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## Criminal Code (R.S., 1985, c. C-46)

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Act current to January 16th, 2011

Attention: See coming into force provision and notes, where applicable.

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### PART VIII

#### OFFENCES AGAINST THE PERSON AND REPUTATION

##### INTERPRETATION

##### Definitions

**214.** In this Part,

"abandon" or "expose"

« *abandonner* » ou « *exposer* »

"abandon" or "expose" includes

(a) a wilful omission to take charge of a child by a person who is under a legal duty to do so, and

(b) dealing with a child in a manner that is likely to leave that child exposed to risk without protection;

"aircraft"

« *aéronef* »

"aircraft" does not include a machine designed to derive support in the atmosphere primarily from reactions against the earth's surface of air expelled from the machine;

"child" [Repealed, 2002, c. 13, s. 9]

"form of marriage"

« *formalité de mariage* »

"form of marriage" includes a ceremony of marriage that is recognized as valid

(a) by the law of the place where it was celebrated, or

(b) by the law of the place where an accused is tried, notwithstanding that it is not recognized as valid by the law of the place where it was celebrated;

"guardian"

« *tuteur* »

“guardian” includes a person who has in law or in fact the custody or control of a child;

“operate”

« *conduire* »

“operate”

(a) means, in respect of a motor vehicle, to drive the vehicle,

(b) means, in respect of railway equipment, to participate in the direct control of its motion, whether

(i) as a member of the crew of the equipment,

(ii) as a person who, by remote control, acts in lieu of such crew, or

(iii) as other than a member or person described in subparagraphs (i) and (ii), and

(c) includes, in respect of a vessel or an aircraft, to navigate the vessel or aircraft;

“vessel”

« *bateau* »

“vessel” includes a machine designed to derive support in the atmosphere primarily from reactions against the earth’s surface of air expelled from the machine.

R.S., 1985, c. C-46, s. 214; R.S., 1985, c. 27 (1st Supp.), s. 33, c. 32 (4th Supp.), s. 56; 2002, c. 13, s. 9.

## DUTIES TENDING TO PRESERVATION OF LIFE

### Duty of persons to provide necessities

**215.** (1) Every one is under a legal duty

(a) as a parent, foster parent, guardian or head of a family, to provide necessities of life for a child under the age of sixteen years;

(b) to provide necessities of life to their spouse or common-law partner; and

(c) to provide necessities of life to a person under his charge if that person

(i) is unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and

(ii) is unable to provide himself with necessities of life.

### Offence

(2) Every one commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse, the proof of which lies on him, to perform that duty, if

(a) with respect to a duty imposed by paragraph (1)(a) or (b),

(i) the person to whom the duty is owed is in destitute or necessitous circumstances, or

(ii) the failure to perform the duty endangers the life of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently; or

(b) with respect to a duty imposed by paragraph (1)(c), the failure to perform the duty endangers the life of the person to whom the duty is owed or causes or is likely to cause the health of that person to be injured permanently.

### Punishment

(3) Every one who commits an offence under subsection (2)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

### Presumptions

(4) For the purpose of proceedings under this section,

(a) [Repealed, 2000, c. 12, s. 93]

(b) evidence that a person has in any way recognized a child as being his child is, in the absence of any evidence to the contrary, proof that the child is his child;

(c) evidence that a person has failed for a period of one month to make provision for the maintenance of any child of theirs under the age of sixteen years is, in the absence of any evidence to the contrary, proof that the person has failed without lawful excuse to provide necessaries of life for the child; and

(d) the fact that a spouse or common-law partner or child is receiving or has received necessaries of life from another person who is not under a legal duty to provide them is not a defence.

R.S., 1985, c. C-46, s. 215; 1991, c. 43, s. 9; 2000, c. 12, ss. 93, 95; 2005, c. 32, s. 11.

### Duty of persons undertaking acts dangerous to life

**216.** Every one who undertakes to administer surgical or medical treatment to another person or to do any other lawful act that may endanger the life of another person is, except in cases of necessity, under a legal duty to have and to use reasonable knowledge, skill and care in so doing.

R.S., c. C-34, s. 198.

### Duty of persons undertaking acts

**217.** Every one who undertakes to do an act is under a legal duty to do it if an omission to do the act is or may be dangerous to life.

R.S., c. C-34, s. 199.

### Duty of persons directing work

**217.1** Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.

2003, c. 21, s. 3.

### Abandoning child

**218.** Every one who unlawfully abandons or exposes a child who is under the age of ten years, so that its life is or is likely to be endangered or its health is or is likely to be permanently injured,

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

R.S., 1985, c. C-46, s. 218; 2005, c. 32, s. 12.

## CRIMINAL NEGLIGENCE

### Criminal negligence

**219.** (1) Every one is criminally negligent who

(a) in doing anything, or

(b) in omitting to do anything that it is his duty to do,

shows wanton or reckless disregard for the lives or safety of other persons.

#### Definition of "duty"

(2) For the purposes of this section, "duty" means a duty imposed by law.

R.S., c. C-34, s. 202.

#### Causing death by criminal negligence

**220.** Every person who by criminal negligence causes death to another person is guilty of an indictable offence and liable

(a) where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for life.

R.S., 1985, c. C-46, s. 220; 1995, c. 39, s. 141.

#### Causing bodily harm by criminal negligence

**221.** Every one who by criminal negligence causes bodily harm to another person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

R.S., c. C-34, s. 204.

## HOMICIDE

### Homicide

**222.** (1) A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being.

#### Kinds of homicide

(2) Homicide is culpable or not culpable.

#### Non culpable homicide

(3) Homicide that is not culpable is not an offence.

#### Culpable homicide

(4) Culpable homicide is murder or manslaughter or infanticide.

#### Idem

(5) A person commits culpable homicide when he causes the death of a human being,

(a) by means of an unlawful act;

(b) by criminal negligence;

(c) by causing that human being, by threats or fear of violence or by deception, to do anything that causes his death; or

(d) by wilfully frightening that human being, in the case of a child or sick person.

#### Exception

(6) Notwithstanding anything in this section, a person does not commit homicide within the meaning of this Act by reason only that he causes the death of a human being by procuring, by false evidence, the conviction and death of that human being by sentence of the law.

R.S., c. C-34, s. 205.

### When child becomes human being

**223.** (1) A child becomes a human being within the meaning of this Act when it has completely proceeded, in a living state, from the body of its mother, whether or not

- (a) it has breathed;
- (b) it has an independent circulation; or
- (c) the navel string is severed.

### Killing child

(2) A person commits homicide when he causes injury to a child before or during its birth as a result of which the child dies after becoming a human being.

R.S., c. C-34, s. 206.

### Death that might have been prevented

**224.** Where a person, by an act or omission, does any thing that results in the death of a human being, he causes the death of that human being notwithstanding that death from that cause might have been prevented by resorting to proper means.

R.S., c. C-34, s. 207.

### Death from treatment of injury

**225.** Where a person causes to a human being a bodily injury that is of itself of a dangerous nature and from which death results, he causes the death of that human being notwithstanding that the immediate cause of death is proper or improper treatment that is applied in good faith.

R.S., c. C-34, s. 208.

### Acceleration of death

**226.** Where a person causes to a human being a bodily injury that results in death, he causes the death of that human being notwithstanding that the effect of the bodily injury is only to accelerate his death from a disease or disorder arising from some other cause.

R.S., c. C-34, s. 209.

**227.** [Repealed, 1999, c. 5, s. 9]

### Killing by influence on the mind

**228.** No person commits culpable homicide where he causes the death of a human being

- (a) by any influence on the mind alone, or
- (b) by any disorder or disease resulting from influence on the mind alone,

but this section does not apply where a person causes the death of a child or sick person by wilfully frightening him.

R.S., c. C-34, s. 211.

## MURDER, MANSLAUGHTER AND INFANTICIDE

### Murder

**229.** Culpable homicide is murder

(a) where the person who causes the death of a human being

(i) means to cause his death, or

(ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

(b) where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being; or

(c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm to any human being.

R.S., c. C-34, s. 212.

### Murder in commission of offences

**230.** Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit high treason or treason or an offence mentioned in section 52 (sabotage), 75 (piratical acts), 76 (hijacking an aircraft), 144 or subsection 145(1) or sections 146 to 148 (escape or rescue from prison or lawful custody), section 270 (assaulting a peace officer), section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm), 273 (aggravated sexual assault), 279 (kidnapping and forcible confinement), 279.1 (hostage taking), 343 (robbery), 348 (breaking and entering) or 433 or 434 (arson), whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if

(a) he means to cause bodily harm for the purpose of

(i) facilitating the commission of the offence, or

(ii) facilitating his flight after committing or attempting to commit the offence,

and the death ensues from the bodily harm;

(b) he administers a stupefying or overpowering thing for a purpose mentioned in paragraph (a), and the death ensues therefrom; or

(c) he wilfully stops, by any means, the breath of a human being for a purpose mentioned in paragraph (a), and the death ensues therefrom.

(d) [Repealed, 1991, c. 4, s. 1]

R.S., 1985, c. C-46, s. 230; R.S., 1985, c. 27 (1st Supp.), s. 40; 1991, c. 4, s. 1.

### Classification of murder

**231.** (1) Murder is first degree murder or second degree murder.

### Planned and deliberate murder

(2) Murder is first degree murder when it is planned and deliberate.

### Contracted murder

(3) Without limiting the generality of subsection (2), murder is planned and deliberate when it is committed pursuant to an arrangement under which money or anything of value passes or is intended to pass from one person to another, or is promised by one person to another, as consideration for that other's causing or assisting in causing the death of anyone or counselling another person to do any act causing or assisting in causing that death.

### Murder of peace officer, etc.

(4) Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder when the victim is

- (a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties;
- (b) a warden, deputy warden, instructor, keeper, jailer, guard or other officer or a permanent employee of a prison, acting in the course of his duties; or
- (c) a person working in a prison with the permission of the prison authorities and acting in the course of his work therein.

#### Hijacking, sexual assault or kidnapping

(5) Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder in respect of a person when the death is caused by that person while committing or attempting to commit an offence under one of the following sections:

- (a) section 76 (hijacking an aircraft);
- (b) section 271 (sexual assault);
- (c) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm);
- (d) section 273 (aggravated sexual assault);
- (e) section 279 (kidnapping and forcible confinement); or
- (f) section 279.1 (hostage taking).

#### Criminal harassment

(6) Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder when the death is caused by that person while committing or attempting to commit an offence under section 264 and the person committing that offence intended to cause the person murdered to fear for the safety of the person murdered or the safety of anyone known to the person murdered.

#### Murder — terrorist activity

(6.01) Irrespective of whether a murder is planned and deliberate on the part of a person, murder is first degree murder when the death is caused by that person while committing or attempting to commit an indictable offence under this or any other Act of Parliament if the act or omission constituting the offence also constitutes a terrorist activity.

#### Murder — criminal organization

(6.1) Irrespective of whether a murder is planned and deliberate on the part of a person, murder is first degree murder when

- (a) the death is caused by that person for the benefit of, at the direction of or in association with a criminal organization; or
- (b) the death is caused by that person while committing or attempting to commit an indictable offence under this or any other Act of Parliament for the benefit of, at the direction of or in association with a criminal organization.

#### Intimidation

(6.2) Irrespective of whether a murder is planned and deliberate on the part of a person, murder is first degree murder when the death is caused by that person while committing or

attempting to commit an offence under section 423.1.

### Second degree murder

(7) All murder that is not first degree murder is second degree murder.

R.S., 1985, c. C-46, s. 231; R.S., 1985, c. 27 (1st Supp.), ss. 7, 35, 40, 185(F), c. 1 (4th Supp.), s. 18(F); 1997, c. 16, s. 3, c. 23, s. 8; 2001, c. 32, s. 9, c. 41, s. 9; 2009, c. 22, s. 5.

### Murder reduced to manslaughter

**232.** (1) Culpable homicide that otherwise would be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation.

#### What is provocation

(2) A wrongful act or an insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purposes of this section if the accused acted on it on the sudden and before there was time for his passion to cool.

#### Questions of fact

(3) For the purposes of this section, the questions

(a) whether a particular wrongful act or insult amounted to provocation, and

(b) whether the accused was deprived of the power of self-control by the provocation that he alleges he received,

are questions of fact, but no one shall be deemed to have given provocation to another by doing anything that he had a legal right to do, or by doing anything that the accused incited him to do in order to provide the accused with an excuse for causing death or bodily harm to any human being.

### Death during illegal arrest

(4) Culpable homicide that otherwise would be murder is not necessarily manslaughter by reason only that it was committed by a person who was being arrested illegally, but the fact that the illegality of the arrest was known to the accused may be evidence of provocation for the purpose of this section.

R.S., c. C-34, s. 215.

### Infanticide

**233.** A female person commits infanticide when by a wilful act or omission she causes the death of her newly-born child, if at the time of the act or omission she is not fully recovered from the effects of giving birth to the child and by reason thereof or of the effect of lactation consequent on the birth of the child her mind is then disturbed.

R.S., c. C-34, s. 216.

### Manslaughter

**234.** Culpable homicide that is not murder or infanticide is manslaughter.

R.S., c. C-34, s. 217.

### Punishment for murder

**235.** (1) Every one who commits first degree murder or second degree murder is guilty of an indictable offence and shall be sentenced to imprisonment for life.

### Minimum punishment



(2) For the purposes of Part XXIII, the sentence of imprisonment for life prescribed by this section is a minimum punishment.

R.S., c. C-34, s. 218; 1973-74, c. 38, s. 3; 1974-75-76, c. 105, s. 5.

### Manslaughter

**236.** Every person who commits manslaughter is guilty of an indictable offence and liable

(a) where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for life.

R.S., 1985, c. C-46, s. 236; 1995, c. 39, s. 142.

### Punishment for infanticide

**237.** Every female person who commits infanticide is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

R.S., c. C-34, s. 220.

### Killing unborn child in act of birth

**238.** (1) Every one who causes the death, in the act of birth, of any child that has not become a human being, in such a manner that, if the child were a human being, he would be guilty of murder, is guilty of an indictable offence and liable to imprisonment for life.

### Saving

(2) This section does not apply to a person who, by means that, in good faith, he considers necessary to preserve the life of the mother of a child, causes the death of that child.

R.S., c. C-34, s. 221.

### Attempt to commit murder

**239.** (1) Every person who attempts by any means to commit murder is guilty of an indictable offence and liable

(a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for life and to a minimum punishment of imprisonment for a term of

(i) in the case of a first offence, five years, and

(ii) in the case of a second or subsequent offence, seven years;

(a. 1) in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for life.

### Subsequent offences

(2) In determining, for the purpose of paragraph (1)(a), whether a convicted person has committed a second or subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

(a) an offence under this section;

(b) an offence under subsection 85(1) or (2) or section 244 or 244.2; or

(c) an offence under section 220, 236, 272 or 273, subsection 279(1) or section 279.1, 344 or

346 if a firearm was used in the commission of the offence.

However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.

### Sequence of convictions only

(3) For the purposes of subsection (2), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.

R.S., 1985, c. C-46, s. 239; 1995, c. 39, s. 143; 2008, c. 6, s. 16; 2009, c. 22, s. 6.

### Accessory after fact to murder

**240.** Every one who is an accessory after the fact to murder is guilty of an indictable offence and liable to imprisonment for life.

R.S., c. C-34, s. 223.

## SUICIDE

### Counselling or aiding suicide

**241.** Every one who

- (a) counsels a person to commit suicide, or
- (b) aids or abets a person to commit suicide,

whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

R.S., 1985, c. C-46, s. 241; R.S., 1985, c. 27 (1st Supp.), s. 7.

## NEGLECT IN CHILD-BIRTH AND CONCEALING DEAD BODY

### Neglect to obtain assistance in child-birth

**242.** A female person who, being pregnant and about to be delivered, with intent that the child shall not live or with intent to conceal the birth of the child, fails to make provision for reasonable assistance in respect of her delivery is, if the child is permanently injured as a result thereof or dies immediately before, during or in a short time after birth, as a result thereof, guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years.

R.S., c. C-34, s. 226.

### Concealing body of child

**243.** Every one who in any manner disposes of the dead body of a child, with intent to conceal the fact that its mother has been delivered of it, whether the child died before, during or after birth, is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

R.S., c. C-34, s. 227.

## BODILY HARM AND ACTS AND OMISSIONS CAUSING DANGER TO THE PERSON

### Discharging firearm with intent

**244.** (1) Every person commits an offence who discharges a firearm at a person with intent to wound, maim or disfigure, to endanger the life of or to prevent the arrest or detention of any person — whether or not that person is the one at whom the firearm is discharged.

## Punishment

(2) Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable

(a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for a term not exceeding 14 years and to a minimum punishment of imprisonment for a term of

(i) in the case of a first offence, five years, and

(ii) in the case of a second or subsequent offence, seven years; and

(b) in any other case, to imprisonment for a term not exceeding 14 years and to a minimum punishment of imprisonment for a term of four years.

## Subsequent offences

(3) In determining, for the purpose of paragraph (2)(a), whether a convicted person has committed a second or subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

(a) an offence under this section;

(b) an offence under subsection 85(1) or (2) or section 244.2; or

(c) an offence under section 220, 236, 239, 272 or 273, subsection 279(1) or section 279.1, 344 or 346 if a firearm was used in the commission of the offence.

However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.

## Sequence of convictions only

(4) For the purposes of subsection (3), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.

R.S., 1985, c. C-46, s. 244; 1995, c. 39, s. 144; 2008, c. 6, s. 17; 2009, c. 22, s. 7.

## Causing bodily harm with intent — air gun or pistol

**244.1** Every person who, with intent

(a) to wound, maim or disfigure any person,

(b) to endanger the life of any person, or

(c) to prevent the arrest or detention of any person,

discharges an air or compressed gas gun or pistol at any person, whether or not that person is the person mentioned in paragraph (a), (b) or (c), is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

1995, c. 39, s. 144.

## Discharging firearm — recklessness

**244.2** (1) Every person commits an offence

(a) who intentionally discharges a firearm into or at a place, knowing that or being reckless as to whether another person is present in the place; or

(b) who intentionally discharges a firearm while being reckless as to the life or safety of another person.

### Definition of "place"

(2) For the purpose of paragraph (1)(a), "place" means any building or structure — or part of one — or any motor vehicle, vessel, aircraft, railway vehicle, container or trailer.

### Punishment

(3) Every person who commits an offence under subsection (1) is guilty of an indictable offence and

(a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if the offence is committed for the benefit of, at the direction of or in association with a criminal organization, is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of

(i) five years, in the case of a first offence, and

(ii) seven years, in the case of a second or subsequent offence; and

(b) in any other case, is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of four years.

### Subsequent offences

(4) In determining, for the purpose of paragraph (3)(a), whether a convicted person has committed a second or subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

(a) an offence under this section;

(b) an offence under subsection 85(1) or (2) or section 244; or

(c) an offence under section 220, 236, 239, 272 or 273, subsection 279(1) or section 279.1, 344 or 346 if a firearm was used in the commission of the offence.

However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.

### Sequence of convictions only

(5) For the purpose of subsection (4), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.

2009, c. 22, s. 8.

### Administering noxious thing

**245.** Every one who administers or causes to be administered to any person or causes any person to take poison or any other destructive or noxious thing is guilty of an indictable offence and liable

(a) to imprisonment for a term not exceeding fourteen years, if he intends thereby to endanger the life of or to cause bodily harm to that person; or

(b) to imprisonment for a term not exceeding two years, if he intends thereby to aggrieve or annoy that person.

R.S., c. C-34, s. 229.

### Overcoming resistance to commission of offence

**246.** Every one who, with intent to enable or assist himself or another person to commit an indictable offence,

(a) attempts, by any means, to choke, suffocate or strangle another person, or by any means calculated to choke, suffocate or strangle, attempts to render another person insensible, unconscious or incapable of resistance, or

(b) administers or causes to be administered to any person, or attempts to administer to any person, or causes or attempts to cause any person to take a stupefying or overpowering drug, matter or thing,

is guilty of an indictable offence and liable to imprisonment for life.

R.S., c. C-34, s. 230; 1972, c. 13, s. 70.

### Traps likely to cause bodily harm

**247.** (1) Every one is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years, who with intent to cause death or bodily harm to a person, whether ascertained or not,

(a) sets or places a trap, device or other thing that is likely to cause death or bodily harm to a person; or

(b) being in occupation or possession of a place, knowingly permits such a trap, device or other thing to remain in that place.

### Bodily harm

(2) Every one who commits an offence under subsection (1) and thereby causes bodily harm to any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

### Offence-related place

(3) Every one who commits an offence under subsection (1), in a place kept or used for the purpose of committing another indictable offence, is guilty of an indictable offence and is liable to a term of imprisonment not exceeding ten years.

### Offence-related place — bodily harm

(4) Every one who commits an offence under subsection (1), in a place kept or used for the purpose of committing another indictable offence, and thereby causes bodily harm to a person is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years.

### Death

(5) Every one who commits an offence under subsection (1) and thereby causes the death of any other person is guilty of an indictable offence and liable to imprisonment for life.

R.S., 1985, c. C-46, s. 247; 2004, c. 12, s. 6.

### Interfering with transportation facilities

**248.** Every one who, with intent to endanger the safety of any person, places anything on or does anything to any property that is used for or in connection with the transportation of persons or goods by land, water or air that is likely to cause death or bodily harm to persons is guilty of an indictable offence and liable to imprisonment for life.

R.S., c. C-34, s. 232.

## MOTOR VEHICLES, VESSELS AND AIRCRAFT

## Dangerous operation of motor vehicles, vessels and aircraft

**249.** (1) Every one commits an offence who operates

(a) a motor vehicle in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might reasonably be expected to be at that place;

(b) a vessel or any water skis, surf-board, water sled or other towed object on or over any of the internal waters of Canada or the territorial sea of Canada, in a manner that is dangerous to the public, having regard to all the circumstances, including the nature and condition of those waters or sea and the use that at the time is or might reasonably be expected to be made of those waters or sea;

(c) an aircraft in a manner that is dangerous to the public, having regard to all the circumstances, including the nature and condition of that aircraft or the place or air space in or through which the aircraft is operated; or

(d) railway equipment in a manner that is dangerous to the public, having regard to all the circumstances, including the nature and condition of the equipment or the place in or through which the equipment is operated.

### Punishment

(2) Every one who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction.

### Dangerous operation causing bodily harm

(3) Every one who commits an offence under subsection (1) and thereby causes bodily harm to any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

### Dangerous operation causing death

(4) Every one who commits an offence under subsection (1) and thereby causes the death of any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

R.S., 1985, c. C-46, s. 249; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 32 (4th Supp.), s. 57; 1994, c. 44, s. 11.

### Flight

**249.1** (1) Every one commits an offence who, operating a motor vehicle while being pursued by a peace officer operating a motor vehicle, fails, without reasonable excuse and in order to evade the peace officer, to stop the vehicle as soon as is reasonable in the circumstances.

### Punishment

(2) Every one who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction.

### Flight causing bodily harm or death

(3) Every one commits an offence who causes bodily harm to or the death of another person by operating a motor vehicle in a manner described in paragraph 249(1)(a), if the person operating the motor vehicle was being pursued by a peace officer operating a motor vehicle and failed, without reasonable excuse and in order to evade the police officer, to stop the vehicle as soon as is reasonable in the circumstances.

#### Punishment

(4) Every person who commits an offence under subsection (3)

(a) if bodily harm was caused, is guilty of an indictable offence and liable to imprisonment for a term not exceeding 14 years; and

(b) if death was caused, is guilty of an indictable offence and liable to imprisonment for life.

2000, c. 2, s. 1.

#### Causing death by criminal negligence (street racing)

**249.2** Everyone who by criminal negligence causes death to another person while street racing is guilty of an indictable offence and liable to imprisonment for life.

2006, c. 14, s. 2.

#### Causing bodily harm by criminal negligence (street racing)

**249.3** Everyone who by criminal negligence causes bodily harm to another person while street racing is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

2006, c. 14, s. 2.

#### Dangerous operation of motor vehicle while street racing

**249.4** (1) Everyone commits an offence who, while street racing, operates a motor vehicle in a manner described in paragraph 249(1)(a).

#### Punishment

(2) Everyone who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction.

#### Dangerous operation causing bodily harm

(3) Everyone who commits an offence under subsection (1) and thereby causes bodily harm to another person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

#### Dangerous operation causing death

(4) Everyone who commits an offence under subsection (1) and thereby causes the death of another person is guilty of an indictable offence and liable to imprisonment for life.

2006, c. 14, s. 2.

#### Failure to keep watch on person towed

**250.** (1) Every one who operates a vessel while towing a person on any water skis, surf-board, water sled or other object, when there is not on board such vessel another responsible person keeping watch on the person being towed, is guilty of an offence punishable on summary conviction.



### Towing of person after dark

(2) Every one who operates a vessel while towing a person on any water skis, surf-board, water sled or other object during the period from one hour after sunset to sunrise is guilty of an offence punishable on summary conviction.

R.S., 1985, c. C-46, s. 250; R.S., 1985, c. 27 (1st Supp.), s. 36.

### Unseaworthy vessel and unsafe aircraft

**251.** (1) Every one who knowingly

(a) sends or being the master takes a vessel that is registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament and that is unseaworthy

(i) on a voyage from a place in Canada to any other place in or out of Canada, or

(ii) on a voyage from a place on the inland waters of the United States to a place in Canada,

(b) sends an aircraft on a flight or operates an aircraft that is not fit and safe for flight, or

(c) sends for operation or operates railway equipment that is not fit and safe for operation

and thereby endangers the life of any person, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

### Defences

(2) An accused shall not be convicted of an offence under this section where the accused establishes that,

(a) in the case of an offence under paragraph (1)(a),

(i) the accused used all reasonable means to ensure that the vessel was seaworthy, or

(ii) to send or take the vessel while it was unseaworthy was, under the circumstances, reasonable and justifiable;

(b) in the case of an offence under paragraph (1)(b),

(i) the accused used all reasonable means to ensure that the aircraft was fit and safe for flight, or

(ii) to send or operate the aircraft while it was not fit and safe for flight was, under the circumstances, reasonable and justifiable; and

(c) in the case of an offence under paragraph (1)(c),

(i) the accused used all reasonable means to ensure that the railway equipment was fit and safe for operation, or

(ii) to send the railway equipment for operation or to operate it while it was not fit and safe for operation was, under the circumstances, reasonable and justifiable.

### Consent of Attorney General

(3) No proceedings shall be instituted under this section in respect of a vessel or aircraft, or in respect of railway equipment sent for operation or operated on a line of railway that is within the legislative authority of Parliament, without the consent in writing of the Attorney General of Canada.

R.S., 1985, c. C-46, s. 251; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 32 (4th Supp.), s. 58.

### Failure to stop at scene of accident



**252.** (1) Every person commits an offence who has the care, charge or control of a vehicle, vessel or aircraft that is involved in an accident with

- (a) another person,
- (b) a vehicle, vessel or aircraft, or
- (c) in the case of a vehicle, cattle in the charge of another person,

and with intent to escape civil or criminal liability fails to stop the vehicle, vessel or, if possible, the aircraft, give his or her name and address and, where any person has been injured or appears to require assistance, offer assistance.

### Punishment

(1.1) Every person who commits an offence under subsection (1) in a case not referred to in subsection (1.2) or (1.3) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or is guilty of an offence punishable on summary conviction.

### Offence involving bodily harm

(1.2) Every person who commits an offence under subsection (1) knowing that bodily harm has been caused to another person involved in the accident is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

### Offence involving bodily harm or death

(1.3) Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable to imprisonment for life if

- (a) the person knows that another person involved in the accident is dead; or
- (b) the person knows that bodily harm has been caused to another person involved in the accident and is reckless as to whether the death of the other person results from that bodily harm, and the death of that other person so results.

### Evidence

(2) In proceedings under subsection (1), evidence that an accused failed to stop his vehicle, vessel or, where possible, his aircraft, as the case may be, offer assistance where any person has been injured or appears to require assistance and give his name and address is, in the absence of evidence to the contrary, proof of an intent to escape civil or criminal liability.

R.S., 1985, c. C-46, s. 252; R.S., 1985, c. 27 (1st Supp.), s. 36; 1994, c. 44, s. 12; 1999, c. 32, s. 1(Preamble).

### Operation while impaired

**253.** (1) Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the operation of an aircraft or of railway equipment or has the care or control of a motor vehicle, vessel, aircraft or railway equipment, whether it is in motion or not,

- (a) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or
- (b) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood.

### For greater certainty

(2) For greater certainty, the reference to impairment by alcohol or a drug in paragraph (1)(a) includes impairment by a combination of alcohol and a drug.

R.S., 1985, c. C-46, s. 253; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 32 (4th Supp.), s. 59; 2008, c. 6, s. 18.

## Definitions

**254.** (1) In this section and sections 254.1 to 258.1,

**"analyst"**

« *analyste* »

"analyst" means a person designated by the Attorney General as an analyst for the purposes of section 258;

**"approved container"**

« *contenant approuvé* »

"approved container" means

(a) in respect of breath samples, a container of a kind that is designed to receive a sample of the breath of a person for analysis and is approved as suitable for the purposes of section 258 by order of the Attorney General of Canada, and

(b) in respect of blood samples, a container of a kind that is designed to receive a sample of the blood of a person for analysis and is approved as suitable for the purposes of section 258 by order of the Attorney General of Canada;

**"approved instrument"**

« *alcootest approuvé* »

"approved instrument" means an instrument of a kind that is designed to receive and make an analysis of a sample of the breath of a person in order to measure the concentration of alcohol in the blood of that person and is approved as suitable for the purposes of section 258 by order of the Attorney General of Canada;

**"approved screening device"**

« *appareil de détection approuvé* »

"approved screening device" means a device of a kind that is designed to ascertain the presence of alcohol in the blood of a person and that is approved for the purposes of this section by order of the Attorney General of Canada;

**"evaluating officer"**

« *agent évaluateur* »

"evaluating officer" means a peace officer who is qualified under the regulations to conduct evaluations under subsection (3.1);

**"qualified medical practitioner"**

« *médecin qualifié* »

"qualified medical practitioner" means a person duly qualified by provincial law to practise medicine;

**"qualified technician"**

« *technicien qualifié* »

"qualified technician" means,

(a) in respect of breath samples, a person designated by the Attorney General as being qualified to operate an approved instrument, and

(b) in respect of blood samples, any person or person of a class of persons designated by the Attorney General as being qualified to take samples of blood for the purposes of this section and sections 256 and 258.

### Testing for presence of alcohol or a drug

(2) If a peace officer has reasonable grounds to suspect that a person has alcohol or a drug in their body and that the person has, within the preceding three hours, operated a motor vehicle or vessel, operated or assisted in the operation of an aircraft or railway equipment or had the care or control of a motor vehicle, a vessel, an aircraft or railway equipment, whether it was in motion or not, the peace officer may, by demand, require the person to comply with paragraph (a), in the case of a drug, or with either or both of paragraphs (a) and (b), in the case of alcohol:

(a) to perform forthwith physical coordination tests prescribed by regulation to enable the peace officer to determine whether a demand may be made under subsection (3) or (3.1) and, if necessary, to accompany the peace officer for that purpose; and

(b) to provide forthwith a sample of breath that, in the peace officer's opinion, will enable a proper analysis to be made by means of an approved screening device and, if necessary, to accompany the peace officer for that purpose.

### Video recording

(2.1) For greater certainty, a peace officer may make a video recording of a performance of the physical coordination tests referred to in paragraph (2)(a).

### Samples of breath or blood

(3) If a peace officer has reasonable grounds to believe that a person is committing, or at any time within the preceding three hours has committed, an offence under section 253 as a result of the consumption of alcohol, the peace officer may, by demand made as soon as practicable, require the person

(a) to provide, as soon as practicable,

(i) samples of breath that, in a qualified technician's opinion, will enable a proper analysis to be made to determine the concentration, if any, of alcohol in the person's blood, or

(ii) if the peace officer has reasonable grounds to believe that, because of their physical condition, the person may be incapable of providing a sample of breath or it would be impracticable to obtain a sample of breath, samples of blood that, in the opinion of the qualified medical practitioner or qualified technician taking the samples, will enable a proper analysis to be made to determine the concentration, if any, of alcohol in the person's blood; and

(b) if necessary, to accompany the peace officer for that purpose.

### Evaluation

(3.1) If a peace officer has reasonable grounds to believe that a person is committing, or at any time within the preceding three hours has committed, an offence under paragraph 253(1)(a) as a result of the consumption of a drug or of a combination of alcohol and a drug, the peace officer may, by demand made as soon as practicable, require the person to submit, as soon as practicable, to an evaluation conducted by an evaluating officer to determine whether the person's ability to operate a motor vehicle, a vessel, an aircraft or railway equipment is impaired by a drug or by a combination of alcohol and a drug, and to accompany the peace officer for that purpose.

### Video recording

(3.2) For greater certainty, a peace officer may make a video recording of an evaluation referred to in subsection (3.1).

### Testing for presence of alcohol

(3.3) If the evaluating officer has reasonable grounds to suspect that the person has alcohol in their body and if a demand was not made under paragraph (2)(b) or subsection (3), the evaluating officer may, by demand made as soon as practicable, require the person to provide, as soon as practicable, a sample of breath that, in the evaluating officer's opinion, will enable a proper analysis to be made by means of an approved instrument.

### Samples of bodily substances

(3.4) If, on completion of the evaluation, the evaluating officer has reasonable grounds to believe, based on the evaluation, that the person's ability to operate a motor vehicle, a vessel, an aircraft or railway equipment is impaired by a drug or by a combination of alcohol and a drug, the evaluating officer may, by demand made as soon as practicable, require the person to provide, as soon as practicable,

(a) a sample of either oral fluid or urine that, in the evaluating officer's opinion, will enable a proper analysis to be made to determine whether the person has a drug in their body; or

(b) samples of blood that, in the opinion of the qualified medical practitioner or qualified technician taking the samples, will enable a proper analysis to be made to determine whether the person has a drug in their body.

### Condition

(4) Samples of blood may be taken from a person under subsection (3) or (3.4) only by or under the direction of a qualified medical practitioner who is satisfied that taking the samples would not endanger the person's life or health.

### Failure or refusal to comply with demand

(5) Everyone commits an offence who, without reasonable excuse, fails or refuses to comply with a demand made under this section.

### Only one determination of guilt

(6) A person who is convicted of an offence under subsection (5) for a failure or refusal to comply with a demand may not be convicted of another offence under that subsection in respect of the same transaction.

R.S., 1985, c. C-46, s. 254; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 1 (4th Supp.), ss. 14, 18(F), c. 32 (4th Supp.), s. 60; 1999, c. 32, s. 2(Preamble); 2008, c. 6, s. 19.

### Regulations

**254.1** (1) The Governor in Council may make regulations

(a) respecting the qualifications and training of evaluating officers;

(b) prescribing the physical coordination tests to be conducted under paragraph 254(2)(a);  
and

(c) prescribing the tests to be conducted and procedures to be followed during an evaluation under subsection 254(3.1).

### Incorporated material

(2) A regulation may incorporate any material by reference either as it exists on a specified date or as amended from time to time.

### Incorporated material is not a regulation

(3) For greater certainty, material does not become a regulation for the purposes of the *Statutory Instruments Act* because it is incorporated by reference.

2008, c. 6, s. 20.

## Punishment

**255.** (1) Every one who commits an offence under section 253 or 254 is guilty of an indictable offence or an offence punishable on summary conviction and is liable,

(a) whether the offence is prosecuted by indictment or punishable on summary conviction, to the following minimum punishment, namely,

(i) for a first offence, to a fine of not less than \$1,000,

(ii) for a second offence, to imprisonment for not less than 30 days, and

(iii) for each subsequent offence, to imprisonment for not less than 120 days;

(b) where the offence is prosecuted by indictment, to imprisonment for a term not exceeding five years; and

(c) if the offence is punishable on summary conviction, to imprisonment for a term of not more than 18 months.

## Impaired driving causing bodily harm

(2) Everyone who commits an offence under paragraph 253(1)(a) and causes bodily harm to another person as a result is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

## Blood alcohol level over legal limit — bodily harm

(2.1) Everyone who, while committing an offence under paragraph 253(1)(b), causes an accident resulting in bodily harm to another person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

## Failure or refusal to provide sample — bodily harm

(2.2) Everyone who commits an offence under subsection 254(5) and, at the time of committing the offence, knows or ought to know that their operation of the motor vehicle, vessel, aircraft or railway equipment, their assistance in the operation of the aircraft or railway equipment or their care or control of the motor vehicle, vessel, aircraft or railway equipment caused an accident resulting in bodily harm to another person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

## Impaired driving causing death

(3) Everyone who commits an offence under paragraph 253(1)(a) and causes the death of another person as a result is guilty of an indictable offence and liable to imprisonment for life.

## Blood alcohol level over legal limit — death

(3.1) Everyone who, while committing an offence under paragraph 253(1)(b), causes an accident resulting in the death of another person is guilty of an indictable offence and liable to imprisonment for life.

## Failure or refusal to provide sample — death

(3.2) Everyone who commits an offence under subsection 254(5) and, at the time of committing the offence, knows or ought to know that their operation of the motor vehicle, vessel, aircraft or railway equipment, their assistance in the operation of the aircraft or railway equipment or their care or control of the motor vehicle, vessel, aircraft or railway equipment caused an accident resulting in the death of another person, or in bodily harm to another person whose death ensues, is guilty of an indictable offence and liable to imprisonment for life.

## Interpretation

(3.3) For greater certainty, everyone who is liable to the punishment described in any of subsections (2) to (3.2) is also liable to the minimum punishment described in paragraph (1)(a).

## Previous convictions

(4) A person who is convicted of an offence committed under section 253 or subsection 254(5) is, for the purposes of this Act, deemed to be convicted for a second or subsequent offence, as the case may be, if they have previously been convicted of

- (a) an offence committed under either of those provisions;
- (b) an offence under subsection (2) or (3); or
- (c) an offence under section 250, 251, 252, 253, 259 or 260 or subsection 258(4) of this Act as this Act read immediately before the coming into force of this subsection.

## Conditional discharge

\* (5) Notwithstanding subsection 730(1), a court may, instead of convicting a person of an offence committed under section 253, after hearing medical or other evidence, if it considers that the person is in need of curative treatment in relation to his consumption of alcohol or drugs and that it would not be contrary to the public interest, by order direct that the person be discharged under section 730 on the conditions prescribed in a probation order, including a condition respecting the person's attendance for curative treatment in relation to that consumption of alcohol or drugs.

R.S., 1985, c. C-46, s. 255; R.S., 1985, c. 27 (1st Supp.), s. 36; R.S., 1985, c. 1 (4th Supp.), s. 18(F); 1995, c. 22, s. 18; 1999, c. 32, s. 3(Preamble); 2000, c. 25, s. 2; 2008, c. 6, s. 21, c. 18, ss. 7, 45.2.

\* [Note: In force in the Provinces of Nova Scotia, New Brunswick, Manitoba, Prince Edward Island, Saskatchewan and Alberta and in the Yukon Territory and the Northwest Territories, see SI/85-211 and SI/88-24.]

## Aggravating circumstances for sentencing purposes

**255.1** Without limiting the generality of section 718.2, where a court imposes a sentence for an offence committed under this Act by means of a motor vehicle, vessel or aircraft or of railway equipment, evidence that the concentration of alcohol in the blood of the offender at the time when the offence was committed exceeded one hundred and sixty milligrams of alcohol in one hundred millilitres of blood shall be deemed to be aggravating circumstances relating to the offence that the court shall consider under paragraph 718.2(a).

1999, c. 32, s. 4(Preamble).

## Warrants to obtain blood samples

**256.** (1) Subject to subsection (2), if a justice is satisfied, on an information on oath in Form 1 or on an information on oath submitted to the justice under section 487.1 by telephone or other means of telecommunication, that there are reasonable grounds to believe that

- (a) a person has, within the preceding four hours, committed, as a result of the consumption of alcohol or a drug, an offence under section 253 and the person was involved in an accident resulting in the death of another person or in bodily harm to himself or herself or to any other person, and
- (b) a qualified medical practitioner is of the opinion that
  - (i) by reason of any physical or mental condition of the person that resulted from the consumption of alcohol or a drug, the accident or any other occurrence related to or resulting from the accident, the person is unable to consent to the taking of samples of his or her blood, and
  - (ii) the taking of samples of blood from the person would not endanger the life or health of

the person,

the justice may issue a warrant authorizing a peace officer to require a qualified medical practitioner to take, or to cause to be taken by a qualified technician under the direction of the qualified medical practitioner, the samples of the blood of the person that in the opinion of the person taking the samples are necessary to enable a proper analysis to be made in order to determine the concentration, if any, of alcohol or drugs in the person's blood.

### Form

(2) A warrant issued pursuant to subsection (1) may be in Form 5 or 5.1 varied to suit the case.

### Information on oath

(3) Notwithstanding paragraphs 487.1(4)(b) and (c), an information on oath submitted by telephone or other means of telecommunication for the purposes of this section shall include, instead of the statements referred to in those paragraphs, a statement setting out the offence alleged to have been committed and identifying the person from whom blood samples are to be taken.

### Duration of warrant

(4) Samples of blood may be taken from a person pursuant to a warrant issued pursuant to subsection (1) only during such time as a qualified medical practitioner is satisfied that the conditions referred to in subparagraphs (1)(b)(i) and (ii) continue to exist in respect of that person.

### Copy or facsimile to person

(5) When a warrant issued under subsection (1) is executed, the peace officer shall, as soon as practicable, give a copy of it — or, in the case of a warrant issued by telephone or other means of telecommunication, a facsimile — to the person from whom the blood samples are taken.

R.S., 1985, c. C-46, s. 256; R.S., 1985, c. 27 (1st Supp.), s. 36; 1992, c. 1, s. 58; 1994, c. 44, s. 13; 2000, c. 25, s. 3; 2008, c. 6, s. 22.

### No offence committed

**257.** (1) No qualified medical practitioner or qualified technician is guilty of an offence only by reason of his refusal to take a sample of blood from a person for the purposes of section 254 or 256 and no qualified medical practitioner is guilty of an offence only by reason of his refusal to cause to be taken by a qualified technician under his direction a sample of blood from a person for those purposes.

### No criminal or civil liability

(2) No qualified medical practitioner by whom or under whose direction a sample of blood is taken from a person under subsection 254(3) or (3.4) or section 256, and no qualified technician acting under the direction of a qualified medical practitioner, incurs any criminal or civil liability for anything necessarily done with reasonable care and skill when taking the sample.

R.S., 1985, c. C-46, s. 257; R.S., 1985, c. 27 (1st Supp.), s. 36; 2008, c. 6, s. 23.

### Proceedings under section 255

**258.** (1) In any proceedings under subsection 255(1) in respect of an offence committed under section 253 or subsection 254(5) or in any proceedings under any of subsections 255(2) to (3.2),

(a) where it is proved that the accused occupied the seat or position ordinarily occupied by a



person who operates a motor vehicle, vessel or aircraft or any railway equipment or who assists in the operation of an aircraft or of railway equipment, the accused shall be deemed to have had the care or control of the vehicle, vessel, aircraft or railway equipment, as the case may be, unless the accused establishes that the accused did not occupy that seat or position for the purpose of setting the vehicle, vessel, aircraft or railway equipment in motion or assisting in the operation of the aircraft or railway equipment, as the case may be;

(b) the result of an analysis of a sample of the accused's breath, blood, urine or other bodily substance — other than a sample taken under subsection 254(3), (3.3) or (3.4) — may be admitted in evidence even if the accused was not warned before they gave the sample that they need not give the sample or that the result of the analysis of the sample might be used in evidence;

(c) where samples of the breath of the accused have been taken pursuant to a demand made under subsection 254(3), if

(i) [Not in force]

(ii) each sample was taken as soon as practicable after the time when the offence was alleged to have been committed and, in the case of the first sample, not later than two hours after that time, with an interval of at least fifteen minutes between the times when the samples were taken,

(iii) each sample was received from the accused directly into an approved container or into an approved instrument operated by a qualified technician, and

(iv) an analysis of each sample was made by means of an approved instrument operated by a qualified technician,

evidence of the results of the analyses so made is conclusive proof that the concentration of alcohol in the accused's blood both at the time when the analyses were made and at the time when the offence was alleged to have been committed was, if the results of the analyses are the same, the concentration determined by the analyses and, if the results of the analyses are different, the lowest of the concentrations determined by the analyses, in the absence of evidence tending to show all of the following three things — that the approved instrument was malfunctioning or was operated improperly, that the malfunction or improper operation resulted in the determination that the concentration of alcohol in the accused's blood exceeded 80 mg of alcohol in 100 mL of blood, and that the concentration of alcohol in the accused's blood would not in fact have exceeded 80 mg of alcohol in 100 mL of blood at the time when the offence was alleged to have been committed;

(d) if a sample of the accused's blood has been taken under subsection 254(3) or section 256 or with the accused's consent and if

(i) at the time the sample was taken, the person taking the sample took an additional sample of the blood of the accused and one of the samples was retained to permit an analysis of it to be made by or on behalf of the accused and, in the case where the accused makes a request within six months from the taking of the samples, one of the samples was ordered to be released under subsection (4),

(ii) both samples referred to in subparagraph (i) were taken as soon as practicable and in any event not later than two hours after the time when the offence was alleged to have been committed,

(iii) both samples referred to in subparagraph (i) were taken by a qualified medical practitioner or a qualified technician under the direction of a qualified medical practitioner,

(iv) both samples referred to in subparagraph (i) were received from the accused directly into, or placed directly into, approved containers that were subsequently sealed, and

(v) an analysis was made by an analyst of at least one of the samples,

evidence of the result of the analysis is conclusive proof that the concentration of alcohol in



the accused's blood both at the time when the samples were taken and at the time when the offence was alleged to have been committed was the concentration determined by the analysis or, if more than one sample was analyzed and the results of the analyses are the same, the concentration determined by the analyses and, if the results of the analyses are different, the lowest of the concentrations determined by the analyses, in the absence of evidence tending to show all of the following three things — that the analysis was performed improperly, that the improper performance resulted in the determination that the concentration of alcohol in the accused's blood exceeded 80 mg of alcohol in 100 mL of blood, and that the concentration of alcohol in the accused's blood would not in fact have exceeded 80 mg of alcohol in 100 mL of blood at the time when the offence was alleged to have been committed;

(*d.01*) for greater certainty, evidence tending to show that an approved instrument was malfunctioning or was operated improperly, or that an analysis of a sample of the accused's blood was performed improperly, does not include evidence of

- (i) the amount of alcohol that the accused consumed,
- (ii) the rate at which the alcohol that the accused consumed would have been absorbed and eliminated by the accused's body, or
- (iii) a calculation based on that evidence of what the concentration of alcohol in the accused's blood would have been at the time when the offence was alleged to have been committed;

(*d.1*) if samples of the accused's breath or a sample of the accused's blood have been taken as described in paragraph (*c*) or (*d*) under the conditions described in that paragraph and the results of the analyses show a concentration of alcohol in blood exceeding 80 mg of alcohol in 100 mL of blood, evidence of the results of the analyses is proof that the concentration of alcohol in the accused's blood at the time when the offence was alleged to have been committed exceeded 80 mg of alcohol in 100 mL of blood, in the absence of evidence tending to show that the accused's consumption of alcohol was consistent with both

- (i) a concentration of alcohol in the accused's blood that did not exceed 80 mg of alcohol in 100 mL of blood at the time when the offence was alleged to have been committed, and
- (ii) the concentration of alcohol in the accused's blood as determined under paragraph (*c*) or (*d*), as the case may be, at the time when the sample or samples were taken;

(*e*) a certificate of an analyst stating that the analyst has made an analysis of a sample of the blood, urine, breath or other bodily substance of the accused and stating the result of that analysis is evidence of the facts alleged in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate;

(*f*) a certificate of an analyst stating that the analyst has made an analysis of a sample of an alcohol standard that is identified in the certificate and intended for use with an approved instrument and that the sample of the standard analyzed by the analyst was found to be suitable for use with an approved instrument, is evidence that the alcohol standard so identified is suitable for use with an approved instrument without proof of the signature or the official character of the person appearing to have signed the certificate;

(*f.1*) the document printed out from an approved instrument and signed by a qualified technician who certifies it to be the printout produced by the approved instrument when it made the analysis of a sample of the accused's breath is evidence of the facts alleged in the document without proof of the signature or official character of the person appearing to have signed it;

(*g*) where samples of the breath of the accused have been taken pursuant to a demand made under subsection 254(3), a certificate of a qualified technician stating

- (i) that the analysis of each of the samples has been made by means of an approved instrument operated by the technician and ascertained by the technician to be in proper

working order by means of an alcohol standard, identified in the certificate, that is suitable for use with an approved instrument,

(ii) the results of the analyses so made, and

(iii) if the samples were taken by the technician,

(A) [Not in force]

(B) the time when and place where each sample and any specimen described in clause (A) was taken, and

(C) that each sample was received from the accused directly into an approved container or into an approved instrument operated by the technician,

is evidence of the facts alleged in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate;

(h) if a sample of the accused's blood has been taken under subsection 254(3) or (3.4) or section 256 or with the accused's consent,

(i) a certificate of a qualified medical practitioner stating that

(A) they took the sample and before the sample was taken they were of the opinion that taking it would not endanger the accused's life or health and, in the case of a demand made under section 256, that by reason of any physical or mental condition of the accused that resulted from the consumption of alcohol or a drug, the accident or any other occurrence related to or resulting from the accident, the accused was unable to consent to the taking of the sample,

(B) at the time the sample was taken, an additional sample of the blood of the accused was taken to permit analysis of one of the samples to be made by or on behalf of the accused,

(C) the time when and place where both samples referred to in clause (B) were taken, and

(D) both samples referred to in clause (B) were received from the accused directly into, or placed directly into, approved containers that were subsequently sealed and that are identified in the certificate,

(ii) a certificate of a qualified medical practitioner stating that the medical practitioner caused the sample to be taken by a qualified technician under his direction and that before the sample was taken the qualified medical practitioner was of the opinion referred to in clause (i)(A), or

(iii) a certificate of a qualified technician stating that the technician took the sample and the facts referred to in clauses (i)(B) to (D)

is evidence of the facts alleged in the certificate without proof of the signature or official character of the person appearing to have signed the certificate; and

(i) a certificate of an analyst stating that the analyst has made an analysis of a sample of the blood of the accused that was contained in a sealed approved container identified in the certificate, the date on which and place where the sample was analyzed and the result of that analysis is evidence of the facts alleged in the certificate without proof of the signature or official character of the person appearing to have signed it.

### Evidence of failure to give sample

(2) Unless a person is required to give a sample of a bodily substance under paragraph 254(2)(b) or subsection 254(3), (3.3) or (3.4), evidence that they failed or refused to give a sample for analysis for the purposes of this section or that a sample was not taken is not admissible and the failure, refusal or fact that a sample was not taken shall not be the subject of

comment by any person in the proceedings.

### Evidence of failure to comply with demand

(3) In any proceedings under subsection 255(1) in respect of an offence committed under paragraph 253(1)(a) or in any proceedings under subsection 255(2) or (3), evidence that the accused, without reasonable excuse, failed or refused to comply with a demand made under section 254 is admissible and the court may draw an inference adverse to the accused from that evidence.

### Release of sample for analysis

(4) If, at the time a sample of an accused's blood is taken, an additional sample is taken and retained, a judge of a superior court of criminal jurisdiction or a court of criminal jurisdiction shall, on the summary application of the accused made within six months after the day on which the samples were taken, order the release of one of the samples for the purpose of examination or analysis, subject to any terms that appear to be necessary or desirable to ensure that the sample is safeguarded and preserved for use in any proceedings in respect of which it was taken.

### Testing of blood for concentration of a drug

(5) A sample of an accused's blood taken under subsection 254(3) or section 256 or with the accused's consent for the purpose of analysis to determine the concentration, if any, of alcohol in the blood may be tested to determine the concentration, if any, of a drug in the blood.

### Attendance and right to cross-examine

(6) A party against whom a certificate described in paragraph (1)(e), (f), (f.1), (g), (h) or (i) is produced may, with leave of the court, require the attendance of the qualified medical practitioner, analyst or qualified technician, as the case may be, for the purposes of cross-examination.

### Notice of intention to produce certificate

(7) No certificate shall be received in evidence pursuant to paragraph (1)(e), (f), (g), (h) or (i) unless the party intending to produce it has, before the trial, given to the other party reasonable notice of his intention and a copy of the certificate.

R.S., 1985, c. C-46, s. 258; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 32 (4th Supp.), s. 61; 1992, c. 1, s. 60(F); 1994, c. 44, s. 14(E); 1997, c. 18, s. 10; 2008, c. 6, s. 24.

### Unauthorized use of bodily substance

**258.1** (1) Subject to subsections 258(4) and (5) and subsection (3), no person shall use a bodily substance taken under paragraph 254(2)(b), subsection 254(3), (3.3) or (3.4) or section 256 or with the consent of the person from whom it was taken after a request by a peace officer or medical samples that are provided by consent and subsequently seized under a warrant, except for the purpose of an analysis that is referred to in that provision or for which the consent is given.

### Unauthorized use or disclosure of results

(2) Subject to subsections (3) and (4), no person shall use, disclose or allow the disclosure of the results of physical coordination tests under paragraph 254(2)(a), the results of an evaluation under subsection 254(3.1), the results of the analysis of a bodily substance taken under paragraph 254(2)(b), subsection 254(3), (3.3) or (3.4) or section 256 or with the consent of the person from whom it was taken after a request by a peace officer, or the results of the analysis of medical samples that are provided by consent and subsequently seized under a warrant, except

(a) in the course of an investigation of, or in a proceeding for, an offence under any of sections 220, 221, 236 and 249 to 255, an offence under Part I of the *Aeronautics Act*, or an

offence under the *Railway Safety Act* in respect of a contravention of a rule or regulation made under that Act respecting the use of alcohol or a drug; or

(b) for the purpose of the administration or enforcement of the law of a province.

### Exception

(3) Subsections (1) and (2) do not apply to persons who for medical purposes use samples or use or disclose the results of tests, taken for medical purposes, that are subsequently seized under a warrant.

### Exception

(4) The results of physical coordination tests, an evaluation or an analysis referred to in subsection (2) may be disclosed to the person to whom they relate, and may be disclosed to any other person if the results are made anonymous and the disclosure is made for statistical or other research purposes.

### Offence

(5) Every person who contravenes subsection (1) or (2) is guilty of an offence punishable on summary conviction.

2008, c. 6, s. 25.

### Mandatory order of prohibition

**259.** (1) When an offender is convicted of an offence committed under section 253 or 254 or this section or discharged under section 730 of an offence committed under section 253 and, at the time the offence was committed or, in the case of an offence committed under section 254, within the three hours preceding that time, was operating or had the care or control of a motor vehicle, vessel or aircraft or of railway equipment or was assisting in the operation of an aircraft or of railway equipment, the court that sentences the offender shall, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place, or from operating a vessel or an aircraft or railway equipment, as the case may be,

(a) for a first offence, during a period of not more than three years plus any period to which the offender is sentenced to imprisonment, and not less than one year;

(b) for a second offence, during a period of not more than five years plus any period to which the offender is sentenced to imprisonment, and not less than two years; and

(c) for each subsequent offence, during a period of not less than three years plus any period to which the offender is sentenced to imprisonment.

### Alcohol ignition interlock device program

(1.1) If the offender is registered in an alcohol ignition interlock device program established under the law of the province in which the offender resides and complies with the conditions of the program, the offender may, subject to subsection (1.2), operate a motor vehicle equipped with an alcohol ignition interlock device during the prohibition period, unless the court orders otherwise.

### Minimum absolute prohibition period

(1.2) An offender who is registered in a program referred to in subsection (1.1) may not operate a motor vehicle equipped with an alcohol ignition interlock device until

(a) the expiry of a period of

(i) for a first offence, 3 months after the day on which sentence is imposed,

(ii) for a second offence, 6 months after the day on which sentence is imposed, and

(iii) for each subsequent offence, 12 months after the day on which sentence is imposed; or

(b) the expiry of any period that may be fixed by order of the court that is greater than a period referred to in paragraph (a).

(1.3) and (1.4) [Repealed, 2008, c. 18, s. 8]

### Discretionary order of prohibition

(2) If an offender is convicted or discharged under section 730 of an offence under section 220, 221, 236, 249, 249.1, 250, 251 or 252 or any of subsections 255(2) to (3.2) committed by means of a motor vehicle, a vessel, an aircraft or railway equipment, the court that sentences the offender may, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place, or from operating a vessel, an aircraft or railway equipment, as the case may be,

(a) during any period that the court considers proper, if the offender is sentenced to imprisonment for life in respect of that offence;

(a.1) during any period that the court considers proper, plus any period to which the offender is sentenced to imprisonment, if the offender is liable to imprisonment for life in respect of that offence and if the sentence imposed is other than imprisonment for life;

(b) during any period not exceeding ten years plus any period to which the offender is sentenced to imprisonment, if the offender is liable to imprisonment for more than five years but less than life in respect of that offence; and

(c) during any period not exceeding three years plus any period to which the offender is sentenced to imprisonment, in any other case.

### Consecutive prohibition periods

(2.1) The court may, when it makes an order under this section prohibiting the operation of a motor vehicle, a vessel, an aircraft or railway equipment, as the case may be, order that the time served under that order be served consecutively to the time served under any other order made under this section that prohibits the operation of the same means of transport and that is in force.

### Saving

(3) No order made under subsection (1) or (2) shall operate to prevent any person from acting as master, mate or engineer of a vessel that is required to carry officers holding certificates as master, mate or engineer.

### Mandatory order of prohibition — street racing

(3.1) When an offender is convicted or discharged under section 730 of an offence committed under subsection 249.4(1), the court that sentences the offender shall, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place

(a) for a first offence, during a period of not more than three years plus any period to which the offender is sentenced to imprisonment, and not less than one year;

(b) for a second offence, during a period of not more than five years plus any period to which the offender is sentenced to imprisonment, and not less than two years; and

(c) for each subsequent offence, during a period of not less than three years plus any period to which the offender is sentenced to imprisonment.

### Mandatory order of prohibition — bodily harm

(3.2) When an offender is convicted or discharged under section 730 of an offence committed under section 249.3 or subsection 249.4(3), the court that sentences the offender shall, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place

- (a) for a first offence, during a period of not more than ten years plus any period to which the offender is sentenced to imprisonment, and not less than one year;
- (b) for a second offence, during a period of not more than ten years plus any period to which the offender is sentenced to imprisonment, and not less than two years; and
- (c) for each subsequent offence, during a period of not less than three years plus any period to which the offender is sentenced to imprisonment.

### Mandatory order of prohibition — death

(3.3) When an offender is convicted or discharged under section 730 of a first offence committed under section 249.2 or subsection 249.4(4), the court that sentences the offender shall, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place

- (a) for an offence under section 249.2, during a period of not less than one year plus any period to which the offender is sentenced to imprisonment; and
- (b) for an offence under subsection 249.4(4), during a period of not more than ten years plus any period to which the offender is sentenced to imprisonment, and not less than one year.

### Mandatory life prohibition

(3.4) When an offender is convicted or discharged under section 730 of an offence committed under section 249.2 or 249.3 or subsection 249.4(3) or (4), the offender has previously been convicted or discharged under section 730 of one of those offences and at least one of the convictions or discharges is under section 249.2 or subsection 249.4(4), the court that sentences the offender shall make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place for life.

### Operation while disqualified

(4) Every offender who operates a motor vehicle, vessel or aircraft or any railway equipment in Canada while disqualified from doing so, other than an offender who is registered in an alcohol ignition interlock device program established under the law of the province in which the offender resides and who complies with the conditions of the program,

- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or
- (b) is guilty of an offence punishable on summary conviction.

### Definition of "disqualification"

(5) For the purposes of this section, "disqualification" means

- (a) a prohibition from operating a motor vehicle, vessel or aircraft or any railway equipment ordered pursuant to any of subsections (1), (2) and (3.1) to (3.4); or
- (b) a disqualification or any other form of legal restriction of the right or privilege to operate a motor vehicle, vessel or aircraft imposed
  - (i) in the case of a motor vehicle, under the law of a province, or

(ii) in the case of a vessel or an aircraft, under an Act of Parliament,

in respect of a conviction or discharge under section 730 of any offence referred to in any of subsections (1), (2) and (3.1) to (3.4).

R.S., 1985, c. C-46, s. 259; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 1 (4th Supp.), s. 18(F), c. 32 (4th Supp.), s. 62; 1995, c. 22, ss. 10, 18; 1997, c. 18, s. 11; 1999, c. 32, s. 5(Preamble); 2000, c. 2, s. 2; 2001, c. 37, s. 1; 2006, c. 14, s. 3; 2008, c. 6, s. 26, c. 18, s. 8.

### Proceedings on making of prohibition order

**260.** (1) If a court makes a prohibition order under section 259 in relation to an offender, it shall cause

- (a) the order to be read by or to the offender;
- (b) a copy of the order to be given to the offender; and
- (c) the offender to be informed of subsection 259(4).

### Endorsement by offender

(2) After subsection (1) has been complied with in relation to an offender who is bound by an order referred to in that subsection, the offender shall endorse the order, acknowledging receipt of a copy thereof and that the order has been explained to him.

### Validity of order not affected

(3) The failure of an offender to endorse an order pursuant to subsection (2) does not affect the validity of the order.

### Onus

(4) In the absence of evidence to the contrary, where it is proved that a disqualification referred to in paragraph 259(5)(b) has been imposed on a person and that notice of the disqualification has been mailed by registered or certified mail to that person, that person shall, after five days following the mailing of the notice, be deemed to have received the notice and to have knowledge of the disqualification, of the date of its commencement and of its duration.

### Certificate admissible in evidence

(5) In proceedings under section 259, a certificate setting out with reasonable particularity that a person is disqualified from

- (a) driving a motor vehicle in a province, purporting to be signed by the registrar of motor vehicles for that province, or
- (b) operating a vessel or aircraft, purporting to be signed by the Minister of Transport or any person authorized by the Minister of Transport for that purpose

is evidence of the facts alleged therein without proof of the signature or official character of the person by whom it purports to be signed.

### Notice to accused

(6) Subsection (5) does not apply in any proceedings unless at least seven days notice in writing is given to the accused that it is intended to tender the certificate in evidence.

### Definition of "registrar of motor vehicles"

(7) In subsection (5), "registrar of motor vehicles" includes the deputy of that registrar and any other person or body, by whatever name or title designated, that from time to time performs the duties of superintending the registration of motor vehicles in the province.



R.S., 1985, c. C-46, s. 260; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 1 (4th Supp.), s. 18(F); 2006, c. 14, s. 4.

### Stay of order pending appeal

**261.** (1) Subject to subsection (1.1), if an appeal is taken against a conviction or discharge under section 730 for an offence committed under any of sections 220, 221, 236, 249 to 255 and 259, a judge of the court being appealed to may direct that any prohibition order under section 259 arising out of the conviction or discharge shall, on any conditions that the judge or court imposes, be stayed pending the final disposition of the appeal or until otherwise ordered by that court.

### Appeals to Supreme Court of Canada

(1.1) In the case of an appeal to the Supreme Court of Canada, the direction referred to in subsection (1) may be made only by a judge of the court being appealed from and not by a judge of the Supreme Court of Canada.

### Effect of conditions

(2) If conditions are imposed under a direction made under subsection (1) or (1.1) that a prohibition order be stayed, the direction shall not operate to decrease the period of prohibition provided in the order.

R.S., 1985, c. C-46, s. 261; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 1 (4th Supp.), s. 18(F); 1994, c. 44, ss. 15, 103; 1995, c. 22, s. 10; 1997, c. 18, ss. 12, 141; 2006, c. 14, s. 5; 2008, c. 6, s. 27.

### Impeding attempt to save life

**262.** Every one who

(a) prevents or impedes or attempts to prevent or impede any person who is attempting to save his own life, or

(b) without reasonable cause prevents or impedes or attempts to prevent or impede any person who is attempting to save the life of another person,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

R.S., c. C-34, s. 241.

### Duty to safeguard opening in ice

**263.** (1) Every one who makes or causes to be made an opening in ice that is open to or frequented by the public is under a legal duty to guard it in a manner that is adequate to prevent persons from falling in by accident and is adequate to warn them that the opening exists.

### Excavation on land

(2) Every one who leaves an excavation on land that he owns or of which he has charge or supervision is under a legal duty to guard it in a manner that is adequate to prevent persons from falling in by accident and is adequate to warn them that the excavation exists.

### Offences

(3) Every one who fails to perform a duty imposed by subsection (1) or (2) is guilty of

(a) manslaughter, if the death of any person results therefrom;

(b) an offence under section 269, if bodily harm to any person results therefrom; or

(c) an offence punishable on summary conviction.

R.S., c. C-34, s. 242; 1980-81-82-83, c. 125, s. 18.

### Criminal harassment



**264.** (1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

#### Prohibited conduct

(2) The conduct mentioned in subsection (1) consists of

(a) repeatedly following from place to place the other person or anyone known to them;

(b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;

(c) besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or

(d) engaging in threatening conduct directed at the other person or any member of their family.

#### Punishment

(3) Every person who contravenes this section is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or

(b) an offence punishable on summary conviction.

#### Factors to be considered

(4) Where a person is convicted of an offence under this section, the court imposing the sentence on the person shall consider as an aggravating factor that, at the time the offence was committed, the person contravened

(a) the terms or conditions of an order made pursuant to section 161 or a recognizance entered into pursuant to section 810, 810.1 or 810.2; or

(b) the terms or conditions of any other order or recognizance made or entered into under the common law or a provision of this or any other Act of Parliament or of a province that is similar in effect to an order or recognizance referred to in paragraph (a).

#### Reasons

(5) Where the court is satisfied of the existence of an aggravating factor referred to in subsection (4), but decides not to give effect to it for sentencing purposes, the court shall give reasons for its decision.

R.S., 1985, c. C-46, s. 264; R.S., 1985, c. 27 (1st Supp.), s. 37; 1993, c. 45, s. 2; 1997, c. 16, s. 4, c. 17, s. 9; 2002, c. 13, s. 10.

## ASSAULTS

#### Uttering threats

**264.1** (1) Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat

(a) to cause death or bodily harm to any person;

(b) to burn, destroy or damage real or personal property; or

(c) to kill, poison or injure an animal or bird that is the property of any person.

#### Punishment

(2) Every one who commits an offence under paragraph (1)(a) is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

### Idem

(3) Every one who commits an offence under paragraph (1)(b) or (c)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) is guilty of an offence punishable on summary conviction.

R.S., 1985, c. 27 (1st Supp.), s. 38; 1994, c. 44, s. 16.

### Assault

**265.** (1) A person commits an assault when

(a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

(b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or

(c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

### Application

(2) This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.

### Consent

(3) For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of

(a) the application of force to the complainant or to a person other than the complainant;

(b) threats or fear of the application of force to the complainant or to a person other than the complainant;

(c) fraud; or

(d) the exercise of authority.

### Accused's belief as to consent

(4) Where an accused alleges that he believed that the complainant consented to the conduct that is the subject-matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, to consider the presence or absence of reasonable grounds for that belief.

R.S., c. C-34, s. 244; 1974-75-76, c. 93, s. 21; 1980-81-82-83, c. 125, s. 19.

### Assault

**266.** Every one who commits an assault is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or

(b) an offence punishable on summary conviction.

R.S., c. C-34, s. 245; 1972, c. 13, s. 21; 1974-75-76, c. 93, s. 22; 1980-81-82-83, c. 125, s. 19.

### Assault with a weapon or causing bodily harm

**267.** Every one who, in committing an assault,

(a) carries, uses or threatens to use a weapon or an imitation thereof, or

(b) causes bodily harm to the complainant,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

R.S., 1985, c. C-46, s. 267; 1994, c. 44, s. 17.

### Aggravated assault

**268.** (1) Every one commits an aggravated assault who wounds, maims, disfigures or endangers the life of the complainant.

### Punishment

(2) Every one who commits an aggravated assault is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

### Excision

(3) For greater certainty, in this section, "wounds" or "maims" includes to excise, infibulate or mutilate, in whole or in part, the labia majora, labia minora or clitoris of a person, except where

(a) a surgical procedure is performed, by a person duly qualified by provincial law to practise medicine, for the benefit of the physical health of the person or for the purpose of that person having normal reproductive functions or normal sexual appearance or function; or

(b) the person is at least eighteen years of age and there is no resulting bodily harm.

### Consent

(4) For the purposes of this section and section 265, no consent to the excision, infibulation or mutilation, in whole or in part, of the labia majora, labia minora or clitoris of a person is valid, except in the cases described in paragraphs (3)(a) and (b).

R.S., 1985, c. C-46, s. 268; 1997, c. 16, s. 5.

### Unlawfully causing bodily harm

**269.** Every one who unlawfully causes bodily harm to any person is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

R.S., 1985, c. C-46, s. 269; 1994, c. 44, s. 18.

### Torture

**269.1** (1) Every official, or every person acting at the instigation of or with the consent or acquiescence of an official, who inflicts torture on any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

### Definitions

(2) For the purposes of this section,

“official”

« *fonctionnaire* »

“official” means

(a) a peace officer,

(b) a public officer,

(c) a member of the Canadian Forces, or

(d) any person who may exercise powers, pursuant to a law in force in a foreign state, that would, in Canada, be exercised by a person referred to in paragraph (a), (b), or (c),

whether the person exercises powers in Canada or outside Canada;

“torture”

« *torture* »

“torture” means any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person

(a) for a purpose including

(i) obtaining from the person or from a third person information or a statement,

(ii) punishing the person for an act that the person or a third person has committed or is suspected of having committed, and

(iii) intimidating or coercing the person or a third person, or

(b) for any reason based on discrimination of any kind,

but does not include any act or omission arising only from, inherent in or incidental to lawful sanctions.

No defence

(3) It is no defence to a charge under this section that the accused was ordered by a superior or a public authority to perform the act or omission that forms the subject-matter of the charge or that the act or omission is alleged to have been justified by exceptional circumstances, including a state of war, a threat of war, internal political instability or any other public emergency.

Evidence

(4) In any proceedings over which Parliament has jurisdiction, any statement obtained as a result of the commission of an offence under this section is inadmissible in evidence, except as evidence that the statement was so obtained.

R.S., 1985, c. 10 (3rd Supp.), s. 2.

Assaulting a peace officer

**270.** (1) Every one commits an offence who

(a) assaults a public officer or peace officer engaged in the execution of his duty or a person acting in aid of such an officer;

(b) assaults a person with intent to resist or prevent the lawful arrest or detention of himself or another person; or

(c) assaults a person

(i) who is engaged in the lawful execution of a process against lands or goods or in making a lawful distress or seizure, or

(ii) with intent to rescue anything taken under lawful process, distress or seizure.

### Punishment

(2) Every one who commits an offence under subsection (1) is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or

(b) an offence punishable on summary conviction.

R.S., c. C-34, s. 246; 1972, c. 13, s. 22; 1980-81-82-83, c. 125, s. 19.

### Assaulting peace officer with weapon or causing bodily harm

**270.01** (1) Everyone commits an offence who, in committing an assault referred to in section 270,

(a) carries, uses or threatens to use a weapon or an imitation of one; or

(b) causes bodily harm to the complainant.

### Punishment

(2) Everyone who commits an offence under subsection (1) is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than 10 years; or

(b) an offence punishable on summary conviction and liable to imprisonment for a term of not more than 18 months.

2009, c. 22, s. 9.

### Aggravated assault of peace officer

**270.02** Everyone who, in committing an assault referred to in section 270, wounds, maims, disfigures or endangers the life of the complainant is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.

2009, c. 22, s. 9.

### Disarming a peace officer

**270.1** (1) Every one commits an offence who, without the consent of a peace officer, takes or attempts to take a weapon that is in the possession of the peace officer when the peace officer is engaged in the execution of his or her duty.

### Definition of "weapon"

(2) For the purpose of subsection (1), "weapon" means any thing that is designed to be used to cause injury or death to, or to temporarily incapacitate, a person.

### Punishment

(3) Every one who commits an offence under subsection (1) is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than five years; or

(b) an offence punishable on summary conviction and liable to imprisonment for a term of not more than eighteen months.

2002, c. 13, s. 11.

### Sexual assault

**271.** (1) Every one who commits a sexual assault is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or
- (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

(2) [Repealed, R.S., 1985, c. 19 (3rd Supp.), s. 10]

R.S., 1985, c. C-46, s. 271; R.S., 1985, c. 19 (3rd Supp.), s. 10; 1994, c. 44, s. 19.

### Sexual assault with a weapon, threats to a third party or causing bodily harm

**272.** (1) Every person commits an offence who, in committing a sexual assault,

- (a) carries, uses or threatens to use a weapon or an imitation of a weapon;
- (b) threatens to cause bodily harm to a person other than the complainant;
- (c) causes bodily harm to the complainant; or
- (d) is a party to the offence with any other person.

### Punishment

(2) Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable

(a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for a term not exceeding 14 years and to a minimum punishment of imprisonment for a term of

- (i) in the case of a first offence, five years, and
- (ii) in the case of a second or subsequent offence, seven years;

(a.1) in any other case where a firearm is used in the commission of the offence, to imprisonment for a term not exceeding 14 years and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for a term not exceeding fourteen years.

### Subsequent offences

(3) In determining, for the purpose of paragraph (2)(a), whether a convicted person has committed a second or subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

- (a) an offence under this section;
- (b) an offence under subsection 85(1) or (2) or section 244 or 244.2; or
- (c) an offence under section 220, 236, 239 or 273, subsection 279(1) or section 279.1, 344 or 346 if a firearm was used in the commission of the offence.

However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.

### Sequence of convictions only

(4) For the purposes of subsection (3), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or

whether any offence occurred before or after any conviction.

R.S., 1985, c. C-46, s. 272; 1995, c. 39, s. 145; 2008, c. 6, s. 28; 2009, c. 22, s. 10.

### Aggravated sexual assault

**273.** (1) Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.

### Aggravated sexual assault

(2) Every person who commits an aggravated sexual assault is guilty of an indictable offence and liable

(a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for life and to a minimum punishment of imprisonment for a term of

(i) in the case of a first offence, five years, and

(ii) in the case of a second or subsequent offence, seven years;

(a.1) in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for life.

### Subsequent offences

(3) In determining, for the purpose of paragraph (2)(a), whether a convicted person has committed a second or subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

(a) an offence under this section;

(b) an offence under subsection 85(1) or (2) or section 244 or 244.2; or

(c) an offence under section 220, 236, 239 or 272, subsection 279(1) or section 279.1, 344 or 346 if a firearm was used in the commission of the offence.

However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.

### Sequence of convictions only

(4) For the purposes of subsection (3), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.

R.S., 1985, c. C-46, s. 273; 1995, c. 39, s. 146; 2008, c. 6, s. 29; 2009, c. 22, s. 11.

### Meaning of "consent"

**273.1** (1) Subject to subsection (2) and subsection 265(3), "consent" means, for the purposes of sections 271, 272 and 273, the voluntary agreement of the complainant to engage in the sexual activity in question.

### Where no consent obtained

(2) No consent is obtained, for the purposes of sections 271, 272 and 273, where

- (a) the agreement is expressed by the words or conduct of a person other than the complainant;
- (b) the complainant is incapable of consenting to the activity;
- (c) the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority;
- (d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or
- (e) the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

### Subsection (2) not limiting

(3) Nothing in subsection (2) shall be construed as limiting the circumstances in which no consent is obtained.

1992, c. 38, s. 1.

### Where belief in consent not a defence

**273.2** It is not a defence to a charge under section 271, 272 or 273 that the accused believed that the complainant consented to the activity that forms the subject-matter of the charge, where

- (a) the accused's belief arose from the accused's
  - (i) self-induced intoxication, or
  - (ii) recklessness or wilful blindness; or
- (b) the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting.

1992, c. 38, s. 1.

### Removal of child from Canada

**273.3** (1) No person shall do anything for the purpose of removing from Canada a person who is ordinarily resident in Canada and who is

- (a) under the age of 16 years, with the intention that an act be committed outside Canada that if it were committed in Canada would be an offence against section 151 or 152 or subsection 160(3) or 173(2) in respect of that person;
- (b) 16 years of age or more but under the age of eighteen years, with the intention that an act be committed outside Canada that if it were committed in Canada would be an offence against section 153 in respect of that person; or
- (c) under the age of eighteen years, with the intention that an act be committed outside Canada that if it were committed in Canada would be an offence against section 155 or 159, subsection 160(2) or section 170, 171, 267, 268, 269, 271, 272 or 273 in respect of that person.

### Punishment

- (2) Every person who contravenes this section is guilty of
  - (a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or
  - (b) an offence punishable on summary conviction.

1993, c. 45, s. 3; 1997, c. 18, s. 13; 2008, c. 6, s. 54.

### Corroboration not required



**274.** If an accused is charged with an offence under section 151, 152, 153, 153.1, 155, 159, 160, 170, 171, 172, 173, 212, 271, 272 or 273, no corroboration is required for a conviction and the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration.

R.S., 1985, c. C-46, s. 274; R.S., 1985, c. 19 (3rd Supp.), s. 11; 2002, c. 13, s. 12.

### Rules respecting recent complaint abrogated

**275.** The rules relating to evidence of recent complaint are hereby abrogated with respect to offences under sections 151, 152, 153, 153.1, 155 and 159, subsections 160(2) and (3) and sections 170, 171, 172, 173, 271, 272 and 273.

R.S., 1985, c. C-46, s. 275; R.S., 1985, c. 19 (3rd Supp.), s. 11; 2002, c. 13, s. 12.

### Evidence of complainant's sexual activity

**276.** (1) In proceedings in respect of an offence under section 151, 152, 153, 153.1, 155 or 159, subsection 160(2) or (3) or section 170, 171, 172, 173, 271, 272 or 273, evidence that the complainant has engaged in sexual activity, whether with the accused or with any other person, is not admissible to support an inference that, by reason of the sexual nature of that activity, the complainant

- (a) is more likely to have consented to the sexual activity that forms the subject-matter of the charge; or
- (b) is less worthy of belief.

### Idem

(2) In proceedings in respect of an offence referred to in subsection (1), no evidence shall be adduced by or on behalf of the accused that the complainant has engaged in sexual activity other than the sexual activity that forms the subject-matter of the charge, whether with the accused or with any other person, unless the judge, provincial court judge or justice determines, in accordance with the procedures set out in sections 276.1 and 276.2, that the evidence

- (a) is of specific instances of sexual activity;
- (b) is relevant to an issue at trial; and
- (c) has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice.

### Factors that judge must consider

(3) In determining whether evidence is admissible under subsection (2), the judge, provincial court judge or justice shall take into account

- (a) the interests of justice, including the right of the accused to make a full answer and defence;
- (b) society's interest in encouraging the reporting of sexual assault offences;
- (c) whether there is a reasonable prospect that the evidence will assist in arriving at a just determination in the case;
- (d) the need to remove from the fact-finding process any discriminatory belief or bias;
- (e) the risk that the evidence may unduly arouse sentiments of prejudice, sympathy or hostility in the jury;
- (f) the potential prejudice to the complainant's personal dignity and right of privacy;
- (g) the right of the complainant and of every individual to personal security and to the full protection and benefit of the law; and

(h) any other factor that the judge, provincial court judge or justice considers relevant.

R.S., 1985, c. C-46, s. 276; R.S., 1985, c. 19 (3rd Supp.), s. 12; 1992, c. 38, s. 2; 2002, c. 13, s. 13.

### Application for hearing

**276.1** (1) Application may be made to the judge, provincial court judge or justice by or on behalf of the accused for a hearing under section 276.2 to determine whether evidence is admissible under subsection 276(2).

### Form and content of application

(2) An application referred to in subsection (1) must be made in writing and set out

(a) detailed particulars of the evidence that the accused seeks to adduce, and

(b) the relevance of that evidence to an issue at trial,

and a copy of the application must be given to the prosecutor and to the clerk of the court.

### Jury and public excluded

(3) The judge, provincial court judge or justice shall consider the application with the jury and the public excluded.

### Judge may decide to hold hearing

(4) Where the judge, provincial court judge or justice is satisfied

(a) that the application was made in accordance with subsection (2),

(b) that a copy of the application was given to the prosecutor and to the clerk of the court at least seven days previously, or such shorter interval as the judge, provincial court judge or justice may allow where the interests of justice so require, and

(c) that the evidence sought to be adduced is capable of being admissible under subsection 276(2),

the judge, provincial court judge or justice shall grant the application and hold a hearing under section 276.2 to determine whether the evidence is admissible under subsection 276(2).

1992, c. 38, s. 2.

### Jury and public excluded

**276.2** (1) At a hearing to determine whether evidence is admissible under subsection 276(2), the jury and the public shall be excluded.

### Complainant not compellable

(2) The complainant is not a compellable witness at the hearing.

### Judge's determination and reasons

(3) At the conclusion of the hearing, the judge, provincial court judge or justice shall determine whether the evidence, or any part thereof, is admissible under subsection 276(2) and shall provide reasons for that determination, and

(a) where not all of the evidence is to be admitted, the reasons must state the part of the evidence that is to be admitted;

(b) the reasons must state the factors referred to in subsection 276(3) that affected the determination; and

(c) where all or any part of the evidence is to be admitted, the reasons must state the manner

in which that evidence is expected to be relevant to an issue at trial.

### Record of reasons

(4) The reasons provided under subsection (3) shall be entered in the record of the proceedings or, where the proceedings are not recorded, shall be provided in writing.  
1992, c. 38, s. 2.

### Publication prohibited

**276.3** (1) No person shall publish in any document, or broadcast or transmit in any way, any of the following:

- (a) the contents of an application made under section 276.1;
- (b) any evidence taken, the information given and the representations made at an application under section 276.1 or at a hearing under section 276.2;
- (c) the decision of a judge or justice under subsection 276.1(4), unless the judge or justice, after taking into account the complainant's right of privacy and the interests of justice, orders that the decision may be published, broadcast or transmitted; and
- (d) the determination made and the reasons provided under section 276.2, unless
  - (i) that determination is that evidence is admissible, or
  - (ii) the judge or justice, after taking into account the complainant's right of privacy and the interests of justice, orders that the determination and reasons may be published, broadcast or transmitted.

### Offence

(2) Every person who contravenes subsection (1) is guilty of an offence punishable on summary conviction.  
1992, c. 38, s. 2; 2005, c. 32, s. 13.

### Judge to instruct jury re use of evidence

**276.4** Where evidence is admitted at trial pursuant to a determination made under section 276.2, the judge shall instruct the jury as to the uses that the jury may and may not make of that evidence.  
1992, c. 38, s. 2.

### Appeal

**276.5** For the purposes of sections 675 and 676, a determination made under section 276.2 shall be deemed to be a question of law.  
1992, c. 38, s. 2.

### Reputation evidence

**277.** In proceedings in respect of an offence under section 151, 152, 153, 153.1, 155 or 159, subsection 160(2) or (3) or section 170, 171, 172, 173, 271, 272 or 273, evidence of sexual reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant.  
R.S., 1985, c. C-46, s. 277; R.S., 1985, c. 19 (3rd Supp.), s. 13; 2002, c. 13, s. 14.

### Spouse may be charged

**278.** A husband or wife may be charged with an offence under section 271, 272 or 273 in respect of his or her spouse, whether or not the spouses were living together at the time the activity that forms the subject-matter of the charge occurred.

1980-81-82-83, c. 125, s. 19.

### Definition of "record"

**278.1** For the purposes of sections 278.2 to 278.9, "record" means any form of record that contains personal information for which there is a reasonable expectation of privacy and includes, without limiting the generality of the foregoing, medical, psychiatric, therapeutic, counselling, education, employment, child welfare, adoption and social services records, personal journals and diaries, and records containing personal information the production or disclosure of which is protected by any other Act of Parliament or a provincial legislature, but does not include records made by persons responsible for the investigation or prosecution of the offence.

1997, c. 30, s. 1.

### Production of record to accused

**278.2** (1) No record relating to a complainant or a witness shall be produced to an accused in any proceedings in respect of

(a) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 170, 171, 172, 173, 210, 211, 212, 213, 271, 272 or 273,

(b) an offence under section 144, 145, 149, 156, 245 or 246 of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 4, 1983, or

(c) an offence under section 146, 151, 153, 155, 157, 166 or 167 of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988,

or in any proceedings in respect of two or more offences that include an offence referred to in any of paragraphs (a) to (c), except in accordance with sections 278.3 to 278.91.

### Application of provisions

(2) Section 278.1, this section and sections 278.3 to 278.91 apply where a record is in the possession or control of any person, including the prosecutor in the proceedings, unless, in the case of a record in the possession or control of the prosecutor, the complainant or witness to whom the record relates has expressly waived the application of those sections.

### Duty of prosecutor to give notice

(3) In the case of a record in respect of which this section applies that is in the possession or control of the prosecutor, the prosecutor shall notify the accused that the record is in the prosecutor's possession but, in doing so, the prosecutor shall not disclose the record's contents.

1997, c. 30, s. 1; 1998, c. 9, s. 3.

### Application for production

**278.3** (1) An accused who seeks production of a record referred to in subsection 278.2(1) must make an application to the judge before whom the accused is to be, or is being, tried.

### No application in other proceedings

(2) For greater certainty, an application under subsection (1) may not be made to a judge or justice presiding at any other proceedings, including a preliminary inquiry.

### Form and content of application

(3) An application must be made in writing and set out

(a) particulars identifying the record that the accused seeks to have produced and the name of

the person who has possession or control of the record; and

(b) the grounds on which the accused relies to establish that the record is likely relevant to an issue at trial or to the competence of a witness to testify.

### Insufficient grounds

(4) Any one or more of the following assertions by the accused are not sufficient on their own to establish that the record is likely relevant to an issue at trial or to the competence of a witness to testify:

(a) that the record exists;

(b) that the record relates to medical or psychiatric treatment, therapy or counselling that the complainant or witness has received or is receiving;

(c) that the record relates to the incident that is the subject-matter of the proceedings;

(d) that the record may disclose a prior inconsistent statement of the complainant or witness;

(e) that the record may relate to the credibility of the complainant or witness;

(f) that the record may relate to the reliability of the testimony of the complainant or witness merely because the complainant or witness has received or is receiving psychiatric treatment, therapy or counselling;

(g) that the record may reveal allegations of sexual abuse of the complainant by a person other than the accused;

(h) that the record relates to the sexual activity of the complainant with any person, including the accused;

(i) that the record relates to the presence or absence of a recent complaint;

(j) that the record relates to the complainant's sexual reputation; or

(k) that the record was made close in time to a complaint or to the activity that forms the subject-matter of the charge against the accused.

### Service of application and subpoena

(5) The accused shall serve the application on the prosecutor, on the person who has possession or control of the record, on the complainant or witness, as the case may be, and on any other person to whom, to the knowledge of the accused, the record relates, at least seven days before the hearing referred to in subsection 278.4(1) or any shorter interval that the judge may allow in the interests of justice. The accused shall also serve a subpoena issued under Part XXII in Form 16.1 on the person who has possession or control of the record at the same time as the application is served.

### Service on other persons

(6) The judge may at any time order that the application be served on any person to whom the judge considers the record may relate.

1997, c. 30, s. 1.

### Hearing *in camera*

**278.4** (1) The judge shall hold a hearing *in camera* to determine whether to order the person who has possession or control of the record to produce it to the court for review by the judge.

### Persons who may appear at hearing

(2) The person who has possession or control of the record, the complainant or witness, as the case may be, and any other person to whom the record relates may appear and make

submissions at the hearing, but they are not compellable as witnesses at the hearing.

### Costs

(3) No order for costs may be made against a person referred to in subsection (2) in respect of their participation in the hearing.

1997, c. 30, s. 1.

### Judge may order production of record for review

**278.5** (1) The judge may order the person who has possession or control of the record to produce the record or part of the record to the court for review by the judge if, after the hearing referred to in subsection 278.4(1), the judge is satisfied that

- (a) the application was made in accordance with subsections 278.3(2) to (6);
- (b) the accused has established that the record is likely relevant to an issue at trial or to the competence of a witness to testify; and
- (c) the production of the record is necessary in the interests of justice.

### Factors to be considered

(2) In determining whether to order the production of the record or part of the record for review pursuant to subsection (1), the judge shall consider the salutary and deleterious effects of the determination on the accused's right to make a full answer and defence and on the right to privacy and equality of the complainant or witness, as the case may be, and any other person to whom the record relates. In particular, the judge shall take the following factors into account:

- (a) the extent to which the record is necessary for the accused to make a full answer and defence;
- (b) the probative value of the record;
- (c) the nature and extent of the reasonable expectation of privacy with respect to the record;
- (d) whether production of the record is based on a discriminatory belief or bias;
- (e) the potential prejudice to the personal dignity and right to privacy of any person to whom the record relates;
- (f) society's interest in encouraging the reporting of sexual offences;
- (g) society's interest in encouraging the obtaining of treatment by complainants of sexual offences; and
- (h) the effect of the determination on the integrity of the trial process.

1997, c. 30, s. 1.

### Review of record by judge

**278.6** (1) Where the judge has ordered the production of the record or part of the record for review, the judge shall review it in the absence of the parties in order to determine whether the record or part of the record should be produced to the accused.

### Hearing *in camera*

(2) The judge may hold a hearing *in camera* if the judge considers that it will assist in making the determination.

### Provisions re hearing

- (3) Subsections 278.4(2) and (3) apply in the case of a hearing under subsection (2).

1997, c. 30, s. 1.

### Judge may order production of record to accused

**278.7** (1) Where the judge is satisfied that the record or part of the record is likely relevant to an issue at trial or to the competence of a witness to testify and its production is necessary in the interests of justice, the judge may order that the record or part of the record that is likely relevant be produced to the accused, subject to any conditions that may be imposed pursuant to subsection (3).

### Factors to be considered

(2) In determining whether to order the production of the record or part of the record to the accused, the judge shall consider the salutary and deleterious effects of the determination on the accused's right to make a full answer and defence and on the right to privacy and equality of the complainant or witness, as the case may be, and any other person to whom the record relates and, in particular, shall take the factors specified in paragraphs 278.5(2)(a) to (h) into account.

### Conditions on production

(3) Where the judge orders the production of the record or part of the record to the accused, the judge may impose conditions on the production to protect the interests of justice and, to the greatest extent possible, the privacy and equality interests of the complainant or witness, as the case may be, and any other person to whom the record relates, including, for example, the following conditions:

- (a) that the record be edited as directed by the judge;
- (b) that a copy of the record, rather than the original, be produced;
- (c) that the accused and counsel for the accused not disclose the contents of the record to any other person, except with the approval of the court;
- (d) that the record be viewed only at the offices of the court;
- (e) that no copies of the record be made or that restrictions be imposed on the number of copies of the record that may be made; and
- (f) that information regarding any person named in the record, such as their address, telephone number and place of employment, be severed from the record.

### Copy to prosecutor

(4) Where the judge orders the production of the record or part of the record to the accused, the judge shall direct that a copy of the record or part of the record be provided to the prosecutor, unless the judge determines that it is not in the interests of justice to do so.

### Record not to be used in other proceedings

(5) The record or part of the record that is produced to the accused pursuant to an order under subsection (1) shall not be used in any other proceedings.

### Retention of record by court

(6) Where the judge refuses to order the production of the record or part of the record to the accused, the record or part of the record shall, unless a court orders otherwise, be kept in a sealed package by the court until the later of the expiration of the time for any appeal and the completion of any appeal in the proceedings against the accused, whereupon the record or part of the record shall be returned to the person lawfully entitled to possession or control of it.

1997, c. 30, s. 1.

### Reasons for decision



**278.8** (1) The judge shall provide reasons for ordering or refusing to order the production of the record or part of the record pursuant to subsection 278.5(1) or 278.7(1).

#### Record of reasons

(2) The reasons referred to in subsection (1) shall be entered in the record of the proceedings or, where the proceedings are not recorded, shall be provided in writing.

1997, c. 30, s. 1.

#### Publication prohibited

**278.9** (1) No person shall publish in any document, or broadcast or transmit in any way, any of the following:

- (a) the contents of an application made under section 278.3;
- (b) any evidence taken, information given or submissions made at a hearing under subsection 278.4(1) or 278.6(2); or
- (c) the determination of the judge pursuant to subsection 278.5(1) or 278.7(1) and the reasons provided pursuant to section 278.8, unless the judge, after taking into account the interests of justice and the right to privacy of the person to whom the record relates, orders that the determination may be published.

#### Offence

(2) Every person who contravenes subsection (1) is guilty of an offence punishable on summary conviction.

1997, c. 30, s. 1; 2005, c. 32, s. 14.

#### Appeal

**278.91** For the purposes of sections 675 and 676, a determination to make or refuse to make an order pursuant to subsection 278.5(1) or 278.7(1) is deemed to be a question of law.

1997, c. 30, s. 1.

### KIDNAPPING, TRAFFICKING IN PERSONS, HOSTAGE TAKING AND ABDUCTION

#### Kidnapping

**279.** (1) Every person commits an offence who kidnaps a person with intent

- (a) to cause the person to be confined or imprisoned against the person's will;
- (b) to cause the person to be unlawfully sent or transported out of Canada against the person's will; or
- (c) to hold the person for ransom or to service against the person's will.

#### Punishment

(1.1) Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable

(a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for life and to a minimum punishment of imprisonment for a term of

- (i) in the case of a first offence, five years, and
- (ii) in the case of a second or subsequent offence, seven years;

(a. 1) in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for life.

### Subsequent offences

(1.2) In determining, for the purpose of paragraph (1.1)(a), whether a convicted person has committed a second or subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

(a) an offence under subsection (1);

(b) an offence under subsection 85(1) or (2) or section 244 or 244.2; or

(c) an offence under section 220, 236, 239, 272, 273, 279.1, 344 or 346 if a firearm was used in the commission of the offence.

However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.

### Sequence of convictions only

(1.3) For the purposes of subsection (1.2), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.

### Forcible confinement

(2) Every one who, without lawful authority, confines, imprisons or forcibly seizes another person is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

### Non-resistance

(3) In proceedings under this section, the fact that the person in relation to whom the offence is alleged to have been committed did not resist is not a defence unless the accused proves that the failure to resist was not caused by threats, duress, force or exhibition of force.

R.S., 1985, c. C-46, s. 279; R.S., 1985, c. 27 (1st Supp.), s. 39; 1995, c. 39, s. 147; 1997, c. 18, s. 14; 2008, c. 6, s. 30; 2009, c. 22, s. 12.

### Trafficking in persons

**279.01** (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable

(a) to imprisonment for life if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or

(b) to imprisonment for a term of not more than fourteen years in any other case.

### Consent

(2) No consent to the activity that forms the subject-matter of a charge under subsection (1)

is valid.

2005, c. 43, s. 3.

### Trafficking of a person under the age of eighteen years

**279.011** (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person under the age of eighteen years, or exercises control, direction or influence over the movements of a person under the age of eighteen years, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable

(a) to imprisonment for life and to a minimum punishment of imprisonment for a term of six years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or

(b) to imprisonment for a term of not more than fourteen years and to a minimum punishment of imprisonment for a term of five years, in any other case.

### Consent

(2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.

2010, c. 3, s. 2.

### Material benefit

**279.02** Every person who receives a financial or other material benefit, knowing that it results from the commission of an offence under subsection 279.01(1) or 279.011(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.

2005, c. 43, s. 3; 2010, c. 3, s. 3.

### Withholding or destroying documents

**279.03** Every person who, for the purpose of committing or facilitating an offence under subsection 279.01(1) or 279.011(1), conceals, removes, withholds or destroys any travel document that belongs to another person or any document that establishes or purports to establish another person's identity or immigration status is guilty of an indictable offence and liable to imprisonment for a term of not more than five years, whether or not the document is of Canadian origin or is authentic.

2005, c. 43, s. 3; 2010, c. 3, s. 3.

### Exploitation

**279.04** For the purposes of sections 279.01 to 279.03, a person exploits another person if they

(a) cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service; or

(b) cause them, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed.

2005, c. 43, s. 3.

### Hostage taking

**279.1** (1) Everyone takes a person hostage who — with intent to induce any person, other than the hostage, or any group of persons or any state or international or intergovernmental organization to commit or cause to be committed any act or omission as a condition, whether express or implied, of the release of the hostage —

(a) confines, imprisons, forcibly seizes or detains that person; and

(b) in any manner utters, conveys or causes any person to receive a threat that the death of, or bodily harm to, the hostage will be caused or that the confinement, imprisonment or detention of the hostage will be continued.

### Hostage-taking

(2) Every person who takes a person hostage is guilty of an indictable offence and liable

(a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for life and to a minimum punishment of imprisonment for a term of

(i) in the case of a first offence, five years, and

(ii) in the case of a second or subsequent offence, seven years;

(a. 7) in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for life.

### Subsequent offences

(2.1) In determining, for the purpose of paragraph (2)(a), whether a convicted person has committed a second or subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

(a) an offence under this section;

(b) an offence under subsection 85(1) or (2) or section 244 or 244.2; or

(c) an offence under section 220, 236, 239, 272 or 273, subsection 279(1) or section 344 or 346 if a firearm was used in the commission of the offence.

However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.

### Sequence of convictions only

(2.2) For the purposes of subsection (2.1), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.

### Non-resistance

(3) Subsection 279(3) applies to proceedings under this section as if the offence under this section were an offence under section 279.

R.S., 1985, c. 27 (1st Supp.), s. 40; 1995, c. 39, s. 148; 2008, c. 6, s. 31; 2009, c. 22, s. 13.

### Abduction of person under sixteen

**280.** (1) Every one who, without lawful authority, takes or causes to be taken an unmarried person under the age of sixteen years out of the possession of and against the will of the parent or guardian of that person or of any other person who has the lawful care or charge of that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

## Definition of “guardian”

(2) In this section and sections 281 to 283, “guardian” includes any person who has in law or in fact the custody or control of another person.

R.S., c. C-34, s. 249; 1980-81-82-83, c. 125, s. 20.

## Abduction of person under fourteen

**281.** Every one who, not being the parent, guardian or person having the lawful care or charge of a person under the age of fourteen years, unlawfully takes, entices away, conceals, detains, receives or harbours that person with intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that person, of the possession of that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

R.S., c. C-34, s. 250; 1980-81-82-83, c. 125, s. 20.

## Abduction in contravention of custody order

**282.** (1) Every one who, being the parent, guardian or person having the lawful care or charge of a person under the age of fourteen years, takes, entices away, conceals, detains, receives or harbours that person, in contravention of the custody provisions of a custody order in relation to that person made by a court anywhere in Canada, with intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that person, of the possession of that person is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or
- (b) an offence punishable on summary conviction.

## Where no belief in validity of custody order

(2) Where a count charges an offence under subsection (1) and the offence is not proven only because the accused did not believe that there was a valid custody order but the evidence does prove an offence under section 283, the accused may be convicted of an offence under section 283.

R.S., 1985, c. C-46, s. 282; 1993, c. 45, s. 4.

## Abduction

**283.** (1) Every one who, being the parent, guardian or person having the lawful care or charge of a person under the age of fourteen years, takes, entices away, conceals, detains, receives or harbours that person, whether or not there is a custody order in relation to that person made by a court anywhere in Canada, with intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that person, of the possession of that person, is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or
- (b) an offence punishable on summary conviction.

## Consent required

(2) No proceedings may be commenced under subsection (1) without the consent of the Attorney General or counsel instructed by him for that purpose.

R.S., 1985, c. C-46, s. 283; 1993, c. 45, s. 5.

## Defence

**284.** No one shall be found guilty of an offence under sections 281 to 283 if he establishes that the taking, enticing away, concealing, detaining, receiving or harbouring of any young person was done with the consent of the parent, guardian or other person having the lawful possession, care or charge of that young person.

1980-81-82-83, c. 125, s. 20.

## Defence

**285.** No one shall be found guilty of an offence under sections 280 to 283 if the court is satisfied that the taking, enticing away, concealing, detaining, receiving or harbouring of any young person was necessary to protect the young person from danger of imminent harm or if the person charged with the offence was escaping from danger of imminent harm.

R.S., 1985, c. C-46, s. 285; 1993, c. 45, s. 6.

## No defence

**286.** In proceedings in respect of an offence under sections 280 to 283, it is not a defence to any charge that a young person consented to or suggested any conduct of the accused.

1980-81-82-83, c. 125, s. 20.

## ABORTION

### Procuring miscarriage

**287.** (1) Every one who, with intent to procure the miscarriage of a female person, whether or not she is pregnant, uses any means for the purpose of carrying out his intention is guilty of an indictable offence and liable to imprisonment for life.

### Woman procuring her own miscarriage

(2) Every female person who, being pregnant, with intent to procure her own miscarriage, uses any means or permits any means to be used for the purpose of carrying out her intention is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

### Definition of "means"

(3) In this section, "means" includes

- (a) the administration of a drug or other noxious thing;
- (b) the use of an instrument; and
- (c) manipulation of any kind.

### Exceptions

(4) Subsections (1) and (2) do not apply to

- (a) a qualified medical practitioner, other than a member of a therapeutic abortion committee for any hospital, who in good faith uses in an accredited or approved hospital any means for the purpose of carrying out his intention to procure the miscarriage of a female person, or
- (b) a female person who, being pregnant, permits a qualified medical practitioner to use in an accredited or approved hospital any means for the purpose of carrying out her intention to procure her own miscarriage,

if, before the use of those means, the therapeutic abortion committee for that accredited or approved hospital, by a majority of the members of the committee and at a meeting of the committee at which the case of the female person has been reviewed,

- (c) has by certificate in writing stated that in its opinion the continuation of the pregnancy of the female person would or would be likely to endanger her life or health, and
- (d) has caused a copy of that certificate to be given to the qualified medical practitioner.

### Information requirement

(5) The Minister of Health of a province may by order

(a) require a therapeutic abortion committee for any hospital in that province, or any member thereof, to furnish him with a copy of any certificate described in paragraph (4)(c) issued by that committee, together with such other information relating to the circumstances surrounding the issue of that certificate as he may require; or

(b) require a medical practitioner who, in that province, has procured the miscarriage of any female person named in a certificate described in paragraph (4)(c), to furnish him with a copy of that certificate, together with such other information relating to the procuring of the miscarriage as he may require.

## Definitions

(6) For the purposes of subsections (4) and (5) and this subsection,

**“accredited hospital”**

« *hôpital accrédité* »

“accredited hospital” means a hospital accredited by the Canadian Council on Hospital Accreditation in which diagnostic services and medical, surgical and obstetrical treatment are provided;

**“approved hospital”**

« *hôpital approuvé* »

“approved hospital” means a hospital in a province approved for the purposes of this section by the Minister of Health of that province;

**“board”**

« *conseil* »

“board” means the board of governors, management or directors, or the trustees, commission or other person or group of persons having the control and management of an accredited or approved hospital;

**“Minister of Health”**

« *ministre de la Santé* »

“Minister of Health” means

(a) in the Provinces of Ontario, Quebec, New Brunswick, Prince Edward Island, Manitoba and Newfoundland, the Minister of Health,

(b) in the Provinces of Nova Scotia and Saskatchewan, the Minister of Public Health, and

(c) in the Province of British Columbia, the Minister of Health Services and Hospital Insurance,

(d) in the Province of Alberta, the Minister of Hospitals and Medical Care,

(e) in Yukon, the Northwest Territories and Nunavut, the Minister of Health;

**“qualified medical practitioner”**

« *médecin qualifié* »

“qualified medical practitioner” means a person entitled to engage in the practice of medicine under the laws of the province in which the hospital referred to in subsection (4) is situated;

**“therapeutic abortion committee”**

« *comité de l'avortement thérapeutique* »

“therapeutic abortion committee” for any hospital means a committee, comprised of not less than



three members each of whom is a qualified medical practitioner, appointed by the board of that hospital for the purpose of considering and determining questions relating to terminations of pregnancy within that hospital.

#### Requirement of consent not affected

(7) Nothing in subsection (4) shall be construed as making unnecessary the obtaining of any authorization or consent that is or may be required, otherwise than under this Act, before any means are used for the purpose of carrying out an intention to procure the miscarriage of a female person.

R.S., 1985, c. C-46, s. 287; 1993, c. 28, s. 78; 1996, c. 8, s. 32; 2002, c. 7, s. 141.

#### Supplying noxious things

**288.** Every one who unlawfully supplies or procures a drug or other noxious thing or an instrument or thing, knowing that it is intended to be used or employed to procure the miscarriage of a female person, whether or not she is pregnant, is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

R.S., c. C-34, s. 252.

### VENEREAL DISEASES

**289.** [Repealed, R.S., 1985, c. 27 (1st Supp.), s. 41]

### OFFENCES AGAINST CONJUGAL RIGHTS

#### Bigamy

**290.** (1) Every one commits bigamy who

(a) in Canada,

(i) being married, goes through a form of marriage with another person,

(ii) knowing that another person is married, goes through a form of marriage with that person, or

(iii) on the same day or simultaneously, goes through a form of marriage with more than one person; or

(b) being a Canadian citizen resident in Canada leaves Canada with intent to do anything mentioned in subparagraphs (a)(i) to (iii) and, pursuant thereto, does outside Canada anything mentioned in those subparagraphs in circumstances mentioned therein.

#### Matters of defence

(2) No person commits bigamy by going through a form of marriage if

(a) that person in good faith and on reasonable grounds believes that his spouse is dead;

(b) the spouse of that person has been continuously absent from him for seven years immediately preceding the time when he goes through the form of marriage, unless he knew that his spouse was alive at any time during those seven years;

(c) that person has been divorced from the bond of the first marriage; or

(d) the former marriage has been declared void by a court of competent jurisdiction.

#### Incompetency no defence

(3) Where a person is alleged to have committed bigamy, it is not a defence that the parties would, if unmarried, have been incompetent to contract marriage under the law of the place where the offence is alleged to have been committed.

### Validity presumed

(4) Every marriage or form of marriage shall, for the purpose of this section, be deemed to be valid unless the accused establishes that it was invalid.

### Act or omission by accused

(5) No act or omission on the part of an accused who is charged with bigamy invalidates a marriage or form of marriage that is otherwise valid.

R.S., c. C-34, s. 254.

### Punishment

**291.** (1) Every one who commits bigamy is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

### Certificate of marriage

(2) For the purposes of this section, a certificate of marriage issued under the authority of law is evidence of the marriage or form of marriage to which it relates without proof of the signature or official character of the person by whom it purports to be signed.

R.S., c. C-34, s. 255.

### Procuring feigned marriage

**292.** (1) Every person who procures or knowingly aids in procuring a feigned marriage between himself and another person is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

### Corroboration

(2) No person shall be convicted of an offence under this section on the evidence of only one witness unless the evidence of that witness is corroborated in a material particular by evidence that implicates the accused.

R.S., c. C-34, s. 256; 1980-81-82-83, c. 125, s. 21.

### Polygamy

**293.** (1) Every one who

(a) practises or enters into or in any manner agrees or consents to practise or enter into

(i) any form of polygamy, or

(ii) any kind of conjugal union with more than one person at the same time,

whether or not it is by law recognized as a binding form of marriage, or

(b) celebrates, assists or is a party to a rite, ceremony, contract or consent that purports to sanction a relationship mentioned in subparagraph (a)(i) or (ii),

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

### Evidence in case of polygamy

(2) Where an accused is charged with an offence under this section, no averment or proof of the method by which the alleged relationship was entered into, agreed to or consented to is necessary in the indictment or on the trial of the accused, nor is it necessary on the trial to prove that the persons who are alleged to have entered into the relationship had or intended to have sexual intercourse.

R.S., c. C-34, s. 257.

## UNLAWFUL SOLEMNIZATION OF MARRIAGE

### Pretending to solemnize marriage

**294.** Every one who

(a) solemnizes or pretends to solemnize a marriage without lawful authority, the proof of which lies on him, or

(b) procures a person to solemnize a marriage knowing that he is not lawfully authorized to solemnize the marriage,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.  
R.S., c. C-34, s. 258.

### Marriage contrary to law

**295.** Every one who, being lawfully authorized to solemnize marriage, knowingly and wilfully solemnizes a marriage in contravention of the laws of the province in which the marriage is solemnized is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

R.S., c. C-34, s. 259.

## BLASPHEMOUS LIBEL

### Offence

**296.** (1) Every one who publishes a blasphemous libel is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

### Question of fact

(2) It is a question of fact whether or not any matter that is published is a blasphemous libel.

### Saving

(3) No person shall be convicted of an offence under this section for expressing in good faith and in decent language, or attempting to establish by argument used in good faith and conveyed in decent language, an opinion on a religious subject.

R.S., c. C-34, s. 260.

## DEFAMATORY LIBEL

### Definition of "newspaper"

**297.** In sections 303, 304 and 308, "newspaper" means any paper, magazine or periodical containing public news, intelligence or reports of events, or any remarks or observations thereon, printed for sale and published periodically or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two such papers, parts or numbers, and any paper, magazine or periodical printed in order to be dispersed and made public, weekly or more often, or at intervals not exceeding thirty-one days, that contains advertisements, exclusively or principally.

R.S., c. C-34, s. 261.

### Definition

**298.** (1) A defamatory libel is matter published, without lawful justification or excuse, that is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or that is designed to insult the person of or concerning whom it is published.

### Mode of expression

(2) A defamatory libel may be expressed directly or by insinuation or irony

(a) in words legibly marked on any substance; or

(b) by any object signifying a defamatory libel otherwise than by words.

R.S., c. C-34, s. 262.

### Publishing

**299.** A person publishes a libel when he

(a) exhibits it in public;

(b) causes it to be read or seen; or

(c) shows or delivers it, or causes it to be shown or delivered, with intent that it should be read or seen by the person whom it defames or by any other person.

R.S., c. C-34, s. 263.

### Punishment of libel known to be false

**300.** Every one who publishes a defamatory libel that he knows is false is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

R.S., c. C-34, s. 264.

### Punishment for defamatory libel

**301.** Every one who publishes a defamatory libel is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

R.S., c. C-34, s. 265.

### Extortion by libel

**302.** (1) Every one commits an offence who, with intent

(a) to extort money from any person, or

(b) to induce a person to confer on or procure for another person an appointment or office of profit or trust,

publishes or threatens to publish or offers to abstain from publishing or to prevent the publication of a defamatory libel.

### Idem

(2) Every one commits an offence who, as the result of the refusal of any person to permit money to be extorted or to confer or procure an appointment or office of profit or trust, publishes or threatens to publish a defamatory libel.

### Punishment

(3) Every one who commits an offence under this section is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

R.S., c. C-34, s. 266.

### Proprietor of newspaper presumed responsible

**303.** (1) The proprietor of a newspaper shall be deemed to publish defamatory matter that is inserted and published therein, unless he proves that the defamatory matter was inserted in the newspaper without his knowledge and without negligence on his part.

### General authority to manager when negligence

(2) Where the proprietor of a newspaper gives to a person general authority to manage or conduct the newspaper as editor or otherwise, the insertion by that person of defamatory matter in the newspaper shall, for the purposes of subsection (1), be deemed not to be negligence on the part of the proprietor unless it is proved that

(a) he intended the general authority to include authority to insert defamatory matter in the newspaper; or

(b) he continued to confer general authority after he knew that it had been exercised by the insertion of defamatory matter in the newspaper.

### Selling newspapers

(3) No person shall be deemed to publish a defamatory libel by reason only that he sells a number or part of a newspaper that contains a defamatory libel, unless he knows that the number or part contains defamatory matter or that defamatory matter is habitually contained in the newspaper.

R.S., c. C-34, s. 267.

### Selling book containing defamatory libel

**304.** (1) No person shall be deemed to publish a defamatory libel by reason only that he sells a book, magazine, pamphlet or other thing, other than a newspaper that contains defamatory matter, if, at the time of the sale, he does not know that it contains the defamatory matter.

### Sale by servant

(2) Where a servant, in the course of his employment, sells a book, magazine, pamphlet or other thing, other than a newspaper, the employer shall be deemed not to publish any defamatory matter contained therein unless it is proved that the employer authorized the sale knowing that

(a) defamatory matter was contained therein; or

(b) defamatory matter was habitually contained therein, in the case of a periodical.

R.S., c. C-34, s. 268.

### Publishing proceedings of courts of justice

**305.** No person shall be deemed to publish a defamatory libel by reason only that he publishes defamatory matter

(a) in a proceeding held before or under the authority of a court exercising judicial authority; or

(b) in an inquiry made under the authority of an Act or by order of Her Majesty, or under the authority of a public department or a department of the government of a province.

R.S., c. C-34, s. 269.

### Parliamentary papers

**306.** No person shall be deemed to publish a defamatory libel by reason only that he

(a) publishes to the Senate or House of Commons or to the legislature of a province defamatory matter contained in a petition to the Senate or House of Commons or to the legislature of a province, as the case may be;

(b) publishes by order or under the authority of the Senate or House of Commons or of the legislature of a province a paper containing defamatory matter; or

(c) publishes, in good faith and without ill-will to the person defamed, an extract from or abstract of a petition or paper mentioned in paragraph (a) or (b).

R.S., c. C-34, s. 270.

### Fair reports of parliamentary or judicial proceedings

**307.** (1) No person shall be deemed to publish a defamatory libel by reason only that he publishes in good faith, for the information of the public, a fair report of the proceedings of the Senate or House of Commons or the legislature of a province, or a committee thereof, or of the public proceedings before a court exercising judicial authority, or publishes, in good faith, any fair comment on any such proceedings.

### Divorce proceedings an exception

(2) This section does not apply to a person who publishes a report of evidence taken or offered in any proceeding before the Senate or House of Commons or any committee thereof, on a petition or bill relating to any matter of marriage or divorce, if the report is published without authority from or leave of the House in which the proceeding is held or is contrary to any rule, order or practice of that House.

R.S., c. C-34, s. 271.

### Fair report of public meeting

**308.** No person shall be deemed to publish a defamatory libel by reason only that he publishes in good faith, in a newspaper, a fair report of the proceedings of any public meeting if

- (a) the meeting is lawfully convened for a lawful purpose and is open to the public;
- (b) the report is fair and accurate;
- (c) the publication of the matter complained of is for the public benefit; and
- (d) he does not refuse to publish in a conspicuous place in the newspaper a reasonable explanation or contradiction by the person defamed in respect of the defamatory matter.

R.S., c. C-34, s. 272.

### Public benefit

**309.** No person shall be deemed to publish a defamatory libel by reason only that he publishes defamatory matter that, on reasonable grounds, he believes is true, and that is relevant to any subject of public interest, the public discussion of which is for the public benefit.

R.S., c. C-34, s. 273.

### Fair comment on public person or work of art

**310.** No person shall be deemed to publish a defamatory libel by reason only that he publishes fair comments

- (a) on the public conduct of a person who takes part in public affairs; or
- (b) on a published book or other literary production, or on any composition or work of art or performance publicly exhibited, or on any other communication made to the public on any subject, if the comments are confined to criticism thereof.

R.S., c. C-34, s. 274.

### When truth a defence

**311.** No person shall be deemed to publish a defamatory libel where he proves that the publication of the defamatory matter in the manner in which it was published was for the public benefit at the time when it was published and that the matter itself was true.

R.S., c. C-34, s. 275.

### Publication invited or necessary

**312.** No person shall be deemed to publish a defamatory libel by reason only that he publishes defamatory matter

- (a) on the invitation or challenge of the person in respect of whom it is published, or
- (b) that it is necessary to publish in order to refute defamatory matter published in respect of him by another person,

if he believes that the defamatory matter is true and it is relevant to the invitation, challenge or necessary refutation, as the case may be, and does not in any respect exceed what is reasonably sufficient in the circumstances.

R.S., c. C-34, s. 276.

### Answer to inquiries

**313.** No person shall be deemed to publish a defamatory libel by reason only that he publishes, in answer to inquiries made to him, defamatory matter relating to a subject-matter in respect of which the person by whom or on whose behalf the inquiries are made has an interest in knowing the truth or who, on reasonable grounds, the person who publishes the defamatory matter believes has such an interest, if

- (a) the matter is published, in good faith, for the purpose of giving information in answer to the inquiries;
- (b) the person who publishes the defamatory matter believes that it is true;
- (c) the defamatory matter is relevant to the inquiries; and
- (d) the defamatory matter does not in any respect exceed what is reasonably sufficient in the circumstances.

R.S., c. C-34, s. 277.

### Giving information to person interested

**314.** No person shall be deemed to publish a defamatory libel by reason only that he publishes to another person defamatory matter for the purpose of giving information to that person with respect to a subject-matter in which the person to whom the information is given has, or is believed on reasonable grounds by the person who gives it to have, an interest in knowing the truth with respect to that subject-matter if

- (a) the conduct of the person who gives the information is reasonable in the circumstances;
- (b) the defamatory matter is relevant to the subject-matter; and
- (c) the defamatory matter is true, or if it is not true, is made without ill-will toward the person who is defamed and is made in the belief, on reasonable grounds, that it is true.

R.S., c. C-34, s. 278.

### Publication in good faith for redress of wrong

**315.** No person shall be deemed to publish a defamatory libel by reason only that he publishes defamatory matter in good faith for the purpose of seeking remedy or redress for a private or public wrong or grievance from a person who has, or who on reasonable grounds he believes has, the right or is under an obligation to remedy or redress the wrong or grievance, if

- (a) he believes that the defamatory matter is true;
- (b) the defamatory matter is relevant to the remedy or redress that is sought; and
- (c) the defamatory matter does not in any respect exceed what is reasonably sufficient in the circumstances.

R.S., c. C-34, s. 279.



### Proving publication by order of legislature

**316.** (1) An accused who is alleged to have published a defamatory libel may, at any stage of the proceedings, adduce evidence to prove that the matter that is alleged to be defamatory was contained in a paper published by order or under the authority of the Senate or House of Commons or the legislature of a province.

### Directing verdict

(2) Where at any stage in proceedings referred to in subsection (1) the court, judge, justice or provincial court judge is satisfied that the matter alleged to be defamatory was contained in a paper published by order or under the authority of the Senate or House of Commons or the legislature of a province, he shall direct a verdict of not guilty to be entered and shall discharge the accused.

### Certificate of order

(3) For the purposes of this section, a certificate under the hand of the Speaker or clerk of the Senate or House of Commons or the legislature of a province to the effect that the matter that is alleged to be defamatory was contained in a paper published by order or under the authority of the Senate, House of Commons or the legislature of a province, as the case may be, is conclusive evidence thereof.

R.S., 1985, c. C-46, s. 316; R.S., 1985, c. 27 (1st Supp.), s. 203.

## VERDICTS

### Verdicts in cases of defamatory libel

**317.** Where, on the trial of an indictment for publishing a defamatory libel, a plea of not guilty is pleaded, the jury that is sworn to try the issue may give a general verdict of guilty or not guilty on the whole matter put in issue on the indictment, and shall not be required or directed by the judge to find the defendant guilty merely on proof of publication by the defendant of the alleged defamatory libel, and of the sense ascribed thereto in the indictment, but the judge may, in his discretion, give a direction or opinion to the jury on the matter in issue as in other criminal proceedings, and the jury may, on the issue, find a special verdict.

R.S., c. C-34, s. 281.

## HATE PROPAGANDA

### Advocating genocide

**318.** (1) Every one who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

### Definition of "genocide"

(2) In this section, "genocide" means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,

(a) killing members of the group; or

(b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

### Consent

(3) No proceeding for an offence under this section shall be instituted without the consent of the Attorney General.

### Definition of "identifiable group"

(4) In this section, “identifiable group” means any section of the public distinguished by colour, race, religion, ethnic origin or sexual orientation.

R.S., 1985, c. C-46, s. 318; 2004, c. 14, s. 1.

### Public incitement of hatred

**319.** (1) Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction.

### Wilful promotion of hatred

(2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction.

### Defences

(3) No person shall be convicted of an offence under subsection (2)

- (a) if he establishes that the statements communicated were true;
- (b) if, in good faith, the person expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text;
- (c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or
- (d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada.

### Forfeiture

(4) Where a person is convicted of an offence under section 318 or subsection (1) or (2) of this section, anything by means of or in relation to which the offence was committed, on such conviction, may, in addition to any other punishment imposed, be ordered by the presiding provincial court judge or judge to be forfeited to Her Majesty in right of the province in which that person is convicted, for disposal as the Attorney General may direct.

### Exemption from seizure of communication facilities

(5) Subsections 199(6) and (7) apply with such modifications as the circumstances require to section 318 or subsection (1) or (2) of this section.

### Consent

(6) No proceeding for an offence under subsection (2) shall be instituted without the consent of the Attorney General.

### Definitions

(7) In this section,

“communicating”  
« *communiquer* »

“communicating” includes communicating by telephone, broadcasting or other audible or visible means;

“identifiable group”  
« *groupe identifiable* »

“identifiable group” has the same meaning as in section 318;

“public place”  
« *endroit public* »

“public place” includes any place to which the public have access as of right or by invitation, express or implied;

“statements”  
« *déclarations* »

“statements” includes words spoken or written or recorded electronically or electro-magnetically or otherwise, and gestures, signs or other visible representations.

R.S., 1985, c. C-46, s. 319; R.S., 1985, c. 27 (1st Supp.), s. 203; 2004, c. 14, s. 2.

### Warrant of seizure

**320.** (1) A judge who is satisfied by information on oath that there are reasonable grounds for believing that any publication, copies of which are kept for sale or distribution in premises within the jurisdiction of the court, is hate propaganda shall issue a warrant under his hand authorizing seizure of the copies.

### Summons to occupier

(2) Within seven days of the issue of a warrant under subsection (1), the judge shall issue a summons to the occupier of the premises requiring him to appear before the court and show cause why the matter seized should not be forfeited to Her Majesty.

### Owner and author may appear

(3) The owner and the author of the matter seized under subsection (1) and alleged to be hate propaganda may appear and be represented in the proceedings in order to oppose the making of an order for the forfeiture of the matter.

### Order of forfeiture

(4) If the court is satisfied that the publication referred to in subsection (1) is hate propaganda, it shall make an order declaring the matter forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct.

### Disposal of matter

(5) If the court is not satisfied that the publication referred to in subsection (1) is hate propaganda, it shall order that the matter be restored to the person from whom it was seized forthwith after the time for final appeal has expired.

### Appeal

(6) An appeal lies from an order made under subsection (4) or (5) by any person who appeared in the proceedings

- (a) on any ground of appeal that involves a question of law alone,
- (b) on any ground of appeal that involves a question of fact alone, or

(c) on any ground of appeal that involves a question of mixed law and fact, as if it were an appeal against conviction or against a judgment or verdict of acquittal, as the case may be, on a question of law alone under Part XXI, and sections 673 to 696 apply with such modifications as the circumstances require.

### Consent

(7) No proceeding under this section shall be instituted without the consent of the Attorney General.

### Definitions

(8) In this section,

“court”

« *tribunal* »

“court” means

(a) in the Province of Quebec, the Court of Quebec,

(a.1) in the Province of Ontario, the Superior Court of Justice,

(b) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen’s Bench,

(c) in the Provinces of Prince Edward Island and Newfoundland, the Supreme Court, Trial Division,

(c.1) [Repealed, 1992, c. 51, s. 36]

(d) in the Provinces of Nova Scotia and British Columbia, in Yukon and in the Northwest Territories, the Supreme Court, and

(e) in Nunavut, the Nunavut Court of Justice;

“genocide”

« *génocide* »

“genocide” has the same meaning as in section 318;

“hate propaganda”

« *propagande haineuse* »

“hate propaganda” means any writing, sign or visible representation that advocates or promotes genocide or the communication of which by any person would constitute an offence under section 319;

“judge”

« *juge* »

“judge” means a judge of a court.

R.S., 1985, c. C-46, s. 320; R.S., 1985, c. 27 (2nd Supp.), s. 10, c. 40 (4th Supp.), s. 2; 1990, c. 16, s. 4, c. 17, s. 11; 1992, c. 1, s. 58, c. 51, s. 36; 1998, c. 30, s. 14; 1999, c. 3, s. 29; 2002, c. 7, s. 142.

### Warrant of seizure

**320.1** (1) If a judge is satisfied by information on oath that there are reasonable grounds for believing that there is material that is hate propaganda within the meaning of subsection 320(8) or data within the meaning of subsection 342.1(2) that makes hate propaganda available, that is stored on and made available to the public through a computer system within the meaning of subsection 342.1(2) that is within the jurisdiction of the court, the judge may order the custodian

of the computer system to

- (a) give an electronic copy of the material to the court;
- (b) ensure that the material is no longer stored on and made available through the computer system; and
- (c) provide the information necessary to identify and locate the person who posted the material.

#### Notice to person who posted the material

(2) Within a reasonable time after receiving the information referred to in paragraph (1)(c), the judge shall cause notice to be given to the person who posted the material, giving that person the opportunity to appear and be represented before the court and show cause why the material should not be deleted. If the person cannot be identified or located or does not reside in Canada, the judge may order the custodian of the computer system to post the text of the notice at the location where the material was previously stored and made available, until the time set for the appearance.

#### Person who posted the material may appear

(3) The person who posted the material may appear and be represented in the proceedings in order to oppose the making of an order under subsection (5).

#### Non-appearance

(4) If the person who posted the material does not appear for the proceedings, the court may proceed *ex parte* to hear and determine the proceedings in the absence of the person as fully and effectually as if the person had appeared.

#### Order

(5) If the court is satisfied, on a balance of probabilities, that the material is available to the public and is hate propaganda within the meaning of subsection 320(8) or data within the meaning of subsection 342.1(2) that makes hate propaganda available, it may order the custodian of the computer system to delete the material.

#### Destruction of copy

(6) When the court makes the order for the deletion of the material, it may order the destruction of the electronic copy in the court's possession.

#### Return of material

(7) If the court is not satisfied that the material is available to the public and is hate propaganda within the meaning of subsection 320(8) or data within the meaning of subsection 342.1(2) that makes hate propaganda available, the court shall order that the electronic copy be returned to the custodian and terminate the order under paragraph (1)(b).

#### Other provisions to apply

(8) Subsections 320(6) to (8) apply, with any modifications that the circumstances require, to this section.

#### When order takes effect

(9) No order made under subsections (5) to (7) takes effect until the time for final appeal has expired.

2001, c. 41, s. 10.

PART IX  
OFFENCES AGAINST RIGHTS OF PROPERTY  
INTERPRETATION

Definitions

**321.** In this Part,

"break"  
« *effraction* »

"break" means

- (a) to break any part, internal or external, or
- (b) to open any thing that is used or intended to be used to close or to cover an internal or external opening;

"credit card"  
« *carte de crédit* »

"credit card" means any card, plate, coupon book or other device issued or otherwise distributed for the purpose of being used

- (a) on presentation to obtain, on credit, money, goods, services or any other thing of value, or
- (b) in an automated teller machine, a remote service unit or a similar automated banking device to obtain any of the services offered through the machine, unit or device;

"document"  
« *document* »

"document" means any paper, parchment or other material on which is recorded or marked anything that is capable of being read or understood by a person, computer system or other device, and includes a credit card, but does not include trade-marks on articles of commerce or inscriptions on stone or metal or other like material;

"exchequer bill"  
« *bon du Trésor* »

"exchequer bill" means a bank-note, bond, note, debenture or security that is issued or guaranteed by Her Majesty under the authority of Parliament or the legislature of a province;

"exchequer bill paper"  
« *papier de bons du Trésor* »

"exchequer bill paper" means paper that is used to manufacture exchequer bills;

"false document"  
« *faux document* »

"false document" means a document

- (a) the whole or a material part of which purports to be made by or on behalf of a person
  - (i) who did not make it or authorize it to be made, or
  - (ii) who did not in fact exist,
- (b) that is made by or on behalf of the person who purports to make it but is false in some

material particular,

(c) that is made in the name of an existing person, by him or under his authority, with a fraudulent intention that it should pass as being made by a person, real or fictitious, other than the person who makes it or under whose authority it is made;

“revenue paper”

« *papier de revenu* »

“revenue paper” means paper that is used to make stamps, licences or permits or for any purpose connected with the public revenue.

R.S., 1985, c. C-46, s. 321; R.S., 1985, c. 27 (1st Supp.), s. 42.

## THEFT

### Theft

**322.** (1) Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent

(a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;

(b) to pledge it or deposit it as security;

(c) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform; or

(d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted.

### Time when theft completed

(2) A person commits theft when, with intent to steal anything, he moves it or causes it to move or to be moved, or begins to cause it to become movable.

### Secrecy

(3) A taking or conversion of anything may be fraudulent notwithstanding that it is effected without secrecy or attempt at concealment.

### Purpose of taking

(4) For the purposes of this Act, the question whether anything that is converted is taken for the purpose of conversion, or whether it is, at the time it is converted, in the lawful possession of the person who converts it is not material.

### Wild living creature

(5) For the purposes of this section, a person who has a wild living creature in captivity shall be deemed to have a special property or interest in it while it is in captivity and after it has escaped from captivity.

R.S., c. C-34, s. 283.

### Oysters

**323.** (1) Where oysters and oyster brood are in oyster beds, layings or fisheries that are the property of any person and are sufficiently marked out or known as the property of that person, that person shall be deemed to have a special property or interest in them.

### Oyster bed



(2) An indictment is sufficient if it describes an oyster bed, laying or fishery by name or in any other way, without stating that it is situated in a particular territorial division.

R.S., c. C-34, s. 284.

### Theft by bailee of things under seizure

**324.** Every one who is a bailee of anything that is under lawful seizure by a peace officer or public officer in the execution of the duties of his office, and who is obliged by law or agreement to produce and deliver it to that officer or to another person entitled thereto at a certain time and place, or on demand, steals it if he does not produce and deliver it in accordance with his obligation, but he does not steal it if his failure to produce and deliver it is not the result of a wilful act or omission by him.

R.S., c. C-34, s. 285.

### Agent pledging goods, when not theft

**325.** A factor or an agent does not commit theft by pledging or giving a lien on goods or documents of title to goods that are entrusted to him for the purpose of sale or for any other purpose, if the pledge or lien is for an amount that does not exceed the sum of

(a) the amount due to him from his principal at the time the goods or documents are pledged or the lien is given; and

(b) the amount of any bill of exchange that he has accepted for or on account of his principal.

R.S., c. C-34, s. 286.

### Theft of telecommunication service

**326.** (1) Every one commits theft who fraudulently, maliciously, or without colour of right,

(a) abstracts, consumes or uses electricity or gas or causes it to be wasted or diverted; or

(b) uses any telecommunication facility or obtains any telecommunication service.

### Definition of "telecommunication"

(2) In this section and section 327, "telecommunication" means any transmission, emission or reception of signs, signals, writing, images or sounds or intelligence of any nature by wire, radio, visual or other electromagnetic system.

R.S., c. C-34, s. 287; 1974-75-76, c. 93, s. 23.

### Possession of device to obtain telecommunication facility or service

**327.** (1) Every one who, without lawful excuse, the proof of which lies on him, manufactures, possesses, sells or offers for sale or distributes any instrument or device or any component thereof, the design of which renders it primarily useful for obtaining the use of any telecommunication facility or service, under circumstances that give rise to a reasonable inference that the device has been used or is or was intended to be used to obtain the use of any telecommunication facility or service without payment of a lawful charge therefor, is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

### Forfeiture

(2) Where a person is convicted of an offence under subsection (1) or paragraph 326(1)(b), any instrument or device in relation to which the offence was committed or the possession of which constituted the offence, on such conviction, in addition to any punishment that is imposed, may be ordered forfeited to Her Majesty, whereupon it may be disposed of as the Attorney General directs.

### Limitation

(3) No order for forfeiture shall be made under subsection (2) in respect of telephone, telegraph or other communication facilities or equipment owned by a person engaged in providing telephone, telegraph or other communication service to the public or forming part of the telephone, telegraph or other communication service or system of such a person by means of which an offence under subsection (1) has been committed if such person was not a party to the offence.

1974-75-76, c. 93, s. 24.

### Theft by or from person having special property or interest

**328.** A person may be convicted of theft notwithstanding that anything that is alleged to have been stolen was stolen

- (a) by the owner of it from a person who has a special property or interest in it;
- (b) by a person who has a special property or interest in it from the owner of it;
- (c) by a lessee of it from his reversioner;
- (d) by one of several joint owners, tenants in common or partners of or in it from the other persons who have an interest in it; or
- (e) by the representatives of an organization from the organization.

R.S., 1985, c. C-46, s. 328; 2003, c. 21, s. 4.

**329.** [Repealed, 2000, c. 12, s. 94]

### Theft by person required to account

**330.** (1) Every one commits theft who, having received anything from any person on terms that require him to account for or pay it or the proceeds of it or a part of the proceeds to that person or another person, fraudulently fails to account for or pay it or the proceeds of it or the part of the proceeds of it accordingly.

### Effect of entry in account

(2) Where subsection (1) otherwise applies, but one of the terms is that the thing received or the proceeds or part of the proceeds of it shall be an item in a debtor and creditor account between the person who receives the thing and the person to whom he is to account for or to pay it, and that the latter shall rely only on the liability of the other as his debtor in respect thereof, a proper entry in that account of the thing received or the proceeds or part of the proceeds of it, as the case may be, is a sufficient accounting therefor, and no fraudulent conversion of the thing or the proceeds or part of the proceeds of it thereby accounted for shall be deemed to have taken place.

R.S., c. C-34, s. 290.

### Theft by person holding power of attorney

**331.** Every one commits theft who, being entrusted, whether solely or jointly with another person, with a power of attorney for the sale, mortgage, pledge or other disposition of real or personal property, fraudulently sells, mortgages, pledges or otherwise disposes of the property or any part of it, or fraudulently converts the proceeds of a sale, mortgage, pledge or other disposition of the property, or any part of the proceeds, to a purpose other than that for which he was entrusted by the power of attorney.

R.S., c. C-34, s. 291.

### Misappropriation of money held under direction

**332.** (1) Every one commits theft who, having received, either solely or jointly with another person, money or valuable security or a power of attorney for the sale of real or personal property, with a direction that the money or a part of it, or the proceeds or a part of the proceeds

of the security or the property shall be applied to a purpose or paid to a person specified in the direction, fraudulently and contrary to the direction applies to any other purpose or pays to any other person the money or proceeds or any part of it.

### Effect of entry in account

(2) This section does not apply where a person who receives anything mentioned in subsection (1) and the person from whom he receives it deal with each other on such terms that all money paid to the former would, in the absence of any such direction, be properly treated as an item in a debtor and creditor account between them, unless the direction is in writing.

R.S., c. C-34, s. 292.

### Taking ore for scientific purpose

**333.** No person commits theft by reason only that he takes, for the purpose of exploration or scientific investigation, a specimen of ore or mineral from land that is not enclosed and is not occupied or worked as a mine, quarry or digging.

R.S., c. C-34, s. 293.

### Punishment for theft

**334.** Except where otherwise provided by law, every one who commits theft

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the property stolen is a testamentary instrument or the value of what is stolen exceeds five thousand dollars; or

(b) is guilty

(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(ii) of an offence punishable on summary conviction,

where the value of what is stolen does not exceed five thousand dollars.

R.S., 1985, c. C-46, s. 334; R.S., 1985, c. 27 (1st Supp.), s. 43; 1994, c. 44, s. 20.

## OFFENCES RESEMBLING THEFT

### Taking motor vehicle or vessel or found therein without consent

**335.** (1) Subject to subsection (1.1), every one who, without the consent of the owner, takes a motor vehicle or vessel with intent to drive, use, navigate or operate it or cause it to be driven, used, navigated or operated, or is an occupant of a motor vehicle or vessel knowing that it was taken without the consent of the owner, is guilty of an offence punishable on summary conviction.

### Exception

(1.1) Subsection (1) does not apply to an occupant of a motor vehicle or vessel who, on becoming aware that it was taken without the consent of the owner, attempted to leave the motor vehicle or vessel, to the extent that it was feasible to do so, or actually left the motor vehicle or vessel.

### Definition of "vessel"

(2) For the purposes of subsection (1), "vessel" has the meaning assigned by section 214.

R.S., 1985, c. C-46, s. 335; R.S., 1985, c. 1 (4th Supp.), s. 15; 1997, c. 18, s. 15.

### Criminal breach of trust

**336.** Every one who, being a trustee of anything for the use or benefit, whether in whole or in

part, of another person, or for a public or charitable purpose, converts, with intent to defraud and in contravention of his trust, that thing or any part of it to a use that is not authorized by the trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

R.S., c. C-34, s. 296.

#### Public servant refusing to deliver property

**337.** Every one who, being or having been employed in the service of Her Majesty in right of Canada or a province, or in the service of a municipality, and entrusted by virtue of that employment with the receipt, custody, management or control of anything, refuses or fails to deliver it to a person who is authorized to demand it and does demand it is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

R.S., c. C-34, s. 297.

#### Fraudulently taking cattle or defacing brand

**338.** (1) Every one who, without the consent of the owner,

(a) fraudulently takes, holds, keeps in his possession, conceals, receives, appropriates, purchases or sells cattle that are found astray, or

(b) fraudulently, in whole or in part,

(i) obliterates, alters or defaces a brand or mark on cattle, or

(ii) makes a false or counterfeit brand or mark on cattle,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

#### Punishment for theft of cattle

(2) Every one who commits theft of cattle is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

#### Evidence of property in cattle

(3) In any proceedings under this Act, evidence that cattle are marked with a brand or mark that is recorded or registered in accordance with any Act is, in the absence of any evidence to the contrary, proof that the cattle are owned by the registered owner of that brand or mark.

#### Presumption from possession

(4) Where an accused is charged with an offence under subsection (1) or (2), the burden of proving that the cattle came lawfully into the possession of the accused or his employee or into the possession of another person on behalf of the accused is on the accused, if the accused is not the registered owner of the brand or mark with which the cattle are marked, unless it appears that possession of the cattle by an employee of the accused or by another person on behalf of the accused was without the knowledge and authority, sanction or approval of the accused.

R.S., c. C-34, s. 298; 1974-75-76, c. 93, s. 26.

#### Taking possession, etc., of drift timber

**339.** (1) Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years who, without the consent of the owner,

(a) fraudulently takes, holds, keeps in his possession, conceals, receives, appropriates, purchases or sells,

(b) removes, alters, obliterates or defaces a mark or number on, or

(c) refuses to deliver up to the owner or to the person in charge thereof on behalf of the

owner or to a person authorized by the owner to receive it,  
any lumber or lumbering equipment that is found adrift, cast ashore or lying on or embedded in the bed or bottom, or on the bank or beach, of a river, stream or lake in Canada, or in the harbours or any of the coastal waters of Canada.

### Dealer in second-hand goods

(2) Every one who, being a dealer in second-hand goods of any kind, trades or traffics in or has in his possession for sale or traffic any lumbering equipment that is marked with the mark, brand, registered timber mark, name or initials of a person, without the written consent of that person, is guilty of an offence punishable on summary conviction.

### Search for timber unlawfully detained

(3) A peace officer who suspects, on reasonable grounds, that any lumber owned by any person and bearing the registered timber mark of that person is kept or detained in or on any place without the knowledge or consent of that person, may enter into or on that place to ascertain whether or not it is detained there without the knowledge or consent of that person.

### Evidence of property in timber

(4) Where any lumber or lumbering equipment is marked with a timber mark or a boom chain brand registered under any Act, the mark or brand is, in proceedings under subsection (1), and, in the absence of any evidence to the contrary, proof that it is the property of the registered owner of the mark or brand.

### Presumption from possession

(5) Where an accused or his servants or agents are in possession of lumber or lumbering equipment marked with the mark, brand, registered timber mark, name or initials of another person, the burden of proving that it came lawfully into his possession or into possession of his servants or agents is, in proceedings under subsection (1), on the accused.

### Definitions

(6) In this section,

“coastal waters of Canada”

« *eaux côtières du Canada* »

“coastal waters of Canada” includes all of Queen Charlotte Sound, all the Strait of Georgia and the Canadian waters of the Strait of Juan de Fuca;

“lumber”

« *bois* »

“lumber” means timber, mast, spar, shingle bolt, sawlog or lumber of any description;

“lumbering equipment”

« *matériel d'exploitation forestière* »

“lumbering equipment” includes a boom chain, chain, line and shackle.

R.S., c. C-34, s. 299.

### Destroying documents of title

**340.** Every one who, for a fraudulent purpose, destroys, cancels, conceals or obliterates

(a) a document of title to goods or lands,

(b) a valuable security or testamentary instrument, or

(c) a judicial or official document,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

R.S., c. C-34, s. 300.

### Fraudulent concealment

**341.** Every one who, for a fraudulent purpose, takes, obtains, removes or conceals anything is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

R.S., c. C-34, s. 301.

### Theft, forgery, etc., of credit card

**342.** (1) Every person who

(a) steals a credit card,

(b) forges or falsifies a credit card,

(c) possesses, uses or traffics in a credit card or a forged or falsified credit card, knowing that it was obtained, made or altered

(i) by the commission in Canada of an offence, or

(ii) by an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence, or

(d) uses a credit card knowing that it has been revoked or cancelled,

is guilty of

(e) an indictable offence and is liable to imprisonment for a term not exceeding ten years, or

(f) an offence punishable on summary conviction.

### Jurisdiction

(2) An accused who is charged with an offence under subsection (1) may be tried and punished by any court having jurisdiction to try that offence in the place where the offence is alleged to have been committed or in the place where the accused is found, is arrested or is in custody, but where the place where the accused is found, is arrested or is in custody is outside the province in which the offence is alleged to have been committed, no proceedings in respect of that offence shall be commenced in that place without the consent of the Attorney General of that province.

### Unauthorized use of credit card data

(3) Every person who, fraudulently and without colour of right, possesses, uses, traffics in or permits another person to use credit card data, including personal authentication information, whether or not the data is authentic, that would enable a person to use a credit card or to obtain the services that are provided by the issuer of a credit card to credit card holders is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or

(b) an offence punishable on summary conviction.

### Definitions

(4) In this section,

“personal authentication information”

« *authentifiant personnel* »

“personal authentication information” means a personal identification number or any other password or information that a credit card holder creates or adopts to be used to authenticate his or her identity in relation to the credit card;

“traffic”

« *trafic* »

“traffic” means, in relation to a credit card or credit card data, to sell, export from or import into Canada, distribute or deal with in any other way.

R.S., 1985, c. C-46, s. 342; R.S., 1985, c. 27 (1st Supp.), ss. 44, 185(F); 1997, c. 18, s. 16; 2009, c. 28, s. 4.

### Instruments for copying credit card data or forging or falsifying credit cards

**342.01** (1) Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years, or is guilty of an offence punishable on summary conviction, who, without lawful justification or excuse, makes, repairs, buys, sells, exports from Canada, imports into Canada or possesses any instrument, device, apparatus, material or thing that they know has been used or know is adapted or intended for use

(a) in the copying of credit card data for use in the commission of an offence under subsection 342(3); or

(b) in the forging or falsifying of credit cards.

### Forfeiture

(2) Where a person is convicted of an offence under subsection (1), any instrument, device, apparatus, material or thing in relation to which the offence was committed or the possession of which constituted the offence may, in addition to any other punishment that may be imposed, be ordered forfeited to Her Majesty, whereupon it may be disposed of as the Attorney General directs.

### Limitation

(3) No order of forfeiture may be made under subsection (2) in respect of any thing that is the property of a person who was not a party to the offence under subsection (1).

1997, c. 18, s. 17; 2009, c. 28, s. 5.

### Unauthorized use of computer

**342.1** (1) Every one who, fraudulently and without colour of right,

(a) obtains, directly or indirectly, any computer service,

(b) by means of an electro-magnetic, acoustic, mechanical or other device, intercepts or causes to be intercepted, directly or indirectly, any function of a computer system,

(c) uses or causes to be used, directly or indirectly, a computer system with intent to commit an offence under paragraph (a) or (b) or an offence under section 430 in relation to data or a computer system, or

(d) uses, possesses, traffics in or permits another person to have access to a computer password that would enable a person to commit an offence under paragraph (a), (b) or (c)

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, or is guilty of an offence punishable on summary conviction.

### Definitions

(2) In this section,

“computer password”



« *mot de passe* »

"computer password" means any data by which a computer service or computer system is capable of being obtained or used;

"computer program"

« *programme d'ordinateur* »

"computer program" means data representing instructions or statements that, when executed in a computer system, causes the computer system to perform a function;

"computer service"

« *service d'ordinateur* »

"computer service" includes data processing and the storage or retrieval of data;

"computer system"

« *ordinateur* »

"computer system" means a device that, or a group of interconnected or related devices one or more of which,

- (a) contains computer programs or other data, and
- (b) pursuant to computer programs,
  - (i) performs logic and control, and
  - (ii) may perform any other function;

"data"

« *données* »

"data" means representations of information or of concepts that are being prepared or have been prepared in a form suitable for use in a computer system;

"electro-magnetic, acoustic, mechanical or other device"

« *dispositif électromagnétique, acoustique, mécanique ou autre* »

"electro-magnetic, acoustic, mechanical or other device" means any device or apparatus that is used or is capable of being used to intercept any function of a computer system, but does not include a hearing aid used to correct subnormal hearing of the user to not better than normal hearing;

"function"

« *fonction* »

"function" includes logic, control, arithmetic, deletion, storage and retrieval and communication or telecommunication to, from or within a computer system;

"intercept"

« *intercepter* »

"intercept" includes listen to or record a function of a computer system, or acquire the substance, meaning or purport thereof;

"traffic"

« *trafic* »

"traffic" means, in respect of a computer password, to sell, export from or import into Canada, distribute or deal with in any other way.

R.S., 1985, c. 27 (1st Supp.), s. 45; 1997, c. 18, s. 18.

### Possession of device to obtain computer service

**342.2** (1) Every person who, without lawful justification or excuse, makes, possesses, sells, offers for sale or distributes any instrument or device or any component thereof, the design of which renders it primarily useful for committing an offence under section 342.1, under circumstances that give rise to a reasonable inference that the instrument, device or component has been used or is or was intended to be used to commit an offence contrary to that section,

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) is guilty of an offence punishable on summary conviction.

### Forfeiture

(2) Where a person is convicted of an offence under subsection (1), any instrument or device, in relation to which the offence was committed or the possession of which constituted the offence, may, in addition to any other punishment that may be imposed, be ordered forfeited to Her Majesty, whereupon it may be disposed of as the Attorney General directs.

### Limitation

(3) No order of forfeiture may be made under subsection (2) in respect of any thing that is the property of a person who was not a party to the offence under subsection (1).

1997, c. 18, s. 19.

## ROBBERY AND EXTORTION

### Robbery

**343.** Every one commits robbery who

(a) steals, and for the purpose of extorting whatever is stolen or to prevent or overcome resistance to the stealing, uses violence or threats of violence to a person or property;

(b) steals from any person and, at the time he steals or immediately before or immediately thereafter, wounds, beats, strikes or uses any personal violence to that person;

(c) assaults any person with intent to steal from him; or

(d) steals from any person while armed with an offensive weapon or imitation thereof.

R.S., c. C-34, s. 302.

### Robbery

**344.** (1) Every person who commits robbery is guilty of an indictable offence and liable

(a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for life and to a minimum punishment of imprisonment for a term of

(i) in the case of a first offence, five years, and

(ii) in the case of a second or subsequent offence, seven years;

(a.1) in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for life.

### Subsequent offences

(2) In determining, for the purpose of paragraph (1)(a), whether a convicted person has committed a second or subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

- (a) an offence under this section;
- (b) an offence under subsection 85(1) or (2) or section 244 or 244.2; or
- (c) an offence under section 220, 236, 239, 272 or 273, subsection 279(1) or section 279.1 or 346 if a firearm was used in the commission of the offence.

However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.

### Sequence of convictions only

(3) For the purposes of subsection (2), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.

R.S., 1985, c. C-46, s. 344; 1995, c. 39, s. 149; 2008, c. 6, s. 32; 2009, c. 22, s. 14.

### Stopping mail with intent

**345.** Every one who stops a mail conveyance with intent to rob or search it is guilty of an indictable offence and liable to imprisonment for life.

R.S., c. C-34, s. 304.

### Extortion

**346.** (1) Every one commits extortion who, without reasonable justification or excuse and with intent to obtain anything, by threats, accusations, menaces or violence induces or attempts to induce any person, whether or not he is the person threatened, accused or menaced or to whom violence is shown, to do anything or cause anything to be done.

### Extortion

(1.1) Every person who commits extortion is guilty of an indictable offence and liable

(a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for life and to a minimum punishment of imprisonment for a term of

(i) in the case of a first offence, five years, and

(ii) in the case of a second or subsequent offence, seven years;

(a.1) in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for life.

### Subsequent offences

(1.2) In determining, for the purpose of paragraph (1.1)(a), whether a convicted person has committed a second or subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

- (a) an offence under this section;

(b) an offence under subsection 85(1) or (2) or section 244 or 244.2; or

(c) an offence under section 220, 236, 239, 272 or 273, subsection 279(1) or section 279.1 or 344 if a firearm was used in the commission of the offence.

However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.

### Sequence of convictions only

(1.3) For the purposes of subsection (1.2), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.

### Saving

(2) A threat to institute civil proceedings is not a threat for the purposes of this section.

R.S., 1985, c. C-46, s. 346; R.S., 1985, c. 27 (1st Supp.), s. 46; 1995, c. 39, s. 150; 2008, c. 6, s. 33; 2009, c. 22, s. 15.

## CRIMINAL INTEREST RATE

### Criminal interest rate

**347.** (1) Despite any other Act of Parliament, every one who enters into an agreement or arrangement to receive interest at a criminal rate, or receives a payment or partial payment of interest at a criminal rate, is

(a) guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) guilty of an offence punishable on summary conviction and liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding six months or to both.

### Definitions

(2) In this section,

“credit advanced”

« *capital prêté* »

“credit advanced” means the aggregate of the money and the monetary value of any goods, services or benefits actually advanced or to be advanced under an agreement or arrangement minus the aggregate of any required deposit balance and any fee, fine, penalty, commission and other similar charge or expense directly or indirectly incurred under the original or any collateral agreement or arrangement;

“criminal rate”

« *taux criminel* »

“criminal rate” means an effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles that exceeds sixty per cent on the credit advanced under an agreement or arrangement;

“insurance charge”

« *frais d'assurance* »

“insurance charge” means the cost of insuring the risk assumed by the person who advances or is to advance credit under an agreement or arrangement, where the face amount of the insurance

does not exceed the credit advanced;

“interest”

« *intérêt* »

“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 the 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;

“official fee”

« *taxe officielle* »

“official fee” means a fee required by law to be paid to any governmental authority in connection with perfecting any security under an agreement or arrangement for the advancing of credit;

“overdraft charge”

« *frais pour découvert de compte* »

“overdraft charge” means a charge not exceeding five dollars for the creation of or increase in an overdraft, imposed by a credit union or caisse populaire the membership of which is wholly or substantially comprised of natural persons or a deposit taking institution the deposits in which are insured, in whole or in part, by the Canada Deposit Insurance Corporation or guaranteed, in whole or in part, by the Quebec Deposit Insurance Board;

“required deposit balance”

« *dépôt de garantie* »

“required deposit balance” means a fixed or an ascertainable amount of the money actually advanced or to be advanced under an agreement or arrangement that is required, as a condition of the agreement or arrangement, to be deposited or invested by or on behalf of the person to whom the advance is or is to be made and that may be available, in the event of his defaulting in any payment, to or for the benefit of the person who advances or is to advance the money.

## Presumption

(3) Where a person receives a payment or partial payment of interest at a criminal rate, he shall, in the absence of evidence to the contrary, be deemed to have knowledge of the nature of the payment and that it was received at a criminal rate.

## Proof of effective annual rate

(4) In any proceedings under this section, a certificate of a Fellow of the Canadian Institute of Actuaries stating that he has calculated the effective annual rate of interest on any credit advanced under an agreement or arrangement and setting out the calculations and the information on which they are based is, in the absence of evidence to the contrary, proof of the effective annual rate without proof of the signature or official character of the person appearing to have signed the certificate.

## Notice

(5) A certificate referred to in subsection (4) shall not be received in evidence unless the party intending to produce it has given to the accused or defendant reasonable notice of that intention together with a copy of the certificate.

## Cross-examination with leave

(6) An accused or a defendant against whom a certificate referred to in subsection (4) is produced may, with leave of the court, require the attendance of the actuary for the purposes of cross-examination.

### Consent required for proceedings

(7) No proceedings shall be commenced under this section without the consent of the Attorney General.

### Application

(8) This section does not apply to any transaction to which the *Tax Rebate Discounting Act* applies.

R.S., 1985, c. C-46, s. 347; 1992, c. 1, s. 60(F); 2007, c. 9, s. 1.

### Definitions

**347.1** (1) The following definitions apply in subsection (2).

“interest”

« *intérêts* »

“interest” has the same meaning as in subsection 347(2).

“payday loan”

« *prêt sur salaire* »

“payday loan” means an advancement of money in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature but not for any guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawnbroking, a line of credit or a credit card.

### Non-application

(2) Section 347 and section 2 of the *Interest Act* do not apply to a person, other than a financial institution within the meaning of paragraphs (a) to (d) of the definition “financial institution” in section 2 of the *Bank Act*, in respect of a payday loan agreement entered into by the person to receive interest, or in respect of interest received by that person under the agreement, if

(a) the amount of money advanced under the agreement is \$1,500 or less and the term of the agreement is 62 days or less;

(b) the person is licensed or otherwise specifically authorized under the laws of a province to enter into the agreement; and

(c) the province is designated under subsection (3).

### Designation of province

(3) The Governor in Council shall, by order and at the request of the lieutenant governor in council of a province, designate the province for the purposes of this section if the province has legislative measures that protect recipients of payday loans and that provide for limits on the total cost of borrowing under the agreements.

### Revocation

(4) The Governor in Council shall, by order, revoke the designation made under subsection (3) if requested to do so by the lieutenant governor in council of the province or if the legislative measures described in that subsection are no longer in force in that province.

2007, c. 9, s. 2.

## BREAKING AND ENTERING

### Breaking and entering with intent, committing offence or breaking out

**348.** (1) Every one who

(a) breaks and enters a place with intent to commit an indictable offence therein,

(b) breaks and enters a place and commits an indictable offence therein, or

(c) breaks out of a place after

(i) committing an indictable offence therein, or

(ii) entering the place with intent to commit an indictable offence therein,

is guilty

(d) if the offence is committed in relation to a dwelling-house, of an indictable offence and liable to imprisonment for life, and

(e) if the offence is committed in relation to a place other than a dwelling-house, of an indictable offence and liable to imprisonment for a term not exceeding ten years or of an offence punishable on summary conviction.

### Presumptions

(2) For the purposes of proceedings under this section, evidence that an accused

(a) broke and entered a place or attempted to break and enter a place is, in the absence of evidence to the contrary, proof that he broke and entered the place or attempted to do so, as the case may be, with intent to commit an indictable offence therein; or

(b) broke out of a place is, in the absence of any evidence to the contrary, proof that he broke out after

(i) committing an indictable offence therein, or

(ii) entering with intent to commit an indictable offence therein.

### Definition of "place"

(3) For the purposes of this section and section 351, "place" means

(a) a dwelling-house;

(b) a building or structure or any part thereof, other than a dwelling-house;

(c) a railway vehicle, a vessel, an aircraft or a trailer; or

(d) a pen or an enclosure in which fur-bearing animals are kept in captivity for breeding or commercial purposes.

R.S., 1985, c. C-46, s. 348; R.S., 1985, c. 27 (1st Supp.), s. 47; 1997, c. 18, s. 20.

### Aggravating circumstance — home invasion

**348.1** If a person is convicted of an offence under section 98 or 98.1, subsection 279(2) or section 343, 346 or 348 in relation to a dwelling-house, the court imposing the sentence on the person shall consider as an aggravating circumstance the fact that the dwelling-house was occupied at the time of the commission of the offence and that the person, in committing the offence,

(a) knew that or was reckless as to whether the dwelling-house was occupied; and

(b) used violence or threats of violence to a person or property.



2002, c. 13, s. 15; 2008, c. 6, s. 34.

### Being unlawfully in dwelling-house

**349.** (1) Every person who, without lawful excuse, the proof of which lies on that person, enters or is in a dwelling-house with intent to commit an indictable offence in it is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or of an offence punishable on summary conviction.

#### Presumption

(2) For the purposes of proceedings under this section, evidence that an accused, without lawful excuse, entered or was in a dwelling-house is, in the absence of any evidence to the contrary, proof that he entered or was in the dwelling-house with intent to commit an indictable offence therein.

R.S., 1985, c. C-46, s. 349; 1997, c. 18, s. 21.

#### Entrance

**350.** For the purposes of sections 348 and 349,

(a) a person enters as soon as any part of his body or any part of an instrument that he uses is within any thing that is being entered; and

(b) a person shall be deemed to have broken and entered if

(i) he obtained entrance by a threat or an artifice or by collusion with a person within, or

(ii) he entered without lawful justification or excuse, the proof of which lies on him, by a permanent or temporary opening.

R.S., c. C-34, s. 308.

#### Possession of break-in instrument

**351.** (1) Every one who, without lawful excuse, the proof of which lies on them, has in their possession any instrument suitable for the purpose of breaking into any place, motor vehicle, vault or safe under circumstances that give rise to a reasonable inference that the instrument has been used or is or was intended to be used for such a purpose,

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) is guilty of an offence punishable on summary conviction.

#### Disguise with intent

(2) Every one who, with intent to commit an indictable offence, has his face masked or coloured or is otherwise disguised is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

R.S., 1985, c. C-46, s. 351; R.S., 1985, c. 27 (1st Supp.), s. 48; 2008, c. 18, s. 9.

#### Possession of instruments for breaking into coin-operated or currency exchange devices

**352.** Every one who, without lawful excuse, the proof of which lies on him, has in his possession any instrument suitable for breaking into a coin-operated device or a currency exchange device, under circumstances that give rise to a reasonable inference that the instrument has been used or is or was intended to be used for breaking into a coin-operated device or a currency exchange device, is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

R.S., c. C-34, s. 310; 1972, c. 13, s. 26; 1974-75-76, c. 93, s. 28.

#### Selling, etc., automobile master key

### 353. (1) Every one who

(a) sells, offers for sale or advertises in a province an automobile master key otherwise than under the authority of a licence issued by the Attorney General of that province, or

(b) purchases or has in his possession in a province an automobile master key otherwise than under the authority of a licence issued by the Attorney General of that province,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

#### Exception

(1.1) A police officer specially authorized by the chief of the police force to possess an automobile master key is not guilty of an offence under subsection (1) by reason only that the police officer possesses an automobile master key for the purposes of the execution of the police officer's duties.

#### Terms and conditions of licence

(2) A licence issued by the Attorney General of a province as described in paragraph (1)(a) or (b) may contain such terms and conditions relating to the sale, offering for sale, advertising, purchasing, having in possession or use of an automobile master key as the Attorney General of that province may prescribe.

#### Fees

(2.1) The Attorney General of a province may prescribe fees for the issue or renewal of licences as described in paragraph (1)(a) or (b).

#### Record to be kept

(3) Every one who sells an automobile master key

(a) shall keep a record of the transaction showing the name and address of the purchaser and particulars of the licence issued to the purchaser as described in paragraph (1)(b); and

(b) shall produce the record for inspection at the request of a peace officer.

#### Failure to comply with subsection (3)

(4) Every one who fails to comply with subsection (3) is guilty of an offence punishable on summary conviction.

#### Definitions

(5) The definitions in this subsection apply in this section.

"automobile master key"

« *passe-partout d'automobile* »

"automobile master key" includes a key, pick, rocker key or other instrument designed or adapted to operate the ignition or other switches or locks of a series of motor vehicles.

"licence"

« *licence* »

"licence" includes any authorization.

R.S., 1985, c. C-46, s. 353; 1997, c. 18, s. 22.

#### HAVING IN POSSESSION

#### Possession of property obtained by crime

**354.** (1) Every one commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from

- (a) the commission in Canada of an offence punishable by indictment; or
- (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

#### Obliterated vehicle identification number

(2) In proceedings in respect of an offence under subsection (1), evidence that a person has in his possession a motor vehicle the vehicle identification number of which has been wholly or partially removed or obliterated or a part of a motor vehicle being a part bearing a vehicle identification number that has been wholly or partially removed or obliterated is, in the absence of any evidence to the contrary, proof that the motor vehicle or part, as the case may be, was obtained, and that such person had the motor vehicle or part, as the case may be, in his possession knowing that it was obtained,

- (a) by the commission in Canada of an offence punishable by indictment; or
- (b) by an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

#### Definition of "vehicle identification number"

(3) For the purposes of subsection (2), "vehicle identification number" means any number or other mark placed on a motor vehicle for the purpose of distinguishing the motor vehicle from other similar motor vehicles.

#### Exception

(4) A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under this section by reason only that the peace officer or person possesses property or a thing or the proceeds of property or a thing mentioned in subsection (1) for the purposes of an investigation or otherwise in the execution of the peace officer's duties.

R.S., 1985, c. C-46, s. 354; 1997, c. 18, s. 23.

#### Punishment

**355.** Every one who commits an offence under section 354

- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or
- (b) is guilty
  - (i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or
  - (ii) of an offence punishable on summary conviction,

where the value of the subject-matter of the offence does not exceed five thousand dollars.

R.S., 1985, c. C-46, s. 355; R.S., 1985, c. 27 (1st Supp.), s. 49; 1994, c. 44, s. 21.

#### Theft from mail

**356.** (1) Everyone commits an offence who

- (a) steals
  - (i) anything sent by post, after it is deposited at a post office and before it is delivered, or

after it is delivered but before it is in the possession of the addressee or of a person who may reasonably be considered to be authorized by the addressee to receive mail,

(ii) a bag, sack or other container or covering in which mail is conveyed, whether or not it contains mail, or

(iii) a key suited to a lock adopted for use by the Canada Post Corporation;

(a. 1) with intent to commit an offence under paragraph (a), makes, possesses or uses a copy of a key suited to a lock adopted for use by the Canada Post Corporation, or a key suited to obtaining access to a receptacle or device provided for the receipt of mail;

(b) has in their possession anything that they know has been used to commit an offence under paragraph (a) or (a. 1) or anything in respect of which they know that such an offence has been committed; or

(c) fraudulently redirects, or causes to be redirected, anything sent by post.

### Allegation of value not necessary

(2) In proceedings for an offence under this section it is not necessary to allege in the indictment or to prove on the trial that anything in respect of which the offence was committed had any value.

### Punishment

(3) Everyone who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years; or

(b) is guilty of an offence punishable on summary conviction.

R.S., 1985, c. C-46, s. 356; 2009, c. 28, s. 6.

### Bringing into Canada property obtained by crime

**357.** Every one who brings into or has in Canada anything that he has obtained outside Canada by an act that, if it had been committed in Canada, would have been the offence of theft or an offence under section 342 or 354 is guilty of an indictable offence and liable to a term of imprisonment not exceeding ten years.

R.S., 1985, c. C-46, s. 357; R.S., 1985, c. 27 (1st Supp.), s. 50.

### Having in possession when complete

**358.** For the purposes of sections 342 and 354 and paragraph 356(1)(b), the offence of having in possession is complete when a person has, alone or jointly with another person, possession of or control over anything mentioned in those sections or when he aids in concealing or disposing of it, as the case may be.

R.S., 1985, c. C-46, s. 358; R.S., 1985, c. 27 (1st Supp.), s. 50.

### Evidence

**359.** (1) Where an accused is charged with an offence under section 342 or 354 or paragraph 356(1)(b), evidence is admissible at any stage of the proceedings to show that property other than the property that is the subject-matter of the proceedings

(a) was found in the possession of the accused, and

(b) was stolen within twelve months before the proceedings were commenced,

and that evidence may be considered for the purpose of proving that the accused knew that the property that forms the subject-matter of the proceedings was stolen property.

### Notice to accused

(2) Subsection (1) does not apply unless

(a) at least three days notice in writing is given to the accused that in the proceedings it is intended to prove that property other than the property that is the subject-matter of the proceedings was found in his possession; and

(b) the notice sets out the nature or description of the property and describes the person from whom it is alleged to have been stolen.

R.S., 1985, c. C-46, s. 359; R.S., 1985, c. 27 (1st Supp.), s. 51.

### Evidence of previous conviction

**360.** (1) Where an accused is charged with an offence under section 354 or paragraph 356(1)(b) and evidence is adduced that the subject-matter of the proceedings was found in his possession, evidence that the accused was, within five years before the proceedings were commenced, convicted of an offence involving theft or an offence under section 354 is admissible at any stage of the proceedings and may be taken into consideration for the purpose of proving that the accused knew that the property that forms the subject-matter of the proceedings was unlawfully obtained.

### Notice to accused

(2) Subsection (1) does not apply unless at least three days notice in writing is given to the accused that in the proceedings it is intended to prove the previous conviction.

R.S., c. C-34, s. 318.

## FALSE PRETENCES

### False pretence

**361.** (1) A false pretence is a representation of a matter of fact either present or past, made by words or otherwise, that is known by the person who makes it to be false and that is made with a fraudulent intent to induce the person to whom it is made to act on it.

### Exaggeration

(2) Exaggerated commendation or depreciation of the quality of anything is not a false pretence unless it is carried to such an extent that it amounts to a fraudulent misrepresentation of fact.

### Question of fact

(3) For the purposes of subsection (2), it is a question of fact whether commendation or depreciation amounts to a fraudulent misrepresentation of fact.

R.S., c. C-34, s. 319.

### False pretence or false statement

**362.** (1) Every one commits an offence who

(a) by a false pretence, whether directly or through the medium of a contract obtained by a false pretence, obtains anything in respect of which the offence of theft may be committed or causes it to be delivered to another person;

(b) obtains credit by a false pretence or by fraud;

(c) knowingly makes or causes to be made, directly or indirectly, a false statement in writing with intent that it should be relied on, with respect to the financial condition or means or ability to pay of himself or herself or any person or organization that he or she is interested in

or that he or she acts for, for the purpose of procuring, in any form whatever, whether for his or her benefit or the benefit of that person or organization,

- (i) the delivery of personal property,
- (ii) the payment of money,
- (iii) the making of a loan,
- (iv) the grant or extension of credit,
- (v) the discount of an account receivable, or
- (vi) the making, accepting, discounting or endorsing of a bill of exchange, cheque, draft or promissory note; or

(d) knowing that a false statement in writing has been made with respect to the financial condition or means or ability to pay of himself or herself or another person or organization that he or she is interested in or that he or she acts for, procures on the faith of that statement, whether for his or her benefit or for the benefit of that person or organization, anything mentioned in subparagraphs (c)(i) to (vi).

### Punishment

(2) Every one who commits an offence under paragraph (1)(a)

(a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding ten years, where the property obtained is a testamentary instrument or the value of what is obtained exceeds five thousand dollars; or

(b) is guilty

- (i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or
- (ii) of an offence punishable on summary conviction,

where the value of what is obtained does not exceed five thousand dollars.

### Idem

(3) Every one who commits an offence under paragraph (1)(b), (c) or (d) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

### Presumption from cheque issued without funds

(4) Where, in proceedings under paragraph (1)(a), it is shown that anything was obtained by the accused by means of a cheque that, when presented for payment within a reasonable time, was dishonoured on the ground that no funds or insufficient funds were on deposit to the credit of the accused in the bank or other institution on which the cheque was drawn, it shall be presumed to have been obtained by a false pretence, unless the court is satisfied by evidence that when the accused issued the cheque he believed on reasonable grounds that it would be honoured if presented for payment within a reasonable time after it was issued.

### Definition of "cheque"

(5) In this section, "cheque" includes, in addition to its ordinary meaning, a bill of exchange drawn on any institution that makes it a business practice to honour bills of exchange or any particular kind thereof drawn on it by depositors.

R.S., 1985, c. C-46, s. 362; R.S., 1985, c. 27 (1st Supp.), s. 52; 1994, c. 44, s. 22; 2003, c. 21, s. 5.

### Obtaining execution of valuable security by fraud

**363.** Every one who, with intent to defraud or injure another person, by a false pretence

causes or induces any person

(a) to execute, make, accept, endorse or destroy the whole or any part of a valuable security, or

(b) to write, impress or affix a name or seal on any paper or parchment in order that it may afterwards be made or converted into or used or dealt with as a valuable security,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

R.S., c. C-34, s. 321.

### Fraudulently obtaining food, beverage or accommodation

**364.** (1) Every one who fraudulently obtains food, a beverage or accommodation at any place that is in the business of providing those things is guilty of an offence punishable on summary conviction.

#### Presumption

(2) In proceedings under this section, evidence that the accused obtained food, a beverage or accommodation at a place that is in the business of providing those things and did not pay for it and

(a) made a false or fictitious show or pretence of having baggage,

(b) had any false or pretended baggage,

(c) surreptitiously removed or attempted to remove his baggage or any material part of it,

(d) absconded or surreptitiously left the premises,

(e) knowingly made a false statement to obtain credit or time for payment, or

(f) offered a worthless cheque, draft or security in payment for the food, beverage or accommodation,

is, in the absence of any evidence to the contrary, proof of fraud.

#### Definition of "cheque"

(3) In this section, "cheque" includes, in addition to its ordinary meaning, a bill of exchange drawn on any institution that makes it a business practice to honour bills of exchange or any particular kind thereof drawn on it by depositors.

R.S., 1985, c. C-46, s. 364; 1994, c. 44, s. 23.

### Pretending to practise witchcraft, etc.

**365.** Every one who fraudulently

(a) pretends to exercise or to use any kind of witchcraft, sorcery, enchantment or conjuration,

(b) undertakes, for a consideration, to tell fortunes, or

(c) pretends from his skill in or knowledge of an occult or crafty science to discover where or in what manner anything that is supposed to have been stolen or lost may be found,

is guilty of an offence punishable on summary conviction.

R.S., c. C-34, s. 323.

## FORGERY AND OFFENCES RESEMBLING FORGERY

### Forgery

**366.** (1) Every one commits forgery who makes a false document, knowing it to be false, with



## intent

(a) that it should in any way be used or acted on as genuine, to the prejudice of any one whether within Canada or not; or

(b) that a person should be induced, by the belief that it is genuine, to do or to refrain from doing anything, whether within Canada or not.

## Making false document

(2) Making a false document includes

(a) altering a genuine document in any material part;

(b) making a material addition to a genuine document or adding to it a false date, attestation, seal or other thing that is material; or

(c) making a material alteration in a genuine document by erasure, obliteration, removal or in any other way.

## When forgery complete

(3) Forgery is complete as soon as a document is made with the knowledge and intent referred to in subsection (1), notwithstanding that the person who makes it does not intend that any particular person should use or act on it as genuine or be induced, by the belief that it is genuine, to do or refrain from doing anything.

## Forgery complete though document incomplete

(4) Forgery is complete notwithstanding that the false document is incomplete or does not purport to be a document that is binding in law, if it is such as to indicate that it was intended to be acted on as genuine.

## Exception

(5) No person commits forgery by reason only that the person, in good faith, makes a false document at the request of a police force, the Canadian Forces or a department or agency of the federal government or of a provincial government.

R.S., 1985, c. C-46, s. 366; 2009, c. 28, s. 7.

## Punishment for forgery

**367.** Every one who commits forgery

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) is guilty of an offence punishable on summary conviction.

R.S., 1985, c. C-46, s. 367; 1994, c. 44, s. 24; 1997, c. 18, s. 24.

## Use, trafficking or possession of forged document

**368.** (1) Everyone commits an offence who, knowing or believing that a document is forged,

(a) uses, deals with or acts on it as if it were genuine;

(b) causes or attempts to cause any person to use, deal with or act on it as if it were genuine;

(c) transfers, sells or offers to sell it or makes it available, to any person, knowing that or being reckless as to whether an offence will be committed under paragraph (a) or (b); or

(d) possesses it with intent to commit an offence under any of paragraphs (a) to (c).

## Punishment

(1.1) Everyone who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years; or

(b) is guilty of an offence punishable on summary conviction.

### Wherever forged

(2) For the purposes of proceedings under this section, the place where a document was forged is not material.

R.S., 1985, c. C-46, s. 368; 1992, c. 1, s. 60(F); 1997, c. 18, s. 25; 2009, c. 28, s. 8.

### Forgery instruments

**368.1** Everyone is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years, or is guilty of an offence punishable on summary conviction, who, without lawful authority or excuse, makes, repairs, buys, sells, exports from Canada, imports into Canada or possesses any instrument, device, apparatus, material or thing that they know has been used or know is adapted or intended for use by any person to commit forgery.

2009, c. 28, s. 9.

### Public officers acting in the course of their duties or employment

**368.2** No public officer, as defined in subsection 25.1(1), is guilty of an offence under any of sections 366 to 368.1 if the acts alleged to constitute the offence were committed by the public officer for the sole purpose of establishing or maintaining a covert identity for use in the course of the public officer's duties or employment.

2009, c. 28, s. 9.

### Exchequer bill paper, public seals, etc.

**369.** Everyone is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years who, without lawful authority or excuse,

(a) makes, uses or possesses

(i) any exchequer bill paper, revenue paper or paper that is used to make bank-notes, or

(ii) any paper that is intended to resemble paper mentioned in subparagraph (i); or

(b) makes, reproduces or uses a public seal of Canada or of a province, or the seal of a public body or authority in Canada or of a court of law.

R.S., 1985, c. C-46, s. 369; 2009, c. 28, s. 9.

### Counterfeit proclamation, etc.

**370.** Every one who knowingly

(a) prints any proclamation, order, regulation or appointment, or notice thereof, and causes it falsely to purport to have been printed by the Queen's Printer for Canada or the Queen's Printer for a province, or

(b) tenders in evidence a copy of any proclamation, order, regulation or appointment that falsely purports to have been printed by the Queen's Printer for Canada or the Queen's Printer for a province,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

R.S., c. C-34, s. 328.

### Telegram, etc., in false name

**371.** Every one who, with intent to defraud, causes or procures a telegram, cablegram or radio message to be sent or delivered as being sent by the authority of another person, knowing that it is not sent by his authority and with intent that the message should be acted on as being sent by his authority, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

R.S., c. C-34, s. 329.

### False messages

**372.** (1) Every one who, with intent to injure or alarm any person, conveys or causes or procures to be conveyed by letter, telegram, telephone, cable, radio or otherwise information that he knows is false is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

### Indecent telephone calls

(2) Every one who, with intent to alarm or annoy any person, makes any indecent telephone call to that person is guilty of an offence punishable on summary conviction.

### Harassing telephone calls

(3) Every one who, without lawful excuse and with intent to harass any person, makes or causes to be made repeated telephone calls to that person is guilty of an offence punishable on summary conviction.

R.S., c. C-34, s. 330.

**373.** [Repealed, R.S., 1985, c. 27 (1st Supp.), s. 53]

### Drawing document without authority, etc.

**374.** Every one who

(a) with intent to defraud and without lawful authority makes, executes, draws, signs, accepts or endorses a document in the name or on the account of another person by procuration or otherwise, or

(b) makes use of or utters a document knowing that it has been made, executed, signed, accepted or endorsed with intent to defraud and without lawful authority, in the name or on the account of another person, by procuration or otherwise,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

R.S., c. C-34, s. 332.

### Obtaining, etc., by instrument based on forged document

**375.** Every one who demands, receives or obtains anything, or causes or procures anything to be delivered or paid to any person under, on or by virtue of any instrument issued under the authority of law, knowing that it is based on a forged document, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

R.S., c. C-34, s. 333.

### Counterfeiting stamp, etc.

**376.** (1) Every one who

(a) fraudulently uses, mutilates, affixes, removes or counterfeits a stamp or part thereof,

(b) knowingly and without lawful excuse, the proof of which lies on him, has in his possession

(i) a counterfeit stamp or a stamp that has been fraudulently mutilated, or

(ii) anything bearing a stamp of which a part has been fraudulently erased, removed or concealed, or

(c) without lawful excuse, the proof of which lies on him, makes or knowingly has in his possession a die or instrument that is capable of making the impression of a stamp or part thereof,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

### Counterfeiting mark

(2) Every one who, without lawful authority,

(a) makes a mark,

(b) sells, or exposes for sale, or has in his possession a counterfeit mark,

(c) affixes a mark to anything that is required by law to be marked, branded, sealed or wrapped other than the thing to which the mark was originally affixed or was intended to be affixed, or

(d) affixes a counterfeit mark to anything that is required by law to be marked, branded, sealed or wrapped,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

### Definitions

(3) In this section,

"mark"

« *marque* »

"mark" means a mark, brand, seal, wrapper or design used by or on behalf of

(a) the government of Canada or a province,

(b) the government of a state other than Canada, or

(c) any department, board, commission or agent established by a government mentioned in paragraph (a) or (b) in connection with the service or business of that government;

"stamp"

« *timbre* »

"stamp" means an impressed or adhesive stamp used for the purpose of revenue by the government of Canada or a province or by the government of a state other than Canada.

R.S., c. C-34, s. 334.

### Damaging documents

**377.** (1) Every one who unlawfully

(a) destroys, defaces or injures a register, or any part of a register, of births, baptisms, marriages, deaths or burials that is required or authorized by law to be kept in Canada, or a copy or any part of a copy of such a register that is required by law to be transmitted to a registrar or other officer,

(b) inserts or causes to be inserted in a register or copy referred to in paragraph (a) an entry, that he knows is false, of any matter relating to a birth, baptism, marriage, death or burial, or erases any material part from that register or copy,

(c) destroys, damages or obliterates an election document or causes an election document to be destroyed, damaged or obliterated, or

(d) makes or causes to be made an erasure, alteration or interlineation in or on an election document,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

#### Definition of "election document"

(2) In this section, "election document" means any document or writing issued under the authority of an Act of Parliament or the legislature of a province with respect to an election held pursuant to the authority of that Act.

R.S., c. C-34, s. 335.

#### Offences in relation to registers

**378.** Every one who

(a) being authorized or required by law to make or issue a certified copy of, extract from or certificate in respect of a register, record or document, knowingly makes or issues a false certified copy, extract or certificate,

(b) not being authorized or required by law to make or issue a certified copy of, extract from or certificate in respect of a register, record or document, fraudulently makes or issues a copy, extract or certificate that purports to be certified as authorized or required by law, or

(c) being authorized or required by law to make a certificate or declaration concerning any particular required for the purpose of making entries in a register, record or document, knowingly and falsely makes the certificate or declaration,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

R.S., c. C-34, s. 336.

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Sections and Schedules

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