

INDEX

The Index is current to 2014 — Release 8

AIDING AND ABETTING

criminal negligence, 1.11(i)
dangerous operation (driving), 2.12(h)

AUTOMATISM, NON-INSANE

criminal negligence, 1.11(b)
dangerous operation (driving), 2.12(b)

AUTREFOIS ACQUIT

criminal negligence, 1.15
dangerous operation (driving), 2.17
failing to remain, 3.18

CAUSATION

criminal negligence, 1.13, 1.14
dangerous operation (driving), 2.15, 2.16

CHARTER OF RIGHTS AND FREEDOMS

effect on
 ss. 219, 220, 221, 1.12
 s. 252, 3.17
 s. 249, 2.14
 s. 259, 5.17.1
prohibition orders, 4.7
s. 24(2), effect of *R. v. Grant* on, 1.12,
 2.14, 3.17, 4.7

CRIMINAL NEGLIGENCE [ss. 219, 220, 221]

“by criminal negligence causes bodily harm to another person,” 1.1, 1.13
“by criminal negligence causes death to another person,” 1.1, 1.14
causal connection, 1.14
foreseeability, 1.14
substantial cause, 1.14
Charter of Rights and Freedoms, effect of, on ss. 219, 220, 221, 1.12
circumstantial evidence and proof of identity, 1.11(h)
Criminal Code, s. 219, 1.1
Criminal Code, s. 220, 1.1
Criminal Code, s. 221, 1.1
Criminal Law Amendment Act, 1985, effect of, 1.2
defects and malfunctions, 1.11(d)
 brakes, 1.11(d)
 steering, 1.11(d)
 tires, 1.11(d)
delict, 1.15

autrefois acquit, 1.15
Kienapple principle, 1.15
multiple victims, 1.15
related offences, 1.15
res judicata, 1.15
emergencies, 1.11(e)
 defence of necessity, 1.11(e)
 instructions to jury, 1.11(e)
erratic driving, 1.11(c)(v)
 fooling around, 1.11(c)(v)(E)
 generally, 1.11(c)(v)(A)
 improper lookout, 1.11(c)(v)(C)
 showing off, 1.11(c)(v)(E)
 unsafe passes, 1.11(c)(v)(C)
 wrong side of road, driving on, 1.11(c)(v)(B)
 zigzagging, 1.11(c)(v)(E)
examples and sample issues, 1.11
“for the lives or safety of other persons,” 1.9
identity, proof of, and circumstantial evidence, 1.11(h)
included offences, 1.16
 dangerous driving, 1.16
 instructions to jury, 1.16
“in doing anything, or in omitting to do anything,” 1.6
information, wording of, 1.4
 “wanton and reckless disregard,” 1.4
 “wanton or reckless disregard,” 1.4
ingredients of offence, 1.5
 “for the lives or safety of other persons,” 1.9
 “shows wanton or reckless disregard,” 1.8
 gross negligence, 1.8
 meaning of “reckless,” 1.8
 meaning of “wanton,” 1.8
 “that it is his duty to do,” 1.7
 “duty imposed by law,” 1.7
 mere breach of duty, 1.7
 “in doing anything, or in omitting to do anything,” 1.6
intoxication and impairment, 1.11(a)
 admissibility of evidence of, 1.11(a)
 non-expert witness, opinion evidence of, 1.11(a)
 statements made under compulsion of statute, 1.11(a)
instructions to jury, 1.11(a)

INDEX

- relevant factors to be considered, 1.11(a)
- self-induced intoxication not defence, 1.11(a)
- mens rea*, 1.10
 - momentary lapse of duty, 1.10
 - objective versus objective standard, 1.10
 - victim's negligence, 1.10
- mental and physical condition, 1.11(b)
 - automatism, non-insane, 1.11(b)
 - carbon monoxide poisoning, 1.11(b)
 - epileptic seizure, 1.11(b)
 - fatigue, 1.11(b)
 - mental illness, 1.11(b)
 - vision, defective, 1.11(b)
- necessity, defence of, 1.11(e)
- parties, 1.11(I)
 - "aiding and abetting a common cause," 1.11(i)
- proof of identity, 1.11(h)
- res gestae*, 1.11(f)
 - driving conduct after accident, 1.11(f)
- Road Traffic Act, 1988 (U.K.), 1.3
- sentencing, 1.17
 - criminal negligence causing bodily harm, 1.17(b)
 - criminal negligence causing death, 1.17(a)
- "shows wanton or reckless disregard," 1.8
- similar facts, 1.11(g)
- speeding, 1.11(c)
 - police chases, 1.11(c)(iii)
 - racing, 1.11(c)(ii)
 - speed alone, 1.11(c)(i)
 - vehicle as weapon, using, 1.11(c)(iv)
- street racing
 - criminal negligence causing bodily harm, 1.19(b)
 - criminal negligence causing death, 1.18(b)
- "that it is his duty to do," 1.7
- DANGEROUS OPERATION (DRIVING)** [s. 249]
 - "and thereby causes bodily harm to any other person," 2.15
 - causal connection, 2.15
 - substantial cause, 2.15
 - "and thereby causes the death of any other person," 2.16
 - causal connection, 2.16
 - contributing cause, 2.16
 - instructions to jury, 2.16
 - substantial cause, 2.16
 - "at a place," 2.8
 - boating, *R. v. MacKay* (2008), 2.14
 - Canadian Bill of Rights, effect of, on s. 249, 2.13
 - Charter of Rights and Freedoms, effect of, on s. 249, 2.14
 - circumstantial evidence and proof of identity, 2.12(g)
 - Criminal Code, s. 249, 2.1
 - Criminal Law Amendment Act, 1985, effect of, 2.2
 - "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," 2.10
 - defects and malfunctions, 2.12(d)
 - brakes, 2.12(d)
 - steering, 2.12(d)
 - tires, 2.12(d)
 - delict, the, 2.17
 - autrefois acquit*, 2.17
 - careless driving, and, 2.17
 - driving "over 80," and, 2.17
 - impaired driving, and, 2.17
 - Kienapple* principle, 2.17
 - res judicata*, 2.17
 - emergencies, 2.12(e)
 - erratic driving, 2.12(c)(vi)
 - fooling around, 2.12(c)(vi)(G)
 - improper lookout, 2.12(c)(vi)(A)
 - interfering with steering wheel, 2.12(c)(vi)(H)
 - red lights or stop signs, driving through, 2.12(c)(vi)(C)
 - showing off, 2.12(c)(vi)(G)
 - tail-gating or following too closely, 2.12(c)(vi)(D)
 - unsafe passes or turns, 2.12(c)(vi)(B)
 - weaving, zigzagging and fish-tailing, 2.12(c)(vi)(E)
 - wrong side of road, driving on, 2.12(c)(vi)(F)
 - flight, 2.20
 - "in a manner that is dangerous to the public," 2.9
 - included offences, 2.18
 - information, wording of, 2.4
 - manner of driving, 2.4
 - place of driving, 2.4

INDEX

- whether defective being nullity, 2.4
- ingredients of offence, 2.5
- “at a place,” 2.8
- “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,” 2.10
- “in a manner that is dangerous to the public,” 2.9
 - dangerous to public, 2.9
 - manner of driving, 2.9
 - “public,” meaning of, 2.9
- “motor vehicle,” 2.7
- “operates” (drives), 2.6
- intoxication and impairment, 2.12(a)
 - admissibility of evidence of, 2.12(a)
 - statements made under compulsion of statute, 2.12(a)
 - aiding and abetting, 2.12(h)
 - combined with speeding and unsafe manoeuvres, 2.12(c)(ii)
 - instructions to jury, 2.12(a)
 - relevant factors, 2.12(a)
 - self-induced intoxication not defence, 2.12(a)
- mens rea, 2.11
 - post-Beatty*, 2.11(c.2)
 - post-Hundal*, 2.11(c)
 - marked departure from prudent conduct, 2.11(c)
 - pre-Hundal*, 2.11(a)
 - advertent versus inadvertent negligence, 2.11(a)
 - amnesia, retrograde, 2.11(a)
 - mens rea requirement, whether, 2.11(a)
 - R. v. Beatty*, 2.11(c.1)
 - R. v. Hundal*, 2.11(b)
 - constitutional requirement of mens rea, 2.11(b)
 - mens rea requirement, 2.11(b)
 - modified objective test, 2.11(b)
- mental condition, 2.12(b)
 - amnesia, retrograde, 2.12(b)
 - automatism, non-insane, 2.12(b)
 - epileptic seizure, 2.12(b)
 - fatigue, 2.12(b)
 - mental illness, 2.12(b)
 - vision, defective, 2.12(b)
- miscellaneous issues, 2.12
 - “motor vehicle,” 2.7
 - “operates (drives),” 2.6
 - parties, 2.12(h)
 - aiding and abetting, 2.12(h)
 - physical condition, 2.12(b)
 - Road Traffic Act, 1988 (U.K.), 2.3
 - sentencing, 2.19
 - dangerous driving, 2.19(a)
 - dangerous driving causing bodily harm, 2.19(c)
 - dangerous driving causing death, 2.19(b)
 - similar acts, 2.12(f)
 - speeding, 2.12(c)
 - police and other chases, 2.12(c)(iv)
 - racing, 2.12(c)(iii)
 - speed alone, 2.12(c)(i)
 - standard of proof, 2.12(c)(i)
 - speed combined with alcohol consumption and unsafe manoeuvres, 2.12(c)(ii)
 - vehicle as weapon, using, 2.12(c)(v)
 - street racing
 - prosecution, 2.21(a)
 - sentencing, 2.21(b)
- DEFECTS AND MALFUNCTIONS**
 - criminal negligence, 1.11(d)
 - brakes, 1.11(d)
 - steering, 1.11(d)
 - tires, 1.11(d)
 - dangerous operation (driving), 2.12(d)
 - brakes, 2.12(d)
 - steering, 2.12(d)
 - tires, 2.12(d)
- DRIVING WHILE DISQUALIFIED** [s. 259(4), (5); s. 260(4), (5), (6), (7); s. 261]
— *See also* **PROHIBITION ORDERS, CRIMINAL CODE**
 - certificate of Registrar, 5.13
 - proof of identity, certificate as, 5.13(c)
 - “reasonable particularity,” 5.13(a)
 - “signature of official character of the person by whom it purports to be signed,” 5.13(b)
 - sample certificate of Registrar, App. D
- Charter of Rights and Freedoms, effect of, on s. 259, 5.17.1
- Criminal Code, 5.1
- delict, 5.17
- “disqualification”
 - by disqualification by province, 5.4

INDEX

- by prohibition under Code, 5.4
 - “disqualified” defined, 5.4
 - 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)), 5.10
 - generally, 5.10(a)
 - proving prohibition, 5.10(b)
 - 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)), 5.11
 - 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,” 5.12
 - information, wording of, 5.4
 - ingredients of offence, 5.5
 - mens rea, 5.9
 - defence of officially induced error, 5.9
 - knowledge that licence suspended, 5.9
 - “operates,” 5.6
 - “motor vehicle,” 5.7
 - notice of suspension of driver’s licence, App. C
 - Registrar of motor vehicles, 5.15
 - Road Traffic Act, 1988 (U.K.), 5.2
 - sentencing, 5.18
 - stay of order pending appeal, 5.16
 - “unless at least seven days notice in writing is given to the accused that it is intended to tender the certificate in evidence,” 5.14
 - accused’s understanding of notice, 5.14(e)
 - Canada Evidence Act, relationship between s. 260(6) and s. 40 of, 5.14(h)
 - copy of certificate to be served, need for, 5.14(d)
 - proof that service was made, 5.14(g)
 - when service must be made in relation to the trial date, 5.14(a)
 - whether Crown precluded from using certificate on trial de novo when it was not used in the court below, 5.14(b)
 - whether notice can be served before the information is sworn, 5.14(c)
 - whom may service be made on, 5.14(f)
- EPILEPTIC SEIZURE**
- criminal negligence, 1.11(b)
 - dangerous operation (driving), 2.12(b)
- EMERGENCIES, *see* NECESSITY, DEFENCE OF**
- ERRATIC DRIVING**
- criminal negligence, 1.11(c)(v)
 - fooling around, 1.11(c)(v)(E)
 - generally, 1.11(c)(v)(A)
 - improper lookout, 1.11(c)(v)(C)
 - showing off, 1.11(c)(v)(E)
 - unsafe passes, 1.11(c)(v)(C)
 - wrong side of road, driving on, 1.11(c)(v)(B)
 - zigzagging, 1.11(c)(v)(E)
 - dangerous operation (driving), 2.12(c)(vi)
 - fooling around, 2.12(c)(vi)(G)
 - improper lookout, 2.12(c)(vi)(A)
 - interfering with steering wheel, 2.12(c)(vi)(H)
 - red lights or stop signs, driving through, 2.12(c)(vi)(C)
 - showing off, 2.12(c)(vi)(G)
 - tail-gating or following too closely, 2.12(c)(vi)(D)
 - unsafe passes or turns, 2.12(c)(vi)(B)
 - weaving, zigzagging and fish-tailing, 2.12(c)(vi)(E)
 - wrong side of road, driving on, 2.12(c)(vi)(F)
- FAILING TO REMAIN [s. 252] — *See also* FLIGHT FROM PEACE OFFICER.**
- “absence of evidence to the contrary,” 3.15
 - “evidence to the contrary,” 3.15
 - generally, 3.15(a)
 - specific examples, 3.15(b)
 - complainant’s evidence, 3.15(b)(vi)
 - drunkenness, 3.15(b)(i)
 - intent to escape for another reason, 3.15(b)(v)

INDEX

lack of knowledge of accident,
3.15(b)(ii)
mental condition, 3.15(b)(iv)
notoriety, 3.15(b)(iii)
“accident” defined, 3.8
Charter of Rights and Freedoms, effect
of, on s. 252, 3.17
Criminal Code, s. 252, 3.1
delict, 3.18
autrefois acquit, 3.18
res judicata, 3.18
evidence, 3.19.1
“[fails to] give his name and address,”
3.12
“fails to stop his vehicle,” 3.11
generally, 3.3
“has the care, charge or control,” 3.6
generally, 3.6(a)
may passenger be convicted, 3.6(b)
included offences, 3.19
information, wording of, 3.4
ingredients of offence, 3.5
“of a vehicle,” 3.7
passenger may be convicted, whether,
3.6(b)
presumption of intent to escape liability,
3.14
Road Traffic Act, 1988 (U.K.), 3.2
sentencing, 3.20
“that is involved in an accident,” 3.8
“with another person,” 3.9
“in the case of a vehicle, cattle in the
charge of another person,” 3.9
voir dire, necessity of, 3.16
“where any person has been injured or
appears to require assistance, [fails to]
offer assistance,” 3.13
“with intent to escape criminal or civil
liability,” 3.10

FATIGUE

criminal negligence, 1.2, 1.11(b)
dangerous operation (driving), 2.12(b)

FLIGHT FROM PEACE OFFICER, 2.1

case law, 2.20(a)
sentencing, 2.20(b)

FORFEITURE OF VEHICLE — See SENTENCING

IGNITION INTERLOCK, 4.4.1

IMPAIRED DRIVING — See

INTOXICATION AND IMPAIRMENT

INCLUDED OFFENCES

failing to remain, 3.19

INTOXICATION AND IMPAIRMENT

criminal negligence, 1.11(a)
admissibility of evidence of, 1.11(a)
non-expert witness, opinion
evidence of, 1.11(a)
statements made under
compulsion of statute, 1.11(a)
instructions to jury, 1.11(a)
relevant factors to be considered,
1.11(a)
self-induced intoxication not defence,
1.11(a)
dangerous operation (driving), 2.12(a)
admissibility of evidence of, 2.12(a)
statements made under
compulsion of statute, 2.12(a)
aiding and abetting, 2.12(h)
combined with speeding and unsafe
manoeuvres, 2.12(c)(ii)
instructions to jury, 2.12(a)
relevant factors to be considered,
2.12(a)
self-induced intoxication not defence,
2.12(a)
ignition interlock provisions, 4.4.1

LICENCE SUSPENSION PROVISIONS

Alberta, App. A.1
British Columbia, App. A.2
Manitoba, App. A.3
New Brunswick, App. A.4
Newfoundland and Labrador, App. A.5
Northwest Territories, App. A.6
Nova Scotia, App. A.7
Nunavut, App. A.7.1
Ontario, App. A.8
Prince Edward Island, App. A.9
Quebec, App. A.10
Saskatchewan, App. A.11
Yukon, App. A.12

MENS REA

criminal negligence, 1.10
momentary lapse of duty, 1.10
objective standard versus subjective
standard, 1.10
victim’s negligence, 1.10
dangerous operation (driving), 2.11
post-*Beatty*, 2.11(c.2)
post-*Hundal*, 2.11

INDEX

- marked departure from prudent conduct, 2.11(c)
- pre-Hundal*, 2.11(a)
- advertent versus inadvertent negligence, 2.11(a)
- amnesia, retrograde, 2.11(a)
- mens rea requirement, whether, 2.11(a)
- R. v. Beatty*, 2.11(c.1)
- R. v. Hundal*, 2.11(b)
- constitutional requirement of mens rea, 2.11(b)
- mens rea requirement, 2.11(b)
- modified objective test, 2.11(b)
- driving while disqualified, 5.9
- defence of officially induced error, 5.9
- knowledge that licence suspended, 5.9
- failing to remain
 - “intent to escape criminal or civil liability,” 3.10
 - presumption of intent to escape liability, 3.14
 - “in the absence of evidence to the contrary,” 3.15
- MENTAL AND PHYSICAL CONDITION**
- criminal negligence, 1.11(b)
- dangerous operation (driving), 2.12(b)
- NECESSITY, DEFENCE OF**
- criminal negligence, 1.11(e)
- dangerous operation (driving), 2.12(e)
- PROHIBITION ORDERS, CRIMINAL CODE** [s. 259(1), (2); s. 260(1), (2), (3)]
- Charter of Rights and Freedoms, effect of, 4.7
- Criminal Code, s. 259(1), (2), 4.2
- Criminal Code, s. 260(1), (2), (3), 4.2
- discretionary order of prohibition, 4.5
- length of prohibition, 4.5(b)
- “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)], 4.5(a)
- generally, 4.1
- mandatory orders of prohibition, 4.4
- “an offence committed under s. 253 . . . and at a time the offence was committed . . . was operating or had the care or control of a motor vehicle,” 4.4(a)
- “in addition to any other punishment that may be imposed,” 4.4(c)
- “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,” 4.4(b)
- length of prohibition, 4.4(i)
- “make an order prohibiting the offender from operating a motor vehicle . . . or a vessel or an aircraft,” 4.4(d)
- “motor vehicle,” 4.4(e)
- “not more than three years,” 4.4(h)
- “on any street, road, highway or other public place,” 4.4(f)
- second or subsequent offenders, 4.4(g)
- Crown’s right to prove previous convictions in ordinary way apart from s. 727, 4.4(g)(ii)
- notification of increased penalty, 4.4(g)(i)
- adjournments to prove service, 4.4(g)(i)(F)
- proof of service, 4.4(g)(i)(E)
- statutory provisions, 4.4(g)(i)(A)
- sufficiency of notice, 4.4(g)(i)(G)
- to whom must notice be given, 4.4(g)(i)(C)
- verbal or written notice, 4.4(g)(i)(B)
- when must notification be made, 4.4(g)(i)(D)
- proceedings on making a prohibition order, 4.6
- Road Traffic Offenders Act, 1988 (U.K.), 4.3
- sample prohibition order, App. B
- PROVINCIAL AUTOMATIC SUSPENSION LEGISLATION — See LICENCE SUSPENSION PROVISIONS**
- RES JUDICATA**
- criminal negligence, 1.15
- dangerous operation (driving), 2.17
- failing to remain, 3.18
- ROAD TRAFFIC ACT, 1988 (U.K.)**, 1.3, 2.3, 3.2, 5.2
- ROAD TRAFFIC OFFENDERS ACT, 1988 (U.K.)**, 4.3

INDEX

SENTENCING

aggravating circumstance, s. 255.1,
2.19(c)
 blood alcohol over 160 mg, 2.19(c)
 flight from peace officer, 2.19(c)
criminal negligence
 causing bodily harm, 1.17(b)
 while street racing, 1.19(b)
 causing death, 1.17(a)
 while street racing, 1.18(b)/index >
dangerous driving, 2.19(a)
 causing bodily harm, 2.19(c)
 causing death, 2.19(b)
designation as “serious violent offence”
 under Youth Criminal Justice Act,
 2.19(f)
driving while disqualified, 5.18
failing to remain, 3.20
flight, 2.20(b)
forfeiture of vehicle, 2.19(d)

SIMILAR ACTS

criminal negligence, 1.11(g)
dangerous operation (driving), 2.12(f)

SPEEDING

criminal negligence, 1.11(c)
 police and other chases, 1.11(c)(iii)
 racing, 1.11(c)(ii)

 speed alone, 1.11(c)(i)
 vehicle as weapon, using, 1.11(c)(iv)
dangerous operation (driving), 2.12(c)
 police and other chases, 2.12(c)(iv)
 racing, 2.12(c)(iii)
 speed alone, 2.12(c)(i)
 standard of proof, 2.12(c)(i)
 speed combined with alcohol
 consumption and unsafe
 manoeuvres, 2.12(c)(ii)
 vehicle as weapon, using, 2.12(c)(v)

STREET RACING

criminal negligence causing bodily harm
 prosecution, 1.19(a)
 sentencing, 1.19(b)
criminal negligence causing death
 prosecution, 1.18(a)
 sentencing, 1.18(b)
dangerous driving operation
 prosecution, 2.21(a)
 sentencing, 2.21(b)

VOIR DIRE

necessity of, 3.16

Youth Criminal Justice Act

designation as “serious violent offence”
 under, 2.19(f)