

MARTIN'S  
CRIMINAL  
CODE

1955



Cartwrights

THE  
**CRIMINAL CODE**  
OF CANADA

With Annotations and Notes by  
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The following notes and comments are dedicated,  
with great respect, to

Chief Justice The Hon. W. M. Martin,  
Regina, Sask.;

Hon. Mr. Justice F. Choquette, Quebec, P.Q.;  
His Honour Judge Robert Forsyth,  
Toronto, Ont.;

Mr. A. A. Moffat, Q.C., Winnipeg, Man.;  
Mr. Joseph Sedgwick, Q.C., Toronto, Ont.;  
Mr. H. J. Wilson, Q.C., Edmonton, Alta.,

the Commissioners who prepared the draft bill  
which resulted in the Criminal Code, 1953-54, c. 51.

J.C.M.

## MARTIN'S CRIMINAL CODE

### PREFACE

Since it will be the first, and perhaps timely, use of this volume to indicate what changes are effected by the new Criminal Code, the arrangement by which the new and the old provisions are set out on opposite pages is designed to facilitate comparison. Yet, although I hope that the volume may be found adequate in that regard, comparison of the two texts is not, in my view, its chief purpose.

Ever since I began to study law, now almost fifty years ago, I have felt that it was too abrupt a change to turn from an English textbook on criminal law to the stately language of a statute, and that, while it was (and is) indispensable to study the English law as background, something was still to be desired to serve as an introduction to the Criminal Code of Canada.

In attempting by the present means to fill what I thought to be a gap, I have tried, first of all, to link the law with history. This is an important consideration, since the development of a people is necessarily reflected in its laws, and primarily in its criminal law. I was confirmed in this opinion by a passage in Leslie Stephen's Life of Sir James Fitzjames Stephen where (p. 414) he spoke of the impossibility of discussing the peculiarities of English criminal law without also being plunged into historical investigations. "At every point," he continued, "the system is determined by the circumstances of its growth; and you can no more account for its oddities or its merits without considering its history than you can explain the structure of a bat or a seal without going back to previous forms of life."

Again, as part of the historical approach, I have tried to show the extent to which the Criminal Code of Canada is indebted to the English Draft Code of 1878. That accounts for the constantly recurring references to the E.D.C.

In the second place, I have tried to set out the broad lines of principle rather than to make an exhaustive review of the cases. This is done in the already-established annotated editions of the Code, one or other of which is essentially a tool, so to speak, of the practitioner.

I acknowledge with gratitude the assistance of Mr. Patrick Hartt, Barrister, of Toronto, especially in the preparation of the Index, and that of Mrs. M. B. Hastie, M.A.(Edin.), of the Publishers' Editorial Department, to whom fell the tasks of arranging the layout of the pages and of reading the proofs.

Ottawa, Canada  
April, 1955

J. C. Martin.

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[ ] A. C.	Law Reports, Appeal Cases, House of Lords, 1891- current
Ad. & E.	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols., 1834-1842
Allen	Allen's Reports (New Brunswick), 6 vols., Vols. 6-11 N.B.R., 1848-1866
All E. R.	All England Law Reports Annotated, 1936-current
A. L. R.	Alberta Law Reports, 26 vols., 1908-1932
App. Cas.	Law Reports, Appeal Cases, House of Lords, 15 vols., 1875-1890
Atlantic	Atlantic Reporter (U.S.A.)
B. & Ald.	Barnewell and Alderson's Reports, King's Bench, 5 vols., 1817-1822
Barn. (K. B.)	Barnardiston's Reports, King's Bench, fol. 2 vols., 1726-1834
B. & C.	Barnewell and Cresswell's Reports, King's Bench, 10 vols., 1822-1830
B. C. R.	British Columbia Reports, 64 vols., 1867-1952
Bell C. C.	T. Bell's Crown Cases Reserved, 1 vol., 1858-1860
Bing.	Bingham's Reports, Common Pleas, 10 vols., 1822-1834
Bl. Com.	Blackstone's Commentaries
Bos. & P.	Bosanquet and Puller's Reports, Common Pleas, 3 vols., 1796-1804
Brod. & Bing.	Broderip and Bingham's Reports, Common Pleas, 3 vols., 1819-1822
B. & S.	Best and Smith's Reports, Queen's Bench, 10 vols., 1861-1870
Burb. Dig.	Burbidge's Digest of Canadian Criminal Law, 1890
Burr.	Burrow's Reports, King's Bench, 5 vols., 1756-1772
Cal.	California Reports (U.S.A.)
Camb. L. J.	Cambridge Law Journal
Camp.	Campbell's Reports, Nisi Prius, 4 vols., 1807-1816
Can. C. C.	(see C. C. C.)
Can. L. J.	Canada Law Journal, 68 vols., 1855-1922
Car. & Kir.	Carrington and Kirwan's Reports, Nisi Prius, 3 vols., 1843-1853
Car. & M.	Carrington and Marshman's Reports, Nisi Prius, 1 vol., 1841-1843

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Cart.	Cases on British North America Act (Cartwright)
C. B.	Common Bench Reports, 18 vols., 1845-1856
C. B. N. S.	Common Bench Reports, New Series, 20 vols., 1856-1865
C. B. R.	Canadian Bankruptcy Reports, Annotated, 1920-current
C. B. Rev.	Canadian Bar Review, 1923-current
C. C. C.	Canadian Criminal Cases, 1892-current
C. C. R.	Law Reports, Crown Cases Reserved, 2 vols., 1865-1875
C. E. D.	Canadian Encyclopedic Digest
C. & F.	(see Cl. & Fin.)
[ ] Ch.	Law Reports, Chancery Division, 1891-current
Ch. D.	Law Reports, Chancery Division, 45 vols., 1875-1890
Chit.	Chitty's Practice Reports, King's Bench, 2 vols., 1770-1822
C. J.	Corpus Juris (U.S.A.)
C. & K.	(see Car. & Kir.)
Cl. & Fin.	Clark and Finnelly's Reports, House of Lords, 12 vols., 1831-1846
C. L. R.	Common Law Reports, 3 vols., 1853-1855
Com. Dig.	Comyn's Digest
Co. Rep.	Coke's Reports, 13 parts, 1572-1616
Cowp.	Cowper's Reports, King's Bench, 2 vols., 1775-1778
Cox, C. C.	E. W. Cox's Criminal Law Cases, 31 vols., 1843-1941
C. P.	(see U. C. C. P.)
C. & P.	Carrington and Payne's Reports, Nisi Prius, 9 vols., 1823-1841
C. P. R.	Canadian Patent Reporter
C. R.	Criminal Reports (Canada), 1946-current
Cr. App. R.	(Cr. App. Rep.) Cohen's Criminal Appeal Reports, 1909-current
Cr. M. & R.	Crompton, Meeson and Roscoe's Reports, Exchequer, 2 vols., 1834-1835
Cro. Car.	Croke's Reports, King's Bench and Common Pleas, 1 vol., 1625-1641
Cyc.	Cyclopedia of Law & Procedure (U.S.A.)
Dears. & B.	Dearsly and Bell's Crown Cases Reserved, 1 vol., 1856-1858
Dears. C. C.	Dearsly's Crown Cases Reserved, 1 vol., 1852-1856

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- DeG. M. & G. .... DeGex, Macnaghten and Gordon's Reports, Chancery, 8 vols., 1851-1857
- Den. (Den. C. C.) .... Denison's Crown Cases Reserved, 2 vols., 1844-1852
- D. L. R. .... Dominion Law Reports, 70 vols., 1912-1922
- [ ] D. L. R. .... Dominion Law Reports, 1923-current
- Dowl. N. S. .... Dowling's Practice Reports, New Series, 2 vols., 1841-1843
- Dow. & Ry. K. B. .... Dowling and Ryland's Reports, King's Bench, 9 vols., 1822-1827
- East. .... East's Reports, King's Bench, 16 vols., 1800-1812
- E. D. C. .... English Draft Code, 1878
- E. & E. .... Ellis and Ellis's Reports, Queen's Bench, 3 vols., 1858-1861
- E. L. R. .... Eastern Law Reporter, 14 vols., 1905-1914
- E. R. .... English Reports (The Reprint), 176 vols.
- Ex. .... Law Reports, Exchequer, 10 vols., 1866-1875
- Exch. .... Exchequer Reports (Welsby, Hurlstone and Gordon), 11 vols., 1847-1856
- Exch. C. R. .... Exchequer Court Reports (Canada), 21 vols., 1881-1922
- [ ] Exch. C. R. .... Exchequer Court Reports (Canada), 1923-current
- Ex. D. (Ex. Div.) .... Law Reports, Exchequer Division, 5 vols., 1876-1890
- F. & F. .... Foster and Finlason's Reports, Nisi Prius, 4 vols., 1856-1867
- F. Supp. .... Federal Supplement (U.S.A.)
- Grant (Gr.) .... Upper Canada Chancery (Grant), 29 vols., 1849-1882
- Greaves' Cons. Acts .... Greaves' Consolidated Criminal Acts 2nd ed. 1862
- Hale P. C. .... Hale's Pleas of the Crown, 2 vols.
- Hals. .... Halsbury's Laws of England
- Hals. Stat. .... Halsbury's Complete Statutes of England
- Hawk. P. C. .... Hawkins' Pleas of the Crown, 2 vols.
- H. & N. .... Hurlstone and Norman's Reports, Exchequer, 7 vols., 1856-1862
- Hopkins (N.Y.) .... Hopkins Chancery (U.S.A.) 1 vol. 1823-1826  
(see State Tr.)
- I. C. I. R. .... Irish Common Law Reports, 17 vols., 1849-1866
- I. L. R. .... Indian Law Reports
- [ ] I. R. (Ir. R.) .... Irish Reports, 1893-current
- James .... Nova Scotia Reports (James), 1 vol., 1853-1855

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J. C. L.	Journal of Criminal Law, 1937-current
Johns.	Johnson, N.Y. Supreme Court Reports, 20 vols., 1806-1823
J. P.	Justice of the Peace, 1837-current
J. P. Jo.	Justice of the Peace (Weekly Notes of Cases)
[ ] K. B.	Law Reports, King's Bench Division, 1905-1952
Keb.	Keble's Reports, 3 vols., 1661-1677
Kel.	Sir John Kelyng's Reports, Crown Cases, fol., 1 vol., 1662-1707
Kel. W.	W. Kelyng's Reports, fol., 1 vol., Chancery, 1730-1732; King's Bench, fol., 1731-1734
Ky.	Kentucky Law Reports (U.S.A.)
L. & C.	(see Le. & Ca.)
L. C. Jur.	Lower Canada Jurist, 35 vols., 1848-1891
L. C. R.	Lower Canada Reports, 17 vols., 1850-1867
Ld. Raym.	Lord Raymond's Reports, King's Bench and Common Pleas, 3 vols., 1694-1732
Leach.	Leach's Crown Cases, 2 vols., 1730-1814
Le. & Ca.	Leigh and Cave's Crown Cases Reserved, 1 vol., 1861-1865
Lew C. C.	Lewin's Crown Cases on the Northern Circuit, 2 vols., 1822-1838
L. J. Ch.	Law Journal, Chancery, 1822-1949
L. J. C. P.	Law Journal, Common Pleas, 1822-1875
L. J. Ex.	Law Journal, Exchequer, 1830-1875
L. J. K. B. (L. J. Q. B.)	Law Journal, King's Bench or Queen's Bench, 1822-1949
L. J. M. C.	Law Journal, Magistrates' Cases, 1831-1896
L. J. (Newsp.)	Law Journal Newspaper, 1866-current
L. J. O. S.	Law Journal, Old Series, 10 vols., 1823-1831
L. J. P.	Law Journal, Probate, Divorce and Admiralty, 1875-1949
L. J. P. C.	Law Journal, Privy Council, 1865-1949
L. Q. R.	Law Quarterly Review
L. R.	Law Reports (see A.C., K.B., Q.B., Ch. & Pro. D. & A.)
L. R. C. C. R.	Law Reports, Crown Cases Reserved, 2 vols., 1865-1875
L. R. Exch.	Law Reports, Exchequer, 10 vols., 1865-1875
L. R. H. L.	Law Reports, English and Irish Appeals and Peerage Claims, House of Lords, 7 vols., 1866-1875
L. R. Ir.	Law Reports (Ireland), Chancery and Common Law, 32 vols., 1877-1893
L. R. Q. B.	Law Reports, Queen's Bench, 10 vols., 1865-1875
L. T. (L. T. R. or L. T. N. S.)	Law Times Reports, 1859-1947

- L. T. Jo. .... Law Times Newspaper, 1843-current  
L. T. O. S. .... Law Times Reports, Old Series, 34 vols.,  
1843-1860  
Man. & G. .... Manning and Granger's Reports, Common Pleas,  
7 vols., 1840-1845  
Man. L. R. (Man. R.,  
    M. R. or M. L. R.) .... Manitoba Law Reports, 1875-current  
Mass. .... Massachusetts Reports (U.S.A.)  
M. L. R. (Q. B.) (Mont. .... Montreal Law Reports (Queen's Bench), 7 vols.,  
    L. R. (Q. B.) .... 1885-1891  
Mood.C.C.(Mood.Rep.) Moody's Crown Cases Reserved, 2 vols., 1824-1844  
Mood. & R. .... Moody and Robinson's Reports, Nisi Prius, 2  
vols., 1830-1844  
M. P. R. .... Maritime Provinces Reports, 1930-current  
M. & S. (Mau. & Sel.) .... Maule and Selwyn's Reports, King's Bench, 6  
vols., 1813-1817  
M. & W. .... Meeson and Welsby's Reports, Exchequer, 16  
vols., 1836-1847  
N. B. R. .... New Brunswick Reports, 54 vols., 1825-1928  
New Rep. .... New Reports, 6 vols., 1862-1865  
N. S. R. .... Nova Scotia Reports, 60 vols., 1834-1929  
N. Y. .... New York Reports (U.S.A.)  
N. Y. S. .... New York Supplement (U.S.A.)  
N. Z. L. R. .... New Zealand Law Reports  
O. A. R. .... Ontario Appeal Reports, 27 vols., 1876-1900  
O. L. R. .... Ontario Law Reports, 66 vols., 1901-1930  
O. R. .... Ontario Reports, 32 vols., 1882-1900  
[ ] O. R. .... Ontario Reports, 1931-current  
O. W. N. .... Ontario Weekly Notes, 41 vols., 1909-1932  
[ ] O. W. N. .... Ontario Weekly Notes, 1933-current  
O. W. R. .... Ontario Weekly Reporter, 27 vols., 1902-1914  
Pac. .... Pacific Reporter (U.S.A.)  
P. D. .... Law Reports, Probate, Divorce and Admiralty  
Division, 15 vols., 1875-1890  
P. E. I. .... Hazard and Warburton's Reports, 2 vols.,  
1850-1882  
Phila. .... Philadelphia (Penn.) Reports (U.S.A.)  
P. R. .... Practice Reports (Ontario), 19 vols., 1850-1900  
Q. B. .... Queen's Bench Reports, 18 vols., 1841-1852  
Q. B. (L. R.) .... Law Reports, Queen's Bench, 10 vols., 1866-1875  
[ ] Q. B. .... Law Reports, Queen's Bench Division, 1891-1905  
and 1953-current

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Q. B. D.	Law Reports, Queen's Bench Division, 25 vols., 1875-1890
Que. K. B. (Que. Q. B.)	Quebec Official Reports (Queen's—King's Bench), 1892-current
Que. L. R. (Q. L. R.)	Quebec Law Reports, 17 vols., 1874-1891
Que. P. R.	Quebec Practice Reports, 1897-current
Que. S. C.	Quebec Official Reports (Superior Court) 1892-current
Ramsay's A. C.	Ramsay's Appeal Cases (Quebec), 1 vol., 1873-1886
Rev. de Jur. (R. de Jur.)	La Revue de Jurisprudence, 1895-1942
R. L.	La Revue Legale, 1943-current
R. L.	La Revue Legale, 21 vols., 1869-1894
R. L. N. S.	La Revue Legale (New Series), 48 vols., 1895-1942
Rolle's Abt.	Rolle's Abridgement, 2 vols., 1668
Russ. & M.	Russell and Mylne's Reports, Chancery, 2 vols., 1829-1833
Russ. & Ry.	Russell and Ryan's Crown Cases Reserved, 1 vol., 1800-1823
Ry. & M.	Ryan and Moody's Reports, Nisi Prius, 1 vol., 1823-1828
Salk.	Salkeld's Reports, King's Bench, 3 vols., 1689-1712
Sask. L. R. (S. L. R.)	Saskatchewan Law Reports, 25 vols., 1908-1931
S. C. (J.)	Court of Justiciary Cases (Scotland), 1906-current
Sc. L. R.	Scottish Law Reports, 1865-current
S. C. R.	Canada Supreme Court Reports, 61 vols., 1877-1922
S. C. R.	Canada Supreme Reports, 1923-current
Sid.	Siderfin's Reports, King's Bench, Common Pleas and Exchequer, fol., 2 vols., 1657-1670
Sol.	The Solicitor
Sol. Jo.	Solicitor's Journal, 1856-current
State Tr. (St. Tr.)	State Trials, 34 vols., 1163-1820
State Tr. (N. S.) (St. Tr. (N. S.))	State Trials, New Series, 8 vols., 1820-1858
Str.(Stra.)	Strange's Reports, 2 vols., 1716-1747
Stu. K. B.	Stuart's Reports (Lower Canada), 1 vol., 1810-1835
Taunt.	Taunton's Reports, Common Pleas, 8 vols., 1807-1819
Term. Rep.	Term Reports (Durnford and East), fol., 8 vols., 1785-1800
Terr. L. R.	Territories Law Reports (Northwest Territories), 7 vols., 1885-1907
T. L. R. (Times L. R.)	The Times Law Reports, 1884-1952
U. C. C. P.	Upper Canada Common Pleas, 32 vols., 1850-1881

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- U. G. L. J. .... Upper Canada Law Journal (Old Series), 10 vols.,  
1855-1864
- U. C. Q. B. .... Upper Canada, Queen's Bench, 46 vols.,  
1844-1881
- U. S. .... United States Supreme Court Reports (U.S.A.)
- Ves. .... Vesey Jun.'s Reports, Chancery, 19 vols.  
1789-1817
- Ves. Sen. .... Vesey Sen.'s Reports, 2 vols., 1747-1756
- W. L. R. .... Western Law Reporter, 34 vols., 1905-1916
- [ ] W. L. R. .... Weekly Law Reports, 1953-current
- [ ] W. N. .... Weekly Notes, 1866-1952
- W. R. .... Weekly Reporter, 54 vols., 1852-1906
- W. W. R. .... Western Weekly Reports, 10 vols., 1911-1916
- [ ] W. W. R. .... Western Weekly Reports, 1917-1950
- W. W. R. (N. S.) .... Western Weekly Reports, New Series,  
1951-current

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## CONCORDANCE SHOWING DISPOSAL OF SECTIONS OF THE REPEALED CODE.

In the revision some Parts of the repealed Code, notably Parts XVI, XVIII and XXI, have been completely rewritten, with the result that it is not possible to allocate every section to a corresponding section in the new Code. Where this is so the section is not enumerated.

R.S.C. 1927, c. 36	New Code Section	R.S.C. 1927, c. 36	New Code Section
1	1	(42)	(41)
2 (1)	2 (1)	(43)	(42)
(2)	(2)	(44)	(43)
(3)	dropped	(45)	(44)
(4)	(3)	(2)	3 (1)
(4) (a)	(4)	3	3 (2)
(5)	(5)	4	3 (3)
(6)	dropped	5	3 (4) and 485
(7)	(9)	6	3 (5)
(8)	391 (d)	7	3 (6)
(9)	dropped	8	4
(9) (a)	168 (1) (e)	9	6
(10)	not required because of definition of territorial division.	10	covered by 7
(11)	(12)	13	10
(12)	(13)	14	dropped
(13)	(15)	15	11
(14)	(16)	16	7 (2)
(15)	(17)	17	12
(16)	dropped	18	13
(16) (a)	(19)	19	16
(17)	(20) and (8)	20	17
(18)	dropped	21	18
(19)	(21)	22	19
(20)	dropped	23	
(20) (a)	(23)	24	
(21)	(24)	25	25
(22)	(26)	26	
(23)	247 and 421 (4)	27	
(24)	(28) and (11)	28	28
(25)	(29)	29	25
(26)	dropped	30	
(27)	(30)	31	
(28)	(22)	32	
(29)	(31)	33	
(30)	(31) (2)	34	
(31)	(32)	35	
(32)	(34)	36	
(33)	(35)	37	
(34)	(36)	38	
(35)	dropped	39	dropped
(36)	(43)	40	25
(37)	dropped	41	29
(38)	(38)	42	
(39)	(39)	43	
(40)	(40)	44	25
(41)	410 (2)	45	

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R.S.C. 1927, c. 36	New Code Section	R.S.C. 1927, c. 36	New Code Section
46	30	105}	dropped
47	31	106}	81 (1)
48}		107}	
49	32	108}	
50}		109}	dropped
51}		110}	
52	27	111	
53 (1) and (2)	34	112	78
(3)	36	113	79
54 (1)	35	114	79
(2)	36	115	80
55	37	116	82
56	38	117	83
57}	39	118	84
58}		119	85 (1)
59}	40	120	86
60		121	88
61	41	122	89
62	42	123	90
63	43	124	91
64	44	125	93
65	45	126	94
66	26	127	95
67	14	128	96
68	15	129	97
69	21 and 407	130	98
70	22	131}	
71	23	132}	dropped
72	24		
73	Rep. 1943-44, c. 23 s. 3	132A	63
74 (1)	46 (1) and (2)	133 }	60
(2)	47 (1)	133A}	61
75	46 (3)	134	62
76	50	135	dropped
77	46 (1)	136	166
78	46 (1)	137	75
79	51	138	76
80	49	139	75
81	53	140	dropped
82	54	141	Rep. 1951, c. 47, s. 10
83	56	142-154	Rep. 1950, c. 11, s. 4
84	57	155	99
85}	Rep. 1939, c. 49, s. 15	156	100 (1)
86}		157	101
87	64	158	102
88	65	159	654
89	67	160	103
90	66	161	104
91	68	162	105 and 654
92	69	163	106
93	33	164	107
94	70	165	108
95	110	166	109
96}		167}	110
97}	372	168}	
98	Rep. 1936, c. 29, s. 1	169	111
99	71	170	99 and 112
100	Sec 160	171	99
101	72	172	113 (1)
102	73	173	114
103		174	113 (1)
104	74		

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R.S.C. 1927, c. 36	New Code Section	R.S.C. 1927, c. 36	New Code Section
175}	114	226}	168 (1) (b) (c) (d) (h), (i)
176}		227}	and
177	117	228	168 (2), (4)
178	408 (b)	229 (1)	176 (2)
179	118	(2)	182 (2)
180	119	229 (3)	176 (1)
181	dropped	229 (4)	182
182	122	(5)	168 (1) (h)
183	123	(6)	182 (2)
184	dropped	(7)	dropped
185	125	(8)	182 (4)
186	128	230	182 (3)
187}	124	231	183
188}		231A	175
189	125	232	326 (1)
190	125	233	327
191}	127	234	dropped
192}		235 (1)	180
193		(2) - (6)	177
194	126	236	178
195		237	179
196	129	238 (a)	167
197	130	(b)	164 (a)
198	246	(c)	dropped
199)		(d)	160 (b)
200	161	(e)	164 (b)
201}		(f)	160 (c)
202	147	160 (d)	Rep. 1947, c. 55, s. 5
203	dropped	142	372
204		158	164 (c)
205		159	164 (d)
205A		149	164 (e)
206		150	164 (2)
207		151	185
207A		152	186
208		153	190
209 (a), (b)	324	239	186 and 190
(c)		240	189
210	131 (3)	241	187
211 (1)	143	242	covered by 191
(2)	131 (4)	243	188
(3)	dropped	244	190
212	144	245	194 (l)
213	131 (4), 145	246	195
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(2)	131 (2)	248	194 (6)
215 (1)	155	249	198
(2) (5) (6)	157	250	200
(7)	133	251	199
216	184 (1), (2)	252	196
217	156	253	197
218	408 (c)	254	201
219	140	255	202
220	dropped	256	203
221}	165	257	205
222}		258	204
222A	dropped	259	206
222B	160 (a)	260	210
223	dropped	261	316
224	dropped	262 (1)	
225	168 (1) (b)	(2)	

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R.S.C. 1927, c. 36	New Code Section	R.S.C. 1927, c. 36	New Code Section
266 (a)	408 (a)	313	234
(b)	407	314	dropped
267	211	315	235
268	207	316	236
268A	208	317	248
269	212	318	249
270	213	319	262
271	214	320	255
272	215	321	256
273	216	322	257
274	231 (2)	323	258
275	dropped	324	259
276	218	325	260
277}	217	326	265
278}		327	268
279	78	328	264
280	79	329	253
281	219	330	254
282	220	331	261
283}	covered by 193	332	252
284}		333	250
285 (1)	covered by 221 (1)	334	251
285 (2)	221 (2) and (3)	335 (1) (a) (b) and (c)	dropped
(3)	281	(d)	268 (a)
(4)	222	(e) (f)	dropped
(4) (a)	223	(g)	2 (14)
(4) (b)-(e)	224	(h)	168 (b)
(5)	226	(i)	dropped
(6)	221 (1)	(j) (k) (l)	268 (c) (d) (e)
(7), (8)	225	(m)	dropped
(9)	2 (18)	(n)	dropped
286	227	(o)	dropped
287	228	(p) (q) (r)	322 (a)
288}	229 (1) and (2)	(s)	dropped
289}		(t) (u)	268 (f)
290	230	(v)	dropped
291	231 (1)	(w)	dropped
292 (a), (b)	141 (1)	(x)	dropped
(c)	231 (2)	(y)	322 (b)
293	148	336	dropped
294	132	337	dropped
295	231 (2)	338	dropped
296	232	339	dropped
297	233	340	2 (14)
298 (1)	135	341	294
(2)	139	342	Covered by 351
299	136	343	dropped
300	137	344	269
301 (1)-(3)	138	345	269 (5)
(4)	131 (4)	346	270 (1)
302	dropped	347	269 (1) - (4)
303}	237	348	271
304}		349 (1)	272
305	238	(2)	dropped
306	209	350	dropped
307	239	351	273
308	240	352	274
309 (1)	241 (1)	353	dropped
(2)	242	354	275
310	243 (1)	355	276
311	244	356	277
312	245		

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358		410	346
359		411	348
360		412 (1), (2)	336
361	dropped	(3)	344
362		413	340
363		414	343
364	298 (1)	415	340
365		415A(b),(c)	341
366		(a) (d)(e)	dropped
367		416	342
368		417 (a), (b)	335
369		(c)	345
370		418	340
371	dropped	419	328
372		420	329
373		421	330
374		422	dropped
375		423	
376		424 (1), (6)	337
377		(2)-(5)	dropped
378 (1)	dropped	424A	339
(2)	279	425	331
379		426	332
380		427	333
381		428	334
382	dropped	429	dropped
383		430	358
384		431 (1)-(8)	dropped
385		(4)	285 (2)
386	covered by 280	432	359
387		433	360
388	dropped	434	361 and 654
389	dropped	435	362
390	282	436	363
391	283	437	
392	284 (1)	438	Rep. 1951, c. 47, s. 17
393	covered by 386	439	
394	285 (1) and (6)	440	
395	dropped	441	dropped
396	286	442 (a)	181
397	287	(b)	179
398	299	443	308
399	replaced by 296, 297	444	323
400	298 (1)	444A	325
401	dropped	445	288
402	300	446	
403	dropped	447	289
404	303	448	288
405 (1)	304 (1) (a)	449	290
(2)	304 (1) (b)	450	
(3)	304 (4)	451	
405A	58	452	291
405B	59	453	
405C	58	454	
406 (1)	305	455	
(2)	306 (1) and (2)	456	
(3)	306 (3) and (4)	457	
407 (1)	dropped	458	292
(2) (a)	304 (1) (c)	459	
(b)	304 (1) (d)	460	
(3)	307	461	
408	346	462	293

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R.S.C.1927,c.36	New Code Section	R.S.C.1927,c.36	New Code Section
463	82	516B	372
464	295	517	
465	dropped	518	
466	309	519	372
467	311	520	
468	310 (1)	521	
469}	Rep. 1950, c. 11, s. 6	522	
470		523	covered by 372, 406
471		524	379
472}	312	525	372
473		526	380
474	313	527	381
475	314	528	320
476	315	529	382
477	317	530	383
478	318	531	384
479	319	532	
480		533	
481	320 and 321	534	372
482		535	
483		536	385
484	340	537 (1) (a), (b)	386
485	340	(c)	316
486	349	(2)	dropped
487}	replaced by	538	316
488}	351 and 352	539	373
489}		540	dropped
490	353	541	371 (2) and (3) and 376
490A	354	542	387
491	355	543	388
492	356	544	389
493	dropped	545	390
494	352	545A	419
495	dropped	546	391
496}	109	547	391
497}		548	404
498	411	549 (1)	403 (2)
498A	412	(2)	dropped
499	365	550	392
500	dropped	551	400
501}	366	552	
502}		553	392-395
502A	367	554	
503	dropped	555	
504	368	556	
504A	dropped	557	401
505	369	558	402
506	dropped	559	398, 399
507	Rep. 1931, c. 28, s. 10	560	
508	dropped	561	394
509	371 (1)	562 (a)	393
509A	52	(b)	392
510	372	563	401
510A	163	564	392
511	374	565	
512	375	566	395, 396
513	374	567	
514	375	568	dropped
515 (1), (2)	377	569 (1)	403
(3)-(6)	dropped	(2)	405
516	316 (1) (b)		
516A	378		

R.S.C. 1927, c. 36	New Code Section	R.S.C. 1927, c. 36	New Code Section
570}		623	
571}	406, 407	624	
572}		625	
573	408 (1) (d)	625	
574}	406	626	dropped
575}		627	
575A	659	628	
575B	660	629	429
575C (1)	660	630	430
(2)	dropped	631	432 (1), (2)
(3) (4)	662	632	covered by 405
575D	663	633	433
575E	667	634	96
575F	664	635	355 (2)
575G (1)	664	636	dropped
(2) and (3)	665	637	338
575H	666	638	285 (3)
576	424	639	Rep. 1951, c. 47, s. 21
577	414	640	172
578	dropped	641	171 and 173
579	554	642 (1) (2)	174
580 (1)	418 (1)	(3)	dropped
(2)	418	643	dropped
581	416	644	427
581A	417	645	428
582	413 (2)	646	434
583	413 (2)	647	435
584	419	648	435
585	422	649	436
586}	423	650	437
587}		651	Rep. 1951, c. 47, s. 21
588	dropped	652	435 pt. 438 pt.
589	dropped	653	439
590	410 (1)	654	439
591	420 (2)	655 (1) (2), (4)	440 (1)-(3)
592	dropped	(3)	See 604
593	100 (2)	656	dropped
594	dropped	657	Rep. 1951, c. 47, s. 21
595	229 (3)	658 (1)	441 (1)
596}		(2)	441 (2)
597		(3)	440 (4)
598}	dropped	(4)	441 (3)
599		(5)	441 (6)
600		659 (1)	442 (3)
601}		(2)	440 (4)
602}	dropped	660 (1)	443
603}		(2), (3)	442 (1) and (2)
604	425	661 (1), (2)	444
604A	604	(3)	20
605	dropped	662 (1)-(3)	447 and 429 (2)
606	426	(4)-(6)	446
607	dropped	663	602
608-618	Rep. 1950, c. 11, s. 7	664	442 (1) (c)
619}		665 (1)	dropped
620}	dropped	(2), (3)	456
621}		666	456
622	Rep. 1943-44, c. 23, s. 12	667	448
	See 96	668	449
		669	458
		670	459
		671	601 (2), 605

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R.S.C. 1927, c. 36	New Code Section	R.S.C. 1927, c. 36	New Code Section
672	441 (3), 606	721	708
673	603	721A	712
674 (1) (2), (3)	610 (1) 611	722 723	710 701
675	603	724	704
676 (1) (2)	604 606 (3)	725 726	703 711
677	609	727	713
678	457	728	714
679		729	dropped
680	451	730	715
681		731	dropped
682	453	732	699
683		733	dropped
684	453 and 454	734	
685	455	735	
686	454	736	716
687	460	737	
688	dropped	738	
689	dropped	739	694
690	460	740	621 (4), 373
691	512	741	
692	461	742	
693	609	743	dropped
694	461	744	
695 (1) (2) (3), (4)	462 508 (3) 514	745 746 747	621 dropped
696	Rep. 1947, c. 55, s. 20	748 (1)	637
697		(2) - (5)	717
698	463	749	719, 720, 721
699		750	721, 722, 724, 725
700	464	751 (1)	727
701	463	(2)	731 (2)
702	463	(3)	728
703	672	(4), (5)	dropped
704	636	752	covered by 727
705 (a)	2 (6)	752A	Rep. 1947-48, c. 39, s. 32
(b)	2 (31)	753	727 (4)
(c)	dropped	754	727 and 732
(d)	2 (39)	755	730
(e)	733	756	732 (2)
706	692 (d), 693	757 (1)	726 (1)
707	692 (g), 705	(2)	725 (2)
708 (1) (2) - (4) (5)	695 (2) 697 692 (g)	(3) (1) 758	712 (4) 782 (3) 731 (1)
709	699	759	731 (3) and (4)
710	695, 696	760	729, 730
711	604, 606, 700	761	734
712	447	762 (1)-(3)	735
713	604, 606, 700	(4), (5)	736
714	428	763	737
715	709	764	738
716 (1) (2) (3) (4)	709 (3) 613, 616 (1) 617 616 (2)	765 766	740 741
717	702	767	739
718	710 (3)	768	742
719	706	769	743
720	707	770	744

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R.S.C. 1927, c. 36	New Code Section	R.S.C. 1927, c. 36	New Code Section
Sections of Part XVI not enumerated are to be taken as not incorporated.		842 (1) (2) (3)	610 611 612
771 (a)	466 (b)	843 } 844 }	491 491 (8)
773	467	845 (1), (2) (3)	dropped
775	480	846	55 and 492
778 pt.	482	847 (1) (2)	510
781 (1)-(3) (4) (5) (6)	468 471 482 483 507	848 849 850	dropped 502 and 503 dropped
782 (1) (2), (3)	441 (4) and (5) 470	851 852 }	572 492
783 }	469	853 }	
784 }		854	500
785	468 (3)	855 (1) (2)	493 492
786	471	856	499, 501
787	428	857 }	501
788	604	858 }	
789	441 606	859 }	497
790		860 }	
791	482	861	494
792		862	495
793		863	496
794	574	864 (a) - (d)	dropped
795	630	(e)	270 (2)
796	450	865	498
797		866 }	
798 }	484	867 }	dropped
799 }		868 }	
800-821	Rep. 1947-48 c. 39, s. 36	869 (1) (2)	298 (2)
822	dropped	870	dropped
823 (a)	466 (a)	871	dropped
824	473	872	486
825 (1)	472	873 (1) - (3) (4)	487
(5)	480		488
(6)	474	(5) - (7)	489
826	474	874 }	504
827 (1)	474	875 }	
(2)	474	876	505
(3)	478	877	506
(5)	482	878	dropped
828	475	879	507
829	479	880 }	
830	475	881 }	dropped
831	481	882 }	
832	477	883	446
833 (1)	477	884 }	508
(2) (3)	482 (2)	885 }	
834	478	886 (1) (2)	509 669
834A }		887	508
835 }	484	888	421 (1), (2)
836 }		889 }	510
837 }		890 }	
838	483	891	500 (2), (3)
839	484	892	dropped
840	669	893	510
841 (1)	610		
(2)	612		

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R.S.C. 1927, c. 36	New Code Section	R.S.C. 1927, c. 36	New Code Section
894}		951 (1) (2)	569
895}	512	952	569
896}		953	dropped
897	513	954	503 (2)
898	510	955	404
899 (2)	537	956	267
900 }	515	957	405
901 (1), (2) }		958	559
902}		959	556
903}	dropped	960	560
904}		961	561
905 (1)	516	962	490
(2)	522	963	572
906	516	964	573
907	518	965	580
908	517	966	523
909	519	967	524
910	520	968	525
911	521	969	526
912}	266	970	527
913}		971	605
914	532	972 (1)	610
915	533	(2)	611
916	528	(3)	612
917	dropped	973	603
918	529	974	608
919	530	975	611
920	531	976	See 607, 608
921	534	977	446
922	dropped	978	562
923	535	979	113 (2)
924	536	980	dropped
925	538	981	403
926	539	982	574
927 (1)-(5)	540	983	dropped
(6)	541	984	565
928	550	985	169
929	552	986 (1) - (3)	169
929A	553	(4)	170
930}	549	987	326 (2)
931}		988	563
932	542	989	284 (2), (3)
933	543	990	285 (4), (5)
933A	541	991	364
934	546	992	357
935	547	993	301
936	548	994	302
937	544	995	
938	545	996	613-618
939	551	997	
940	488 (3)	998	
941	446	999	619 (1)
942	557 (3)	1000	619 (2)
943	557	1001	564
944	558	1002 (a)	47 (2)
945 (1) (2) (6)	554	(b)	115
(3)-(5)	556	(c)	181 (1), 184 (3)
946	556	(d)	242 (2), see 184
947	266	(e)	310 (2)
948	213 (2)	1003 (1)	dropped
949	567	(2)	566
950	568	(3)	99 (f)

R.S.C. 1927,c.36	New Code Section	R.S.C. 1927,c.36	New Code Section
1004	575	1036}	626
1005	576	1037}	
1006	covered by 634	1038	627 (1)
1007	dropped	1039	355 (2)
1008}	577	1040	dropped
1009}		1041-1043	Rep. 1950, c. 11, s. 18
1010	578	1044	dropped
1011	579	1045	631
1012	581	1046}	dropped
1013 (1), (2) pt.	583	1047}	
(2), (4), (5)		1048	628
pt.		1049	629
(3)	584	1050	630
(6)	582	1051	5 (1) (b)
(5) pt.	585	1052 (1)	633
1014 (1) (a) (b)	592 (4)	(2)	694 (1)
(c)	592 (1)(a)	1053	dropped
(d)	592 (1)(b)(iii)	1054	621
(2)	592 (1)(b)(iv)	1054A (1)-(3)	661
(3)	592 (2)(6)	(4)	662
(4)	592 (5)	(5)	661, 664
1015	593	(6)	665 (2)
1016 (1)	592 (1)(b)(i)	(7)	666
(2)	592 (1)(b)(ii)(3)	(8)	659
(3)	592 (1)(c)	1054B	624
(4)	592 (1)(d)	1055	621 (4)
1017	424 (2)(d)(iv)	1056	634
	595	1057	dropped
1018	586, 594	1058}	637
1019	587	1059}	
1020	424, 588	1060	641
1021 (1)-(3)	424, 589	1061	dropped
(4), (5)	590	1062	642
(6), (7)	591	1063	643
(8)	589 (3)	1064	644
(10)	591	1065}	
(11)	424	1066}	645
(13)-(18)	424	1067}	
1022 (1)	658	1068	646
(2)	596	1069	647
1023 (1)	597 (1)	1070	648
(2) pt.	597 (2)	1071	650
(3)	598	1072	649
(4)	599	1073	651
1024 (1) (2)	600	1074	652
(3) (4)	dropped	1075	653
1025 (1)	597, 598	1076	655
(2)	599	1077	656
1025A	dropped	1078	dropped
1026	640	1079	dropped
1027	5 (1)	1080	658
1028	621 (1)	1081	638
1029	621 (2)	1082	dropped
1030}		1083	639
1031	5 (1) (b)	1084}	657
1032}		1085}	
1033}		Sections of Part	
1034	654	XXI of R.S.C.	
1035 (1), (2)	622	1927, c. 36, not	
(3)	623	enumerated are	
(4)	621 (4) (c)	to be taken as	
1035A	625	not incorporated,	

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R.S.C. 1927,c.36	New Code Section	R.S.C. 1927,c.36	New Code Section
1086}	668 (1)	1128	687
1087}		1129	682
1088	672	1130	688
1089	675	1131	689
1090	672	1132	Rep. 1950, c. 11, s. 21
1091	673	1133-1139	Rep. 1951, c. 47, s. 25
1092	670	1140 (1)(a)(i),	
1093	674	(ii)	48 (1)
1094	676	(1)(c)(v)to	
1098}	668, 676	(x)	133, 184 (4)
1099}		(2)	48 (2)
1106	679	1141	627 (2)
1107	678	1142	693 (2)
1116	678	1143	
1117	679	1144	
1120	681	1145	dropped
1121}	682	1146	
1122}		1147	
1123	dropped	1148	
1124	683	1149	Rep. 1950, c. 11, s. 21
1125	684	1150	dropped
1126	685	1151	dropped. See 25
1127	686	1152	753

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# MARTIN'S ANNOTATED CRIMINAL CODE OF CANADA

## INTRODUCTION

It is often said that the *Criminal Code of Canada*, 1892, is based upon the English Draft Code of 1878. Although a good deal of the latter was embodied in the Canadian legislation, this is true only to a limited extent—each had its genesis in earlier legislation. On the other hand, it is unjustifiably extreme to speak of the Canadian Code, as has been done, as a "hodge-podge" of the laws of the Colonies which entered into Confederation.

Before 1826, the criminal law of England was scattered through many different Acts. Reformers, notably Jeremy Bentham, Sir Samuel Romilly and Sir James Mackintosh were pressing for change, and in the years between 1826 and 1828 a number of remedial and consolidating Acts were passed at the instance of the Home Secretary, Sir Robert Peel. It is interesting to note that in 1823 he had secured legislation whereby about one hundred felonies were exempted from capital punishment and that, according to his biographer, Sir Tresham Lever, two hundred and seventy-eight earlier Acts relating to criminal law were sifted during his first tenure of office as Home Secretary and such of their provisions as continued to be of any value consolidated in eight new Acts.

1833 saw the appointment of the first of a series of Criminal Law Commissioners, but it was not until 1878 that, from the hand of Sir James Stephen, the English Draft Code came into being. Meanwhile, in 1861, the Parliament of the United Kingdom enacted several Acts to consolidate and amend the criminal law, namely, c.94 (Accessories and Abettors); c.95 (Repeals); c.96 (Larceny); c.97 (Malicious Injuries to Property); c.98 (Forgery); c.99 (Offences against the Coinage); c.100 (Offences against the Person).

Two years after Confederation the Parliament of Canada enacted several Acts relating to criminal law, especially the *Criminal Law Procedure Act*, and also Acts relating to forgery, to larceny, to perjury, to offences against the person, and to offences against the coinage. In introducing

them Sir John A. MacDonald said (May 24, 1869) that "The primary object in introducing these criminal laws was the assimilation of the whole criminal law of the Dominion, and every other consideration was subsidiary to this". These Acts appear in the Statutes of 1869 and in the Revised Statutes of 1886. While these Acts contain many of the provisions of the Imperial Acts of 1861 it is of interest (even if the interest be now no more than historical) to note that a number of provisions had special reference to conditions in Canada. For example, it was said that the *Act respecting the Preservation of Peace at Public Works*, which later became Part III of the *Criminal Code* and was repealed in 1950, was copied from an Act which had existed in Canada for many years and was first enacted when the Lachine Canal was being enlarged.

The Prime Minister said also (May 4, 1869) that "There were reasons in this country only, that the restrictions imposed on carrying weapons should not be so general as those which prevail in England. We were exposed to irruptions from the neighbouring States of lawless characters in the habit of carrying weapons, and were it known that our people were prohibited by law from defending themselves, these parties might be encouraged to greater depredations". From this and from the fact, which appears elsewhere, that the British garrisons were being removed from Canada rather against the will of Canadian authorities, it may be inferred that the memory of the Fenian raids was still very much alive.

Again, in answer to a motion to abolish whipping as a punishment, still a moot subject, he said that it was not new in Canada, but that it had been provided for in an Act passed in 1847 for persons under eighteen years of age convicted of certain offences.

Thus it appears that, while it is true that the English Draft Code of 1878 is the specific basis of the Canadian Code, much of the substance of both was to be found in Peel's Acts and in the Acts of 1861. For many purposes it was still necessary to refer to the common law, and that will continue to be necessary in respect of some aspects of criminal procedure in Canada, although not with regard to offences. It is to be remembered too that the English Draft Code dealt only with indictable offences and that the basis of the procedure on summary conviction is to be found in the *Summary Jurisdiction Act*, 1848 (Imp.), known as Jervis' Act.

Although the British Parliament has passed other Codes, e.g., the *Partnership Act* and the *Sale of Goods Act*, it failed to pass a Criminal Code notwithstanding that several bills based upon the Draft Code of 1878 were introduced in successive years thereafter. The reasons for the opposition are academic so far as Canada is concerned since we have such a Code. It is sufficient to say that the chief opponent was Chief Justice Sir Alexander Cockburn, and that the principal ground of objection was that it put the law in a strait jacket, losing in the process the elasticity of the common law. By this was meant the ability of the common law to adapt itself to new conditions, but critics of this theory say on the other hand that it meant simply taking away from the judges their right to declare new offences. Stephen himself has strongly criticized the achievement of the judges in declaring the offence of common law conspiracy, and, as will be seen later (s.120), the declaration of the common law offence of public mischief met with adverse comment of equal vigour.

What, then, is a Code? To take the dictionary meaning, a code of law is a complete and co-ordinated body of law, approved by legislation and arranged under the public authority, in which the laws enacted and to be specifically applied by the courts are set forth in a brief manner and according to their relation to each crime or condition. In his speech introducing the Criminal Code (Indictable Offences) Bill in the British Parliament of 1879, the then Attorney General said (Parl. Deb., 3 Series, Volume 245, Column 315): "Now, as I understand the term, a Code is nothing more or less than a legislative declaration of the law, and the whole of the law, relating to any particular subject, which declaration is made by an enactment or enactments expressed in precise and perfectly accurate language. The law which is thus declared may be derived from a variety of sources. . . . When, however, it . . . has been declared in such enactments as I have described, this declaration is to be accepted as correct . . . and the Code is made a fresh point of departure and a fresh source of law, beyond which, or behind which it is not permitted to go in order to carry out further investigation." And (at Column 334) he added: "Pass the Code tomorrow and they would soon have commentaries upon it, and reports and digests of the decisions to which the ever changing circumstances of life would give rise. Still, however, it was an important thing that our laws should be classified and arranged, as far as possible in symmetrical form."

The following words spoken by Lord Herschell in *BANK OF ENGLAND v. VAGLIANO*, [1891] A.C.107, at p.145, are illuminating:

"The purpose of such a statute (i.e., a statute intended to embody in a code a particular branch of the law) surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions, dependent upon a knowledge of the exact effect even of an obsolete proceeding such as a demurrer to evidence. I am of course far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the code." (The words in brackets added).

This leads to the equally fundamental question, What is a crime? It has been defined as "an act or omission in respect of which legal punishment may be inflicted on the person who is in default either by acting or omitting to act". However, Stephen in his History of Criminal Law says that this is too wide for practical purposes and (Vol.1, p.3) he describes criminal law as follows:

"The criminal law is that part of the law which relates to the definition and punishments of acts or omissions which are punished as being  
(1) attacks upon public order, internal or external; or  
(2) abuses or obstructions of public authority; or  
(3) acts injurious to the public in general; or  
(4) attacks upon the persons of individuals, or upon rights annexed to their persons; or  
(5) attacks upon the property of individuals or rights connected with, and similar to rights of property."

Nevertheless these definitions, however apt they may be in Great Britain where one Parliament legislates for the whole country, cannot be applied without qualification in relation to the *Criminal Code of Canada*. To understand why this is so, it is necessary to turn to the *British North America Act, 1867*. Section 91 of that Act empowers the Parliament of Canada to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects assigned by the Act exclusively to the Legislatures of the provinces, and includes among other special categories, the criminal law including the procedure in criminal matters (par.27). Section 92 assigns to the provincial Legislatures a variety of subjects including property and civil rights in the province (par.13) and "The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section" (par.15). This latter power gives rise to what are sometimes called "provincial crimes", that is to say, infractions of provincial statutes punishable by fine or imprisonment which are crimes in the broad sense of the definitions already quoted but which, of course, have their application only within the province.

It has been found in operation that the line of demarcation between the legislative powers of the Dominion and of the provinces is sometimes not clear. To give one illustration, the right of the former to legislate upon matters of trade and commerce has led to some conflict with the right of the latter to legislate with reference to property and civil rights within the province. Similarly, there has been found to be some overlapping in the field of criminal law.

In *ATTORNEY-GENERAL, FOR ONTARIO v. RECIPROCAL INSURERS*, [1924] A.C.328, the Privy Council held that legislation passed as section 508C of the *Criminal Code* was invalid as being an attempt to regulate contracts of insurance, a matter within the powers of the provinces. Referring to some earlier decisions it was said (at p.342):

"In accordance with the principle inherent in these decisions their Lordships think it is no longer open to dispute that the Parliament of Canada cannot, by purporting to create penal sanctions under s.91, head 27, appropriate to itself exclusively a field of jurisdiction in which, apart from such a procedure, it could exert no legal authority, and that if, when examined as a whole, legislation in form criminal is found, in aspects and for purposes exclusively within the Provincial sphere, to deal with matters committed to the Provinces, it cannot be upheld as valid".

And at p. 343 the following appears:

"Their Lordships think it undesirable to attempt to define, however generally, the limits of Dominion jurisdiction under head 27 of s.91; but they think it proper to observe, that what has been said above does not involve any denial of the authority of the Dominion Parliament to create offences merely because the legislation deals with matters which, in another aspect, may fall under one or more of the subdivisions of the jurisdiction entrusted to the Provinces. It is one thing, for example, to declare corruption in municipal elections, or

negligence of a given order in the management of railway trains, to be a criminal offence and punishable under the *Criminal Code*; it is another thing to make use of the machinery of the criminal law for the purpose of assuming control of municipal corporations or of Provincial railways."

On the other hand the same body held s.498A of the *Criminal Code* (s.412, *post*) dealing with discrimination in trade, to be properly within the scope of the criminal law and therefore valid legislation (*ATTORNEY-GENERAL FOR BRITISH COLUMBIA v. ATTORNEY-GENERAL FOR CANADA*, [1937] A.C.368). The following appears at p.375:

"The only limitation on the plenary power of the Dominion to determine what shall or shall not be criminal is the condition that Parliament shall not in the guise of enacting criminal legislation in truth and in substance encroach on any of the classes of subjects enumerated in s.92. It is no objection that it does in fact affect them. If a genuine attempt to amend the criminal law, it may obviously affect previously existing civil rights. The object of an amendment of the criminal law as a rule is to deprive the citizen of the right to do that which, apart from the amendment, he could lawfully do. No doubt the plenary power given by s.91(27) does not deprive the Provinces of their right under s.92(15) of affixing penal sanctions to their own competent legislation. On the other hand, there seems to be nothing to prevent the Dominion, if it thinks fit in the public interest, from applying the criminal law generally to acts and omissions which so far are only covered by provincial enactments."

It follows that if the Parliament of Canada, acting within its powers declares, expressly or by reasonable intendment, that certain conduct constitutes a criminal offence, the provincial Legislatures are precluded from penalizing the same conduct. Thus, when a provincial Liquor Act declared it to be an offence to refuse to answer questions asked by a peace officer in the course of his duty to enforce it, it was held that this provision infringed upon the *Criminal Code*, under which it was already an offence to obstruct a peace officer in the execution of his duty (*R. v. MAGEE*(1923), 40 C.C.C.10). And when the *Criminal Code* declared it to be an offence for a person to operate a motor vehicle while intoxicated, it automatically superseded similar provincial legislation (*R. v. FIELD* (1928), 51 C.C.C.80).

Here it may be mentioned that the new Code makes a change from the former s.161. Its effect is noted with s.107 *post*.

In considering the legislative competence of Canadian legislatures, especially the Parliament of Canada, it is necessary to refer to the *Statute of Westminster*, 1931, of which the provisions relevant here are as follows:

"2. (1) The *Colonial Laws Validity Act*, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or in-

operative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule, or regulation made under such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion.

3. It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

4. No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.

7. (1) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the *British North America Acts*, 1867 to 1930, or any order, rule or regulation made thereunder.

(2) The provisions of section two of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the legislatures of such Provinces.

(3) The powers conferred by this Act upon the Parliament of Canada or upon the legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the legislatures of the Provinces respectively."

During the debates on the *Criminal Code* in 1892 the colonial status of the Canadian Parliament was referred to from time to time, for example, with regard to the sections dealing with false trade marks, and it is to be borne in mind too that the *Colonial Laws Validity Act* of 1865 rendered the Acts of a colonial legislature invalid to the extent of any repugnancy between them and Imperial legislation. It will be seen that this Act has ceased, by virtue of the *Statute of Westminster*, to have any effect upon legislation passed since the date of that Act, and that "in truth Canada is in enjoyment of the full scope of self-government". The principal impact of the *Statute of Westminster* is (1) upon the right to pass legislation with extra-territorial effect, and (2) upon the right of appeal.

1. The *Criminal Code* as it was introduced in 1892 contained a clause providing that the "criminal law of Canada extends to all offences committed by any person in Canada or on such part of the sea adjacent to the coast of Canada as is within one marine league from ordinary low watermark or is determined by international law to be within the territorial sovereignty of Her Majesty, or committed by any person on board any British ship or boat on the great lakes or on the high seas or in any place where the Admiralty of England has jurisdiction, and piracy by the Law of Nations wherever committed."

This gave rise to lengthy debate and, in spite of affirmations that it merely declared the existing law, it was finally dropped on the ground that the reference to international law introduced an element of un-

certainty. At the same time, the Admiralty jurisdiction was recognized in sections which appear in the Code of 1927 as ss.589 and 656.

Again, there had been conflicting decisions regarding bigamous marriages contracted outside of Canada. In the case of the *QUEEN v. BRIERLY*(1887), 14 O.R.525, it was held that the bigamy sections were *intra vires* in so far as they dealt with a second marriage outside Canada, but in the *QUEEN v. PLOWMAN*(1894), 25 O.R.656, it was held that they were *ultra vires*. By reason of this conflict, a reference was taken to the Supreme Court of Canada which held (the Chief Justice dissenting) that it was within the power of the Parliament of Canada to make it an offence for a British subject to leave Canada with intent to enter into a bigamous marriage elsewhere: *IN RE CR. CODE BIGAMY SECTIONS* (1897), 27 S.C.R.461.

In so far as territorial waters were concerned, the *Territorial Waters Jurisdiction Act*, 1878 (Imp.) applied in Canada. By that Act an 'offence' was defined as 'an act, neglect or default of such a description as would, if committed within the body of a county in England, be punishable on indictment according to the law of England for the time being in force'. This Act was stated to extend to a distance of one marine league from shore at low watermark.<sup>(1)</sup> It is mentioned here for the reason that the British Solicitor General said of s.3 of the *Statute of Westminster* that its effect was "that each nation has the capacity to legislate outside the three-mile limit of its own territory in respect of its own subjects in such a way as to make them amenable to the law, as administered in its own courts when they come within its jurisdiction". (See s.420, *post*).

2. As long ago as 1888 the Parliament of Canada inserted in the *Criminal Code*, a section designed to abolish appeals to the Privy Council in criminal cases. This, as noted in *BRITISH COAL CORPORATION v. THE KING*, [1935]A.C.500, at p.514, remained unchallenged until 1926. In that year it came to be considered by the Privy Council in *NADAN v. THE KING*, [1926]A.C.482, and that body held that the powers granted by s.91 of the *British North America Act* "did not appear to their Lordships to authorize the Dominion Parliament to annul the prerogative right of the King in Council to grant special leave to appeal". They then referred to the *Colonial Laws Validity Act*, 1865, and went on to say that "in their Lordships' opinion s.1025 of the *Canadian Criminal Code*, if and so far as it is intended to prevent the Sovereign in Council from giving effective leave to appeal against an order of the Canadian Court, is repugnant to the Acts of 1833 (the *Judicial Committee Act*, 1833) and 1844 (the *Judicial Committee Act*, 1844) which have been cited, and is therefore void and inoperative by virtue of the Act of 1865".

After the passage of the *Statute of Westminster* the Criminal Code was amended in the same sense (1932-33, c.53, s.17) and the new legislation was considered by the Privy Council and held to be valid in the *British Coal Corporation* case. It was held that the limitations imposed by the *Colonial Laws Validity Act*, 1865, and by the doctrine forbidding

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<sup>(1)</sup> It is to be noted that for some other purposes, e.g. the protection of the revenue, the distance was not so restricted. See *CROFT v. DUNPHY*, [1933]A.C.156.

extra-territorial legislation had been removed by the Statute of Westminster.

Further consequences of the *Statute of Westminster* were the passing of the *Extra-territorial Act* (R.S.C. 1952, c.107) and the *Canada Shipping Act* (R.S.C. 1952, c.29) and a re-enactment of s.54 of the *Supreme Court Act* (R.S.C. 1952, c.259). The first mentioned is not relevant to this discussion but ss.690, 691 and 692 of the *Canada Shipping Act*, R.S.C. 1952, c.29, contain important criminal jurisdiction supplemental to the Criminal Code.

By s.691 jurisdiction is given to courts, justices, and magistrates over vessels lying off the coasts and persons on board or belonging to such vessels "as if the vessel or persons were within the limits of the original jurisdiction of the court, justice or magistrate". This is expressed to be "in addition to and not in derogation of any jurisdiction or power of a court under the *Criminal Code*". S.692 confers jurisdiction upon Canadian courts in respect of offences committed on the high seas, aboard ships of Canadian registry, or in foreign ports, and this jurisdiction covers within its limitations not only British subjects but others as well. The section applies "notwithstanding anything contained in the *Criminal Code* or in any other Act". By s.693 Canadian courts are given jurisdiction in respect of offences against property or person committed in or at any place either ashore or afloat out of Her Majesty's dominions by members of the crews registered in Canada.

The amendment to the *Supreme Court Act* abolishes entirely appeals to the Privy Council and expressly repeals the Judicial Committee Acts mentioned above. For this reason the prohibition contained in s.1024(4) of the *Criminal Code* is not continued in the new Code, but is left to the operation of s.54 of the *Supreme Court Act*.

This last mentioned amendment was challenged before the Privy Council in *ATTORNEY-GENERAL FOR ONTARIO v. ATTORNEY-GENERAL FOR CANADA*, [1947]A.C.127, and held to be *intra vires* of the Parliament of Canada. The following review of the Nadan and British Coal Corporation cases appears at pages 149 and 150:

'In 1935 there came before the Board the British Coal Corporation case in which the same question was raised, but with this vital difference, that in the meantime the *Statute of Westminster* had been passed. The section of the *Criminal Code* then in force purported in unambiguous terms to abolish the appeal to His Majesty in Council; 'Notwithstanding any royal prerogative or anything contained in the *Interpretation Act* or in the *Supreme Court Act*, no appeal shall be brought in any criminal case from any judgment or order of any court in Canada to any court of appeal or authority in which in the United Kingdom appeals or petitions to His Majesty may be heard'. The validity of this provision was challenged by certain persons who sought leave to appeal in a criminal case from a judgment of the court of King's Bench (Appeal Side) of the Province of Quebec. But it was challenged in vain. The Board, after once more expounding the nature of appeals to His Majesty in Council, explained the decision in Nadan's case thus: 'Their Lordships are of opinion that the judgment

was based on two grounds only: (1) that s.1025 was repugnant to the *Privy Council Acts* of 1833 and 1844 and was therefore void under the *Colonial Laws Validity Act*, 1865; (2) that it could only be effective if construed as having an extra-territorial operation, whereas according to the law as it was in 1926 a Dominion statute could not have extra-territorial operation. These two difficulties as the law then stood could only be overcome by an Imperial Statute . . . . Such, their Lordships think, is the meaning of the decision in Nadari's case . . . . The Board proceeded to consider the question whether the difficulties had been overcome. Recalling the words used by Lord Loreburn L.C., in delivering the judgment of the Judicial Committee in *ATTORNEY-GENERAL FOR ONTARIO v. ATTORNEY-GENERAL FOR CANADA*: 'Now, there can be no doubt that under this organic instrument the powers distributed between the Dominion on the one hand and the provinces on the other hand, cover the whole area of self-government within the whole area of Canada. It would be subversive of the entire scheme and policy of the Act to assume that any point of internal self-government was withheld from Canada' (words that their Lordships reiterate in regard to the present appeal); the Board concluded that both difficulties had been removed by the *Statute of Westminster*. 'There now remain,' it was said, 'only such limitations as flow from the Act itself,' the operation of which as effecting the competence of Dominion legislation was saved by s.7 of the statute, a section which excludes from the competence of the Dominion and provincial Parliaments any power of 'repeal, amendment or alteration' of the Act'."

If anything further be needed to indicate the effect of the *Statute of Westminster* it is to be found in *CROFT v. DUNPHY*, [1933] A.C.156. In that case the Privy Council declined to express an opinion whether or not the statute was of retrospective effect and contented itself with observing (p.167) that "the question of the validity of extra-territorial legislation by the Dominion cannot at least arise in the future."<sup>2</sup>

The following, while not exhaustive, is a summary of the principal changes effected by the new Code:

1. Proceedings for offences at common law are not to be instituted under United Kingdom statutes, pre-confederation statutes or ordinances (s.8). The common law offences which have been codified include common law conspiracy (s.408(2)) public mischief (s.120) indemnification of bail (s.119(2)(d)) and compounding felony (s.121).
2. Provision is made (s.9) for appeals in cases of contempt of court.
3. Treason is redefined to include killing or causing bodily injury to Her Majesty or putting her under restraint, levying war against Canada, assisting an enemy at war with Canada or armed forces engaged in

(<sup>1</sup>) Italics supplied.

(<sup>2</sup>) For further discussion of the *Statute of Westminster* see K. G. Wheare: 'The Statute of Westminster, 1931; Maurice Ollivier: The British North America Act and selected statutes; *CANADA STEAMSHIP LINES v. CHARLAND*(1935), 39 Rev. de Jur.70; *MAY v. HARTIN*, [1946]4 D.L.R.202; *R. v. BRITISH COLUMBIA ELECTRIC COMPANY*, [1946]4 D.L.R.81; and, with reference to the *Extra-territorial Act*, Hansard, 1933, Vol.5, p.4744.

hostilities against Canadian forces, using force to overthrow the Government, and the communication to an agent of a state other than Canada, of information likely to be used prejudicially to the safety or defence of Canada (s.46).

4. It is made an offence to incite or assist a subject of a state against whose forces Canadian forces are engaged in hostilities, to leave Canada without the consent of the Crown (s.50(1)).

5. The reference to piratical acts not amounting to piracy by the Law of Nations is limited to acts in relation to or done on board Canadian ships (s.76).

6. Under s.164 it was an offence to disobey a statute of Canada or of a province where the statute does not expressly provide a punishment. The reference to provincial legislation is not continued (s.107).

7. It is made an offence for a witness who has given evidence in a judicial proceeding to give contradictory evidence on a material issue in subsequent judicial proceedings (s.116).

8. On charges of rape, carnal knowledge and indecent assault, where the only evidence implicating the accused is that of the woman who has been assaulted, the judge is required to instruct the jury that it would be unsafe to convict on her uncorroborated evidence unless they are satisfied beyond a reasonable doubt that her evidence is true (s.134).

The provisions requiring corroboration in respect of the offences of living on the avails of prostitution (former s.216(1)), householder permitting defilement (former s.217) and conspiracy to defile (former s.218) are not retained but incest has been added to the cases in which corroborative evidence is required.

9. In cases of seduction of girls between sixteen and eighteen years of age, the requirement which formerly appeared in s.211 that the trial judge must instruct the jury that if they find that the accused is not wholly or chiefly to blame he is entitled to be acquitted, is not retained. Corroboration is still necessary (See ss.131 and 143).

10. The provisions relating to acts of gross indecency which formerly appeared in s.206 are extended to include such acts committed by persons of either sex (s.149).

11. Criminal negligence is defined (s.191). It is made an offence to cause death or bodily harm by criminal negligence (ss.192 and 193). Where death is caused by a motor vehicle a charge may be preferred under s.192 or a charge of manslaughter may be laid.

12. The provision in the former s.260(d) relating to constructive murder, i.e., killing while armed in the commission or attempted commission of specified offences or in flight thereafter, has been redrawn with reference to the decision of the Supreme Court of Canada in *ROWE v. THE KING*(1951), 100 C.C.C.97, and in other respects (s.202(d)).

13. The law concerning infanticide has been changed in several particulars. The definition (s.204) is extended to include cases in which the

mind of the mother is disturbed by the effect of lactation. Where a woman is charged with an offence arising out of the death of her newly born child, a justice may at the preliminary inquiry, remand her for mental examination (s.451(c)). There is further provision that where the evidence upon the trial of a charge of infanticide establishes that the accused caused the death of the child but not that she was mentally disturbed within the definition, she is not entitled to acquittal unless she establishes that her act was not wilful (s.570).

14. The words "receives or retains in his possession" which appeared in the former s.399 have been replaced by the words "has in his possession". The possession of goods obtained by crime thus becomes an offence if there is guilty knowledge (s.296).

15. Minimum punishments for offences under the Code are not retained except in four instances, namely, driving while intoxicated (s.222); driving with impaired ability (s.223); theft of postal matter (s.298); and for a person found to be a criminal sexual psychopath (s.662(3)).

16. Special punishments for subsequent offences under the Code are not retained except for the offences under ss.222 and 223.

17. The provisions which empower courts to make orders to prohibit persons convicted of drunken driving, from driving motor vehicles, are made applicable to persons convicted of driving while their ability is impaired (s.225).

18. The provisions creating various offences of theft and providing special punishments therefor are not retained in detail, and the maximum punishment for that offence has been fixed at ten years' imprisonment (s.280).

19. In an endeavour to overcome the variation in sentences for indictable offences a schedule of sentences of imprisonment has been adopted, namely, two years, five years, ten years, fourteen years, life imprisonment. The death penalty for rape is not continued but whipping for certain offences is retained.

The new Code (s.694) provides a general penalty for summary conviction offences.

20. Provision is made whereby, at the request of an accused convicted in one province, offences which he admits having committed in another may be taken into account in passing sentence. This is subject to the consent of the Attorney General of that other province (s.421(3)).

21. The provision formerly in s.1081 which required the consent of counsel for the Crown to the granting of suspended sentence is not retained (s.638).

22. The provision dealing with failure to collect fares which formerly appeared in s.412 is extended to include tolls and admissions (s.336).

23. The former s.424 which dealt with highgrading is made applicable

throughout Canada. The provision requiring a proclamation before it comes into force in certain localities is not retained (s.387).

24. The provision making it an offence to bill liquor falsely to enable its transportation into a prohibited area (former s.412(3)) is extended to include other contraband goods (s.344).

25. The former s.499 dealing with criminal breach of contract has been redrawn (s.365).

26. The provisions relating to wilful damage to and inference with property are largely consolidated (s.372).

27. The fraudulent use of slugs, etc., in vending machines or receptacles for collecting fares or tolls is made an offence (s.397).

28. The former s.584(c) has been put in more general terms to provide that an offence committed on a vehicle during the course of a journey may be tried in any jurisdiction through which the vehicle passed on that journey (s.419(c)). Similar provision is made with respect to offences committed in an aircraft (s.419(d)).

29. The provisions of the former ss.592, 594, and 596 to 598 requiring the consent of the Attorney-General to the commencement of certain prosecutions, are not retained. On the other hand, such a provision has been added for cases under ss.116 (giving contradictory evidence), 328 (fraudulent concealment of documents), 365 (criminal breach of contract) and 420 (offences in territorial waters).

30. The powers of search and seizure set out in ss.431 and 432 effect changes as follows:

(a) A peace officer may seize, in addition to things mentioned in the search warrant anything that he has reasonable grounds to believe has been obtained by or used in the commission of an offence.

(b) A person interested in goods under seizure may obtain an order permitting him to examine them.

(c) An appeal is provided against an order of forfeiture.

31. The limitation of time for the commencement of prosecutions is retained only in respect of certain treasonable and sexual offences and in summary conviction matters (ss.48(1), 157(2), 184(4) and 693(2)).

32. The provisions in the former s.688 whereby a private prosecutor might be bound over to prosecute is not continued.

33. Private informers will no longer be able to bring penal actions. Such actions will be maintainable only at suit of the Crown, subject to a limitation of two years (s.627).

34. Provision has been made for the granting of bail upon a recognizance with a cash deposit (ss. 451, 461, 463 and 710(3)).

35. The provisions of the *Territorial Waters Jurisdiction Act*, 1878 giving the courts jurisdiction over offences committed by a foreigner through the operation of or on board a foreign ship in territorial waters have been adapted (s.420).

36. Parts XVI and XVIII of the repealed Code, which dealt with the trial of indictable offences without jury before magistrates and judges respectively, had various provisions in common and have been combined into Part XVI of the new Code. The principal changes are as follows:

- (a) There is a new definition of "magistrate" for purposes of the Part (s.466).
- (b) The cases of indecent assault specified in the former s.773(d) have been withdrawn from the absolute jurisdiction of the magistrate and will be subject to election.
- (c) Lottery offences and charges of cheating at play have been added to that absolute jurisdiction (s.467(c)(iv) and (v)).
- (d) If an accused is before a justice charged with an offence within the absolute jurisdiction of a magistrate under Part XVI, the justice shall remand him to appear before a qualified magistrate (s.450(1)).
- (e) In cases where the accused has a right to elect, the justice will give him an opportunity to do so at the preliminary inquiry (s.450(2)).
- (f) There will be a right to elect in the following cases in which under the former s.583 it did not exist:  
Spreading false news, s.166;  
Frauds on government, s.102;  
Breach of trust by public officer, s.103;  
Municipal corruption, s.104;  
Selling offices, s.105;  
Defamatory Libel, ss.250 and 251.  
(See s.413.)
- (g) A judge or magistrate trying an indictable offence will have power to try an issue of insanity (ss.523 and 524). This is an extension of the former ss.966 and 967.
- (h) The prosecution is given powers in relation to preferring charges under Part XVI, similar to those which it has in cases in the superior courts (s.478(2)).

37. The judge and not the jury is to try a challenge to the array (s.537).

38. The issues raised by the special pleas of *autrefois acquit*, *autrefois convict* and pardon are to be tried by the judge and not by the jury (s.516(3)).

39. The power to amend indictments is extended to meet a conflict in the decisions regarding the amendment of an indictment which omits an essential averment (s.510).

40. The provisions relating to the finding of verdicts for included offences are extended to permit a verdict for a summary conviction offence where the accused is charged with an indictable offence (s.569(1)).

41. With certain exceptions the power of the court to order costs in criminal cases is not retained. The exceptions are cases of criminal libel (ss.631 and 632), and summary conviction matters. The former s.1044, which provided also for an allowance for expenses, is not continued.

42. A court may make against an accused an order for compensation to a person aggrieved from moneys in his possession at the time of arrest except where there is a dispute in relation to that money by claimants other than by the accused (s.628). The limit of one thousand dollars which appears in the former s.1048 is not retained.

43. The Attorney-General of Canada is given the same right of appeal where the prosecution is conducted by the Government of Canada as the Attorney-General of a province has in other cases (s.601). It may be added that with reference to summary conviction proceedings similar provision is made in ss. 724 and 743.

44. The former section 1025A which required an accused who had been acquitted to provide bail pending the hearing of an appeal on the part of the Crown, is not retained. This had been severely criticized in the courts.

45. The right of the Crown to appeal against an acquittal is extended to include an appeal against an acquittal for the principal offence although the accused has been convicted of an included offence (s.584).

46. There is an important change from the former s.1014(2) concerning the power of the court of appeal to dismiss an appeal where it is of opinion that no substantial wrong or miscarriage of justice has actually occurred (s.592(1)(b)(iii)).

47. With reference to summary convictions, in addition to the provision for a general penalty which has already been mentioned, there are the following principal changes:

(a) More than one offence may be included in an information. Where this is done the justice is given a power of severance similar to that of a superior court (ss.696 and 708(4)).

(b) The provisions of the former Code for the issue of warrants of distress are not retained.

(c) There is provision for use on the hearing of an appeal of evidence taken on the hearing before the justice (s.727(2)).

48. Part IX of the repealed Code which dealt with counterfeiting has been completely rewritten and appears as Part X of the new Code. The principal change is in its application to paper money (s.891(b)).

49. Part X(A) of the repealed Code, which dealt with habitual offenders, appears as Part XXI of the new Code. There have been some changes:

- (a) The former s.1054A referring to criminal sexual psychopaths is incorporated in the Part and its application has been extended.
- (b) It will be for the prosecution to apply for preventive detention of an habitual criminal. The application will be to a judge after notice to the accused and the charge will contain no indication that such an application is to be made.
- (c) The power to impose sentence of preventive detention on an habitual criminal is extended to courts sitting under Part XVI. Where there is a jury it will be the judge and not the jury which will determine the status of the accused.
- (d) The accused is given a right of appeal against a sentence of preventive detention and the Crown is given an appeal against the dismissal of an application therefor (ss.659 *et seq.*).

50. The former Part XXI which is replaced by Part XXII of the new Code has been rewritten so as to simplify it and to provide, in respect of the forfeiture of the bail, a procedure more nearly uniform than the old procedure. It is drawn upon the principle that, as has been held, the recovery upon a forfeited recognizance is a civil, rather than a criminal proceeding.

It is made clear (s.671) that where an accused commits an offence while he is at large on bail his arrest for that subsequent offence does not release the sureties from their recognizance in respect of the previous charge.

51. Part XXIII dealing with extraordinary remedies (formerly Part XXII) has been changed

- (a) to make a uniform provision for appeals in respect of *certiorari*, *mandamus* and prohibition (ss.690 and 691), and
- (b) the new Code contains no reference to *quo warranto*, that being a civil rather than a criminal matter.

52. Ss.1143 *et seq.* of the former Code relating to actions against persons administering the criminal law are not continued. Ss.25 to 33 contain provisions for the justification of those administering the criminal law, and otherwise the matters covered by the repealed sections are left to the operation of provincial laws for the protection of public officers.

By way of conclusion it must be repeated that the foregoing is an attempt only to call attention to the principal changes contained in the new Code and not to set out all that have been made. Others appear in notes to the relevant sections. It is trite to observe that the effect of the changes must await their interpretation by the courts, and it is by reason of the rule that the debates in Parliament cannot be cited in court, that the following pages contain sparing reference to what was said in Parliament when Code Bills were before it.