

Index

AIDING AND ABETTING

- Criminal negligence, **1:27**
- Dangerous operation (driving), **2:37**

AUTOMATISM, NON-INSANE

- Criminal negligence, **1:11**
- Dangerous operation (driving), **2:16**

AUTREFOIS ACQUIT

- Criminal negligence, **1:32**
- Dangerous operation (driving), **2:43**
- Failing to remain, **3:18**

CAUSATION

- Criminal negligence, **1:30, 1:31**
- Dangerous operation (driving), **2:41, 2:42**

CHARTER OF RIGHTS AND FREEDOMS

- Effect on
 - s, 249, **2:40**
 - s, 252, **3:17**
 - s, 259, **5:28**
 - ss, 219, 220, 221, **1:29**
- Prohibition orders, **4:23**
- s. 24(2), effect of R. v. Grant on, **1:29, 2:40, 3:17, 4:23**

CRIMINAL NEGLIGENCE, [SS. 219, 220, 221]

- “By criminal negligence causes bodily harm to another person,” **1:1, 1:30**
- “By criminal negligence causes death to another person”
 - generally, **1:1, 1:31**
 - causal connection, **1:31**
 - foreseeability, **1:31**
 - substantial cause, **1:31**
- Charter of Rights and Freedoms, effect of, on ss, 219, 220, 221, **1:29**
- Circumstantial evidence and proof of identity
 - generally, **1:26**
- Criminal Code, s, 219, **1:1**
- Criminal Code, s, 220, **1:1**
- Criminal Code, s, 221, **1:1**

CRIMINAL NEGLIGENCE, [SS. 219, 220, 221]—Cont’d

- Criminal Law Amendment Act, 1985, effect of, **1:2**
- Defects and malfunctions
 - generally, **1:22**
 - brakes, **1:22**
 - steering, **1:22**
 - tires, **1:22**
- Delict
 - generally, **1:32**
 - autrefois acquit, **1:32**
 - Kienapple principle, **1:32**
 - multiple victims, **1:32**
 - related offences, **1:32**
 - res judicata, **1:32**
- Emergencies
 - generally, **1:23**
 - defence of necessity, **1:23**
 - instructions to jury, **1:23**
- Erratic driving
 - generally, **1:16; 1:17**
 - fooling around, **1:21**
 - improper lookout, **1:19**
 - showing off, **1:21**
 - unsafe passes, **1:19**
 - wrong side of road, driving on, **1:18**
 - zigzagging, **1:21**
- Examples and sample issues, **1:10 to 1:28**
- “For the lives or safety of other persons,” **1:8**
- Identity, proof of, and circumstantial evidence, **1:26**
- Included offences
 - generally, **1:33**
 - dangerous driving, **1:33**
 - instructions to jury, **1:33**
- “In doing anything, or in omitting to do anything,” **1:5**
- Information, wording of
 - generally, **1:3**
 - “wanton and reckless disregard,” **1:3**
 - “wanton or reckless disregard,” **1:3**

CRIMINAL NEGLIGENCE, [SS. 219, 220, 221]—Cont'd

- Ingredients of offence
 - generally, **1:4**
 - “for the lives or safety of other persons,” **1:8**
 - “in doing anything, or in omitting to do anything,” **1:5**
 - “shows wanton or reckless disregard”
 - generally, **1:7**
 - gross negligence, **1:7**
 - meaning of “reckless,” **1:7**
 - meaning of “wanton,” **1:7**
 - “that it is his duty to do”
 - generally, **1:6**
 - “duty imposed by law,” **1:6**
 - mere breach of duty, **1:6**
- Intoxication and impairment
 - generally, **1:10**
 - admissibility of evidence of
 - generally, **1:10**
 - non-expert witness, opinion evidence of, **1:10**
 - statements made under compulsion of statute, **1:10**
 - instructions to jury, **1:10**
 - relevant factors to be considered, **1:10**
 - self-induced intoxication not defence, **1:10**
- Mens rea
 - generally, **1:9**
 - momentary lapse of duty, **1:9**
 - objective versus objective standard, **1:9**
 - victim’s negligence, **1:9**
- Mental and physical condition
 - generally, **1:11**
 - automatism, non-insane, **1:11**
 - carbon monoxide poisoning, **1:11**
 - epileptic seizure, **1:11**
 - fatigue, **1:11**
 - mental illness, **1:11**
 - vision, defective, **1:11**
- Necessity, defence of, **1:23**
- Parties
 - generally, **1:27**
 - “aiding and abetting a common cause,” **1:27**
- Proof of identity, **1:26**
- Res gestae
 - generally, **1:24**

CRIMINAL NEGLIGENCE, [SS. 219, 220, 221]—Cont'd

- Res gestae—Cont'd
 - driving conduct after accident, **1:24**
- Sentencing
 - generally, **1:34 to 1:36**
 - criminal negligence causing bodily harm, **1:36**
 - criminal negligence causing death, **1:35**
 - “Shows wanton or reckless disregard,” **1:7**
- Similar facts, **1:25**
- Speeding
 - generally, **1:12 to 1:21**
 - police chases, **1:15**
 - racing, **1:14**
 - speed alone, **1:13**
 - vehicle as weapon, using, **1:16**
- Street racing
 - criminal negligence causing bodily harm, **1:36**
 - criminal negligence causing death, **1:35**
 - “That it is his duty to do,” **1:6**
- DANGEROUS OPERATION (DRIVING), [S. 249]**
 - “And thereby causes bodily harm to any other person”
 - generally, **2:41**
 - causal connection, **2:41**
 - substantial cause, **2:41**
 - “And thereby causes the death of any other person”
 - causal connection
 - generally, **2:42**
 - contributing cause, **2:42**
 - instructions to jury, **2:42**
 - substantial cause, **2:42**
 - “And thereby causes the death of any other person,” **2:42**
 - “At a place,” **2:8**
 - Boating, R. v. MacKay (2008), **2:40**
 - Canadian Bill of Rights, effect of, on s, 249, **2:41**
 - Charter of Rights and Freedoms, effect of, on s, 249, **2:40**
 - Circumstantial evidence and proof of identity, **2:36**
 - Criminal Code, s, 249, **2:1**
 - Criminal Law Amendment Act, 1985, effect of, **2:2**

DANGEROUS OPERATION**(DRIVING), [S. 249]—Cont'd**

- Defects and malfunctions
 - generally, **2:33**
 - brakes, **2:33**
 - steering, **2:33**
 - tires, **2:33**
- Delict, the
 - generally, **2:43**
 - autrefois acquit, **2:43**
 - careless driving, and, **2:43**
 - driving “over 80,” and, **2:43**
 - impaired driving, and, **2:43**
 - Kienapple principle, **2:43**
 - res judicata, **2:43**
- Emergencies, **2:34**
- Erratic driving
 - generally, **2:23**
 - fooling around, **2:30**
 - improper lookout, **2:24**
 - interfering with steering wheel, **2:31**
 - red lights or stop signs, driving through, **2:26**
 - showing off, **2:30**
 - tail-gating or following too closely, **2:27**
 - unsafe passes or turns, **2:25**
 - weaving, zigzagging and fish-tailing, **2:28**
 - wrong side of road, driving on, **2:29**
- Flight, **2:50 to 2:52**
 - “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,” **2:8**
 - “In a manner that is dangerous to the public,” **2:7**
- Included offences, **2:44**
- Information, wording of
 - generally, **2:3**
 - manner of driving, **2:3**
 - place of driving, **2:3**
 - whether defective being nullity, **2:3**
- Ingredients of offence
 - generally, **2:4**
 - “at a place,” **2:8**
 - “having regard to all the circumstances, including the nature,

DANGEROUS OPERATION**(DRIVING), [S. 249]—Cont'd**

- Ingredients of offence—Cont'd
 - 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,” **2:8**
 - “in a manner that is dangerous to the public,” **2:7**
 - dangerous to public, **2:7**
 - manner of driving, **2:7**
 - “public,” meaning of, **2:7**
 - “motor vehicle,” **2:6**
 - “operates” (drives), **2:5**
- Intoxication and impairment
 - generally, **2:15**
 - admissibility of evidence of
 - generally, **2:15**
 - statements made under compulsion of statute, **2:15**
 - aiding and abetting, **2:37**
 - combined with speeding and unsafe manoeuvres, **2:19**
 - instructions to jury, **2:15**
 - relevant factors, **2:15**
 - self-induced intoxication not defence, **2:15**
- Mens rea
 - generally, **2:9 to 2:13**
 - post-Beatty, **2:12**
 - post-Hundal
 - generally, **2:11**
 - marked departure from prudent conduct, **2:11**
 - pre-Hundal
 - generally, **2:9**
 - advertent versus inadvertent negligence, **2:9**
 - amnesia, retrograde, **2:9**
 - mens rea requirement, whether, **2:9**
 - R. v. Beatty, **2:12**
 - R. v. Hundal
 - generally, **2:10**
 - constitutional requirement of mens rea, **2:10**
 - mens rea requirement, **2:10**
 - modified objective test, **2:10**
- Mental condition
 - generally, **2:16**

DANGEROUS OPERATION**(DRIVING), [S. 249]—Cont'd**

- Mental condition—Cont'd
 - amnesia, retrograde, **2:16**
 - automatism, non-insane, **2:16**
 - epileptic seizure, **2:16**
 - fatigue, **2:16**
 - mental illness, **2:16**
 - vision, defective, **2:16**
- Miscellaneous issues, **2:15 to 2:39**
- “Motor vehicle,” **2:6**
- “Operates (drives),” **2:5**
- Parties
 - generally, **2:37**
 - aiding and abetting, **2:37**
- Physical condition, **2:16**
- Sentencing
 - generally, **2:45 to 2:49**
 - dangerous driving, **2:46**
 - dangerous driving causing bodily harm, **2:48**
 - dangerous driving causing death, **2:47**
- Similar acts, **2:35**
- Speeding
 - generally, **2:17 to 2:32**
 - police and other chases, **2:21**
 - racing, **2:20**
 - speed alone
 - generally, **2:18**
 - standard of proof, **2:18**
 - speed combined with alcohol consumption and unsafe manoeuvres, **2:19**
 - vehicle as weapon, using, **2:22**
- Street racing
 - prosecution, **2:20**
 - sentencing, **2:20**

DEFECTS AND MALFUNCTIONS

- Criminal negligence
 - generally, **1:22**
 - brakes, **1:22**
 - steering, **1:22**
 - tires, **1:22**
- Dangerous operation (driving)
 - generally, **2:33**
 - brakes, **2:33**
 - steering, **2:33**
 - tires, **2:33**

DRIVING WHILE DISQUALIFIED, [S. 259(4), (5); S. 260(4), (5), (6), (7); S. 261]

See also PROHIBITION ORDERS, CRIMINAL CODE

Generally, **5:3**“in Canada,” **5:8**

“in the absence of evidence to the contrary . . . 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,” **5:11**

Certificate of Registrar

generally, **5:13 to 5:16**proof of identity, certificate as, **5:16**“reasonable particularity,” **5:14**sample certificate of Registrar, **APP E**

“signature of official character of the person by whom it purports to be signed,” **5:15**

Charter of Rights and Freedoms, effect of, on s, 259, **5:28**Criminal Code, **5:1**Delict, **5:27**

“Disqualification”

by disqualification by province, **5:3**by prohibition under Code, **5:3**“Disqualified” defined, **5:3**

During “a disqualification or any other form of legal restriction of the right or privilege to operate a motor vehicle . . . imposed . . . in the case of a motor vehicle, under the law of a province . . . in respect of a conviction or discharge under section 730 of any offence referred to in any of subsection (2) and (3.1) to (3.4)” (s. 259(5)(b)), **5:10**

During “a prohibition from operating a motor vehicle . . . pursuant to any of subsections (1), (2) and (3.1) to (3.4)” (s. 259(5)(a)), **5:8, 5:9**

generally, **5:8**proving prohibition, **5:9**Information, wording of, **5:3**Ingredients of offence, **5:4**

Mens rea

generally, **5:7**defence of officially induced error, **5:7**

DRIVING WHILE DISQUALIFIED, [S. 259(4), (5); S. 260(4), (5), (6), (7); S. 261]—Cont'd

- Mens rea—Cont'd
 - knowledge that licence suspended, **5:7**
 - “Motor vehicle,” **5:7**
- Notice of suspension of driver’s licence, **APP D**
 - “Operates,” **5:5**
 - Registrar of motor vehicles, **5:25**
 - Sentencing, **5:29**
 - Stay of order pending appeal, **5:26**
 - “Unless at least seven days notice in writing is given to the accused that it is intended to tender the certificate in evidence”
 - generally, **5:17 to 5:24**
 - accused’s understanding of notice, **5:21**
 - Canada Evidence Act, relationship between s. 260(6) and s. 40 of, **5:24**
 - copy of certificate to be served, need for, **5:20**
 - proof that service was made, **5:23**
 - when service must be made in relation to the trial date, **5:17**
 - whether Crown precluded from using certificate on trial de novo when it was not used in the court below, **5:18**
 - whether notice can be served before the information is sworn, **5:19**
 - whom may service be made on, **5:22**

EMERGENCIES

See NECESSITY, DEFENCE OF

EPILEPTIC SEIZURE

- Criminal negligence, **1:11**
- Dangerous operation (driving), **2:16**

ERRATIC DRIVING

- Criminal negligence
 - generally, **1:16; 1:17**
 - fooling around, **1:21**
 - improper lookout, **1:19**
 - showing off, **1:21**
 - unsafe passes, **1:19**
 - wrong side of road, driving on, **1:18**
 - zigzagging, **1:21**
- Dangerous operation (driving)
 - generally, **2:23**

ERRATIC DRIVING—Cont'd

- Dangerous operation (driving)—Cont'd
 - fooling around, **2:30**
 - improper lookout, **2:24**
 - interfering with steering wheel, **2:31**
 - red lights or stop signs, driving through, **2:26**
 - showing off, **2:30**
 - tail-gating or following too closely, **2:27**
 - unsafe passes or turns, **2:25**
 - weaving, zigzagging and fish-tailing, **2:28**
 - wrong side of road, driving on, **2:29**

FAILING TO REMAIN, [S. 252]

See also FLIGHT FROM PEACE OFFICER.

Generally, **3:3**

“Absence of evidence to the contrary” generally, **3:17**

“evidence to the contrary,” **3:17**

specific examples

generally, **3:17**

complainant’s evidence, **3:17**

drunkenness, **3:17**

intent to escape for another reason, **3:17**

lack of knowledge of accident, **3:17**

mental condition, **3:17**

notoriety, **3:17**

“Accident” defined, **3:10**

Charter of Rights and Freedoms, effect of, on s, 252, **3:17**

Criminal Code, s, 252, **3:1**

Delict

generally, **3:18**

autrefois acquit, **3:18**

res judicata, **3:18**

Evidence, **3:20**

“[Fails to] give his name and address,” **3:13**

“Fails to stop his vehicle,” **3:12**

“Has the care, charge or control”

generally, **3:5; 3:6**

may passenger be convicted, **3:7**

Included offences, **3:19**

Information, wording of, **3:3**

Ingredients of offence, **3:4**

“Of a vehicle,” **3:9**

Passenger may be convicted, whether, **3:7**

FAILING TO REMAIN, [S. 252]—Cont'd

Presumption of intent to escape liability,
3:16

Sentencing, **3:21**

“That is involved in an accident”

generally, **3:10**

“in the case of a vehicle, cattle in the
charge of another person,” **3:11**

“with another person,” **3:11**

Voir dire, necessity of, **3:16**

“Where any person has been injured or
appears to require assistance, [fails to]
offer assistance,” **3:14**

“With intent to escape criminal or civil
liability,” **3:12**

FATIGUE

Criminal negligence, **1:2, 1:11**

Dangerous operation (driving), **2:16**

FLIGHT FROM PEACE OFFICER

Generally, **2:1**

Case law, **2:51**

Sentencing, **2:52**

FORFEITURE OF VEHICLE

See SENTENCING

IGNITION INTERLOCK

Generally, **4:28**

IMPAIRED DRIVING

See INTOXICATION AND IMPAIR-
MENT

INCLUDED OFFENCES

Failing to remain, **3:19**

INTOXICATION AND IMPAIRMENT

Criminal negligence

generally, **1:10**

admissibility of evidence of

generally, **1:10**

non-expert witness, opinion evidence
of, **1:10**

statements made under compulsion
of statute, **1:10**

instructions to jury, **1:10**

relevant factors to be considered, **1:10**

self-induced intoxication not defence,
1:10

Dangerous operation (driving)

generally, **2:15**

INTOXICATION AND IMPAIRMENT**—Cont'd**

Dangerous operation (driving)—Cont'd
admissibility of evidence of

generally, **2:15**

statements made under compulsion
of statute, **2:15**

aiding and abetting, **2:37**

combined with speeding and unsafe
manoeuvres, **2:19**

instructions to jury, **2:15**

relevant factors to be considered, **2:15**

self-induced intoxication not defence,
2:15

Ignition interlock provisions, **4:28**

LICENCE SUSPENSION PROVISIONS

Alberta, **APP B1**

British Columbia, **APP B2**

Manitoba, **APP B3**

New Brunswick, **APP B4**

Newfoundland and Labrador, **APP B5**

Northwest Territories, **APP B6**

Nova Scotia, **APP B7**

Nunavut, **APP B8**

Ontario, **APP B9**

Prince Edward Island, **APP B10**

Quebec, **APP B11**

Saskatchewan, **APP B12**

Yukon, **APP B13**

MENS REA

Criminal negligence

generally, **1:9**

momentary lapse of duty, **1:9**

objective standard versus subjective
standard, **1:9**

victim's negligence, **1:9**

Dangerous operation (driving)

generally, **2:9 to 2:13**

post-Beatty, **2:12**

post-Hundal

generally, **2:9 to 2:13**

marked departure from prudent
conduct, **2:11**

pre-Hundal

generally, **2:9**

advertent versus inadvertent
negligence, **2:9**

amnesia, retrograde, **2:9**

mens rea requirement, whether, **2:9**

MENS REA—Cont'd

Dangerous operation (driving)—Cont'd

R. v. Beatty, **2:12**

R. v. Hundal

generally, **2:10**

constitutional requirement of mens
rea, **2:10**

mens rea requirement, **2:10**

modified objective test, **2:10**

Driving while disqualified

generally, **5:7**

defence of officially induced error, **5:7**

knowledge that licence suspended, **5:7**

Failing to remain

“intent to escape criminal or civil
liability,” **3:12**

presumption of intent to escape
liability, **3:17**

“in the absence of evidence to the
contrary,” **3:17**

**MENTAL AND PHYSICAL
CONDITION**

Criminal negligence, **1:11**

Dangerous operation (driving), **2:16**

NECESSITY, DEFENCE OF

Criminal negligence, **1:23**

Dangerous operation (driving), **2:34**

**PROHIBITION ORDERS, CRIMINAL
CODE, [S. 259(1), (2); S. 260(1), (2),
(3)]**

Generally, **4:1**

Charter of Rights and Freedoms, effect of,
4:23

Criminal Code, s. 259(1), (2), **4:2**

Criminal Code, s. 260(1), (2), (3), **4:2**

Discretionary order of prohibition

generally, **4:21, 4:22**

length of prohibition, **4:21**

“offence under section 220, 221, 236,
249, 249.1, 250, 251 or 252,
subsection 255(2) or (3), 257 or
this section or subsection 255(2)
or (3)

committed by means of a vehicle,”
[s. 259(2)], **4:21**

Mandatory orders of prohibition

generally, **4:3 to 4:9**

adjournments to prove service
generally, **4:17**

**PROHIBITION ORDERS, CRIMINAL
CODE, [S. 259(1), (2); S. 260(1), (2),
(3)]—Cont'd**

Mandatory orders of prohibition—Cont'd

adjournments to prove service—Cont'd

proof of service, **4:16**

statutory provisions, **4:12**

sufficiency of notice, **4:18**

to whom must notice be given, **4:14**

verbal or written notice, **4:13**

when must notification be made,
4:15

“an offence committed under s. 253 . . .
and at a time the offence was com-
mitted . . . was operating or had
the care or control of a motor
vehicle,” **4:4**

Crown’s right to prove previous
convictions in ordinary way apart
from s. 727, **4:19**

“in addition to any other punishment
that may be imposed,” **4:5**

“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,” **4:19**

length of prohibition, **4:20**

“make an order prohibiting the
offender from operating a motor
vehicle . . . or a vessel or an
aircraft,” **4:6**

notification of increased penalty, **4:11**

“not more than three years,” **4:8**

“on any street, road, highway or other
public place,” **4:7**

second or subsequent offenders, **4:10 to
4:20**

Proceedings on making a prohibition
order, **4:22**

Sample prohibition order, **APP C**

**PROVINCIAL AUTOMATIC
SUSPENSION LEGISLATION**

See LICENCE SUSPENSION PROVI-
SIONS

RES JUDICATA

Criminal negligence, **1:32**

Dangerous operation (driving), **2:43**

Failing to remain, **3:18**

SENTENCING

- Aggravating circumstance, s, 255.1
 - generally, **2:48**
 - blood alcohol over 160 mg, **2:48**
 - flight from peace officer, **2:48**
- Criminal negligence
 - causing bodily harm, **1:36**
 - causing death, **1:35**
 - while street racing, **1:35; 1:36**
- Dangerous driving
 - generally, **2:46**
 - causing bodily harm, **2:48**
 - causing death, **2:47**
- Driving while disqualified, **5:29**
- Failing to remain, **3:21**
- Flight, **2:52**
- Forfeiture of vehicle, **2:49**

SIMILAR ACTS

- Criminal negligence, **1:25**
- Dangerous operation (driving), **2:35**

SPEEDING

- Criminal negligence
 - generally, **1:12 to 1:21**
 - police and other chases, **1:15**

SPEEDING—Cont'd

- Criminal negligence—Cont'd
 - racing, **1:14**
 - speed alone, **1:13**
 - vehicle as weapon, using, **1:16**
- Criminal negligence causing bodily harm
 - prosecution, **1:36**
 - sentencing, **1:36**
- Criminal negligence causing death
 - prosecution, **1:35**
 - sentencing, **1:35**
- Dangerous driving operation
 - prosecution, **2:43 to 2:44**
 - sentencing, **2:45 to 2:49**
- Dangerous operation (driving)
 - generally, **2:17 to 2:32**
 - police and other chases, **2:21**
 - racing, **2:20**
 - speed alone, **2:18**
 - speed combined with alcohol consumption and unsafe manoeuvres, **2:19**
 - standard of proof, **2:18**
 - vehicle as weapon, using, **2:22**

VOIR DIRE

- Necessity of, **3:16**