X has a defence of mistake of fact and is to be judged on the facts as he imagined them to be. D has no such defence and is to be judged on the facts as he knew them to be. The same principle applies where X has a defence like that of immaturity. In all these cases, D can be said to be using X. At common law D would be said to commit the crime through X as an innocent agent. The use in clause 4(2)(a) of the term "uses" makes a special "innocent agent" rule unnecessary.

By virtue of clause 2(4)(d), the culpability required is purpose; the furtherer must act for the purpose of having the crime in question committed. As to the problem arising when the committer commits a different crime from the one intended to be furthered, clause 4(6) deals with the "common purpose" rule set out in subsection 21(2) of the *Code*.

Involvement in Incomplete Crimes

Comment

Present law is contained in the *Criminal Code* provisions on the three inchoate offences: attempt, counselling and conspiracy. Clauses 4(3) and 4(4) replace these with a more unified approach relating to furthering. Just as involvement in complete crimes is divided into committing and furthering (for example by helping or procuring), so involvement in incomplete crimes is divided into attempting and attempted furthering (for example by helping or procuring a person to commit a crime which is not ultimately committed). Involvement in incomplete crimes, therefore, runs parallel to involvement in complete crimes instead of being treated quite separately.

4(3) Attempt. Everyone is liable for attempt who, going beyond mere preparation, attempts to commit a crime, and is subject to half the penalty for it.

Comment

The present law on attempt is contained in sections 24, 421 and 587 of the *Criminal Code*. There are also numerous specific attempt provisions (for example

section 222, attempted murder and subsection 326(1), attempted utterance of forged document). There is also much case-law on the *actus reus* and *mens rea* of attempt.⁴³

Clause 4(3) replaces the above sections by one general rule. It gives no definition of the physical element except to state that the attempt must go beyond mere preparation. This is because nothing more can be done than give synonyms such as “try” and “endeavour” which are likewise unanalysable. As for the question, When does the accused get beyond mere preparation? (the real problem about the *actus reus* of attempt), there is no way of formulating any satisfactory answer, as is clear from the inadequacy of each of the tests known to the law. Ultimately the trier of fact faces a judgment call in each particular case.

Unlike section 421 of the *Code*, clause 4(3) provides one penalty for attempt, and fixes it at half that for the full offence on two grounds. First, the main deterrence and stigma for a crime are contained in the penalty for its actual commission, and not in the penalty for attempt. Second, an attempter creates less actual harm than a successful committer. Finally, clause 4(3) makes unnecessary any specific attempt provisions in the new Code. In the cases where a crime would be punishable by life imprisonment, the length of sentence would have to be established by a specific rule.

4(4) Attempted Furthering.

- (a) General Rule. Everyone is liable for attempted furthering of a crime and is subject to half the penalty for that crime if he helps, advises, encourages, urges, incites or uses another person to commit that crime and that other person does not completely perform the conduct specified by its definition.**
- (b) Exception. No one is liable under clause 4(4)(a) where the person who performs the conduct has a defence other than one under clauses 3(1) to 3(4), 3(6) to 3(8) and 3(16).**

Comment

Present law relates only to counselling. This is dealt with by section 422 of the *Code*. There are also various specific procuring provisions, for example paragraph 76(d) (procuring piratical acts).

Clause 4(4) makes attempted furthering parallel to furthering (clause 4(2)). Again, clause 4(4) spells out the different ways of attempted furthering. The penalty for attempted furthering is the same as for attempt, just as the penalty for furthering is the same as for committing. Clause 4(4)(b) provides an analogous rule to benefit the attempted furtherer as clause 4(2)(b) provides for the furtherer.

43. On *actus reus* see LRCC, *Secondary Liability: Participation in Crime and Inchoate Offences*, *supra*, note 3. On *mens rea* see *Lajoie v. R.* (1973), 310 C.C.C. (2d) 313; 20 C.R.N.S. 360 (S.C.C.); *Ancio v. R.* (1984), 6 D.L.R. (4th) 577 (S.C.C.).

Finally, the inclusion of “helping” is new. Under present law, liability arises for aiding and counselling another to commit a crime which he actually commits, for counselling another to commit a crime which he does not commit, but not for aiding a person to commit a crime which he does not commit. Clause 4(4) closes this gap in present law.

4(5) Conspiracy. Everyone is liable for conspiracy who agrees with another person to commit a crime and is subject to half the penalty for it.

Comment

The law on conspiracy is principally contained in section 423 of the *Code*. There are also three specific provisions: section 46 (treason), and subsections 60(3) (sedition) and 424(1) (restraint of trade). There are also specific sections in other federal statutes. Basically conspiracy consists of any agreement between two or more persons to commit an offence.

Clause 4(5) roughly retains but simplifies the law. It replaces the various provisions contained in section 423 and the other sections of the *Criminal Code* by one single rule. It restricts conspiracy to agreements to commit *crimes*, on the ground that the *Code* should control the ambit of the crimes within it, that criminal law in this as in all other contexts should be, as far as possible, uniform across Canada and that if an act does not merit criminalization, then neither does an agreement to do it.

A conspirator who goes further than agreement may become liable, of course, for committing or furthering or for attempting or attempted furthering as the case may be.

4(6) Different Crime Committed from That Furthered.

- (a) **General Rule.** No one is liable for furthering or attempting to further any crime which is different from the crime he meant to further.
- (b) **Exception.** Clause 4(6)(a) does not apply where the crime differs only as to the victim's identity or the degree of harm or damage involved.
- (c) **Qualification.** A person who agrees with another person to commit a crime and who also otherwise furthers it, is liable not only for the crime he agrees to commit and intends to further, but also for any crime which he knows is a probable consequence of such agreement or furthering.

Comment

Present law is contained in subsections 21(2) and 22(2) of the *Code*. Subsection 21(2) makes parties having a common intention liable for any offence committed by one of them which they knew or ought to have known would be a probable consequence

of carrying out that common purpose. Subsection 22(2) provides an analogous rule for counsellors.

Clause 4(6) changes the law to some extent. Clause 4(6)(a) sets out the general rule that a furtherer is liable only for furthering the crime he intends to further. This is subject to two qualifications. First, clause 4(6)(b) itself provides that where the crime committed differs from that intended only as regards the victim's identity or the degree of harm, the general rule does not apply. Second, clause 4(6)(c) incorporates a "common purpose" rule analogous to that in subsection 21(2) of the *Code*, but restricts liability to crimes which the furtherer actually *knows* to be probable consequences of the agreement or furthering. It does so on the basis that negligence has no place in this context.

4(7) Alternative Convictions.

- (a) **Committing.** Everyone charged with committing a crime may, on appropriate evidence, be convicted of furthering it, of attempting to commit it or of attempted furthering of it.
- (b) **Furthering.** Everyone charged with furthering a crime may, on appropriate evidence, be convicted of committing it, of attempting to commit it or of attempted furthering of it.
- (c) **Attempting.** Everyone charged with attempting to commit a crime may, on appropriate evidence, be convicted of attempted furthering of it, and, where the evidence shows that he committed or furthered it, may nevertheless be convicted of attempting to commit it.
- (d) **Attempted Furthering.** Everyone charged with attempted furthering of a crime may, on appropriate evidence, be convicted of attempting to commit it, and, where the evidence shows that he committed or furthered it, may nevertheless be convicted of attempted furthering of it.
- (e) **Unclear Cases.**
 - (i) Where two or more persons are involved in committing a crime but it is unclear which of them committed it and which of them furthered it, all may be convicted of furthering.
 - (ii) Where two or more persons are involved in attempting to commit a crime but it is unclear which of them attempted to commit it and which of them attempted to further it, all may be convicted of attempted furthering.

Comment

A person charged with committing a crime may turn out only to have helped its commission and vice versa. Likewise one charged with committing may turn out only to have attempted to commit it and vice versa. Clause 4(7) provides rules for these problems.

Present law needs no rule as to committers and helpers since all count equally as parties. It does provide rules in sections 587 and 588 about inchoate offences. Where a complete offence is charged but only an attempt is proved, there may be conviction for attempt as an included offence (section 587); where an attempt is charged but the complete offence is proved, there may be conviction for the full offence (section 588).

Clause 4(7) provides five rules. The first four deal with the four possibilities, namely, committing, furthering, attempting and attempted furthering. Whichever is charged, the evidence may show that one of the other three in fact obtained. In the case of committing and furthering, clauses 4(7)(a) and 4(7)(b) allow for the appropriate conviction. In the case of attempting and attempted furthering, it would be unfair to allow conviction for involvement in the complete offence carrying the full penalty of an accused charged only with involvement in an incomplete offence carrying a half penalty. Accordingly, where the evidence shows the offence to be complete, clauses 4(7)(c) and 4(7)(d) allow conviction, nevertheless, for involvement in an incomplete offence. Clause 4(7)(e) provides for situations where it is clear that all of the accused were involved, but it is unclear who had primary involvement.

Nothing is said here on abandonment or on attempting the impossible. As for the former, though a defence of abandonment could acknowledge reduced culpability on the part of the accused and could provide incentives to desist from secondary involvement, there are counter-arguments. First, abandonment may often result less from genuine change of heart than from awareness that police are watching. Second, even where this is not so, reduced culpability is not the same as complete innocence. For these reasons, abandonment is best left to be dealt with as a mitigating factor going to sentence.

As for attempting the impossible, no special provision is necessary. Where the offence attempted is impossible because the facts are other than imagined by the attempter, his error does not decrease his culpability or dangerousness. If D tries to kill V, who is, unknown to him, already dead, he is surely as blameworthy and as much a social menace as one who tries to kill a living victim and should accordingly be liable for attempted murder; D should be judged (analogously with the defence of mistake of fact) not on the facts as they are, but as he wrongly thinks them to be. Where the offence attempted is impossible because the law is other than imagined, then no crime has been attempted. If D tries to buy contraceptives, wrongly believing that this is (as it once was) an offence against the *Criminal Code*, he is attempting to do something which in law is not a crime and which, therefore, should incur no liability; D should be judged (analogously with the defence of mistake of law) on the law as it is, not as he erroneously thinks it to be. Attempting the impossible, then, can be adequately dealt with by the proposed Code provisions.

Chapter 5: Territorial Jurisdiction

5(1) General Rule. Subject to clause 5(2), no person shall be convicted in Canada for a crime committed wholly outside Canada.

5(2) Jurisdiction Rules. Subject to diplomatic and other immunity under the law, the Code applies to, and the Canadian courts have jurisdiction over:

- (a) crimes committed wholly inside Canada (including on Canadian ships and aircraft);
- (b) crimes where one of the elements (including the direct resulting harm or damage) occurs in Canada and that element establishes a real and substantial link with Canada;
- (c) conduct engaged in outside Canada which constitutes either
 - (i) a conspiracy to commit a crime in Canada,
 - (ii) attempting to commit a crime in Canada, or
 - (iii) furthering or attempting to further a crime in Canada,if the crime in question is a crime both in Canada and in the place where the conduct is engaged in;
- (d) conduct engaged in inside Canada which constitutes either
 - (i) a conspiracy to commit a crime outside Canada,
 - (ii) attempting to commit a crime outside Canada, or
 - (iii) furthering or attempting to further the commission of a crime outside Canada,if the crime in question is a crime both in Canada and in the place where the crime is to be committed;
- (e) crimes committed in “special zones” in which Canada has sovereign rights and either the offender or the victim is present in such zone for the purpose of engaging in an activity over which Canadian sovereign rights extend, this rule being applicable to crimes committed
 - (i) within a fishing zone or exclusive economic zone of Canada,
 - (ii) on, under or within a distance to be determined by regulation of any artificial island, installation or structure
 - (A) in a fishing zone or exclusive economic zone of Canada, or
 - (B) on or over the continental shelf of Canada, or
 - (C) (other than a ship of non-Canadian registry) under the administration and control of the Government of Canada;
- (f) crimes against state security committed anywhere by Canadian citizens and others who benefit from the protection of Canada;

- (g) crimes of helping the enemy, espionage or disclosure of classified government information committed anywhere by persons who were Canadian citizens or who did benefit from the protection of Canada at the time when classified government information was obtained;
- (h) crimes committed outside Canada by
 - (i) persons subject to the Code of Service Discipline under the *National Defence Act* when serving abroad,
 - (ii) Government of Canada employees serving abroad and members of their families forming part of their households who are Canadian citizens or otherwise owe allegiance to Canada, and
 - (iii) R.C.M.P. members serving abroad and members of their families forming part of their households who are Canadian citizens or otherwise owe allegiance to Canada,where the crime in question is a crime both in Canada and in the place where it was committed;
- (i) piracy committed outside the territorial jurisdiction of any state;
- (j) any universal crimes recognized by Canada committed anywhere by anyone;
- (k) crimes committed anywhere by anyone against Canadian passports, certificates of Canadian citizenship or Canadian currency;
- (l) crimes against nuclear material committed anywhere where the alleged offender is present in Canada after the commission of the offence or is a Canadian citizen;
- (m) crimes against internationally protected persons committed anywhere by anyone where
 - (i) the alleged offender is a Canadian citizen or is present in Canada after the commission of the offence, or
 - (ii) the victim is an internationally protected person by virtue of the functions he exercises on behalf of Canada;
- (n) hostage taking where
 - (i) the alleged offender is a Canadian citizen, is a stateless person ordinarily resident in Canada, or is present in Canada after the commission of the offence, or
 - (ii) the person taken hostage is a Canadian citizen, or
 - (iii) the crime is committed in order to influence the actions of the Government of Canada or a province;
- (o) crimes committed anywhere by anyone of endangering the safety of an aircraft, hijacking or any other related crime involving violence against passengers or crew of an aircraft in flight where

- (i) the crime is committed against or on board a Canadian aircraft or an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence in Canada, or
- (ii) the aircraft in question lands in Canada with the alleged offender on board, or
- (iii) the alleged offender is present in Canada after the commission of the offence.

Comment

The provisions of clause 5(2) serve two purposes: (1) to regulate where and under what conditions criminal conduct, particularly outside Canada, should be governed by Canadian criminal law; and (2) to give Canadian courts the power to exercise jurisdiction over such conduct. To a large extent, it creates exceptions to the general principle enunciated in clause 5(1) that no one should be convicted in Canada for a crime committed wholly outside Canada. The provisions are based upon generally accepted principles of international law and subject to the various diplomatic and other legal immunities.

Clauses 5(2)(a) to 5(2)(d) reflect the territorial principle of international law which gives states jurisdiction over crimes committed wholly inside their territory, and partly inside it where material elements or direct harmful effects occur therein. Clause 5(2)(a) sets out the general rule that the Code applies to, and Canadian courts have jurisdiction over, crimes committed wholly inside Canada. Canadian ships and aircraft are considered extensions of Canadian territory. Clauses 5(2)(b), (c) and (d) apply to transnational offences — crimes committed partly inside and partly outside Canada. Clause 5(2)(b) is consistent with the recent *Libman* decision of the Supreme Court of Canada⁴⁴ and permits Canadian courts to exercise jurisdiction where one of the elements of a crime occurs in Canada and that element establishes a real and substantial link with this country. Clauses 5(2)(c) and (d) are mirror images of one another and cover conduct outside Canada which constitutes conspiracy, attempt, furthering, or attempt to further a crime in Canada, and vice versa. Both rules are subject to a double criminality test; that is, the crime in question must contravene the criminal law of both Canada and the state where the conduct is engaged in.

Clause 5(2)(e) extends the ambit of Canadian criminal law to activities occurring in a number of "special zones" which are strictly speaking outside Canadian territory but over which Canada has sovereign rights. For Canadian law to apply, either the offender or the victim must be present in the zone in connection with some activity over which Canadian sovereign rights extend. Under this rule, Canadian courts would have jurisdiction over an assault committed in a fishing zone by or against anyone in that zone connected with the fishing industry. Canadian criminal law would not,

44. *Libman v. R.*, [1985] 2 S.C.R. 178.

however, apply to a crime committed by anyone in a fishing zone on board a foreign pleasure craft unless he was there in connection with an activity (for example fishing) over which Canadian sovereign rights extend.

Clauses 5(2)(f), (g) and (k) are applications of the protective principle of international law pursuant to which a state may exercise jurisdiction over crimes committed anywhere by anyone against state security and state documents such as currency and passports.

Under the nationality principle of international law, a state may apply its criminal law to, and exercise jurisdiction over, its citizens, nationals and other persons owing allegiance to it who engage in criminal conduct in other states. The present *Code* applies this principle sparingly and extends the ambit of Canadian criminal law only to certain classes of people who represent Canada abroad and engage in conduct which constitutes a crime in both states. Clause 5(2)(h) applies to persons serving abroad who are subject to the Code of Service Discipline under the *National Defence Act*. This includes: military personnel, certain members of their accompanying families and some civilian personnel; R.C.M.P. members and Government of Canada employees serving abroad who are Canadian citizens or otherwise owe allegiance to Canada; and family members accompanying R.C.M.P. members or government employees and forming part of their households if they are Canadian citizens or otherwise owe allegiance to Canada.

Clauses 5(2)(i) and (j) reflect the universality principle and permit Canadian courts to exercise jurisdiction over persons who commit piracy in a place outside the territorial jurisdiction of any state or commit any other universal crime anywhere.

Clauses 5(2)(l), (m), (n) and (o), which are not based upon any particular principle of international law, implement Canada's various treaty obligations to exercise criminal jurisdiction over various crimes with international ramifications.

THE SPECIAL PART

The Special Part of the new Code divides crimes into six categories. These consist of crimes against:

- the person,
- property,
- the natural order,
- the social order,
- the political order, and
- the international order.

Each category is subdivided, where appropriate, by reference to the interests infringed. So crimes against the person are divided into:

- crimes against personal safety and liberty, and
- crimes against personal security and privacy.

Each subcategory is, where necessary, further subdivided. So, crimes against personal safety and liberty are divided into:

- crimes against life,
- crimes against bodily integrity,
- threats and harassment,
- crimes against personal liberty, and
- crimes causing danger.

In each of these further subcategories crimes are for the most part listed in ascending order of gravity. Thus, less serious crimes usually precede more serious ones which include them or build upon them. In crimes against life, criminally negligent homicide precedes manslaughter (or reckless killing) which precedes murder (or intentional killing).

THE SPECIAL PART

TITLE II. Crimes against the Person

Part 1: Crimes against Personal Safety and Liberty

Chapter 6: Crimes against Life

Comment

The common law on homicide was relatively straightforward. Unlawful killing was murder if done with malice aforethought, manslaughter if done without. What counted as malice was worked out over the centuries in some detail. In 1874 Stephen drafted a mini-Code on homicide which was later incorporated in the English *Draft Code* of 1879, the model for the Canadian *Criminal Code* of 1892.

Based on the 1892 draft, the present *Criminal Code* now presents a complex network of sections. As to the crimes themselves: subsection 205(1) defines homicide; subsections 205(4), 205(5) and section 210, culpable and non-culpable homicide; sections 212 and 213, murder; section 217, manslaughter; sections 216 and 220, infanticide; section 221, child destruction; and section 222, attempted murder. Then, section 214 divides murder into first and second degree, while sections 218 and 669 to 672 deal with sentencing for murder. Section 219 provides the penalty for manslaughter. Sections 197 to 199 deal with duties and omissions; section 200, with child abandonment; sections 202 and 203, with causing death by criminal negligence; section 206, with the meaning of "human being"; sections 207 to 211, with specific causation matters; and section 223, with accessory after the fact to murder.

The new Code simplifies the arrangement by reason of the following changes. The culpable/non-culpable distinction is dropped as unnecessary. The duty provisions are relocated in clause 2(3)(c) of the General Part. Specific causation provisions are subsumed under the general causation provision in the General Part. Infanticide is dropped since it can be dealt with under ordinary homicide provisions. Attempted murder is left to the general provisions on attempt. Accessory after the fact to murder is left to the general provisions on obstructing justice. Child destruction is dealt with under crimes against birth.

Accordingly, the chapter on Crimes against Life defines four basic crimes of killing persons already born: negligent homicide, manslaughter, murder and first degree murder. Then it adds a special crime of furthering suicide. It ends with an exception relating to palliative care.

This chapter, then, relates to the killing of those already born. All the homicides here listed consist in killing another "person" which is defined in this Code by clause

1(2) as “a person already born by having completely proceeded in a living state from the mother’s body” Crimes against the unborn will be located in a separate chapter of a later volume.

The crimes, then, in this chapter are homicides and indeed *culpable* homicides. Our proposed Code, however, does not state as much but takes the position that all killing with negligence, recklessness or purpose entails criminal liability unless excused or justified as provided by the General Part. Hence, no need arises for reference to “culpable” and “non-culpable.”

6(1) Negligent Homicide. Everyone commits a crime who negligently kills another person.

Comment

Under present law, this kind of homicide is covered by sections 202 and 203 (causing death by negligence) and section 217 (manslaughter). Two points, however, remain unclear. One is the extent of possible overlap between sections 202 and 203 and section 217. The other is the meaning of “criminal negligence” in section 202, the definition of which refers to “wanton or reckless disregard.”

The new Code clarifies both points. First, clause 6(1) creates a crime of negligent, as opposed to reckless, killing. Second, clause 2(4)(b) in the General Part defines negligence as something clearly different from and less than recklessness.

6(2) Manslaughter. Everyone commits a crime who recklessly kills another person.

Comment

“Manslaughter” is not defined by the present *Criminal Code* but is simply stated to be “[c]ulpable homicide that is not murder or infanticide” (section 217). As such, it includes negligent killing and some kinds of reckless killing: negligent killing by reason of the fact that causing death by negligence (section 203) is a culpable homicide that is not murder or infanticide; and reckless killings other than those covered by sections 212(a)(ii) and (c). It is accordingly a crime of broad and unclear dimensions.

The new Code defines “manslaughter” as reckless killing. “Recklessly” is defined in clause 2(4)(b) of the General Part as something worse than negligence but less heinous than wrongful purpose. Manslaughter, then, is singled out as falling between negligent homicide and murder and as meriting an intermediate penalty.

6(3) Murder. Everyone commits a crime who purposely kills another person.

Comment

Murder at common law was killing with malice aforethought. Killing with malice was defined by Stephen to consist in killing: (1) with intent to kill or cause grievous bodily harm; (2) with knowledge that one's act was likely to kill or cause grievous bodily harm; (3) in the course of furtherance of a violent felony; and (4) with intent to oppose by force an officer of justice.⁴⁵ The present *Criminal Code* replaces "intent to ... cause grievous bodily harm" and "knows that one's act is likely to kill or cause bodily harm" by "means to cause ... bodily harm that he knows is likely to cause ... death, ..." (subparagraph 212(a)(ii)). It replaces the two heads of constructive malice ((3) and (4) of Stephen's definition) by "for an unlawful object, does anything that he knows ... is likely to cause death, ..." (paragraph 212(c)) and by the performance of certain listed acts in the course of certain listed offences (section 213).

Clause 6(3) abandons constructive malice and restricts murder to killing purposely. "Purposely" is defined in clause 2(4)(b) of the General Part to include oblique or indirect purpose, sometimes referred to as indirect intent. So where D causes V's death, which he does not desire, as a necessary step to some other objective, which he does desire, he commits murder. All other unintended killings, whether or not in the course of other offences, are either manslaughter or negligent homicide. So, where D kills V in the course of a robbery, he will be guilty of murder if he kills him on purpose, of manslaughter if he kills recklessly, and of negligent homicide if he kills with negligence; D will be guilty of the kind of killing he does, not for what he may do by accident. The fact that the killing may be worse because done in a robbery can be reflected in the sentence.

[Alternative — Murder

Murder. Everyone commits a crime who purposely:

(a) kills another person; or

(b) causes bodily harm that he knows is likely to cause death and is reckless whether death ensues or not.]

Comment

A minority of the Commissioners would retain the *Criminal Code* approach expressed in subparagraph 212(a)(ii) on the basis that this kind of reckless killing is more akin to killing on purpose than to ordinary reckless homicide. The reason is that

45. See Sir James Fitzjames Stephen, *A History of the Criminal Law of England* (1883, reprinted New York: Burt Franklin, 1964), vol. 3, p. 80.

such a killer not only exposes the victim to a risk of death, but also purposely takes unwarranted liberties with his physical person. The majority consider such reckless killing to be more akin to other kinds of reckless homicide than to killing on purpose.

6(4) First Degree Murder. Murder is first degree murder if committed:

- (a) pursuant to an agreement for valuable consideration;
- (b) with torture;
- (c) for the purpose of preparing, facilitating or concealing a crime or furthering an offender's escape from detection, arrest or conviction;
- (d) for terrorist or political motives;
- (e) during the course of hijacking, robbery, confinement, or sexual assault;
- (f) by means which the accused knows will kill more than one person; or
- (g) by premeditation in terms of a calculated and carefully considered plan other than for the purpose of mercy killing.

Comment

Although there is nothing in the new Code on sentencing, the Commission's recommendation is that ordinary murder should carry no fixed or minimum penalty.⁴⁶ Some murders, though, are heinous enough to merit very severe penalty. To reassure the public at this time that they will receive such penalty, the Code retains a provision on first degree murder.

Clause 6(4) simplifies and somewhat alters the present law contained in section 214 of the *Criminal Code*. First, to some extent it categorizes murders in terms of activity and motive rather than by a list of offences and victims: for example, it replaces "[m]urder of police officer, etc." by murder "for the purpose of ... furthering an offender's escape ...". Second, it replaces "planned and deliberate" by a new formulation deliberately excluding mercy killings (see clause 6(4)(g)). In line with recent amendments to the *Criminal Code*, the "repeated murder" provision has been dropped. It has been replaced by one relating to multiple killings (see clause 6(4)(f)) although a minority of Commissioners would have preferred to delete this provision on the ground that simultaneous multiple killings are no worse than consecutive multiple killings. It adds "with torture" (see clause 6(4)(b)) as being particularly heinous.

[Alternative — First Degree Murder

Murder is first degree murder if the offender deliberately subordinates the victim's life to his own further purpose of:

⁴⁶. See LRCC, *Homicide*, *supra*, note 3.

- (a) *advancing terrorist or political objectives;*
- (b) *influencing the course of justice;*
- (c) *preparing, facilitating or concealing a crime or furthering an offender's escape from detection, arrest or conviction;*
- (d) *financial gain; or*
- (e) *obtaining consideration paid, or to be paid, pursuant to an agreement to kill.]*

Comment

A minority of the Commissioners would prefer to articulate the distinction between first degree and other murders by reference to some principle. This principle they see as the murderer's deliberate subordination of the victim's life to his own purpose by doing one of the things listed in the clause. The things listed, with the exception of premeditation, correspond roughly to the provisions in the majority alternative, but contain no reference to torture, specific crimes or multiple killings.

[Alternative — Homicide

Homicide. Everyone commits a crime who kills another person:

- (a) *purposely;*
- (b) *recklessly; or*
- (c) *through negligence.]*

Comment

A minority of the Commissioners would like to get away from the confusion surrounding older concepts and to have one crime of homicide that could be committed with one of three different levels of culpability. This would put homicide on the same footing as causing bodily harm and many other "result offences." The majority, however, prefer to retain the existing labels.

6(5) Furthering Suicide. Everyone commits a crime who helps, advises, encourages, urges or incites another person to commit suicide whether suicide results or not.

Comment

Under present law, there is no crime of attempted suicide but it is a crime to counsel, aid or abet another's suicide according to section 224 of the *Criminal Code*.

This may be justified on the basis that while a person should be left free to take his own life, others should not be free to help or encourage him to do so. Without their ministrations he might well recover from his suicidal frame of mind.

Clause 6(5) retains the present law. Since the suicide furthered by definition must be that of another, it must be furthered by helping, urging and so on. It cannot be furthered by attempting for one can only attempt one's own suicide; attempting to bring about another's death will be attempted murder.

6(6) Palliative Care. Clauses 6(1) to 6(5) do not apply to the administration of palliative care appropriate in the circumstances for the control or elimination of a person's pain and suffering even if such care shortens his life expectancy, unless the patient refuses such care.

Comment

Under present law, administration of palliative treatment likely to shorten life would in theory fall under subparagraph 212(a)(ii) and give rise to liability for murder. In practice, Canadian case-law has no record of conviction of a doctor for shortening a terminal patient's life by administering pain-relieving drugs.⁴⁷ Moreover, most people, including religious leaders, see nothing wrong in giving treatment for the purpose of relieving pain in certain circumstances even though one result of such relief may be to shorten life. Clause 6(6) clarifies the law, reconciles it with present practice and brings the Code into line with current moral thinking.

Chapter 7: Crimes against Bodily Integrity

Comment

At common law, non-fatal crimes against the person consisted of assault (threatening immediate violence) and battery (inflicting violence). Statute added other more serious offences. The present *Criminal Code* deals with such crimes in Part VI which concerns assault (section 244), aggravated assaults (sections 245.1, 245.2 and 246), unlawfully causing bodily harm (section 245.3) and numerous other offences (for example sections 228, 229 and 230). As well, there are several offences contained in sections outside Part VI (for example: sections 38 to 42, assaults by trespassers; 69, assaulting person reading riot proclamation; 172, assaulting clergyman celebrating divine service). In addition, sexual assaults are prohibited specifically by sections 246.1, 246.2 and 246.3.

47. See LRCC, *Euthanasia, Aiding Suicide and Cessation of Treatment* [Working Paper 28] (Ottawa: Supply and Services Canada, 1982), p. 8.

The new Code restricts this area of law to crimes of actual violence, relocates the crime of threatening immediate violence in the chapter on Threats and Harassment (Chapter 8) and reduces the rest of the law to two crimes: (1) touching or hurting, and (2) harming. Many of the specific crimes are dealt with in terms of aggravating factors. Exceptions are created regarding therapeutic treatment and sporting activities. Sexual assaults will be dealt with later.

7(1) Assault by Touching or Hurting. Everyone commits a crime who, [offensively] touches or hurts another person without that other's consent.

Comment

Subsection 244(1) of the *Code* makes it a crime to apply force intentionally to another without his consent. According to case-law, "force" covers any touching, however slight and brief, without the exertion of strength or power.⁴⁸ Consent may be either express or implied. According to subsection 244(3) it must be real, that is, not induced by threat or fraud. According to case-law, a person impliedly consents to harmless non-hostile contacts in ordinary social life, to non-hostile contact for treatment and to contact reasonably incidental to a lawful game or sport. The culpability specified in paragraph 244(1)(a) is "intentionally"⁴⁹ although in England (and, according to Stuart, in Canada too)⁵⁰ assault can be committed recklessly.

Clause 7(1) basically reproduces subsection 244(1). It clarifies that the crime can only be committed purposely (see clause 2(4)(d) in the General Part), retains the need for consent but replaces "apply force" by "touches or hurts." "Consent" is defined in the general definition clause (1(2)). "Hurt" is defined in that same clause as "to inflict physical pain."

A minority of the Commissioners would add the word "offensively" before "touches." This would rule out trivial touching not ordinarily considered objectionable, and avoid resort to the fiction of implied consent as a means of excluding liability for non-hostile social contact.

7(2) Assault by Harming. Everyone commits a crime who harms another person:

- (a) purposely;**
- (b) recklessly; or**
- (c) through negligence.**

48. See *R. v. Burden*, [1982] 1 W.W.R. 193; (1981), 64 C.C.C. (2d) 68; 25 C.R. (3d) 283 (B.C. C.A.).

49. See *R. v. George*, [1960] S.C.R. 871 and *Leary v. R.*, *supra*, note 17.

50. See Stuart, *supra*, note 5, p. 132.

Comment

Present law on harming is contained primarily in sections 204 (causing bodily harm by criminal negligence) and 245.3 (unlawfully causing bodily harm), and secondarily in related sections, for example sections 228 (discharging firearm), 229 (administering noxious thing) and 245.2 (wounding, maiming). Problems arise regarding consent and culpability. Consent is clearly a defence to any crime piggybacked on subsection 244(1) (assault), but less clearly a defence to sections 204 and 245.3.⁵¹ Culpability, apart from crimes based on subsection 244(1), clearly extends to recklessness, but how far it includes negligence depends on the meaning to be given to that term in the light of section 202 (see comment to clause 6(1) above).

Clause 7(2) reduces the law to one crime of harming. It clarifies that this crime can be committed purposely, recklessly or negligently. It further clarifies, by omitting all reference to it, that the victim's consent is irrelevant. "Consent" is defined in the general definition clause (1(2)).

"Harm" is defined in clause 1(2) as "to impair the body or its functions" This would include impairment of its psychological functions.

7(3) Exceptions.

- (a) **Medical Treatment.** Clauses 7(2)(a) and 7(2)(b) do not apply to the administration of treatment with the patient's informed consent for therapeutic purposes or for purposes of medical research involving risk of harm not disproportionate to the expected benefits.
- (b) **Sporting Activities.** Clauses 7(2)(a) and 7(2)(b) do not apply to injuries inflicted during the course of, and in accordance with, the rules of a lawful sporting activity.

Comment

Under present law, a person performing a surgical operation for the benefit of the patient is protected from criminal liability by section 45 if it is performed with reasonable skill and care and it is reasonable to perform the operation having regard to all the circumstances. This section, however, does not cover other kinds of therapeutic treatment. Nor does it cover surgical treatment for another's benefit, for example, an operation on D1, in order to transplant an organ into D2. Nor does it cover operations for the sake of medical research.

Clause 7(3) extends present law by providing that clauses 7(2)(a) and 7(2)(b) do not apply to the administration of any kind of treatment, given two conditions. First,

51. See Fortin and Viau, *supra*, note 4, pp. 297 and especially, p. 299; see also Stuart, *supra*, note 5, p. 457 and especially, p. 460.

there must be informed consent on the part of the patient if he is conscious. In the case of an unconscious patient, there can be a defence of necessity which, of course, would not be available to a homicide charge; hence the different wording of clause 6(6). Second, the treatment must be for therapeutic purposes or for purposes of medical research where the risk of harm is not disproportionate to the expected benefits. A surgeon who administers therapeutic treatment with the patient's consent will still be liable, however, if he is criminally negligent, because clause 7(3) provides exceptions only to clauses 7(2)(a) and 7(2)(b) and not to 7(2)(c).

Clause 7(3)(b) provides an exception for lawful sporting activities. "Lawful" here means not forbidden by law, since it is a basic principle in our law that everything that is not forbidden is allowed. Many lawful contact and combat sports, however, are specifically authorized and regulated by provincial statutes. In most such sports the participants consent to, and the law acknowledges the lawfulness of, the infliction of harm according to the rules. Where the injuring party goes beyond the rules, he will of course fall outside the clause 7(3)(b) exception. The same is true where he is guilty of criminal negligence because that too falls outside the exception, which refers only to clauses 7(2)(a) and 7(2)(b).

Chapter 8: Threats and Harassment

Comment

Present law deals in various ways with threats of force. Paragraph 244(1)(b) of the *Criminal Code* makes it an assault to attempt to threaten, by act or gesture, to apply force to another. Subsection 381(1) of the *Code* defines various acts which count as the crime of intimidation if done wrongfully to compel another to abstain from doing what he has a right to do or to do what he has a right to abstain from doing. Section 243.4 makes it a crime to utter certain kinds of threats.

The new Code restricts this area of law to threatening. It therefore drops the provision relating to attempts to apply force since these automatically qualify as attempts to commit assault by touching, hurting or harming, depending on the circumstances. It then divides crimes of threatening into four offences listed in ascending order of gravity.

8(1) Harassment. Everyone commits a crime who harasses and thereby frightens another person.

Comment

This replaces paragraphs 381(1)(c) to (g) of the *Criminal Code*, which outlaw an illogical array of conduct ranging from hiding tools to using violence. Clause 8(1)

focusses simply on the characteristics of the conduct, namely, its persistent and frightening nature. By virtue of clause 2(4)(d) this is a "purpose" crime; the accused's purpose must be to harass and frighten.

8(2) Threatening. Everyone commits a crime who threatens to hurt, harm or kill another person or to damage his property.

Comment

This replaces paragraphs 381(1)(a) and (b) of the *Code*, which outlaw acts going beyond what is covered by clause 8(1).

8(3) Immediate Threatening. Everyone commits a crime who threatens another person with immediate hurt, harm or death.

Comment

This replaces paragraph 244(1)(b) of the *Code* (assault). The immediacy of the threats renders them more serious than those covered by clauses 8(1) and 8(2).

8(4) Extortion. Everyone commits a crime who threatens:

(a) to harm another person's reputation;

(b) to hurt, harm or kill another person or to damage his property; or

(c) to inflict on another person immediate hurt, harm or death

for the purpose of making someone, whether the person threatened or not, do or refrain from doing some act.

Comment

"Extortion" is defined at present by section 305 of the *Criminal Code* as having six elements. The defendant must (1) without reasonable justification or excuse (2) with intent to extort or gain anything (3) by threats, accusations, menaces or violence (4) induce or attempt to induce (5) any person (6) to do anything or cause anything to be done. Subsection 305(2) provides that threats to institute civil proceedings are not threats under this section. Section 266 makes it an offence to publish or threaten to publish a defamatory libel with intent to extort.

Clause 8(4) reproduces present law, simplifies it and builds it partly on the crimes defined in clauses 8(2) and 8(3). Element (1) is omitted since, on the one hand, the absence of a justification or excuse makes the threat criminal and, on the other hand,

the presence of a justification or excuse provided by clauses 3(7) to 3(16) affords a defence. Elements (2), (4), (5) and (6) are reproduced in the words "for the purpose of making someone ... do or refrain from doing some act." Element (3) is replaced by the word "threatens." Section 266 of the *Code* is reproduced in clause 8(4)(a). It is envisaged that the penalties for crimes defined in clauses 8(4)(a), 8(4)(b) and 8(4)(c) would be in ascending order of gravity.

Chapter 9: Crimes against Personal Liberty

Comment

Wrongful deprivation of liberty constituted at common law either the crime of false imprisonment (unlawful confining) or kidnapping (unlawful confining and taking away). Statute added various crimes of abduction.

The *Criminal Code* provides three general crimes. Subsection 247(1) prohibits the kidnapping of someone with intent to confine him against his will, send him outside Canada or ransom him. Subsection 247(2) prohibits the simple unlawful confining or forceful seizing of another. Subsection 247.1(1) prohibits hostage taking in order to compel a third party to do an act or to abstain from doing an act. The provision in subsection 247(3), to the effect that non-resistance is no defence unless proved by the accused not to have been caused by duress, threats or force, has been held invalid as contrary to the Charter.⁵² In addition, the *Criminal Code* defines four crimes of abduction: abduction of a person under sixteen (subsection 249(1)); of a person under fourteen (section 250); by a parent in contravention of a custody order (section 250.1); and by a parent when there is no such order (subsection 250.2(1)).

The new Code provisions on liberty simplify the law and create two offences of confinement and one of abduction.

9(1) Confinement. Everyone commits a crime who confines another person without that other's consent.

Comment

Clause 9(1) replaces subsections 247(1) and 247(2) of the *Code*. It clarifies that the deprivation must be without the victim's consent. By omitting all reference to culpability, it creates a "purpose" crime (see clause 2(4)(d)).

52. See *R. v. Gough* (1985), 43 C.R. (3d) 297 (Ont. C.A.).

9(2) Kidnapping. Everyone commits a crime who confines another person, without that other's consent, for the purpose of making him or some other person do or refrain from doing some act.

Comment

Clause 9(2) replaces paragraph 247(1)(c) and subsection 247.1(1) of the *Code*. It clarifies that this crime is an aggravated form of that defined by clause 9(1), the aggravation being the purpose for which the victim is confined.

9(3) Child Abduction. Everyone commits a crime who takes or keeps a person under fourteen years of age, whether that person consents or not, for the purpose of depriving a parent, guardian or person who has lawful care or charge of that person of the possession of that person.

Comment

Clause 9(3) simplifies the law and creates one single crime of abduction. The reason for providing for a crime of abduction is that in many cases the child being abducted consents to go with the defendant so that the latter does not commit confinement or kidnapping. The crime of abducting a child under sixteen has been dropped because it was out of keeping with modern views on child development.

Chapter 10: Crimes Causing Danger

Comment

Traditionally, criminal law concentrates on acts causing actual harm to identifiable victims and criminalizes acts causing mere risk of harm in three ways: (1) through inchoate crimes, (2) through public nuisance, and (3) through specific crimes of endangering. These last acts divide into dangerous activities such as dangerous driving (subsection 233(1) of the *Code*), acts related to dangerous things such as explosives (sections 77 and 78), and those related to dangerous weapons (sections 82 to 84). The new Code supplements these with a general crime of endangering.⁵³ Chapter 10 contains the general crime, crimes of failure to rescue and impeding rescue, and crimes relating to motor vehicles, vessels, aircraft and transport. Crimes relating to public nuisance, firearms and explosives will be contained in the Title on Crimes against the Social Order (Volume II). Crimes of endangering the environment will be placed in the Title dealing with Crimes against the Natural Order.

53. See LRCC, *Omissions, Negligence and Endangering*, *supra*, note 3.

10(1) Endangering. Everyone commits a crime who causes a risk of death or of serious harm to another person:

- (a) purposely;
- (b) recklessly; or
- (c) through negligence.

Comment

Clause 10(1), which creates the new general crime of endangering, shows the general principle underlying this chapter of offences and affords a residual provision for acts not covered by more specific clauses. It thereby facilitates early law enforcement intervention to prevent harm before its actual occurrence and brings our law into line with section 211.2 of the *Model Penal Code*, with most state codes in the United States and with European codes such as those of Austria and Sweden. The crime is limited, however, to causing risk of death or *serious* harm.

10(2) Failure to Rescue.

- (a) **General Rule.** Everyone commits a crime who, perceiving another person in immediate danger of death or serious harm, does not take reasonable steps to assist him.
- (b) **Exception.** Clause 10(2)(a) does not apply where the person cannot take reasonable steps to assist without risk of death or serious harm to himself or another person, or where he has some other valid reason for not doing so.

Comment

Clause 10(2)(a) creates a new crime, as recommended in the Law Reform Commission's Working Paper 46 on *Omissions, Negligence and Endangering*.⁵⁴ It thereby builds on the principle recognized in section 2 of the Québec *Charter of Human Rights and Freedoms*⁵⁵ and brings our law into line not only with ordinary notions of morality but also with the laws of many other states, for example Belgium, France, Germany, Greece, Italy, Poland, and certain states of the United States (for example Vermont). The penalty is envisaged as being relatively low. The exception in clause 10(2)(b) is modelled on the Québec Charter.

10(3) Impeding Rescue. Everyone commits a crime who impedes the rescue of another person in danger of death or serious harm.

54. *Idem.*, p. 20.

55. See *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12.

Comment

This clause replaces section 243.2 of the *Criminal Code*. Unlike that section it does not divide impeding into: (1) impeding someone attempting to save his own life; and (2) impeding someone attempting to save another's life. Both are covered by impeding rescue, and will be mostly covered by endangering contrary to clause 10(1).

10(4) Endangering by Motor Vehicle. Everyone commits a crime who purposely, recklessly or negligently operates a means of transportation (other than one humanly powered) in such a way, or in such condition of disrepair as to cause a risk of death or serious harm to another person.

Comment

This clause replaces sections 233 and 235 of the *Code*. It replaces "dangerous to the public" by the more concrete term "in such a way, or in such condition of disrepair as to cause a risk of death or serious harm to another person." It extends the crime to cover operating a means of transportation anywhere, rather than restricting it to driving in public places. It clarifies the culpability levels. Finally, it excludes specific provisions relating to the causing of death or bodily harm, since this is already covered by the homicide and assault provisions.

Section 235 of the *Criminal Code* relating to unseaworthy vessels and unsafe aircraft, is also replaced by this clause by virtue of the words "in such condition of disrepair." But unlike section 235, clause 10(4) applies only to the actual operation of a means of transportation. The sending of an unseaworthy vessel on a voyage constitutes furthering the actual operation which is covered by the furthering provisions in clauses 4(1) to 4(4). Nor is there any restriction to registered vessels or to the points of the voyage, because the essence of the crime, being the endangering, makes such details irrelevant. Again, the three levels of culpability are expressly spelled out.

10(5) Impaired or with More Than 80 Mg. of Alcohol in Blood. Everyone commits a crime who operates or has care and control of a means of transportation (other than one humanly powered) when he knows or ought to know that his ability is impaired by alcohol or a drug, or that he has more than eighty milligrams of alcohol in one hundred millilitres of blood (see Schedule Z).

Comment

This clause replaces and reproduces section 237 of the *Criminal Code*, criminalizing conduct obviously tending to endanger. The detailed procedures in connection with arresting and taking samples are to be located, not in the text of the Code, but in an appended schedule, so as to confine the Special Part clauses to the

creating of offences. Since this is essentially a crime of negligence, the culpability requirement is that the accused "knows or ought to know." In contrast to the general rule on criminal negligence, "ought to know" is inserted for policy reasons to impose liability for ordinary civil negligence. If criminal negligence were required it might often be unduly difficult to prove that a defendant's ignorance fell markedly below the standard of reasonable care; after a bout of drinking such ignorance might not be criminally negligent.

10(6) Failure or Refusal to Provide Sample.

- (a) **General Rule.** Everyone commits a crime who, being reasonably suspected of committing a crime defined in clause 10(5) and being requested by a peace officer to provide a proper breath sample as required by law and specified in Schedule Z, fails or refuses to do so.
- (b) **Exception.** No one is liable under this clause who has a reasonable excuse for failing or refusing to provide a proper sample.

Comment

This clause replaces and reproduces subsections 237(3) to 237(5) of the *Code*. The details contained in subsections 237(3) and 237(4) will be relocated in the above-mentioned Schedule Z. Given the lack of specific reference to culpability, clause 10(6) creates a "purpose" crime (see clause 2(4)(d)).

10(7) Failure to Stop at Scene of Accident. Everyone commits a crime who, while operating or having care and control of a means of transportation (other than one humanly powered), is involved in an accident with another person or another's property and leaves the scene of the accident for the purpose of escaping civil or criminal liability.

Comment

This clause replaces subsection 236(1) of the *Criminal Code*. It widens the offence to apply to those involved in accidents involving another's property instead of restricting it as regards property, as does subsection 236(1), to accidents involving other vehicles or cattle. It replaces the requirement to stop at the scene of the accident by a simple prohibition against leaving the scene of the accident. Finally, like subsection 236(1), it makes the crime a "purpose" crime.

10(8) Driving a Motor Vehicle While Disqualified. Everyone commits a crime who operates a means of transportation knowing that he is disqualified from driving on account of having committed a crime under this Code.

Comment

This clause replaces former subsection 238(3) of the *Criminal Code*, which has now been repealed. Clause 10(8) restricts the offence to cases of disqualification (under federal or provincial law) for Code crimes. In this it reproduces in effect the new *Criminal Code* subsections 242(4) and 242(5). Here the culpability is that of actual knowledge, for this is not so much a crime of negligence as one of disobedience to a disqualification order.

10(9) Interfering with Transportation and Navigation Facilities. Everyone commits a crime who interferes with anything used for, or in connection with, or anyone engaged in, transportation, and thereby causes risk of death or serious harm to another person.

Comment

This clause reproduces and replaces section 232 of the *Code* in a simplified form.

10(10) Aggravating Factors. The crimes in Chapters 7 to 10 are aggravated where appropriate if committed:

- (a) pursuant to an agreement for valuable consideration;
- (b) with torture;
- (c) for the purpose of preparing, facilitating or concealing a crime or furthering an offender's escape from detection, arrest or conviction;
- (d) for terrorist or political motives;
- (e) with a weapon;
- (f) by means which the accused knowingly or recklessly uses to harm more than one person; or
- (g) knowingly against the offender's spouse, child, grandchild, parent or grandparent.

Comment

This clause applies where appropriate to all crimes in this Part on Crimes against the Person except crimes of homicide. Instead of numerous clauses creating particular aggravated offences or specifying aggravating factors for each separate offence, the Part has one unifying provision. The aggravating factors are largely parallel to those rendering a murder one of first degree, but contain in addition references to use of a

weapon and to special categories of victims — factors which hardly aggravate murder but which clearly make non-fatal violence additionally alarming to the victim.

It is intended that the Code of Criminal Procedure will contain provisions relating to the effect of such factors on sentence, the need to bring them to the defendant's notice before trial, the method of establishing them at trial, and the result as regards verdict and record.

Part 2: Crimes against Personal Security and Privacy

Comment

The right to privacy, although not expressly acknowledged by the Charter, is recognized both by Article 12 of the *Universal Declaration of Human Rights* (1948) and Article 17 of the *International Covenant on Civil and Political Rights* (1976)⁵⁶ to which this country is a party. The right itself has different aspects. There is the right to live one's life free from unwelcome monitoring and observation, especially by those in authority — a right protected by provisions on unlawful surveillance. There is the right to keep the details of that life private and free from the glare of unwanted publicity — a right adequately protected by the law of civil libel and in some provinces by privacy statutes, and therefore not needing special criminal provisions. Thirdly, there is the right of inviolability of one's dwelling-house and other personal space — a right protected by provisions on break and enter, or, in the new Code's terminology, criminal intrusion.

Chapter 11: Unlawful Surveillance

Comment

In the past, simple precautions could be taken by individuals to protect their privacy against unwanted monitoring and observation. With the advances in modern technology, such precautions are no longer adequate. There is a need for special legislative protection to govern the use of electromagnetic, acoustical, mechanical or other listening or optical devices capable of intruding upon the privacy of the individual. This is the role of sections 178.1 to 178.23 of the *Criminal Code*.

56. See *Universal Declaration of Human Rights*. General Assembly, Third Session, Official Records, Part I, Res. 217A (III), A/810 (1948) and *International Covenant on Civil and Political Rights*. (1976) 999 U.N.T.S. 172.

Many of these sections, however, deal with the procedure and conditions surrounding the use of these devices, not with crimes as such. The new Code includes only the substantive provisions, that is, crimes and defences relating to the contravention of the relevant procedural provisions. The procedural provisions will be placed in the Code of Criminal Procedure.

11(1) Auditory Surveillance.

- (a) General Rule. Everyone commits a crime who, without the consent of at least one of the parties to the communication, intercepts a private communication by means of a surveillance device.**
- (b) Exception. This clause does not apply to anyone engaged in providing a telephone, telegraph or other communication service to the public who intercepts a private communication where it is a necessary incidence of providing the service.**

Comment

Clause 11(1) basically retains the current law found in section 178.11 of the *Code*. "Surveillance device" is defined in clause 1(2) as a device capable of intercepting a private communication. "[P]rivate communication" refers to any oral communication or any telecommunication made under circumstances in which it is reasonable for the originator to expect that it will not be intercepted by any person other than the person intended to receive it. This is meant to cover those situations where a communication would normally be considered to be private. In such situations, even if one of the parties knows the conversation is being intercepted, the conversation remains a private communication. But, if at least one of the parties consents there is no crime.

As to the exceptions in subsection 178.11(2) of the current *Code*, consent has been built into the offence; the authorization is covered by clause 3(13) in the General Part; operating a communication service has been retained, but the random monitoring of radio frequencies has been excluded because it is already covered by federal statute and would also be covered by clause 3(13).

11(2) Unauthorized Entry of Private Premises. Everyone commits a crime who, without the consent of the owner or occupier, enters private premises for the purpose of installing, servicing or removing a surveillance or optical device.

11(3) Unauthorized Search of Private Premises. Everyone commits a crime who, being authorized to enter private premises for the purpose of installing, servicing or removing a surveillance or optical device, searches the premises.

11(4) Use of Force to Gain Entry. Notwithstanding clause 3(13), everyone commits a crime who uses force against a person for the purpose of gaining entry into private premises to install, remove or service a surveillance or optical device, or for the purpose of exiting from such premises.

Comment

Installation of auditory surveillance devices may be necessary for the advancement of justice. The authorization procedures to enter premises and install devices will be set out in the Code of Criminal Procedure.

It is to be noted that clause 11(3) also extends to optical devices for the reasons set out in the Law Reform Commission's Working Paper 47, *Electronic Surveillance*.⁵⁷

As the Ontario Court of Appeal pointed out in *McCafferty*,⁵⁸ a search warrant must be strictly interpreted, and cannot be used to plant a listening device. Similarly, an entry under an authorization is not authority to conduct a search of the premises. This is made clear in clause 11(3).

Clause 11(4) prohibits the use of force for the purpose of installing a device. This prohibition is necessary because the person authorized to enter for installation might be tempted to utilize the authorization to use force.

11(5) Disclosure of Private Communications.

(a) General Rule. Everyone commits a crime who, without the consent of at least one of the parties to a private communication that has been intercepted by a surveillance device:

- (i) discloses or threatens to disclose the existence or the contents of the communication; or**
- (ii) uses the contents of the communication.**

(b) Exceptions. No one is liable under clause 11(5) if the disclosure is:

- (i) in the course of, or for the purpose of, giving evidence in a judicial proceeding where the private communication is admissible;**
- (ii) in the course of, or for the purpose of, any criminal investigation if the private communication was lawfully intercepted;**
- (iii) to a peace officer or to the Attorney General or his agent, if it is in the interests of the administration of justice;**
- (iv) for the purpose of giving notice or furnishing particulars in accordance with clause X of the Code of Criminal Procedure;**

57. See LRCC, *Electronic Surveillance* [Working Paper 47] (Ottawa: LRCC, 1986).

58. *R. v. McCafferty* (1984), 13 W.C.B. 143 (Ont. C.A.).

- (v) to an employee of the Canadian Security Intelligence Service, if it is for the purpose of enabling the Service to perform its duties and functions;
- (vi) in the course of the operation of a communication service; or
- (vii) to an investigative or law enforcement officer in a foreign jurisdiction, if it tends to reveal a past, ongoing or prospective crime in such jurisdiction.

Comment

Although the use or disclosure of information obtained as the result of an intercepted private communication without the express consent of the originator or the person intended to receive the communication should be penalized, it is equally desirable to subject to criminal liability any person who intentionally threatens to disclose the existence or contents of any such communication.

The exceptions to the clause 11(5)(a) crime are those found in section 178.2 of the current *Code* with two additions: for disclosing a private communication in certain circumstances to the Attorney General or his agent, or to a law enforcement officer in a foreign jurisdiction. This is consistent with Canada's obligation of international co-operation in criminal law enforcement.

Chapter 12: Criminal Intrusion

Comment

At common law, one's private space was protected against intruders with criminal intent by the law on burglary (break and enter of a dwelling-house by night) and housebreaking (break and enter by day). In due course, statutes extended the latter to cover shops, warehouses and many other types of buildings. Our present law is to be found in sections 173 and 306 to 308 of the *Code*.

Basically those sections define three offences. Section 173 prohibits trespass at night — loitering or prowling at night upon another's property near a dwelling-house thereon. Subsection 307(1) prohibits being unlawfully in a dwelling-house — entering or being in it without lawful excuse and with intent to commit an indictable offence. Section 306 prohibits break and enter, a crime which has three forms: (a) break and enter of a place with intent to commit an indictable offence therein; (b) break and enter and commission of such an offence; and (c) breaking out of a place after (i) commission of an indictable offence therein, or (ii) entering it with intent to commit such an offence.

The new Code replaces these by a crime of criminal intrusion which falls midway between crimes against the person and crimes against property. This is committed by: (a) entering or remaining in another's premises to commit a crime; or (b) doing so and committing a crime. "Premises," as defined in clause 1(2), includes dwelling-houses, while "remaining" covers "being in." No special provision, therefore, is needed for being unlawfully in a dwelling-house. However, the fact that the premises are a dwelling-house is made by clause 12(2) an aggravating factor. Finally, since criminal intrusion, like the present crime of break and enter, requires criminal intent or criminal commission, it does not cover trespass by night. This offence, used mainly to deal with peeping Toms, is best located (if at all) in the context of public order provisions.

12(1) Criminal Intrusion. Everyone commits a crime who enters or remains in another's premises without consent:

- (a) for the purpose of committing a crime; or
- (b) does so and commits a crime.

Comment

Criminal intrusion differs in three ways from break and enter. First, it does not require a breaking. In theory, this differentiates it from break and enter. In practice, owing to presumptions and case-law decisions, it is rarely necessary to prove a breaking. Hence the dropping in the new Code of this requirement.

Second, unlike sections 306 to 308 of the *Code*, clause 12(1) explicitly states that the entry or remaining must be without the occupier's consent. This clarifies that criminal intrusion is a crime against a non-consenting victim.

Finally, clauses 12(1) and 12(2) have no counterpart to paragraph 306(2)(a) of the *Code*. That paragraph creates a rebuttable presumption of intent once break and entry is proved. No such presumption, however, is necessary to enable the trier of fact to conclude, in the absence of a satisfactory explanation, that an intruder had some criminal intent. And no such presumption is desirable in the light of paragraph 11(d) of the Charter.

12(2) Aggravated Criminal Intrusion. The crime defined in clause 12(1) is aggravated if:

- (a) the premises are a dwelling-house;
- (b) the accused is reckless as to the presence of people in the premises; or
- (c) a weapon is carried.

Comment

Subsection 306(1) of the *Code* provides a greater penalty for break and enter when it is committed in relation to a dwelling-house. This effect is reproduced by clause 12(2)(a), which provides that criminal intrusion is aggravated when the premises are a dwelling-house. The rationale is that intrusion into a dwelling-house is a particularly gross violation of privacy and is potentially more dangerous than other intrusions by reason of the potential alarm to people in the dwelling.

Other premises, however, such as shops, banks and offices, may be occupied by people during certain hours. In such hours the same considerations will apply. For this reason clause 12(2)(b) adds a second aggravating feature not recognized in present law.

Finally, intrusion becomes all the more dangerous when done by people carrying guns or other weapons. For one thing, there is the added alarm caused by the carrying of guns. For another, there is the risk that they will be discharged — deliberately or accidentally. Accordingly, clause 12(2)(c) adds carrying of a weapon as a third aggravating factor.

TITLE III. Crimes against Property

Comment

Property crimes are of two kinds. One consists of wrongful redistribution of the property with resulting deprivation of the owner's rights over it. The other consists of wrongful damage or destruction of the property with resulting annihilation of all rights over it. The former kind is dealt with by theft and related crimes, the latter by crimes of damage and arson.

Chapter 13: Theft and Related Crimes

Comment

Against wrongful redistribution of property the common law gave protection through tort law and through criminal law. Through the latter, it protected goods and chattels by provisions on theft and fraud, and real property through the provisions on forgery. Our present law on theft, which is taking property without the owner's consent, is contained in section 283 of the *Code* and in twenty-four other specific provisions. Our law on fraud, which is deceiving an owner into consensually parting with his property, is to be found in paragraphs 320(1)(a), 320(1)(b) and

subsection 338(1) of the *Code*, in sixty-five other specific provisions and in numerous other non-*Code* provisions (for example in the *Bankruptcy Act*, *Food and Drugs Act* and *Combines Investigation Act*). Our law on forgery, which is making or using documents that lie about themselves, is dealt with in sections 324 to 326 of the *Code* and in over a dozen other sections.

The new Code simplifies this area of law by reducing it to three crimes. They are theft, fraud and forgery. These are supplemented by two other crimes: (1) obtaining services and, (2) fraudulent documentary misrepresentation. It thus concentrates on general offences and basic principle and avoids undue specificity and *ad hoc* detail. These crimes are described in Chapters 13 and 14.

The Commissioners were divided, however, on how best to formulate theft, obtaining and fraud. Some thought the best solution was that proposed by our Working Paper 19 and Report 12,⁵⁹ that is, to use the word "dishonestly," the ordinary word which judges often employ to explain the term "fraudulently" in the present law. Others found "dishonestly" objectionable on two grounds. First, it is a culpability word or a type of *mens rea*, which is not defined in the culpability clause in the General Part. Second, it is a word whose use in the English *Theft Act 1968*⁶⁰ has created problems for courts in the United Kingdom. In these circumstances, two alternatives are presented — the first based on the above-mentioned Working Paper and using "dishonestly," the second avoiding the use of this term to describe the requisite culpability.

[Alternative 1]

13(1) Theft. Everyone commits a crime who dishonestly appropriates another's property without his consent.

Comment

Under present law the basic offence of theft is defined in section 283 of the *Code* as already noted. One commits theft either by taking or by converting another's property, but in either case the offender must act fraudulently, without colour of right and with a specific intent. The intent must be one of four types: (a) to deprive the owner temporarily or absolutely of the property; (b) to pledge or deposit it; (c) to part with it under a condition regarding its return which the owner may be unable to comply with; or (d) to deal with it in such manner that it cannot be restored to its original condition.

59. See LRCC, *Theft and Fraud Offences* [Working Paper 19] (Ottawa: Supply and Services Canada, 1977) and *Theft and Fraud* [Report 12] (Ottawa: Supply and Services Canada, 1979).

60. *Theft Act, 1968* (U.K.), 1968, c. 60.

The more specific offences fall into three categories. They relate to special kinds of property, for example oysters (section 284). They relate to special victims, for example bailees of goods under lawful seizure (section 285). Or they relate to connected behaviour, for example fraudulent concealment (section 301).

Clause 13(1) radically simplifies all this. First, it provides one general offence to extend to both what is presently covered by section 283 and what is covered by the more specific sections. Second, it streamlines the general offence by merging "takes" and "converts" into "appropriates," by merging "fraudulently" and "without colour of right" into "dishonestly," and by dropping reference to the four types of intent, because the first type (intent to deprive temporarily or absolutely) is necessarily involved in every taking, necessarily covers the other three types, and in fact adds nothing.

The gist of theft is not the taking or the converting itself. These are only modes of doing what theft seeks to prohibit, that is, usurping the owner's rights — appropriating another's property. Hence clause 13(1) singles out appropriation as the kernel of the crime.

Next the appropriation must be dishonest. This means two things. First, it means that the appropriation must be without a claim of right. If the owner consents to it or if the law allows it, then of course it is not dishonest. If the defendant wrongly but genuinely believes that he has a right to appropriate, (for example, that the owner consents or the law allows the appropriation), then he has a defence of mistake and once again the taking is not dishonest. If his error relates to fact (for example, he wrongly thinks he has the owner's consent), then he has a defence of mistake of fact under clause 3(2)(a). If it relates solely to law (for example he thinks he has a legal right to property), then he has a defence of mistake of law under clause 3(7)(a). If, however, he thinks simply that stealing is not against the law or that, though illegal, it is justifiable, he has no defence. To act dishonestly, therefore, is to act in a way which would be ordinarily described as dishonest, whatever the agent's own personal morality. Second, the appropriation must be not merely wrongful but also "crooked." A person may wrongfully retain another's property out of omeriness and thereby render himself liable in civil law — without necessarily being a thief. A thief is one who takes another's property dishonestly or fraudulently; typically he does so by stealth and cheats the owner. The first kind of wrongdoing is open and therefore can adequately be dealt with by the civil law. The second is surreptitious and underhanded and, if successful, cannot be pinned on the wrongdoer. It therefore needs to be deterred and stigmatized by criminal law.

Clause 13(1) says nothing about the level of culpability. According to clause 2(4)(d), therefore, theft is a "purpose" crime: the defendant must mean to misappropriate. What is excluded is accidental or mistaken appropriation.

"Appropriate" is defined by clause 1(2) as to "take, borrow, use or convert" property. It means, therefore, usurping the owner's rights of ownership — assuming

ownership or possession of the property. It would not apply to trespass, damage or destruction, the first of which is left to civil law while the other two constitute the crime of vandalism.

“Property” is defined by clause 1(2) to include “electricity, gas, water, telephone, telecommunication and computer services.” In consequence, theft is not restricted to misappropriation of goods or other items of tangible property.

“Another’s property” is defined by clause 1(2) as property which that other owns or has any special interest in. Thus, as under present law, an owner may steal from a joint owner, or a lender from a borrower, a pledger from a pledgee and so on. No special provision that spouses may not steal each other’s property is included; in keeping with changing ideas about cohabitation, section 289 of the *Code* is not replaced.

13(2) Obtaining Services. Everyone commits a crime who dishonestly obtains for himself or another person services from a third party without full payment for them.

Comment

This crime covers such acts as dishonestly getting a ride, a haircut, accommodation and so on without paying. Such acts at common law did not amount to theft since services are not property. Under present law, dishonest obtaining of accommodation is covered by section 322 of the *Code*, of transportation by subsection 351(3) and of other services by paragraph 320(1)(b) (obtaining credit by fraud). These are all covered in the new Code by clause 13(2).

A person may in all honesty obtain services without paying for them because the person whose duty it is to charge him gives him a “free ride”: for example, a cinema usher allows him to enter the theatre free. If this leads the customer to believe it is all right to come in without paying, he is not dishonest and commits no crime. But the dishonest usher’s conduct falls under clause 13(2): “obtains for ... another person.”

Like theft, obtaining services is by reason of clause 2(4)(d) a “purpose” crime. And as with theft, the accused’s conduct must be underhanded, fraudulent or in some way “crooked.”

13(3) Fraud. Everyone commits a crime who dishonestly, by false representation or by non-disclosure, induces another person to suffer an economic loss or risk thereof.

Comment

To defraud has been defined as to deprive by deceit. It differs from theft in that the deprivation takes place with consent but with consent obtained by deception. The *Criminal Code* recognizes three fraud offences: first, a basic offence of fraud defined by subsection 338(1); second, obtaining property by false pretence contained in paragraph 320(1)(a); and third, obtaining credit by false pretence in paragraph 320(1)(b). In addition, as mentioned above, there are numerous other *Code* and non-*Code* provisions.

Subsection 338(1) of the *Code* prohibits defrauding a person, that is, depriving him, of any property, money or valuable security by deceit, falsehood or other fraudulent means. This subsection clearly overlaps with, and covers the offence defined by, paragraph 320(1)(a) (obtaining property by false pretence). It also may, since section 2 of the *Code* defines "property" to include "real and personal property of every description ...," overlap with, and cover the offence defined by, paragraph 320(1)(b) (obtaining credit by false pretences or by fraud).

Clause 13(3) reduces fraud to one offence with two elements. First, there must be either false representation or non-disclosure. Second, this must induce the victim to suffer an economic loss or *risk thereof*.

The first element is further explained in clause 1(2) by the definition of "representation." This basically reproduces the law set out in subsection 319(1) of the *Code* ("matter of fact either present or past"). But it extends the law in line with the implications of section 338 ("other fraudulent means, whether or not it is a false pretence within the meaning of this Act") to cover representation as to future facts. However, it retains the exception in subsection 319(2) concerning exaggeration or "puffing." "Non-disclosure" relates to misrepresentation by omission when there is a duty to disclose arising from a special confidential relationship (for example solicitor/client) or a duty to correct a false impression created by, or on behalf of, the defendant.

The second element is that the victim must be induced to suffer an economic loss or risk thereof. While a literal reading of sections 320 and 338 of the *Code* might suggest that clause 13(3) extends the law by adding the words "or risk thereof," this is not so. As explained by the Supreme Court of Canada in *R. v. Olan, Hudson and Hartnett*,⁶¹ the element of deprivation necessary for an offence against section 338 of the *Code* is satisfied on proof of detriment, prejudice or risk of prejudice to the victim's economic interest. In this regard clause 13(3), therefore, merely reproduces existing law.

There being no express reference in clause 13(3) to level of culpability, fraud is by virtue of clause 2(4)(d) a "purpose" crime. In addition, the accused must act dishonestly, that is, fraudulently or deceitfully.

61. See *R. v. Olan, Hudson and Hartnett*, [1978] 2 S.C.R. 1175; (1978), 86 D.L.R. (3d) 212; 41 C.C.C. (2d) 145.

Finally, no presumption is included similar to that contained in subsection 320(4) of the *Code* regarding cheques issued without funds. Such a presumption is both unnecessary and undesirable. It is unnecessary because, in the absence of a satisfactory explanation, the trier of fact can always infer fraudulent intent, and undesirable because it conflicts with paragraph 11(d) of the Charter.

[Alternative 2]

13(1) Theft. Everyone commits a crime who appropriates another's property without his consent and without any right to do so.

Comment

In this formulation, the kernel of the crime lies in the appropriator's having no right to appropriate. If he has a right, he commits no wrong at all, civil or criminal. If he has no right but thinks he has, he commits a civil wrong but not necessarily a crime. If he is just factually mistaken, he has a defence of mistake of fact. If he is mistaken as to the effect of the law on his rights, he has the special defence of mistake of law under clause 3(7)(a). If he is simply mistaken in that he does not know that one has, in law, no right generally to appropriate another's property, then he commits theft.

13(2) Obtaining Services. Everyone commits a crime who, without a right to do so, obtains for himself or another person services from a third party without fully paying for them.

Comment

Again the nub of the crime is the obtaining when there is no right to do so. The same considerations as to mistake apply as in clause 13(1).

13(3) Fraud. Everyone commits a crime who, without any right to do so, by dishonest representation or dishonest non-disclosure induces another person to suffer an economic loss or risk thereof.

Comment

Again the culpability of the offence is formulated in terms of there being no right to justify the inducement. The same considerations as to mistake apply as in clauses 13(1) and 13(2). But the force of the deceitfulness or fraud is brought out by using dishonest to describe the representation or non-disclosure. These terms are defined in clause 1(2).

Chapter 14: Forgery and Related Crimes

Comment

Theft and fraud require actual appropriation by the defendant or actual suffering of loss by the victim. Absent such actual appropriation or loss, the crime committed will usually be attempted theft or fraud. In some cases, however, the accused may not have gone far enough to commit an attempt. For some of these cases criminal law has created the special preparatory crimes of forgery and of falsification of documents. The former is primarily dealt with in sections 324, 325 and 326 of the *Code*, the latter in sections 355 to 358.

14(1) Forgery of Public Documents. Everyone commits a crime who forges or uses a forged:

- (a) item of currency;
- (b) stamp;
- (c) public seal;
- (d) exchequer bill;
- (e) passport;
- (f) certificate of citizenship; or
- (g) proclamation, order, regulation or appointment or notice thereof purporting to have been printed by the Queen's Printer for Canada or for a province.

14(2) Forgery of Other Documents. Everyone commits a crime who for the purpose of fraud, forges or uses a forged document, other than one falling within clause 14(1).

Comment

The essence of forgery is that of making a document, not just give false information but misrepresent itself as genuine when it is not. The forger makes it tell a lie about itself. Under the present *Code*, it is covered by sections 324 (making a false document) and 326 (uttering such a document). In addition, there are numerous specific offences relating to exchequer bill paper, public seals, stamps, registers of birth, trade marks and so on. The law, however, is difficult and confusing. No clear distinction is drawn between forgery and falsification, and there is considerable piggybacking.

Clauses 14(1) and 14(2) replace all this by two crimes. The first comprises the making or using of certain forged documents, which are so relied on in our society that

their mere faking is prohibited. The second comprises making or using other forged documents for the purpose of fraud. Both “forge” and “document” are defined in clause 1(2) which basically reproduces existing law in this regard.

14(3) Fraudulent Documentary Misrepresentation. Everyone commits a crime who for the purpose of fraud:

- (a) makes a document or valuable security that misrepresents such facts as it refers to; or
- (b) uses such document or valuable security.

Comment

Falsification of books and other documents, that is, making them give false information about the outside world rather than about themselves, is the other preparatory offence. It is something usually done as a first step towards carrying out a theft or fraud. At present, such crimes are covered by sections 355 to 358 of the *Criminal Code*. Clause 14(3) replaces these by a single crime of fraudulent documentary misrepresentation.

Chapter 15: Commercial Frauds and Related Matters

Comment

The present *Criminal Code* contains numerous specific offences designed to ensure honesty and fair dealing in commerce. Some of these offences are found in Part VII, Offences against Rights of Property, while the bulk of them are in Part VIII, Fraudulent Transactions relating to Contracts and Trade. Most of these offences are specific instances of fraud or attempted fraud, for example section 344 (fraudulent registration of title) or paragraph 352(1)(a) (fraud in relation to minerals). Others are more akin to forgery, for example section 332 (drawing document without authority) or section 364 (forging a trade mark). The redrafting of fraud, forgery of non-public documents, and falsification makes most of the specific trade offences unnecessary. In the interests of simplifying the *Code* and avoiding useless detail, we propose to deal with most of these offences under the revised fraud and forgery offences in Chapters 13 and 14. Thus the present chapter on Commercial Frauds and Related Matters proscribes only conduct which does not fit within the offences defined in Chapters 13 and 14, and which nevertheless warrants criminalization.

We envisage that crimes related to the securities market (presently dealt with in sections 338(2), 340, 341, 342 and 358 of the *Code*) would be located in this chapter on Commercial Frauds and Related Matters. The general fraud offence in Chapter 14

would also be relevant to securities matters. At the time of printing this document we are still engaged in consultations with securities experts across the country and have not yet finalized a draft of securities crimes. Therefore, our proposals for any such crimes will be included in Volume II of the Code. For the purposes of Volume I then we wish only to indicate the appropriate location for securities crimes in the overall scheme of our draft Code.

15(1) Bribing an Agent. Everyone commits a crime who confers a benefit on an agent for the purpose of corruptly influencing him in the performance of his functions as agent.

15(2) Accepting Bribe. Everyone commits a crime who, being an agent, accepts a benefit given in order to influence him corruptly in the performance of his functions as agent.

Comment

Clauses 15(1) and 15(2) simplify and replace the secret commissions offence found in section 383 of the present *Code*. The definition of “agent” (clause 1(2)) ensures that these bribery offences catch persons in employment relationships as well as the more traditional agency relationships.

15(3) Disposal of Property to Defraud Creditors. Everyone commits a crime who transfers, conceals or disposes of his property for the purpose of defrauding his creditors.

15(4) Receipt of Property to Defraud Creditors. Everyone commits a crime who, for the purpose of defrauding creditors, receives property that has been transferred, concealed or disposed of for such purpose.

Comment

These clauses reproduce in a somewhat simplified form the offence in section 350 of the present *Code*.

15(5) Criminal Lending. Everyone commits a crime who:

- (a) enters into an agreement or arrangement to receive interest at a criminal rate; or**
- (b) receives a payment or partial payment of interest at a criminal rate.**

Comment

This clause forbids people from entering into agreements to lend money at an interest rate that is "a criminal rate," that is, more than sixty per cent per annum. The culpability required for this crime is to enter into such agreements purposely.

The aim of the clause is to protect borrowers from being charged exorbitant rates of interest. The message being communicated to the public is a clear and necessary one. The clause also aims at protecting the public from the evils of loan-sharking, which involves the exploitation of the poor and the possible threat and harm to persons who are sometimes associated with these practices. The majority feel that these practices must be denounced by the criminal law, even though they recognize that the civil law tries to confront the problem as well.

There are technical problems of definition with this section, but these are left for resolution during the course of the drafting of legislation.

A minority of the Commissioners believes that this provision should not be contained in the new Code. According to the minority, the principle of restraint would generally require that such contractual matters be left to the civil law to control. Means exist under the civil law to set aside unconscionable agreements. A "criminal interest" offence, the minority believes, cannot solve the problem of excessive interest charges because schemes can usually be devised to circumvent its effect.

The minority recognizes that these transactions are objectionable because they often lead to threats and the use of violence. Under present law, however, a loan shark who resorts to threats to obtain repayment of a loan may be charged with extortion. Furthermore, where bodily harm results, the charge of assault may be laid. Similar charges can be laid under the proposed Code as well, to combat this evil.

Chapter 16: Robbery

Comment

Theft and fraud cover getting another's property by stealth or false representation or non-disclosure. More reprehensible yet is getting it by force. At common law this was covered by the crimes of robbery. Present law is contained in section 302 of the *Criminal Code* (robbery). Chapter 16 largely reproduces present law.

16(1) Robbery. Everyone commits a crime who for the purpose of, or in the course of, theft uses immediate violence or threats of violence to person or property.

16(2) Aggravated Robbery. The crime in clause 16(1) is aggravated if committed with a weapon.

Comment

Robbery is theft aggravated by, or combined with, assault. Section 302 of the *Code* covers four acts:

- (a) using violence or threat thereof to person or property to steal or overcome resistance to the stealing;
- (b) using personal violence immediately before, immediately after or during theft from the person;
- (c) assaulting with intent to steal; and
- (d) stealing from the person while armed with an offensive weapon or imitation thereof.

Clause 16(1) consolidates these into one crime of robbery. It consists in the use of violence or threats of immediate violence to person or property for the purpose of, or in the course of, theft. Where the violence threatened is not immediate, the crime is not robbery but extortion (clause 8(4)). Violence and threat of violence include immediate threatening. They do not necessarily include being armed, though the display of the weapon may, in the circumstances, constitute a threat of violence. Violence “in the course of theft” includes violence used, not only during, but also immediately before and after.

Chapter 17: Criminal Damage

Comment

At common law, the only kind of property damage ranking as criminal was the wilful and malicious burning of a dwelling-house. Statutes later criminalized the burning of other buildings. Later still they criminalized malicious damage to various kinds of property.

All such offences are now found in Part IX of the *Criminal Code*. That Part creates five groups of offences: (1) mischief, (2) arson and other fires, (3) other interference with property, (4) injury to cattle and other animals and (5) cruelty to animals. The property damaged need not be owned by another. A person can be criminally liable for damaging property of which he is a part owner and even for damaging property of which he is an absolute owner if he does so with intent to defraud.

Clause 17 simplifies the law by reducing it to two crimes: (1) vandalism and (2) arson, which cover the first four groups described above. Vandalism covers mischief, other interference with property and injury to animals in another's ownership. Cruelty to animals not in another's ownership, being clearly not a property offence, is dealt with under Crimes against the Natural Order.

In one respect clauses 17(1) and 17(2) appear to extend current law. In general the crimes contained in Part IX of the present *Code* can only be committed wilfully, whereas clauses 17(1) and 17(2) allow for their commission recklessly. But section 386 of the *Code* defines "wilfully," in line with the English case-law on the *Malicious Damage Act* (1861),⁶² to include recklessly. In fact clauses 17(1) and 17(2) in this regard are faithful to existing law.

17(1) Vandalism. Everyone commits a crime who, without another person's consent, damages that other's property or by physical interference renders it useless or inoperative:

(a) purposely; or

(b) recklessly.

Comment

The main *Criminal Code* offence is mischief, defined by section 387. It can be committed in four ways: (1) by damaging or destroying property, (2) by rendering it dangerous, useless, inoperative or ineffective, (3) by obstructing its lawful use, and (4) by obstructing a person lawfully using it. *Mens rea* is usually taken to be intent or recklessness. Higher penalties are available for mischief endangering life. Section 385 of the *Code* defines "property" for the purposes of Part IX as "real or personal corporeal property," but subsection 387(1.1) specifically extends mischief to destruction and so on of data. In addition to the main offence, there are numerous specific offences relating to the nature of the property in question (buildings, wrecks, sea-marks, boundary lines, animals).

Clause 17(1) creates one crime, renamed "vandalism," since "mischief" carries too trivial a connotation. It can be committed purposely or recklessly and different penalties are envisaged for each level of culpability. The crime is restricted to damaging (which clearly covers destroying) or interfering with "another's property" as defined by clause 1(2). The fraudulent damaging of one's own property is, and should be dealt with as, attempted fraud. The damaging of one's own property which endangers life, should be dealt with as the crime of endangering as defined by clause 10(1). Finally, clause 17(1) specifies that the damaging must be without the owner's consent; an owner can not only damage his property, but can also license another to do so.

62. *Malicious Damage Act*, 1861 (U.K.), 24 & 25 Vict., c. 97.

It should be noted that no reference is made to the exception relating to strikes. Subsection 387(6) of the *Code* provides that no one commits mischief solely by reason of stopping work and so on. Under the new Code the position would be as follows. If as a result of the stoppage damage was caused to property, this would result from an omission. In order to constitute a crime, it would have to result from an omission to perform one of the duties laid down in clause 2(3)(c) in the General Part. These, however, arise only where there is danger to life. Accordingly, where mere property damage is caused, no crime would be committed by the strikers; but where life was endangered, a crime might well be committed, depending on the facts. No special provision, therefore, is needed to replace subsection 387(6).

No reference is made to computer data as a possible object of vandalism. The whole treatment of such data is a matter for further study.

17(2) Arson. Everyone commits a crime who, without another person's consent, causes a fire or explosion damaging or destroying that other's property:

- (a) purposely; or
- (b) recklessly.

Comment

Though in reality merely a special form of vandalism, arson has always been treated separately, and was indeed the first form to become a crime, presumably because of the danger and uncontrollability of fire. Arson at common law was setting fire to a dwelling-house. Legislation extended it to setting fire to other buildings and haystacks. Setting fire to personal property was arson only to the extent that it threatened real property. No great change was made to the *Criminal Code* until 1921.

Since then the following changes were made. First, setting fire to personal property became arson if done with fraudulent intent. Second, setting fire by negligence was criminalized.

The main provision today is to be found in section 389 of the *Code*. Subsection 389(1) makes it a crime wilfully to set fire to various listed items of property, and subsection 389(2) makes it a lesser crime to do the same for a fraudulent purpose to any other personal property. In addition, section 390 makes it a crime: (a) wilfully to set fire to anything likely to set fire to property listed under subsection 389(1); and (b) wilfully to set fire for a fraudulent purpose to anything likely to set fire to other personal property. Finally, section 392 makes it a crime to cause a fire wilfully or by violating a law in force where the fire occurs, if the fire results in loss of, (but curiously not injury to,) life or destruction or damage to property.

Clause 17(2) replaces these different offences with one crime of arson, which like vandalism, can be committed either purposely or recklessly. It extends arson to damage

by explosion, which is clearly as dangerous as fire. It restricts it for the same reasons as given regarding clause 17(1), to burning another's property without his consent, leaving fraud and endangering to be dealt with in their appropriate chapters. It also restricts the crime to cases of actual damage; those without actual damage are best dealt with as attempts. The section 391 fraud presumption is omitted since arson no longer relates to fraud.

Chapter 18: Miscellaneous Property Crimes

Comment

In addition to the major property crimes, a Criminal Code will typically contain numerous related and ancillary offences. Many of these may be preparatory offences, for example possession of housebreaking instruments (subsection 309(1) of the *Code*). Others may be offences which provide assistance after, and indeed the incentive for, the commission of other crimes, for example possession of stolen goods (subsection 312(1) of the *Code*).

Chapter 18 reduces these to six crimes, which are mostly self-explanatory. Clause 18(1) covers possession in suspicious circumstances for criminal purposes of housebreaking instruments and other implements of crime. Clause 18(2) covers possession by itself of two kinds of items. Clause 18(3) criminalizes possession of weapons and explosives, contrary to the schedules envisaged as providing mini-Codes regulating their possession. Clause 18(4) prohibits possession of forged documents. Clause 18(5) replaces subsection 312(1) of the *Code* and forbids possession of things obtained by crime. Clause 18(6) is new and makes special provision for professional receivers of stolen goods. Clause 18(7) replaces in part sections 398 and 399 and subsection 334(2) of the *Code* and concerns boundary and other identifying marks.

18(1) Possession of Things in Suspicious Circumstances. Everyone commits a crime who possesses a device or instrument in such circumstances that the reasonable inference is that he used it or means to use it to commit:

- (a) theft;
- (b) criminal intrusion; or
- (c) forgery.

Comment

This crime would replace the various offences in the present *Code* of unlawful possession of instruments or devices for criminal purposes. Clause 18(1) provides a

general rule rather than a list of items as is afforded by the present law. The present provisions in fact relate to three general headings:

- (1) *theft* — section 287.1 (device to obtain telecommunication service) and section 310 (instruments for breaking into coin-operated or currency exchange devices);
- (2) *criminal intrusion* — section 309 (housebreaking instruments);
- (3) *forgery* — paragraphs 327(a), (b) and (c) (instruments for forgery), paragraph 334(1)(c) (instruments for forging stamps), and section 367 (instruments for forging trade marks).

It is to be noted that possession of a surveillance device is covered by clause 18(2) below.

Under clause 18(1), the reasonable inference may of course be rebutted if a satisfactory explanation transpires. In this case no crime is committed.

18(2) Possession of Prohibited Things. Everyone commits a crime who possesses:

- (a) any exchequer bill paper, revenue paper or paper used to make bank notes; or
- (b) any device capable of being used to intercept a private communication.

Comment

Clause 18(2) replaces paragraph 327(a) of the *Code* (exchequer bill paper) and section 178.18 (interception device). In both cases simple possession of the items described suffices, for their general circulation carries such risk of social harm as warrants prohibition. By contrast, section 311 of the *Code* (simple possession of automobile master key) is not retained. On the one hand, there could be justifiable reasons for people such as car dealers to possess such master keys. On the other hand, while section 311 only permits possession under the authority of a licence issued by the provincial Attorney General, our information is that the provinces do not have and do not intend to introduce such licensing schemes.

18(3) Possession of Things Dangerous in Themselves. Everyone commits a crime who possesses:

- (a) a prohibited weapon;
- (b) a restricted weapon contrary to Schedule X; or
- (c) an explosive or volatile substance contrary to Schedule Y.

18(4) Possession of Forgeries. Everyone commits a crime who:

- (a) possesses a forged document falling under clause 14(1); or
- (b) possesses for the purpose of fraud any other forged document.

18(5) Possession of Things Obtained by Crime. Everyone commits a crime who has possession of any property or thing obtained by a crime committed in Canada or committed anywhere, if it would have been a crime in Canada.

18(6) Criminal Dealing. Everyone commits a crime who carries on a business of dealing in things obtained by crime anywhere, if the crime would have been a crime in Canada.

Comment

It is often said that the receiver of stolen goods is a greater social menace than the actual thief. For without the market provided by the former there would be little profit in the activities of the latter. This is particularly true of the professional receiver or dealer in stolen property. For this reason the new Code adds a novel provision to articulate something which at present is reflected, if at all, only in sentencing.

18(7) Obliteration of Identifying Marks. Everyone commits a crime who for the purpose of facilitating the commission of a crime, obliterates, simulates or applies any identifying mark.

Acknowledgements

During the course of our work in developing this Report, we have consulted with many distinguished jurists, both in Canada and abroad. We are truly grateful to all of them for their advice and hereby acknowledge their enormous influence on our work.

We also wish to thank the current and past Ministers of Justice and their Deputies, Solicitors General and their Deputies, and Members of Parliament who have been involved in our work, for their encouragement and support. Without their help, this Report would have been more imperfect than it is. Needless to say, the views contained in that document do not necessarily reflect those of Parliament, the Department of Justice or of any of the individual consultants.

Finally, we wish to express our indebtedness to our late colleague, Jacques Fortin, for his invaluable contribution to this Code.

Among those who have met with us during the codification exercise, arranged alphabetically under certain categories, are the following:

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We would also like to extend our thanks to present and former co-ordinators, consultants and staff who have assisted us in this project.



Appendix A

An Act to revise and codify the criminal law

Loi portant révision et codification du droit criminel

Short title 1. This Act may be cited as the *Criminal Code*.

TITRE ABRÉGÉ
1. *Code criminel*. Titre abrégé

INTERPRETATION

RÈGLES D'INTERPRÉTATION

Definitions 2. (1) In this Code,
"another's property" "another's property" means property that
"bien d'autrui" another owns or in which he has a legally
protected interest;
"conduct" "conduct", in relation to a crime, means an
"fait" act or omission that is specified in the
provision of this Code or another Act of
Parliament that defines the crime;
"crime" "crime" means an offence that is liable to be
"crime" punished by imprisonment, otherwise than
"crime" on default of payment of a fine;
"document" "document" means any writing, recording or
"documents" marking capable of being read or under-
stood by a person or read by a machine;
"harm" "harm" means any impairment of the body
"blessures" or of its functions;
"hurt" "hurt" means to inflict physical pain;
"faire mal"
"peace officer" "peace officer" includes
"agent de la (a) a sheriff, deputy sheriff, sheriff's
paix" officer and justice of the peace,
(b) a warden, deputy warden, instruc-
tor, keeper, gaoler, guard and any other
officer or permanent employee of a
prison,
(c) a police officer, police constable,
bailliff, constable or other person
employed for the preservation and main-
tenance of the public peace or for the
service or execution of civil process,
(d) an officer or person having the
powers of a customs or excise officer
when performing any duty in the
administration of the *Customs Act* or
Excise Act,
(e) a person appointed or designated as
a fishery officer under the *Fisheries Act*
when performing any of his duties or
functions pursuant to that Act,
(f) the pilot in command of an aircraft
(i) registered in Canada under regu-
lations made under the *Aeronautics*
Act, or

2. (1) Les définitions qui suivent s'appli-
quent au présent code.
«agent de la paix» S'entend notamment des
personnes suivantes :
a) un shérif, shérif adjoint, officier du
shérif et juge de paix;
b) un directeur, sous-directeur, instruc-
teur, gardien, geôlier, garde et tout
autre fonctionnaire ou employé perma-
nent d'une prison;
c) un officier de police, un agent de
police, un huissier, ou une autre per-
sonne employée à la préservation et au
maintien de la paix publique ou à la
signification ou à l'exécution des actes
judiciaires au civil;
d) un fonctionnaire ou une personne
possédant les pouvoirs d'un agent des
douanes ou d'un préposé de l'accise lors-
qu'il exerce une fonction dans l'applica-
tion de la *Loi sur les douanes* ou de la
Loi sur l'accise;
e) les fonctionnaires des pêcheries
nommés ou désignés en vertu de la *Loi*
sur les pêcheries, dans l'exercice des
fonctions que leur confère cette loi;
f) le pilote commandant un aéronef —
pendant que cet aéronef est en vol — :
(i) soit immatriculé au Canada en
vertu des règlements établis sous le
régime de la *Loi sur l'aéronautique*,
(ii) soit loué sans équipage et mis en
service par une personne remplissant,
aux termes des règlements; pris sous le
régime de la *Loi sur l'aéronautique*,
les conditions requises pour être ins-
crite comme propriétaire d'un aéronef
immatriculé au Canada en vertu de
ces règlements,
g) les officiers et les membres sans
brevet d'officier des Forces canadiennes
qui sont
(i) soit nommés aux fins de l'article
134 de la *Loi sur la défense*
nationale,

(ii) leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as owner of an aircraft registered in Canada under those regulations,

while the aircraft is in flight, and

(g) officers and non-commissioned members of the Canadian Forces who are

(i) appointed for the purposes of section 134 of the *National Defence Act*, or

(ii) employed on duties that the Governor in Council, in regulations made under the *National Defence Act* for the purposes of this paragraph, has prescribed to be of such a kind as to necessitate that the officers and non-commissioned members performing them have the powers of peace officers;

"person"
"personne"

"person" means a corporate body or a physical person and in the latter case means a person already born by having completely proceeded in a living state from the mother's body;

"property"
"biens"

"property" includes electricity, gas and water and telephone, telecommunication and computer services;

"valuable security"
"valeurs"

"valuable security" means any order or security giving title or evidence of title to property.

Ordinary meaning

(2) The provisions of this Code shall be interpreted according to the ordinary meaning of the words used when read in the context of this Code.

Strict interpretation

(3) The provisions of this Code that are susceptible of more than one interpretation shall be interpreted in favour of the accused.

Consent

(4) To be valid, consent must be given by a person who is competent to give consent and must be freely given and informed; consent obtained by fraud, violence or threats is not valid.

(ii) soit employés à des fonctions que le gouverneur en conseil, dans des règlements établis en vertu de la *Loi sur la défense nationale*, aux fins du présent alinéa, a désignées comme étant d'une nature telle que les officiers et les membres sans brevet d'officier qui les exercent doivent nécessairement avoir les pouvoirs d'un agent de la paix.

«biens» Y sont assimilés les services informatiques et de télécommunication ainsi que l'électricité, le gaz et l'eau.

«bien d'autrui» Bien dont une autre personne est propriétaire ou sur lequel elle a un droit.

«blessures» Lésions corporelles ou fonctionnelles.

«crime» Infraction sanctionnée par l'emprisonnement sauf pour non-paiement d'une amende.

«document» Support matériel sur lequel des signes écrits, enregistrés ou marqués peuvent être lus et compris par une personne ou lus par une machine.

«faire mal» S'entend du fait d'infliger à une autre personne une douleur physique.

«fait» Acte ou omission prévu par la disposition du présent code ou d'une autre loi fédérale qui crée un crime.

«personne» Personne morale ou physique et dans le cas d'une personne physique s'entend d'une personne déjà née complètement sortie vivante du sein de sa mère.

«valeur» Ordre ou valeur donnant droit à un bien ou constatant le titre d'une personne à un bien.

«biens»
"property"

«bien d'autrui»
"another person's property"

«blessures»
"harm"

«crime»
"crime"

«document»
"document"

«faire mal»
"hurt"

«fait»
"conduct"

«personne»
"person"

«valeur»
"valuable security"

Sens normal des mots

(2) Les dispositions du présent code s'interprètent selon le sens normal des mots dans le contexte du code.

(3) S'interprètent en faveur de l'accusé les dispositions qui sont susceptibles de plusieurs interprétations.

(4) Pour être valide, le consentement doit être libre et éclairé et donné par une personne juridiquement capable; le consentement obtenu par fraude, violence ou menaces n'est pas valide.

Interprétation stricte

Consentement

PART I

THE GENERAL PART

Division I

PRINCIPLES OF CRIMINAL LIABILITY

Principle of legality and non-retroactivity

3. No person shall be found guilty of a crime for conduct that, at the time of the conduct, was not defined by this Code or another Act of Parliament to be a crime.

Liability for personal conduct

4. A person is only criminally liable for conduct engaged in by that person unless otherwise provided in this Code or another Act of Parliament.

PARTIE I

DISPOSITIONS GÉNÉRALES

Chapitre premier

PRINCIPES DE RESPONSABILITÉ CRIMINELLE

Principe de la légalité et de la non-rétroactivité

3. Nul ne peut être déclaré coupable d'un crime dont les éléments ne sont pas définis par le présent code ou une autre loi fédérale à la date à laquelle il aurait été commis.

Responsabilité personnelle

4. Sous réserve des autres dispositions du présent code et des autres lois fédérales, nul n'est criminellement responsable que de son propre fait.

5. A person commits a crime only by engaging in the relevant conduct with the state of mind specified in the definition of the crime or section 8.

5. Il n'y a point de crime si n'intervient pas dans l'accomplissement des faits prévus par la disposition qui le crée l'élément moral défini par celle-ci ou présumé par l'article 8.

Physical Element

Élément matériel

Omissions

6. (1) A person is criminally liable for an omission only if

6. (1) Les omissions qui engagent la responsabilité criminelle d'une personne sont les suivantes :

Omissions

(a) the omission is specified in the definition of the crime; or

a) celles que prévoit la disposition qui crée le crime;

(b) the omission endangers human life and consists of a failure by the person to take reasonable steps

b) celles qui mettent en danger la vie humaine, faute des mesures nécessaires pour, selon le cas :

(i) to provide the necessaries of life to his spouse, his child, any other member of his family who lives in the same household or anyone under his care, if such person is unable to provide himself with the necessaries of life,

(i) assurer la subsistance de son conjoint, de ses enfants, des autres membres de sa famille qui vivent sous son toit ou d'une personne à sa charge lorsque ceux-ci sont incapables de subvenir à leurs besoins,

(ii) to do that which he undertook to do,

(ii) s'acquitter d'une obligation qu'elle a contractée,

(iii) to assist those joining with him in a lawful and hazardous enterprise, or

(iii) aider les personnes qui participent avec elle à une activité légitime dangereuse,

(iv) to remedy a dangerous situation created by him or within his control.

(iv) remédier aux dangers qu'elle a créés ou auxquels elle est en mesure de remédier.

Exception

(2) No person is criminally liable for an omission to provide or continue medical treatment that is therapeutically useless or medical treatment for which consent is expressly refused or withdrawn.

(2) Nul n'engage sa responsabilité criminelle en refusant de donner ou de poursuivre un traitement de valeur thérapeutique nulle ou à l'égard duquel un consentement est expressément refusé ou retiré.

Exception

Causation

7. A person causes a result only if the conduct of the person substantially contributes to its occurrence and no other subsequent unforeseeable cause supersedes the conduct.

7. Une personne ne cause un résultat que si son fait y contribue d'une façon importante sans qu'une autre cause imprévisible s'y substitue entre-temps.

Cause

Mental Element

Élément moral

Purpose

8. Where the definition of a crime specifies purpose as the relevant state of mind, or where the definition does not specify the relevant state of mind, a person has the relevant state of mind, if

8. Lorsque la disposition qui crée un crime précise que l'élément moral nécessaire à la culpabilité est l'intention — ou est silencieuse sur ce point —, cet élément moral est constitué par la réunion des éléments suivants :

Intention

(a) the person purposely engages in the conduct specified in the definition of the crime;

a) l'auteur agit intentionnellement à l'égard du fait que prévoit la disposition;

(b) the conduct is engaged in purposely in respect of any result so specified; and

b) l'auteur agit intentionnellement à l'égard du résultat que prévoit la disposition;

(c) the person knows of any circumstance so specified when he engages in the conduct or is reckless as to whether the circumstance exists or not.

c) l'auteur agit intentionnellement à l'égard des circonstances que prévoit la disposition ou sans s'en soucier.

Recklessness

9. Where the definition of a crime specifies recklessness as the relevant state of mind, a person has the relevant state of mind if

9. Lorsque la disposition qui crée un crime précise que l'élément moral nécessaire à la culpabilité est l'insouciance, cet élément moral est constitué par la réunion des éléments suivants :

Insouciance

(a) the person purposely engages in the conduct; and

a) l'auteur agit intentionnellement à l'égard du fait que prévoit la disposition;

(b) the conduct is engaged in recklessly in respect of any result or circumstance so specified.

b) l'auteur agit sans se soucier des résultats ou des circonstances que prévoit la disposition.

Negligence

10. Where the definition of a crime specifies negligence as the relevant state of mind, a person has the relevant state of mind if

(a) the person negligently engages in the conduct; and

(b) the conduct is engaged in negligently in respect of any result or circumstance so specified.

10. Lorsque la disposition qui crée un crime précise que l'élément moral nécessaire à la culpabilité est la négligence, cet élément moral est constitué par la réunion des éléments suivants :

a) l'auteur agit avec négligence à l'égard du fait que prévoit la disposition;

b) l'auteur agit avec négligence à l'égard des résultats ou des circonstances que prévoit la disposition.

Négligence

Definitions

11. For the purposes of this Code and the provisions of other Acts of Parliament that define crimes,

(a) a person purposely engages in conduct if the person means to engage in the conduct and if, in the case of an omission, the person knows of the circumstances giving rise to the duty to act or is reckless as to the existence of those circumstances;

(b) conduct is engaged in purposely in respect of a result if the person engages in the conduct for the purpose of bringing about the result or a result that the person knows must bring about that result;

(c) conduct is engaged in recklessly in respect of a result or circumstance including, in the case of an omission, a circumstance giving rise to the duty to act, if the person is aware that the result will probably come about or that the circumstance probably exists;

(d) a person negligently engages in conduct if the conduct is a marked departure from the ordinary standard of reasonable care; and

(e) conduct is engaged in negligently in respect of a result or circumstance if it is a marked departure from the ordinary standard of reasonable care to take the risk that the result will come about or that the circumstance exists.

11. Pour l'application des dispositions du présent code ou d'une autre loi fédérale qui créent un crime, il y a :

a) intention, quand il y a une volonté d'agir ou, dans le cas d'une omission, quand son auteur est au courant des circonstances qui donnent lieu à son obligation d'agir ou ne se soucie pas de leur existence;

b) volonté de causer un événement, quand l'auteur accomplit un fait dans le but de produire ce résultat ou un résultat qui, à sa connaissance, produira celui qu'il vise;

c) insouciance, relativement à un résultat ou à une circonstance — y compris une circonstance qui donne lieu à son obligation d'agir —, quand l'auteur du fait a conscience de la probabilité du résultat ou de la circonstance;

d) négligence, quand le fait déroge de façon marquée aux normes ordinaires de prudence;

e) négligence relativement à un résultat ou à une circonstance, quand le fait constitue une inobservation marquée des précautions à prendre normalement au cas où ce résultat ou cette circonstance se réaliserait.

Définitions

Presumption

12. (1) Proof of purpose satisfies a requirement of recklessness or negligence.

12. (1) La preuve de l'intention emporte celle de l'insouciance ou de la négligence.

Présomption

Idem

(2) Proof of recklessness satisfies a requirement of negligence.

(2) La preuve de l'insouciance emporte celle de la négligence.

Idem

Exemptions

Exemptions

Immaturity

13. A person is not criminally liable for conduct engaged in by him while he was under twelve years of age.

13. Nul n'est criminellement responsable de son fait s'il l'accomplit avant d'atteindre l'âge de douze ans.

Enfants

Mental disorder

14. A person does not commit a crime if, at the time of the relevant conduct, the person, by reason of mental disorder, is incapable of appreciating the nature or consequences of the conduct or of appreciating that the conduct constitutes a crime.

14. N'est pas coupable d'un crime la personne qui, en raison d'un désordre mental au moment des faits reprochés, est incapable d'apprécier leur nature ou leurs conséquences ou de comprendre qu'ils constituent un crime.

Désordre mental

Absence of Physical Element

Absence d'élément matériel

Lack of control

15. (1) No person who engages in conduct specified in the definition of a crime is guilty of the crime where that conduct was beyond that person's control

15. (1) Une personne n'est pas coupable de crime si elle a agi sous l'empire d'une force à laquelle elle n'a pu résister en raison :

Force irrésistible

(a) by reason of physical compulsion by another person or, in the case of an omission, the physical impossibility of performing the relevant act; or

(b) for any other reason, other than loss of temper or mental disorder, that would cause an ordinary person to engage in the same conduct.

a) soit d'une contrainte physique de la part d'une autre personne ou, dans le cas d'une omission, de l'impossibilité matérielle d'accomplir l'acte prescrit;

b) soit de toute autre situation — à l'exception du désordre mental ou de la perte de sang-froid — qui aurait un effet semblable sur toute autre personne normale.

Exception (2) Subsection (1) does not apply where the relevant state of mind is negligence and the conduct was beyond the person's control by reason of his negligence.

(2) Le paragraphe (1) ne s'applique pas si l'élément moral du crime reproché est la négligence et si la contrainte ou la force irrésistible à l'origine des faits résulte de la propre négligence de l'auteur de ceux-ci.

Exception

Absence of Mental Element

Absence d'élément moral

Mistake of fact 16. (1) No person is guilty of a crime who engages in the conduct specified in the definition of the crime but does not have the relevant state of mind by reason of mistake or ignorance as to the relevant circumstances.

16. (1) N'est pas coupable la personne qui accomplit les faits prévus par une disposition législative créant un crime si elle n'a pas l'état mental requis par suite de sa méprise ou de son ignorance d'une circonstance pertinente au crime.

Erreur de fait

Idem (2) Notwithstanding section 5, a person who is not guilty of a crime by reason of the application of subsection (1) may be found guilty of an included crime or of attempting to commit a different crime if that person believed he was committing that included or different crime.

(2) Par dérogation à l'article 5, la personne qui n'est pas coupable en raison de l'application du paragraphe (1) peut être déclarée coupable d'une infraction incluse ou de tentative de commettre une autre infraction si elle croyait commettre cette infraction incluse ou cette autre infraction.

Idem

Exception (3) Subsection (1) does not apply where the relevant state of mind is recklessness or negligence and the person's mistake or ignorance results from his recklessness or negligence.

(3) Le paragraphe (1) ne s'applique pas si l'élément moral du crime reproché est l'insouciance ou la négligence et si l'erreur ou l'ignorance résulte de l'une ou de l'autre, selon le cas.

Exception

Intoxication 17. (1) No person is guilty of a crime who engages in the conduct specified in the definition of the crime but does not have the relevant state of mind by reason of intoxication resulting from fraud, duress, compulsion or reasonable mistake.

17. (1) N'est pas coupable la personne qui accomplit les faits prévus par une disposition législative créant un crime si elle n'a pas l'état mental requis en raison d'une intoxication causée par la fraude, la contrainte physique ou morale ou une erreur justifiable.

Intoxication

Idem (2) Notwithstanding section 5, a person who engages in conduct specified in the definition of a crime but who does not have the relevant state of mind by reason of intoxication, other than intoxication resulting as described in subsection (1), is guilty of committing the crime while intoxicated.

(2) Par dérogation à l'article 5, dans tous les autres cas d'intoxication, la personne qui accomplit les faits constituant l'élément matériel d'un crime est coupable d'avoir commis ce crime alors qu'elle était sous l'effet d'une intoxication.

Idem

Division II

Chapitre deuxième

JUSTIFICATIONS AND EXCUSES

JUSTIFICATIONS ET EXCUSES

Lack of knowledge and mistake of law 18. (1) No person is guilty of a crime who engages in the conduct specified in the definition of the crime but does so by reason of a lack of knowledge of or mistake as to the law relating to private rights and those rights are, by reason of the definition of the crime, relevant.

18. (1) N'est pas coupable la personne qui en raison d'une erreur de droit ou d'une ignorance de la loi relative à des droits privés pertinents à la définition d'un crime accomplit les faits prévus par la disposition législative créant ce crime.

Ignorance de la loi ou erreur de droit

Idem (2) No person is guilty of a crime who engages in the conduct specified in the definition of the crime but does so by reason of a lack of knowledge of or mistake as to the law that reasonably results from

(2) Il n'y a pas crime en cas d'erreur de droit ou d'ignorance de la loi justifiable :

Idem

a) soit par la non-publication d'une règle de droit;

	(a) the non-publication of a rule of law; or (b) his reliance on the decision of an appellate court in the province where the crime is alleged to have been committed or on the opinions or advice of a competent administrative authority in that province.		b) soit par une décision d'une juridiction d'appel de la province où le crime aurait été commis ou par une interprétation ou un avis d'une autorité administrative compétente de cette province.	
Duress	19. (1) No person is guilty of a crime who engages in the conduct specified in the definition of the crime but does so by reason of a threat of immediate serious harm, whether to himself or to another person.		19. (1) N'est pas coupable d'un crime la personne qui accomplit les faits prévus par une disposition législative créant le crime en raison de menaces de blessures graves et immédiates qu'elle-même ou une tierce personne pourrait subir.	Contrainte morale
Exception	(2) Subsection (1) does not apply where engaging in the conduct is not a reasonable reaction to the threat or where the person purposely kills or purposely inflicts serious harm on another person in reaction to the threat.		(2) Le paragraphe (1) ne s'applique pas si l'accomplissement des faits ne constituait pas une réaction normale aux menaces ou si la personne, de façon intentionnelle, tue ou blesse gravement une autre personne.	Exception
Necessity	20. (1) No person is guilty of a crime who engages in the conduct specified in the definition of the crime but does so in order to avoid immediate serious harm to himself or to another person or damage to property where such harm or damage (a) substantially outweighs the harm or damage resulting from the conduct; and (b) could not have been avoided by other means that would have resulted in less harm or damage.		20. (1) N'est pas coupable d'un crime la personne qui, face au danger imminent soit de blessures graves pour elle-même ou une tierce personne, soit de dommages importants, accomplit les faits prévus par une disposition législative créant le crime lorsque, à la fois ces blessures ou ces dommages : a) sont nettement plus graves que ceux qui sont causés par l'accomplissement des faits; b) ne pouvaient être empêchés d'une autre façon qui aurait entraîné des blessures ou des dommages moindres.	Nécessité
Exception	(2) Subsection (1) does not apply where the person purposely kills or purposely inflicts serious harm on another person.		(2) Le paragraphe (1) ne s'applique pas si la personne, de façon intentionnelle, tue ou blesse gravement une autre personne.	Exception
Defence of persons	21. (1) No person who uses force to protect himself or another person from the unlawful use of force is guilty of a crime if the force used is reasonably necessary to avoid the hurt or harm apprehended from that unlawful use of force.		21. (1) N'est pas coupable d'un crime la personne qui accomplit les faits prévus par une disposition législative créant le crime pour se protéger — ou pour protéger une autre personne — contre l'emploi illégal de la force si la force qu'elle utilise n'est pas excessive pour éviter ce qu'elle appréhende.	Protection contre l'usage illégal de la force
Exception	(2) Subsection (1) does not apply where the person uses force against a peace officer who is executing a warrant of arrest or against a person acting under the authority of a peace officer in the execution of a warrant of arrest, if the peace officer is reasonably identifiable as a peace officer.		(2) Le paragraphe (1) ne s'applique pas lorsque la personne fait usage de la force contre une autre personne qui vraisemblablement est un agent de la paix en train d'exécuter un mandat d'arrêt ou une personne qui assiste un agent de la paix dans cette tâche.	Exception
Defence of property	22. (1) No person in peaceable possession of property is guilty of a crime if he uses force (a) to prevent another person from unlawfully taking, or committing a trespass with respect to, the property; (b) to retake the property from a person who has just unlawfully taken it; or (c) in the case of property that is land, to remove a trespasser from the land.		22. (1) N'est pas coupable d'un crime la personne qui, ayant la possession paisible d'un bien, fait usage de la force pour, selon le cas : a) empêcher une autre personne de le lui prendre illégalement ou, dans le cas d'un immeuble, pour empêcher une intrusion; b) reprendre le bien à la personne qui vient illégalement de s'en emparer; c) dans le cas d'un immeuble, pour expulser un intrus.	Défense de biens
Exception	(2) Subsection (1) does not apply where the person (a) purposely kills or purposely inflicts serious harm on another person; or (b) uses more force than is reasonably necessary for the purposes described in that subsection.		(2) Le paragraphe (1) ne s'applique pas dans les cas suivants : a) la personne, de façon intentionnelle, tue ou blesse gravement une autre personne; b) la personne fait usage d'une force excessive pour reprendre le bien en question.	Exception

Protection of persons acting under statute	<p>23. (1) No person is guilty of a crime who (a) uses such force as is reasonably necessary to prevent the commission of a crime that is likely to cause the death of or serious harm to another person or serious damage to property;</p> <p>(b) uses such force as is reasonably necessary to effect the arrest of a person as authorized by law; or</p> <p>(c) performs any act that is required or authorized to be performed by or under an Act of Parliament or an Act of the legislature of a province and uses such force as is reasonably necessary to perform the act.</p>	<p>23. (1) N'est pas coupable d'un crime la personne qui :</p> <p>a) fait usage d'une force raisonnable et nécessaire pour empêcher la perpétration d'un crime susceptible de causer des dommages sérieux ou de causer des blessures graves ou la mort d'une autre personne;</p> <p>b) fait usage d'une force raisonnable et nécessaire pour effectuer une arrestation permise par la loi;</p> <p>c) accomplit un fait prescrit ou autorisé par une loi fédérale ou provinciale et, à cette fin, n'utilise que la force raisonnable et nécessaire.</p>	Application de la loi
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Exception	<p>(2) Subsection (1) does not apply where the person purposely kills or purposely inflicts serious harm on another person, except where such an act is reasonably necessary to effect the arrest or recapture of, or prevent the escape of, a person whose being at large endangers human life.</p>	<p>(2) Le paragraphe (1) ne s'applique pas si la personne, de façon intentionnelle, tue ou blesse gravement une autre personne à moins que ceci ne soit justifié en vue de l'arrestation ou de la capture d'un individu qui met en danger la vie humaine, ou pour empêcher son évasion.</p>	Exception
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Orders of superior officer	<p>24. No person bound by military law to obey the orders of a superior officer is guilty of a crime by reason of engaging in conduct pursuant to an order of the officer that is not manifestly unlawful.</p>	<p>24. Les personnes tenues par la loi militaire d'obéir aux ordres d'un officier supérieur ne sont pas coupables de crime à raison des faits accomplis en exécution d'un tel ordre, sauf si celui-ci est manifestement illégal.</p>	Obéissance aux ordres d'un officier
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Mistaken belief as to defence	<p>25. (1) No person is guilty of a crime who engages in the conduct specified in the definition of the crime but mistakenly believes in the existence of a circumstance that, if it existed, would provide a defence under the law except a defence under section 13 or 14.</p>	<p>25. (1) Une personne n'est pas coupable d'un crime à raison des faits qu'elle accomplit alors qu'elle croit à l'existence d'une circonstance qui, eût-elle existé, aurait constitué un moyen de défense reconnu par la loi, à l'exception d'une exemption prévue par les articles 13 ou 14.</p>	Erreur à l'égard d'un moyen de défense
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Exception	<p>(2) Subsection (1) does not apply where the relevant state of mind is negligence and the mistaken belief is a result of that negligence.</p>	<p>(2) Le paragraphe (1) ne s'applique pas dans les cas de négligence si la croyance erronée en question résulte de celle-ci.</p>	Exception
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Division III

INVOLVEMENT IN CRIME

Chapitre troisième

PARTICIPATION À UN CRIME

Principals	<p>26. The person who commits a crime is the person who, either solely or jointly with another person, engages in the conduct specified in the definition of the crime.</p>	<p>26. Les auteurs d'un crime sont les personnes qui le commettent seules ou ensemble si, selon le cas, une seule ou plusieurs personnes ont accompli les faits prévus par la disposition législative créant le crime.</p>	Auteurs d'un crime
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Corporate liability	<p>27. (1) With respect to crimes requiring purpose or recklessness as the relevant state of mind, a corporation is criminally liable for conduct engaged in on its behalf by its directors, officers or employees acting within the scope of their authority and identifiable as persons with authority over the formulation or implementation of corporate policy.</p>	<p>27. (1) Dans le cas des crimes dont l'élément moral est l'intention ou la négligence, une personne morale est criminellement responsable des faits accomplis, en son nom et dans l'exercice de leurs fonctions, par ceux de ses administrateurs, dirigeants ou préposés qui sont identifiables comme étant les personnes chargées de l'élaboration et de la mise en oeuvre de ses politiques.</p>	Responsabilité criminelle des personnes morales
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Idem	<p>(2) With respect to crimes requiring negligence as the relevant state of mind, a corporation is criminally liable for conduct engaged in on its behalf by its directors, officers or employees acting within the scope of their authority and identifiable as persons with authority over the formulation or implementation of corporate policy, notwithstanding that no such director, officer or employee may be held individually liable for the same offence.</p>	<p>(2) Dans le cas des crimes dont l'élément moral est la négligence, une personne morale est criminellement responsable des faits accomplis, en son nom et dans l'exercice de leurs fonctions, par ceux de ses administrateurs, dirigeants ou préposés qui sont identifiables comme étant les personnes chargées de l'élaboration et de la mise en oeuvre de ses politiques même si aucun administrateur, dirigeant ou préposé ne peut être tenu criminellement responsable à l'égard des mêmes faits.</p>	Idem
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Furtherance	28. (1) Every one who helps, advises, incites or uses another person to commit a crime is guilty of a crime and is liable to the punishment prescribed for the crime that was so furthered, where the crime intended to be committed was committed or some other crime was committed that involves a similar degree of harm or that differs from the crime intended to be committed by reason only of the identity of the victim.	28. (1) Quiconque se sert d'une autre personne pour commettre un crime, l'aide à le commettre, le lui conseille ou l'y incite est, si la personne accomplit les faits prévus par la disposition législative créant le crime, coupable d'un crime et est passible de la peine prévue pour le crime commis si celui-ci est le crime qu'il avait l'intention de voir commis ou un autre crime qui cause des blessures ou des dommages de même gravité ou qui n'en diffère que par l'identité de la victime.	Instigation
Exception	(2) Subsection (1) does not apply where the other person has a defence under the law, except a defence under sections 13 to 19 and 25.	(2) Le paragraphe (1) ne s'applique pas si l'autre personne dispose d'un moyen de défense reconnu par la loi, à l'exception d'un moyen de défense prévu par les articles 13 à 19 et 25.	Exception
<p>Inchoate Crimes</p>			
Attempts	29. (1) Every one who attempts to commit a crime is guilty of a crime and is liable to one-half the punishment prescribed for the crime that was attempted to be committed.	29. (1) Quiconque tente de mettre à exécution son projet de commettre un crime est coupable d'un crime et passible de la moitié de la peine prévue pour le crime qu'il a tenté de commettre.	Tentative
Exception	(2) Mere preparation for a crime does not constitute an attempt to commit that crime.	(2) La simple préparation en vue de la perpétration d'un crime n'équivaut pas à tentative.	Exception
Attempting furtherance	30. (1) Every one who helps, advises, incites or uses another person to commit a crime is, where that person does not completely perform the conduct specified in the definition of the crime, guilty of a crime and is liable to one-half the punishment prescribed for the crime.	30. (1) Quiconque se sert d'une autre personne pour commettre un crime, l'aide à le commettre, le lui conseille ou l'y incite est, si la personne n'accomplit pas les faits prévus par la disposition législative créant le crime, coupable d'un crime et passible de la moitié de la peine prévue pour le crime qu'il avait l'intention de faire commettre.	Tentative d'instigation
Exception	(2) Subsection (1) does not apply where the other person has a defence under the law, except a defence under sections 13 to 19 and 25.	(2) Le paragraphe (1) ne s'applique pas si l'autre personne dispose d'un moyen de défense reconnu par la loi, à l'exception d'un moyen de défense prévu par les articles 13 à 19 et 25.	Exception
Conspiracy	31. Every one who agrees with another person to commit a crime is guilty of a crime and is liable to one-half the punishment prescribed for the crime.	31. Sont coupables d'un crime et passibles de la moitié de la peine prévue pour le crime projeté les personnes qui s'entendent en vue de commettre un crime.	Entente criminelle
Different crime committed	32. Every one who agrees with another person to commit a crime and helps, advises, incites or uses that person to commit the crime is liable to the punishment prescribed for any other crime that (a) is committed as a result of that conduct; and (b) is, to his knowledge, a probable consequence of that conduct.	32. Quiconque s'entend avec une autre personne en vue de commettre un crime et se sert de cette personne pour commettre le crime, l'aide à le commettre, le lui conseille ou l'y incite est passible de la peine prévue pour chacun des crimes qui, à la fois : a) sont commis par suite de l'entente et de l'instigation; b) en constituent, à sa connaissance, un résultat probable.	Résultat différent
<p>Possible Convictions</p>			
Committing	33. (1) Every one charged with committing a crime may on appropriate evidence be convicted of committing it, furthering it, attempting to commit it or attempted furthering of it.	33. (1) Quiconque est accusé d'avoir commis un crime peut, selon la preuve, être déclaré coupable de perpétration, d'instigation, de tentative de perpétration ou de tentative d'instigation de ce crime.	Accusation de perpétration
Furthering	(2) Everyone charged with furthering the commission of a crime may on appropriate evidence be convicted of committing it, furthering it, attempting to commit it or attempted furthering of it.	(2) Quiconque est accusé d'avoir été l'instigateur d'un crime peut, selon la preuve, être déclaré coupable de perpétration, d'instigation, de tentative de perpétration ou de tentative d'instigation de ce crime.	Accusation d'instigation
<p>Condamnations possibles</p>			

Attempt	(3) Every one charged with attempting to commit a crime may on appropriate evidence be convicted of attempting to commit it or attempted furthering of it, regardless of whether the evidence shows that he committed the crime or furthered the crime.	(3) Quiconque est accusé d'avoir tenté de commettre un crime ne peut, même si la preuve révèle qu'il a commis le crime ou en a été l'instigateur, être déclaré coupable que de tentative de perpétration ou de tentative d'instigation.	Accusation de tentative de perpétration
Attempted furthering	(4) Every one charged with attempted furthering of a crime may on appropriate evidence be convicted of attempting to commit it or attempted furthering of it, regardless of whether the evidence shows that he committed the crime or furthered the crime.	(4) Quiconque est accusé d'avoir tenté d'être l'instigateur d'un crime ne peut, même si la preuve révèle qu'il a commis le crime ou en a été l'instigateur, être déclaré coupable que de tentative de perpétration ou de tentative d'instigation.	Accusation de tentative d'instigation
Accomplices	(5) Where two or more persons are involved in committing a crime but the evidence does not clearly establish which of them committed the crime and which of them furthered it, all of them may be convicted of furthering the crime.	(5) Lorsque la preuve ne permet pas de distinguer parmi les personnes impliquées dans la perpétration d'une infraction les auteurs des instigateurs, tous peuvent être déclarés coupables d'instigation.	Coauteurs et complices
Idem	(6) Where two or more persons are involved in attempting to commit a crime but the evidence does not clearly establish which of them attempted to commit the crime and which of them attempted furtherance of the crime, all of them may be convicted of attempted furthering of the crime.	(6) Lorsque la preuve ne permet pas de distinguer parmi les personnes impliquées dans la tentative de commettre une infraction les personnes qui sont coupables de tentative de perpétration de celles qui sont coupables de tentative d'instigation, toutes peuvent être déclarées coupables de tentative d'instigation.	Idem

Division IV

JURISDICTION

Definitions
 "Canada"
 «Canada»

34. (1) In this Division,
 "Canada" includes the following lands and waters, the airspace above them and the seabed and subsoil below them:

(a) the land mass of Canada,
 (b) the inland waters, being the rivers, lakes and other fresh waters in Canada and including the St. Lawrence River as far seaward as the straight lines drawn
 (i) from Cap-des-Rosiers to the westernmost point of Anticosti Island, and
 (ii) from Anticosti Island to the north shore of the St. Lawrence River along the meridian of longitude sixty-three degrees west,
 (c) the internal waters, being any areas of the sea that are on the landward side of the baselines of the territorial sea and any areas of the sea, other than the territorial sea, in respect of which Canada has an historic or other title of sovereignty, and
 (d) the territorial sea of Canada as determined in accordance with the *Territorial Sea and Fishing Zones Act*;

Idem

(2) Words and expressions used in this Division and not otherwise defined have the same meaning as in the *Canadian Laws Off-shore Application Act*.

Chapitre quatrième

CHAMP D'APPLICATION

Definitions

34. (1) Les définitions qui suivent s'appliquent au présent chapitre.

«Canada» Le Canada comprend les terres et les eaux mentionnées ci-après, de même que l'espace aérien, les zones sous-marines et le sous-sol correspondants :

a) la masse terrestre du Canada;
 b) les eaux internes, c'est-à-dire l'ensemble des cours d'eau, lacs et autres plans d'eau douce du Canada, y compris la partie du Saint-Laurent délimitée, vers la mer, par les lignes droites joignant :
 (i) Cap-des-Rosiers à la pointe extrême ouest de l'île d'Anticosti,
 (ii) l'île d'Anticosti à la rive nord du Saint-Laurent suivant le méridien de soixante-trois degrés de longitude ouest;
 c) les eaux intérieures, c'est-à-dire les zones de mer situées entre le littoral et les lignes de base de la mer territoriale ainsi que toute zone de mer, autre que la mer territoriale, sur laquelle le Canada a un titre de souveraineté historique ou autre;
 d) la mer territoriale du Canada, délimitée conformément à la *Loi sur la mer territoriale et les zones de pêche*.

Terminologie

(2) Les autres termes du présent chapitre s'entendent au sens de la *Loi sur l'application extracôtière des lois canadiennes*.

35. (1) This Code applies to crimes committed in Canada but, subject to diplomatic and other immunity under the law, this Code applies to, and Canadian courts have jurisdiction in respect of, the following crimes:

(a) any crime committed in a place in or above the continental shelf or in any exclusive economic zone that is created by the Government of Canada, where the crime is an offence in that place by virtue of section 5 of the *Canadian Laws Offshore Application Act*;

(b) any crime committed in a fishing zone of Canada as determined in accordance with the *Territorial Sea and Fishing Zones Act*;

(c) any crime committed outside Canada on an aircraft or a ship registered under an Act of Parliament;

(d) any crime committed outside Canada on a vessel or aircraft of the Canadian Forces;

(e) any crime defined by any of sections x to x (crimes against the state) committed outside Canada by a citizen or permanent resident of Canada or a person who benefits from the protection of Canada;

(f) any crime defined by any of sections x to x (espionage, etc.) committed outside Canada, where the classified information referred to in those sections was obtained by a person who, at that time, was a citizen or permanent resident of Canada or a person who benefited from the protection of Canada;

(g) any act or omission committed outside Canada by a person who is serving abroad in the Armed Forces, working abroad for the Armed Forces or who is subject to the Code of Service Discipline, where the act or omission is a crime in Canada and a crime under the laws of the place where the act or omission is committed;

(h) any act or omission committed outside Canada by an employee of the Government of Canada or a member of the Royal Canadian Mounted Police who is serving or working abroad, where the act or omission is a crime in Canada and a crime under the laws of the place where the act or omission is committed;

(i) any act or omission committed outside Canada by a citizen or permanent resident of Canada or person otherwise owing allegiance to Canada who is a member of the family of a person described in paragraph (h) and is living in the same household, where the act or omission is a crime in Canada and a crime under the laws of the place where the act or omission is committed;

(j) any crime defined in any of sections x to x (crimes against international order) committed outside Canada by a citizen of Canada or by a person who is present in Canada after the commission of the crime;

(k) any crime committed outside Canada in relation to a Canadian passport, a certificate of Canadian citizenship or Canadian currency;

35. (1) Les dispositions du présent code ne s'appliquent qu'aux crimes commis au Canada, toutefois sous réserve des immunités diplomatiques et autres reconnues par la loi, elles s'appliquent aux crimes qui suivent et les tribunaux canadiens ont compétence à leur égard :

a) les crimes commis dans les limites du plateau continental ou de toute zone économique exclusive créée par le gouvernement du Canada s'ils constituent, en application de l'article 5 de la *Loi sur l'application extracôtière des lois canadiennes*, des infractions à cet endroit;

b) les crimes commis dans une zone de pêche du Canada, déterminée en conformité avec la *Loi sur la mer territoriale et les zones de pêche*;

c) les crimes commis à l'extérieur du Canada à bord d'un aéronef ou d'un navire immatriculé sous le régime d'une loi fédérale;

d) les crimes commis à l'extérieur du Canada à bord d'un bâtiment ou d'un aéronef des Forces canadiennes;

e) les crimes visés aux articles x à x (crimes contre l'État) commis à l'extérieur du Canada par un citoyen canadien, un résident permanent du Canada ou une personne qui bénéficie de la protection du Canada;

f) les crimes visés aux articles x à x (espionage, etc.) commis à l'extérieur du Canada, si les renseignements secrets que mentionnent ces articles ont été obtenus par une personne qui, à ce moment, était un citoyen canadien, un résident permanent du Canada ou une personne qui bénéficiait de la protection du Canada;

g) les crimes commis à l'étranger par un membre des Forces canadiennes en service à l'étranger ou une personne qui travaille à l'étranger pour le compte des Forces canadiennes ou qui est justiciable du Code de Justice militaire, à la condition que ce qui constitue le crime au sens de la loi canadienne soit aussi une infraction passible de l'emprisonnement — sauf pour non-paiement d'une amende — en vertu du droit en vigueur au lieu de sa perpétration;

h) les crimes commis à l'étranger par un salarié du gouvernement du Canada ou un membre de la Gendarmerie royale du Canada en service ou en poste à l'étranger, à la condition que ce qui constitue le crime au sens de la loi canadienne soit aussi une infraction passible de l'emprisonnement — sauf pour non-paiement d'une amende — en vertu du droit en vigueur au lieu de sa perpétration;

i) les crimes commis à l'étranger par un citoyen ou un résident permanent du Canada ou une personne qui doit allégeance au Canada qui fait partie de la famille de l'une des personnes mentionnées à l'alinéa (h) et vit sous son toit, à la condition que ce qui constitue le crime au sens de la loi canadienne soit aussi une infraction passible de l'emprisonnement — sauf pour non-paiement d'une amende —

(l) any crime defined in any of sections x to x (crimes against internationally protected persons) committed outside Canada where

(i) the victim is an internationally protected person by virtue of the functions that he exercises on behalf of Canada; or

(ii) the alleged offender is a Canadian citizen or is present in Canada after the commission of the crime.

(m) any crime defined by section x (hostage taking) committed outside Canada in relation to a citizen or permanent resident of Canada or to induce the Government of Canada or the government of a province to perform an act or omission; and

(n) piracy committed outside the territorial jurisdiction of any state.

en vertu du droit en vigueur au lieu de sa perpétration;

j) les crimes visés aux articles x à x (crimes contre l'ordre international) commis à l'étranger par un citoyen canadien ou par une personne qui se trouve au Canada après la perpétration du crime;

k) les crimes commis à l'étranger qui visent un passeport canadien, un certificat de citoyenneté canadienne ou la monnaie canadienne;

l) les crimes visés aux articles x à x (crimes contre les personnes protégées par le droit international) commis à l'étranger :

(i) soit à l'égard d'une personne qui est protégée par le droit international à raison des fonctions qu'elle exerce au nom du Canada au lieu de la perpétration,

(ii) soit par un citoyen canadien ou par une personne qui se trouve au Canada après la perpétration du crime.

m) les crimes visés à l'article x (prise d'otages) commis à l'étranger à l'égard d'un citoyen canadien ou d'un résident permanent ou qui visent à amener le gouvernement du Canada ou celui d'une province à accomplir certains actes ou à s'en abstenir;

n) les actes de piraterie commis à l'extérieur du territoire de tout État.

When act performed in Canada

(2) For the purposes of subsection (1), a crime is committed in Canada if

(a) the act or omission constituting the physical element of the crime is committed wholly in Canada;

(b) the act or omission constituting the physical element of the crime is committed partially in Canada, a result of the crime occurs in Canada or a circumstance that is by reason of the definition of the crime relevant exists in Canada and the result or circumstance establishes a substantial link between Canada and the crime.

Lieu de la perpétration

(2) Pour l'application du paragraphe (1), un crime est commis au Canada si :

a) l'acte ou l'omission qui en constitue l'élément matériel est accompli au Canada dans son intégralité;

b) l'acte ou l'omission qui en constitue l'élément matériel est accompli en partie à l'étranger, le crime produit un résultat au Canada, ou encore une de ses circonstances est établie au Canada, et il en découle clairement un lien important entre le crime et le Canada.

Inchoate crimes

36. (1) For the purposes of applying paragraph 35(2)(b) in respect of an act or omission that is described in any of sections 29 to 31,

(a) the fact that the crime mentioned in the relevant section is or was to be committed in Canada is a result that establishes a substantial link between Canada and the conduct; and

(b) there may be a substantial link between Canada and the conduct even though the crime mentioned in the relevant section is not or was not to be committed in Canada.

36. (1) Pour l'application de l'alinéa 35(2)b) aux faits visés aux articles 29 à 31 :

a) la perpétration — effective ou prévue — au Canada du crime mentionné dans l'article applicable constitue un lien important entre le Canada et les faits en question;

b) il peut exister un lien important entre le Canada et les faits même si la perpétration du crime a eu lieu à l'étranger ou y était envisagée.

Crimes non consommés

Dual criminality

(2) Paragraph 35(2)(b) only applies in respect of the conduct that is described in any of sections 29 to 31 where the crime

(2) L'alinéa (1)b) ne s'applique qu'aux faits visés aux articles 29 à 31 et qu'à la condition que le crime en question soit aussi

Limite

mentioned in the relevant section is also an offence that is liable to be punished by imprisonment, otherwise than on default of payment of a fine, under the laws of every place where the parts of the conduct that are not performed in Canada are performed.

une infraction punissable par l'emprisonnement — sauf pour non-paiement d'une amende — dans chacun des lieux à l'étranger où les éléments de sa perpétration surviennent.

PART II

CRIMES AGAINST THE PERSON

Division I

CRIMES AGAINST LIFE

- Negligent homicide** 37. Every one commits the crime of negligent homicide who negligently kills another person.
- Manslaughter** 38. Every one commits the crime of manslaughter who recklessly kills another person.
- Manslaughter while intoxicated** 39. Every one commits the crime of manslaughter while intoxicated who kills another person but does not, by reason of intoxication, have the state of mind required for murder.
- Murder** 40. (1) Every one commits the crime of murder who purposely kills another person.
- First degree murder** (2) Murder is first degree murder where it is premeditated or where it is
(a) accompanied by torture;
(b) committed pursuant to an agreement for valuable consideration;
(c) committed in preparation to commit a crime or to facilitate the commission of a crime or aid in the escape of a criminal from detection, arrest or conviction;
(d) committed for terrorist or political motives;
(e) committed during the commission of a crime contrary to section 49 (confinement), 80 (robbery), x (hijacking), or x (sexual assault); or
(f) committed by means that the person who commits the crime knows will kill more than one person and in fact more than one death results.
- Where premeditated** (3) Murder is premeditated where the killing is the result of a calculated and carefully considered plan other than a plan to kill a person for a compassionate motive.
- Second degree murder** (4) Murder that is not first degree murder is second degree murder.
- Helping, etc. person to commit suicide** 41. Every one commits a crime who helps, advises or incites a person to commit suicide, regardless of whether suicide results or not.

PARTIE II

CRIMES CONTRE LA PERSONNE

Chapitre premier

LES ATTEINTES À LA VIE

37. Est coupable d'homicide par négligence quiconque cause la mort d'une autre personne par négligence. **Homicide par négligence**
38. Est coupable d'homicide involontaire quiconque cause la mort d'une autre personne par insouciance. **Homicide involontaire**
39. Est coupable d'homicide involontaire en état d'intoxication quiconque cause la mort d'une autre personne sans avoir, à cause d'intoxication, l'état d'esprit nécessaire au meurtre. **Homicide involontaire en état d'intoxication**
40. (1) Est coupable de meurtre quiconque cause intentionnellement la mort d'une autre personne. **Meurtre**
- (2) Le meurtre est un meurtre au premier degré s'il est prémédité ou dans les cas suivants :
a) sa perpétration est accompagnée de torture;
b) il est commis en exécution d'une entente qui vise à rapporter à son auteur un avantage pécuniaire;
c) il est commis pour préparer, faciliter ou cacher un crime, pour aider un criminel à s'échapper ou pour empêcher son arrestation ou sa condamnation;
d) il est commis à des fins terroristes ou politiques;
e) il est commis à l'occasion de la perpétration de l'un des crimes prévus aux articles suivants : 49 (séquestration), 80 (vol qualifié), x (détournement d'avion) ou x (agression sexuelle);
f) il est commis dans des circonstances qui ont causé la mort de plusieurs personnes avec des moyens qui, à la connaissance de l'auteur, pouvaient tuer plus d'une personne.
- (3) Le meurtre est prémédité lorsqu'il résulte du dessein réfléchi de causer la mort sauf pour mettre fin aux souffrances physiques ou morales d'une personne. **Préméditation**
- (4) Les meurtres auxquels ne s'applique pas la qualification de premier degré sont des meurtres au deuxième degré. **Meurtre au deuxième degré**
41. Est coupable d'un crime quiconque aide une autre personne à se donner la mort, le lui conseille ou l'y incite, que le suicide s'en suive ou non. **Incitation au suicide**

Palliative care	42. Sections 37 to 41 do not apply in respect of the administration of palliative care that is appropriate in the circumstances to control or eliminate the pain and suffering of a person regardless of whether or not the palliative care reduces the life expectancy of that person, unless that person refuses to consent to that care.	42. Les articles 37 à 41 ne s'appliquent pas aux soins palliatifs justifiés par les circonstances et administrés pour atténuer ou éliminer les souffrances d'une personne même s'il peut en résulter une diminution de l'espérance de vie de celle-ci, sauf dans le cas où elle a refusé de consentir au traitement.	Soins palliatifs
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Division II

CRIMES AGAINST BODILY INTEGRITY

Assault	43. Every one commits a crime who touches or hurts another person without the consent of that person.
Infliction of harm	44. (1) Every one commits a crime who purposely, recklessly or negligently harms another person.
Exception	(2) Subsection (1) does not apply in respect of harm that is inflicted purposely or recklessly in the course of (a) medical treatment that is administered with the consent of the patient for therapeutic purposes or for purposes of medical research, unless the risk of harm is disproportionate to the benefits expected from the research; or (b) a lawful sporting activity that is conducted in accordance with the rules governing that activity.

Chapitre deuxième

LES ATTEINTES À L'INTÉGRITÉ PHYSIQUE

43. Est coupable d'un crime quiconque touche à une autre personne ou lui fait mal sans son consentement.	Agression
44. (1) Est coupable d'un crime quiconque, intentionnellement, par insouciance ou par négligence, blesse une autre personne.	Blessures
(2) Le paragraphe (1) ne s'applique pas aux blessures corporelles causées intentionnellement ou par insouciance à une personne dans les cas suivants : a) traitement médical administré avec le consentement du patient dans un but thérapeutique ou pour la recherche médicale, sauf s'il y a disproportion entre le risque encouru et les avantages que l'on espère retirer de la recherche; b) activité sportive licite conforme aux règles qui la régissent.	Exception

Division III

CRIMES AGAINST PSYCHOLOGICAL INTEGRITY

Harassment	45. Every one commits a crime who harasses another person and thereby frightens him.
Threatening	46. Every one commits a crime who threatens to hurt, harm or kill another person or to damage another's property.
Threats of immediate harm	47. Every one commits a crime who threatens another person with immediate hurt, harm or death.
Extortion	48. Every one commits a crime who threatens to hurt, harm or kill a person, damage the property of a person or harm the reputation of a person for the purpose of inducing that person or another person to do or to refrain from doing anything.

Chapitre troisième

LES ATTEINTES À L'INTÉGRITÉ PSYCHOLOGIQUE

45. Est coupable d'un crime quiconque harcèle une autre personne au point de l'effrayer.	Harcèlement
46. Est coupable d'un crime quiconque menace une autre personne de lui faire mal, de la tuer, de la blesser ou d'endommager ses biens.	Menaces
47. Est coupable d'un crime quiconque menace une autre personne de lui faire mal, de la tuer ou de la blesser immédiatement.	Menaces de blessures immédiates
48. Est coupable d'un crime quiconque menace une autre personne de lui faire mal, de la blesser, d'endommager ses biens ou de nuire à sa réputation dans l'intention de l'inciter — ou d'inciter une tierce personne — à faire ou à s'abstenir de faire quelque chose.	Extorsion

Division IV

CRIMES AGAINST PERSONAL LIBERTY

Confinement	49. Every one commits a crime who confines another person without the consent of that person.
Kidnapping	50. Every one commits a crime who confines a person for the purpose of inducing that person or another person to do or to refrain from doing anything.

Chapitre quatrième

LES ATTEINTES À LA LIBERTÉ

49. Est coupable d'un crime quiconque séquestre une autre personne sans son consentement.	Séquestration
50. Est coupable d'un crime quiconque enlève une personne dans l'intention de l'inciter — ou d'inciter une tierce personne — à faire ou à s'abstenir de faire quelque chose.	Enlèvement

Child abduction	51. Every one commits a crime who takes unlawful custody of a child who is less than fourteen years of age for the purpose of depriving a person who has lawful custody of the child of the use of that right, regardless of whether the child consents or not.	51. Est coupable d'un crime quiconque enlève un enfant âgé de moins de quatorze ans dans l'intention d'en priver la personne qui en a la garde légale, que l'enfant consente ou non.	Rapt d'enfant
Discipline	52. Sections 43 and 49 and sections 46 and 47 where threats to hurt only are involved do not apply in respect of reasonable discipline imposed on a child who is less than eighteen years of age by a person who has custody of the child or has access rights in respect of the child pursuant to a court order or an agreement between the parents of the child or by a person whom the custodian has expressly authorized to discipline that child.	52. Les articles 43 et 49 — ainsi que les articles 46 et 47 lorsqu'il ne s'agit que de menaces de faire mal — ne s'appliquent pas dans le cadre de l'éducation donnée à un enfant de moins de dix-huit ans par une personne chargée de sa garde — ou qui s'est vu expressément déléguer cette autorité disciplinaire par qui de droit — ou à qui des droits d'accès auprès de l'enfant ont été accordés par ordonnance judiciaire ou en vertu d'une entente conclue par les parents.	Discipline
Division V		Chapitre cinquième	
CRIMES CAUSING DANGER		LES CRIMES DE MISE EN DANGER	
Endangerment	53. Every one commits a crime who negligently creates a risk of death or serious harm to another person.	53. Est coupable d'un crime quiconque par négligence crée un risque de mort ou de blessures graves pour une autre personne.	Mise en danger
Failure to rescue	54. (1) Every one commits a crime who, realizing that a person is in immediate danger of death or serious harm, omits to take reasonable steps to aid that person.	54. (1) Est coupable d'un crime quiconque s'aperçoit qu'une autre personne est en danger immédiat de mort ou de blessures graves et ne prend pas les mesures normales dans les circonstances pour l'aider.	Non-assistance
Exception	(2) Subsection (1) does not apply to a person who cannot render aid without incurring a risk of death or serious harm to himself or another person or for any other valid reason.	(2) Le paragraphe (1) ne s'applique pas dans le cas d'une personne qui ne peut porter assistance sans risque de mort ou de blessures graves pour elle ou pour une autre personne ou si elle a une autre raison valable de ne pas le faire.	Exception
Impeding rescue	55. Every one commits a crime who impedes the rescue of another person who faces a risk of death or serious harm.	55. Est coupable d'un crime quiconque entrave le sauvetage d'une personne en danger de mort ou de blessures graves.	Entrave au sauvetage
Definition of "operate" and "vehicle"	56. For the purposes of sections 57 to 63,	56. Les définitions qui suivent s'appliquent aux articles 57 à 63 :	Définitions
"operate" "conducteur"	"operate" includes, in respect of a vessel or an aircraft, navigate;	"conducteur" Dans le cas d'un navire ou d'un aéronef, y est assimilé le navigateur.	"conducteur" "operate"
"vehicle" "véhicule"	"vehicle" means a motor vehicle, train, vessel or aircraft but does not include anything driven by, propelled by or drawn by means of muscular power.	"véhicule" S'entend, outre les véhicules à moteur, des navires, trains et aéronefs; la présente définition ne vise toutefois pas les véhicules tirés, mis ou poussés par la force musculaire.	"véhicule" "vehicle"
Dangerous operation of vehicle	57. Every one commits a crime who negligently operates a vehicle in a manner that creates a risk of death or serious harm to another person.	57. Est coupable d'un crime quiconque conduit un véhicule de façon négligente et crée ainsi un risque de mort ou de blessures graves pour une autre personne.	Conduite dangereuse
Operation of vehicle while impaired	58. Every one commits a crime who operates a vehicle or has the care or control of a vehicle while he knows or ought to know that his ability to operate that vehicle is impaired by alcohol or drug or that he has in his blood more than eighty milligrams of alcohol in one hundred millilitres of blood.	58. Est coupable d'un crime quiconque conduit un véhicule — ou en a la garde ou le contrôle — alors qu'il sait ou devrait savoir que sa capacité de conduire est affaiblie par l'alcool ou une drogue ou que son alcoolémie dépasse quatre-vingts milligrammes d'alcool par cent millilitres de sang.	Conduite en état d'ébriété
Failure or refusal to provide breath sample	59. (1) Every one commits a crime who, being reasonably suspected by a peace officer of committing a crime defined in section 58 and being requested by the peace officer to provide a sample of his breath in accordance	59. (1) Est coupable d'un crime la personne qu'un agent de la paix a des motifs raisonnables de soupçonner d'avoir commis le crime visé à l'article 58 et qui, lorsque l'agent lui demande de fournir un échantillon	Refus ou omission de fournir un échantillon d'haleine

	with Annex xxx, fails or refuses to provide a sample of his breath.	de son haleine conformément aux dispositions de l'annexe xxx, refuse ou omet de le faire.	
Exception	(2) No one is liable under subsection (1) who has a reasonable excuse for failing or refusing to provide a sample of his breath.	(2) Le paragraphe (1) ne s'applique pas si la personne a une excuse raisonnable de refuser ou d'omettre de fournir un échantillon de son haleine.	Exception
Failure to stop at scene of accident	60. Every one commits a crime who operates or has the care or control of a vehicle that is involved in an accident and who leaves the scene of the accident to escape civil or criminal liability.	60. Est coupable d'un crime le conducteur ou la personne qui a la garde ou le contrôle d'un véhicule ayant causé ou subi un accident qui quitte les lieux de l'accident dans l'intention d'échapper à toute responsabilité civile ou criminelle.	Délit de fuite
Operation of vehicle while disqualified	61. Every one commits a crime who operates a vehicle while he knows that he is prohibited or otherwise disqualified from doing so under an Act of Parliament or of the legislature of a province as a consequence of having committed a crime defined in this Code.	61. Est coupable d'un crime la personne qui conduit un véhicule sachant que son permis lui a été retiré ou qu'elle est sous le coup d'une autre interdiction résultant, aux termes d'une loi fédérale ou provinciale, de la perpétration de l'un des crimes prévus par le présent code.	Conduite sans permis
Unsafe vehicle	62. Every one commits a crime who, being negligent as to whether or not a vehicle is fit and safe for operation, operates that vehicle and thereby creates a risk of death or serious harm to another person.	62. Est coupable d'un crime la personne qui conduit un véhicule et qui, par négligence, ne s'est pas assurée de la sécurité de fonctionnement de celui-ci et crée ainsi un risque de mort ou de blessures graves pour une autre personne.	Véhicule en mauvais état
Interference with transportation facilities	63. Every one commits a crime who negligently interferes with any thing used in connection with a vehicle or with the actions of any person relating to the operation of a vehicle and thereby creates a risk of death or serious harm to another person.	63. Est coupable d'un crime quiconque gêne le fonctionnement d'un appareil ou entrave l'action d'une personne liés à la conduite d'un véhicule et crée ainsi un risque de mort ou de blessures graves pour une autre personne.	Entrave au transport
Aggravating circumstances	64. The crimes defined by sections 43 (assault), 44 (infliction of harm), 45 (harassment), 46 (threatening), 47 (threats of immediate harm), 48 (extortion), 49 (confinement), 50 (kidnapping), 51 (child abduction), 53 (endangerment), 54 (failure to rescue), 55 (impeding rescue), 57 (dangerous operation of vehicle), 58 (operation of vehicle while impaired), 59 (failure or refusal to provide breath sample), 60 (failure to stop at scene of accident), 61 (operation of vehicle while disqualified), 62 (unsafe vehicle) and 63 (interference with transportation facilities) are aggravated where, to the knowledge of the accused, the victim is his spouse, child, parent, grandparent or grandchild or where the crimes are: (a) accompanied by torture; (b) committed pursuant to an agreement for valuable consideration; (c) committed in preparation to commit a crime or to facilitate the commission of a crime, conceal the commission of a crime or aid in the escape of a criminal from detection, arrest or conviction; (d) committed for terrorist or political motives; (e) committed by means of a weapon; or (f) committed by means that, to the knowledge of the accused, could harm more than one person or by means with respect to which the accused was reckless	64. Les crimes visés aux articles 43 (agression), 44 (blessures), 45 (harcèlement), 46 (menaces), 47 (menaces de blessures immédiates), 48 (extorsion), 49 (séquestration), 50 (enlèvement), 51 (rapt d'enfant), 53 (mise en danger), 54 (non-assistance), 55 (entrave au sauvetage), 57 (conduite dangereuse), 58 (conduite en état d'ébriété), 59 (refus ou omission de fournir un échantillon d'haleine), 60 (délit de fuite), 61 (conduite sans permis), 62 (conduite d'un véhicule en mauvais état) et 63 (entrave au transport) sont aggravés si l'auteur sait que la victime est son conjoint, son enfant, son père, sa mère, son grand-père, sa grand-mère, son petit-fils ou sa petite-fille, ou dans les cas suivants : a) leur perpétration est accompagnée de torture; b) ils sont commis en exécution d'une entente qui vise à rapporter à leur auteur un avantage pécuniaire; c) ils sont commis pour préparer, faciliter ou cacher un crime, pour aider un criminel à s'échapper ou pour empêcher son arrestation ou sa condamnation; d) ils sont commis à des fins terroristes ou politiques; e) il est fait usage d'une arme lors de leur perpétration; f) ils sont commis dans des circonstances où plusieurs personnes ont été blessées,	Circonstances aggravantes

as to whether more than one person could be harmed and in fact more than one person is harmed.

avec des moyens qui, à la connaissance de l'auteur, pouvaient blesser plus d'une personne ou dont il ne se souciait pas qu'ils blessent plus d'une personne ou non.

Division VI

CRIMES AGAINST PERSONAL SECURITY AND PRIVACY

Definitions	65. For the purposes of sections 66 to 68,
"optical device" «appareil de surveillance optique»	"optical device" means any device capable of permitting surreptitious viewing of persons, places or things;
"private communication" «communication privée»	"private communication" means any oral communication or any telecommunication made under circumstances in which it is reasonable for any party to the communication to expect that it will not be intercepted;
"surveillance device" «appareil d'interception»	"surveillance device" means any device capable of being used to intercept a private communication.
Interception of private communications	66. (1) Every one commits a crime who, by means of a surveillance device, intercepts a private communication without the consent of at least one party to the communication.
Exception	(2) Subsection (1) does not apply to a person engaged in providing a telephone, telegraph or other communication service to the public where the interception is a necessary incidence to the provision of the service.
Entry to install instrument	67. (1) Every one commits a crime who, without the consent of the owner or occupier of premises, enters on the premises to install, service, repair or remove any surveillance device or optical device.
Search of premises	(2) Every one commits a crime who, being authorized to enter on the premises of a person for the purpose of installing, servicing or removing a surveillance or optical device, searches the premises while acting under that authority.
Use of force	(3) Notwithstanding section 23, every one commits a crime who uses force against a person for the purpose of gaining entry onto premises to install, remove or service a surveillance or optical device or in an attempt to leave the premises.
Disclosure of private communications	68. (1) Every one commits a crime who, without the consent of at least one of the parties to a private communication, (a) discloses or threatens to disclose to any other person the existence of or the contents of the communication; or (b) uses the contents of the communication for any purpose.

Chapitre sixième

LES ATTEINTES À LA SÉCURITÉ PERSONNELLE ET À LA VIE PRIVÉE

Définitions	65. Les définitions qui suivent s'appliquent aux articles 66 à 68;	Définitions
«appareil d'interception» Appareil capable d'intercepter des communications privées.		«appareil d'interception d'interception "surveillance device"»
«appareil de surveillance optique» Appareil capable de permettre la surveillance de choses, de lieux ou de personnes sans être vu.		«appareil de surveillance optique» "optical..."
«communication privée» Communication verbale ou télécommunication faite dans des circonstances telles que les auteurs de la communication pouvaient normalement s'attendre à ce que celle-ci ne soit pas interceptée.		«communication privée» "private..."
66. (1) Est coupable d'un crime la personne qui, à l'aide d'un appareil d'interception, intercepte une communication privée sans le consentement d'au moins une des parties à la communication.		Interception des communications privées
(2) Le paragraphe (1) ne s'applique pas au personnel des compagnies de communication qui intercepte des communications privées dans le cadre de ses fonctions.		Exception
67. (1) Est coupable d'un crime la personne qui, sans le consentement du propriétaire ou de l'occupant d'un lieu, pénètre dans ce lieu pour y installer, entretenir, réparer ou enlever un appareil d'interception ou un appareil de surveillance optique.		Installation d'appareils d'interception
(2) Est coupable d'un crime la personne qui tout en étant autorisée à pénétrer dans un lieu pour installer, entretenir, réparer ou enlever un appareil d'interception ou un appareil de surveillance optique, perquisitionne ce lieu à cette occasion.		Perquisitions interdites
(3) Par dérogation à l'article 23, est coupable d'un crime la personne qui fait usage de la force à l'égard d'une autre personne dans le but d'avoir accès à un lieu pour y installer, entretenir, réparer ou enlever un appareil d'interception de communications verbales ou de télécommunications ou un appareil de surveillance optique ou dans le but d'en sortir.		Usage de la force interdit
68. (1) Est coupable d'un crime la personne qui, sans le consentement d'au moins une des parties à la communication privée qui a été interceptée à l'aide d'un appareil :		Communication
a) la révèle, en révèle le contenu ou menace de le faire;		
b) utilise le contenu de la communication.		

Exception

(2) Subsection (1) does not apply in respect of a disclosure made

(a) in the course of or for the purpose of giving evidence in a judicial proceeding where the communication is admissible in evidence;

(b) in the course of or for the purpose of any criminal investigation, if the communication was lawfully intercepted;

(c) to a peace officer or to the Attorney General or his agent, if the disclosure is made in the interests of the administration of justice;

(d) for the purpose of giving notice or furnishing particulars in accordance with section x of the *Code of Criminal Procedure*;

(e) to an employee of the Canadian Security Intelligence Service, if the disclosure is made for the purpose of enabling the Service to perform its duties or exercise its functions;

(f) in the course of the operation of a communication service, if the disclosure is a necessary incidence to the provision of the service;

(g) to a person who is authorized by the originator of the communication or by a person whom the originator intended to receive it to disclose, or use the content of, the communication; or

(h) to an investigative or law enforcement officer of a foreign jurisdiction, if the disclosure is made for the purpose of revealing criminal activity in that jurisdiction.

(2) Le paragraphe (1) ne s'applique pas dans les cas suivants :

a) révélation à un tribunal dans le cadre de procédures judiciaires où la communication est elle-même admissible en preuve;

b) révélation dans le cadre d'une enquête en matière criminelle, si la communication a été interceptée légalement;

c) révélation à un agent de la paix ou au procureur général ou à son représentant si elle est faite dans l'intérêt de l'administration de la justice;

d) révélation faite dans le cadre de l'article x du Code de procédure criminelle;

e) révélation à un employé du Service canadien du renseignement de sécurité, pour permettre à celui-ci d'exercer ses fonctions;

f) révélation nécessaire dans le cadre de la fourniture de services de communications;

g) révélation faite par une personne que l'une des parties à la communication privée a autorisée à révéler la communication ou à en utiliser le contenu;

h) révélation à un agent chargé de l'application de la loi ou un enquêteur étranger si elle vise à leur faire connaître l'existence d'un crime dans leur ressort.

Exception

Criminal intrusion

69. (1) Every one commits a crime who, for the purpose of committing a crime, enters or remains on premises of a person without the consent of the owner or a person in peaceable possession of the premises.

69. (1) Est coupable d'un crime quiconque, dans l'intention de commettre un crime, s'introduit dans un lieu — ou y demeure — sans le consentement du propriétaire ou de la personne qui en a la possession paisible.

Introduction illégale

Idem

(2) Every one commits a crime who, for the purposes of committing a crime, enters or remains on the premises of a person without the consent of that person and commits a crime on the premises.

(2) Est coupable d'un crime quiconque s'introduit dans un lieu — ou y demeure — sans le consentement du propriétaire ou de la personne qui en a la possession paisible et y commet un crime.

Idem

Aggravating circumstances

(3) A crime defined by subsection (1) or (2) is aggravated where

(a) the premises or any part thereof are used as or connected to a building or structure that is used as a permanent or temporary residence;

(b) the accused was reckless as to the presence of persons on the premises; or

(c) the accused, at the time of the commission of the crime, had a weapon in his possession.

(3) Les crimes visés aux paragraphes (1) et (2) sont aggravés si :

a) le lieu de l'introduction illégale sert, en totalité ou en partie, de résidence permanente ou temporaire, ou est attaché à une telle résidence;

b) l'auteur ne s'est pas soucié de la présence ou non d'autres personnes dans le lieu de la perpétration;

c) l'auteur a en sa possession une arme au moment de la perpétration.

Circonstances aggravantes

Entrance

(4) For the purposes of this section, a person enters as soon as any part of his body or of any instrument used by him is within the premises.

(4) Pour l'application du présent article, il y a introduction dans un lieu dès qu'une partie du corps de l'individu ou d'un instrument qu'il emploie se trouve à l'intérieur.

Interprétation

Definition (5) In this section, "premises" means
 (a) any building or part thereof; and
 (b) any part of a structure, vehicle, vessel or aircraft that is used for overnight accommodation or for commercial purpose.

(5) Au présent article, lieu s'entend :
 a) d'un bâtiment ou d'une partie d'un bâtiment;
 b) de la partie d'une construction, d'un véhicule, d'un navire ou d'un aéronef qui est utilisée pour y dormir ou à des fins commerciales.

Définition

PART III

PARTIE III

CRIMES AGAINST PROPERTY

CRIMES CONTRE LES BIENS

Division I

Chapitre premier

THEFT AND FRAUD

VOL ET FRAUDE

Theft 70. Every one commits the crime of theft who dishonestly appropriates another's property without his consent.

70. Est coupable d'un crime quiconque s'approprié malhonnêtement le bien d'autrui sans son consentement.

Vol

Dishonest obtention of benefit 71. Every one commits a crime who dishonestly obtains a service for himself or any other person and does not pay for it.

71. Est coupable d'un crime quiconque obtient malhonnêtement pour lui-même ou pour une tierce personne un service sans payer.

Obtention malhonnête de services

Fraud 72. (1) Every one commits a crime who by a false representation of fact, whether past, present or future or by an omission to disclose a fact induces another person
 (a) to part with his property; or
 (b) to incur a financial loss or a risk thereof.

72. (1) Est coupable d'un crime quiconque amène une autre personne par une fausse déclaration concernant un fait passé, présent ou futur ou une omission de révéler un fait :
 a) soit à se départir d'un bien;
 b) soit à subir une perte financière ou à s'exposer à un risque financier.

Fraude

Interpretation (2) For the purposes of subsection (1),
 (a) a representation that is no more than an exaggerated statement of opinion concerning the attributes or quality of anything is not a false representation;
 (b) an omission to disclose a fact means an omission by which
 (i) the accused breaches an obligation to disclose arising from a special relationship between the accused and the victim, or
 (ii) the accused or another acting with him has created or reinforced a false impression in the victim's mind or has prevented the victim from acquiring information that the accused knows is likely to affect the belief of the victim concerning the fact.

(2) Les règles qui suivent s'appliquent au paragraphe (1) :
 a) le simple fait d'exagérer en donnant son opinion sur les qualités ou les caractéristiques d'une chose ne constitue pas une fausse déclaration;
 b) il y a omission de révéler un fait lorsque, selon le cas :
 (i) l'accusé brise ainsi une relation particulière qui autorisait la victime à s'en remettre à lui;
 (ii) l'accusé, ou un tiers agissant de concert avec lui, crée ou renforce par son comportement une fausse impression dans l'esprit de la victime ou empêche cette dernière d'obtenir des renseignements qu'il sait être de nature à influencer son jugement.

Interprétation

Fraudulent misrepresentation 73. Every one commits a crime who, for the purpose of defrauding another person, makes or uses a document or valuable security that misrepresents such facts as it refers to.

73. Est coupable d'un crime quiconque, dans l'intention de frauder, fabrique ou utilise un document ou une valeur qui énonce un fait inexact.

Représentations frauduleuses

Forgery of public documents 74. (1) Every one commits a crime who makes, alters or uses a public document which in whole or in part differs from that which it purports to be.

74. (1) Est coupable d'un crime quiconque fabrique, modifie ou utilise un document public qui, en tout ou en partie, est différent de ce qu'il semble être.

Faux document public

Forgery of private document (2) Everyone commits a crime who, for the purpose of defrauding another person, makes, alters or uses a private document which in whole or in part differs from that which it purports to be.

(2) Est coupable d'un crime quiconque, dans l'intention de frauder, fabrique, modifie ou utilise un document privé qui, en tout ou en partie, est différent de ce qu'il semble être.

Faux document privé

Definition (3) For the purposes of this section, "public document" means:
 (a) an item or currency;
 (b) a stamp;

(3) Pour l'application du présent article, «document public» s'entend des documents suivants :
 a) la monnaie,

Définition

- (c) the official seal of the government of Canada or a province, of a corporate body or of a court in Canada;
- (d) a valuable security issued or guaranteed by Her Majesty in right of Canada or a province;
- (e) a passport;
- (f) a citizenship certificate;
- (g) a proclamation, order, regulation or appointment or notice thereof purporting to have been printed by the Queen's Printer for Canada or for a province.

- b) les timbres,
- c) le sceau officiel d'un gouvernement, d'une administration ou d'un tribunal canadiens,
- d) des valeurs émises ou garanties par Sa Majesté du chef du Canada ou d'une province,
- e) un passeport,
- f) un certificat de citoyenneté,
- g) une proclamation, un décret, une ordonnance, un arrêté, un règlement ou une nomination — ou un avis de ceux-ci — censé être imprimés par l'imprimeur officiel du gouvernement fédéral ou de celui d'une province.

COMMERCIAL CRIMES

CRIMES COMMERCIAUX

Bribery of agent	75. Every one commits a crime who confers a benefit on an employee or agent of a person for the purpose of corruptly influencing him in the performance of his duties or the exercise of his functions.	75. Est coupable d'un crime quiconque confère quelque avantage que ce soit à l'employé ou au mandataire d'une personne dans l'intention de l'influencer dans l'exercice de ses fonctions ou de son mandat.	Corruption de mandataire
Idem	76. Every one commits a crime who, being an employee or agent of a person, accepts a benefit from another person given for the purpose of corruptly influencing him in the performance of his duties or the exercise of his functions.	76. Est coupable d'un crime l'employé ou le mandataire d'une personne qui accepte quelque avantage que ce soit qu'une autre personne lui confère dans le but de l'influencer dans l'exercice de ses fonctions ou de son mandat.	Idem
Fraud on creditors	77. Every one commits a crime who transfers, conceals or disposes of his property for the purpose of defrauding his creditors.	77. Est coupable d'un crime quiconque aliène ou cache un bien qu'il possède dans l'intention de frauder ses créanciers.	Fraude des créanciers
Idem	78. Every one commits a crime who, for the purpose of defrauding the creditors of any person, receives property that has been transferred, concealed or disposed of for the purpose of defrauding those creditors.	78. Est coupable d'un crime quiconque, dans l'intention de frauder les créanciers d'une autre personne, reçoit un bien que celle-ci cache ou aliène dans l'intention de les frauder.	Idem
Usury	79. (1) Every one commits a crime who enters into an agreement or arrangement to receive interest at a criminal rate or receives a payment of interest at a criminal rate.	79. (1) Est coupable d'un crime, quiconque conclut une convention ou une entente pour percevoir des intérêts à un taux criminel ou en perçoit effectivement.	Usure
Definition of "criminal rate"	(2) For the purposes of subsection (1), a rate of interest is criminal if it exceeds sixty per cent per annum calculated annually on the value of anything actually advanced.	(2) Pour l'application du paragraphe (1), est criminel tout taux d'intérêt annuel, calculé sur la valeur du prêt, supérieur à soixante pour cent.	Définition
Definition of "interest"	(3) For the purposes of subsection (1), "interest" means the aggregate of all charges and expenses, whether in the form of a fee, fine, penalty, commission or other similar charge or expense or in any other form, paid or payable for the advancing of credit under an agreement or arrangement, by or on behalf of the person to whom credit is or is to be advanced, irrespective of the person to whom any such charges and expenses are or are to be paid or payable, but does not include any repayment of credit advanced or any insurance charge, official fee, overdraft charge, required deposit balance or, in the case of a mortgage transaction, any amount required to be paid on account of property taxes.	(3) Pour l'application du paragraphe (1), l'intérêt s'entend de l'ensemble des frais de tous genres, y compris les agios, commissions, pénalités et indemnités, qui sont payés ou payables à qui que ce soit par l'emprunteur ou pour son compte, en contrepartie du capital prêté ou à prêter. La présente définition exclut un remboursement de capital prêté, les frais d'assurance, les taxes officielles, les frais pour découvert de compte, le dépôt de garantie et dans le cas d'un prêt hypothécaire les sommes destinées à l'acquittement de l'impôt foncier.	Idem

	Division II		Chapitre deuxième	
	ROBBERY		VOL QUALIFIÉ	
Robbery	80. (1) Every one commits a crime who, while or for the purpose of committing the crime of theft, uses violence or threatens to use violence against another person or against property.		80. (1) Est coupable d'un crime quiconque, dans l'intention de commettre un vol ou au cours de la perpétration d'un vol, fait usage de violence contre une personne ou des biens ou menace d'en faire usage.	Vol qualifié
Aggravation	(2) The crime defined by subsection (1) is aggravated if the accused uses a weapon at the time of the commission of the crime.		(2) Le crime visé au paragraphe (1) est aggravé si l'auteur emploie une arme au moment de la perpétration.	Circonstance aggravante
	Division III		Chapitre troisième	
	CRIMINAL DAMAGE		DOMMAGES CRIMINELS	
Vandalism	81. Every one commits a crime who recklessly destroys or damages another's property or renders it useless or inoperative without his consent.		81. Est coupable d'un crime, quiconque, par insouciance, détruit ou endommage le bien d'autrui ou le rend inutilisable sans son consentement.	Vandalisme
Arson	82. Every one commits a crime who recklessly causes a fire or explosion that destroys or damages another's property without his consent.		82. Est coupable d'un crime, quiconque, par insouciance, cause un incendie ou une explosion qui endommage ou détruit le bien d'autrui sans son consentement.	Incendie criminel
	Division IV		Chapitre quatrième	
	OTHER CRIMES AGAINST PROPERTY		AUTRES CRIMES CONTRE LES BIENS	
Possession in suspicious circumstances	83. Every one commits a crime who possesses any device or instrument under circumstances that give rise to a reasonable inference that the person used it or means to use it to commit theft, criminal intrusion or forgery.		83. Est coupable d'un crime quiconque a en sa possession un appareil ou un instrument dans des circonstances telles qu'on peut raisonnablement en induire qu'elle s'en est servi ou a l'intention de s'en servir pour commettre l'un des crimes suivants : a) le vol; b) l'introduction illégale; c) la fabrication d'un faux.	Possession de certains objets dans des circonstances suspectes
Possession of prohibited things	84. Every one commits a crime who possesses (a) any paper used to make bank notes or used to make valuable securities issued or guaranteed by Her Majesty in right of Canada or a province; or (b) any device capable of being used to intercept a private communication or a telecommunication.		84. Est coupable d'un crime quiconque a en sa possession : a) du papier servant à l'impression de billets de banque ou de valeurs émises ou garanties par Sa Majesté du chef du Canada ou d'une province; b) un appareil destiné à l'interception des communications verbales ou des télécommunications.	Possession d'objets interdits
Possession of dangerous things	85. Every one commits a crime who possesses (a) a prohibited weapon or a restricted weapon contrary to the provisions of Annex xxx; or (b) an explosive or volatile substance, except as authorized under section x.		85. Est coupable d'un crime quiconque a en sa possession : a) soit une arme prohibée ou une arme à autorisation restreinte contrairement aux dispositions de l'annexe xxx; b) soit un explosif ou une substance volatile, sauf autorisation visée à l'annexe xxx.	Possession d'objets dangereux
Possession of forged document	86. Every one commits a crime who (a) possesses a forged public document referred to in subsection 74(1); or (b) for the purpose of defrauding another person, possesses a forged private document referred to in subsection 74(2).		86. Est coupable d'un crime quiconque : a) a en sa possession un faux document public visé au paragraphe 74(1); b) a en sa possession, dans l'intention de frauder, un faux document privé visé au paragraphe 74(2).	Possession d'un faux document
Possession of things obtained by crime	87. Every one commits a crime who possesses anything obtained by the commission of a crime in Canada or by the performance of an act or omission that, if performed in		87. Est coupable d'un crime quiconque a en sa possession des biens obtenus par la perpétration d'un crime au Canada ou par l'accomplissement d'un fait qui, au Canada,	Possession de biens criminellement obtenus

Canada, would be a crime and that is a crime under the law of the place where the act or omission is performed.

Criminal dealing

88. Every one commits a crime who deals in things obtained by the commission of a crime in Canada or by the performance of an act or omission that, if performed in Canada, would be a crime and that is a crime under the law of the place where the act or omission is performed.

Obliteration of identifying marks

89. Every one commits a crime who, for the purpose of facilitating the commission of a crime, defaces or destroys an identifying mark on any thing or applies or adds to any thing any false mark.

aurait été un crime et qui en est un au sens de la loi du lieu de son accomplissement.

88. Est coupable d'un crime quiconque fait le commerce d'objets obtenus par la perpétration d'un crime au Canada ou par l'accomplissement d'un fait qui, au Canada, aurait été un crime et qui en est un au sens de la loi du lieu de son accomplissement.

Opérations criminelles

89. Est coupable d'un crime quiconque, dans l'intention de faciliter la perpétration d'un crime, modifie, efface ou détruit une marque d'identification sur un objet ou remplace celle-ci par une fausse.

Suppression de marques d'identification