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## SUMMARY TRIALS OF INDICTABLE OFFENSES IN THE PROVINCE OF ALBERTA—CANADA

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All Criminal Law in the Dominion of Canada is administered under the provisions of The Criminal Code of Canada, a lengthy code covering every branch of Criminal Law and its administration, and consisting of 1152 Sections. Criminal law is, under the terms of The British North America Act, 1867, within the exclusive competence of the Federal Parliament of Canada, and, consequently, its jurisdiction is Dominion wide. A person charged with an offense against its provisions at, for example, Halifax, Nova Scotia, can be arrested in Vancouver, B. C., upon a warrant issued by a Magistrate or a Justice of the Peace in the former city, duly "backed" by a Magistrate or a Justice of the Peace in the latter city, and conveyed back across the Dominion to the scene of the commission of the crime.

All offenses mentioned in the Criminal Code are divided into two classes, summary offenses and indictable offenses. (See Section 14 of the Criminal Code.) Summary offenses are triable by a Justice of the Peace, a Magistrate or a Police Magistrate. The provisions relating to the summary trial of indictable offenses are rather complicated, and the writer will confine himself to the practice existing in the Province of Alberta. It may be mentioned, by way of explanation, that when considering the matter of summary trials of indictable offenses before Magistrates in Canada, the word "Magistrate" as defined in Section 771 of the Criminal Code, dealing with Summary Trials, has one meaning in Ontario, Quebec and Manitoba; one meaning in Nova Scotia and New Brunswick; one meaning in British Columbia and Prince Edward Island; one meaning in Saskatchewan and Alberta; one meaning in The North West Territories; and one meaning in The Yukon Territory. To write a treatise covering every Province in Canada would take too much space for an article of this nature.

Section 771 of the Criminal Code of Canada is in part as follows:

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<sup>1</sup> Police Magistrate, Lethbridge, Alberta, Can.

(a) "Magistrate" means and includes

(1V.) In the Provinces of Saskatchewan and Alberta, a Judge of any District Court, or any two justices, or any police magistrate or other functionary or tribunal having the powers of two justices or acting within the local limits of his or its jurisdiction."

In Alberta the Judges and Magistrates are divided as follows:

The Chief Justice of Alberta and four Judges of the Appellate Division of the Supreme Court of Alberta;

The Chief Justice of the Trial Division and five Judges of the Trial Division of the Supreme Court of Alberta;

Five Judges of the Southern Alberta District Court;

Five Judges of the Northern Alberta District Court;

Police Magistrates stationed throughout the Province; and,

Justices of the Peace stationed in various Cities, Towns, Villages and Hamlets through the Province.

Police Magistrates and Justices of the Peace are appointed by the Provincial Government and their jurisdiction is province wide. All Judges, on the other hand, are appointed by The Federal Government, and have jurisdiction in the Province in which they are appointed.

Under the provisions of the Magistrates and Justices Act, Ch. 78 of the Revised Statutes of Alberta, 1922, all persons appointed as Magistrates (not as Justices of the Peace) by the Government of the Province of Alberta are Police Magistrates. It will be noted that two Justices sitting together have the jurisdiction of a Magistrate only, as defined by the Criminal Code, but they have not the jurisdiction of a Police Magistrate.

Under the provisions of the Criminal Code certain indictable offenses may be tried summarily by two Justices of the Peace sitting together, or by a Police Magistrate, and other indictable offenses may be tried summarily by a Police Magistrate. It is necessary, in certain cases, to obtain the consent of the accused before trying him in a summary manner, and in other cases the consent is not necessary.

The following indictable offenses may be tried in a summary manner, either by two Justices of the Peace sitting together, or by a Police Magistrate, and with or without the consent of the accused, as the case may be.

Without the consent of the accused, two Justices of the Peace sitting together, or a Police Magistrate, may try in a summary manner, any of the following indictable offenses:

1. Theft or obtaining money or property by false pretences, or unlawfully receiving stolen property where the value of the property, in the opinion of the Magistrate, does not exceed \$25.00;
2. Attempt to commit theft;
3. Unlawfully wounding or inflicting grievous bodily harm upon any other person, either with or without a weapon or instrument;
4. Committing an assault occasioning actual bodily harm;
5. Indecent assault on a male of apparently not more than 14 years of age, or on a female, not amounting to an assault with intent to commit rape;
6. Assaulting or obstructing any public or police officer engaged in the execution of his duty, or any person acting in aid of such officer;
7. Any offense under Section 235—betting and pool selling and bookmaking, etc.;
8. Any offense under Section 442 (b)—Three card monte, etc.;
9. Keeping a disorderly house, or being an inmate of a common bawdy house under Section 229.

Except in No. 9 above, the maximum punishment that can be imposed after a summary trial is six months imprisonment with hard labor or a fine and costs not exceeding \$200.00, or both. In No. 9 punishment may be inflicted in certain cases up to two years imprisonment with hard labor, or a fine of \$100.00 in other cases, depending upon whether the offense is charged as a first offense or not.

Two justices of the Peace sitting together, after hearing the evidence for the prosecution, if they consider that there is sufficient evidence to put the accused on trial, and the case appears to be one which may properly be disposed of summarily (of which fact the Justices are the judge), may, *with the consent* of the accused and *provided he pleads guilty*, summarily dispose of the following indictable offenses:

1. Theft of property valued at more than \$25.00;
2. Obtaining by false pretences property valued at more than \$25.00;
3. Receiving stolen property valued at more than \$25.00;
4. Retaining stolen property valued at more than \$25.00.

In each of the above cases the Justices may impose the same punishment as would be imposed if the offense was tried by a Judge and Jury.

With the consent of the accused two Justices of the Peace sitting together may summarily dispose of the following indictable offenses:

1. Obtaining passage by false ticket;
2. Obtaining carriage of liquor by false billing.

The maximum punishment which may be awarded after summary trial of either of the above offenses is six months hard labor, or fine and costs not exceeding \$200.00 or both.

A Police Magistrate may, if the accused consents, in addition to the offenses mentioned above as triable without consent, summarily try charges of all indictable offenses mentioned in the Criminal Code, except the following:

1. Treason:
  - Accessories after the fact to treason;
  - Treasonable offenses;
  - Assaults on the King;
  - Inciting to mutiny;
  - Unlawfully obtaining and communicating official information;
  - Communicating information acquired in office;
2. Administering, taking or procuring the taking of oaths to commit certain crimes;
  - Administering, taking or procuring the taking of other unlawful oaths;
  - Seditious offenses;
  - Libels on foreign sovereigns;
  - Spreading false news;
  - Piracy;
3. Judicial, etc., corruption;
  - Corruption of officers employed in prosecuting offenders;
  - Frauds upon the Government;
  - Breach of trust by a public officer;
  - Municipal corruption;
  - Selling offenses;
4. Murder;
  - Attempt to murder;
  - Threat to murder;
  - Conspiracy to murder;
  - Accessory after the fact to murder;
  - Manslaughter;
5. Rape;
  - Attempt to commit rape;
6. Defamatory libel;
7. Combination in restraint of trade;
8. Conspiring or attempting to commit, or being an accessory after the fact to any of the foregoing offenses;
9. Bribery or undue influence, personation or other corrupt practice, under the Dominion Election Act.

It is not incumbent on two Justices of the Peace or a Police Magistrate to try in a summary manner any prisoner charged

with the commission of an indictable offense. Instead the presiding Justices or Police Magistrate may proceed to hold a Preliminary Hearing, and after hearing the evidence may either commit the accused for trial by a Supreme Court Judge and a Jury, or remand him for trial in the same manner pending the furnishing of bail, or discharge the prisoner if sufficient evidence has not been adduced to warrant putting the accused upon his trial.

There is a further procedure under Part 18 of the Criminal Code, whereby any accused committed to stand trial for any indictable offense may elect for a Speedy Trial before a Supreme Court Judge or a Judge of a District Court, without a jury. This trial is commenced by a presentment of a charge against the accused by the Attorney General or his Agent, and is not a summary trial. This subject is dealt with at greater length later on in this article.

Trials of summary offenses are governed by Part 15 of The Criminal Code, and an appeal from the Magistrate's decision lies to a District Court Judge of the District in which the trial took place. The appeal is a trial *de novo*.

An appeal from a conviction for an indictable offense tried summarily is governed by Part 16 of The Criminal Code, and is taken direct to The Appellate Division of the Supreme Court of Alberta (except in two specified cases where appeal is to the District Court), and may be an appeal against the verdict, or, by leave of the Court, against the verdict and sentence, or the sentence only. It is argued upon the evidence produced at the original trial, unless the Court of Appeal grants special leave to lead new evidence. In Criminal cases an appeal, by special leave, may be taken to The Supreme Court of Canada, but only upon some point of law of great importance not previously settled by The Supreme Court of Canada, where at least one of the Provincial Appeal Judges renders a dissenting judgment.

The procedure to obtain the consent of an accused person to be tried summarily is set out in Section 781 of The Criminal Code, and is as follows:

The Police Magistrate or one of the Justices, if two are sitting, reads the sworn information to the accused, and then says to him,

"You have the option to be forthwith tried by the Magistrate without the intervention of a jury, or to remain in custody or under bail, as the Court decides, to be tried in the ordinary way by the Court having criminal jurisdiction."

This is then generally explained to the accused, and the accused

is then asked how he elects to be tried. If the accused elects to be tried summarily the information is then read to him again, and he is asked to plead to same. If the accused does not elect for a Summary Trial, a Preliminary Hearing is held. (See article on Preliminary Hearings in January, 1937, number of The Journal of Criminal Law.) It is a matter of the greatest importance that the exact words quoted above from Section 781 of The Criminal Code are read or repeated to the accused. If the exact words are not read or repeated, the conviction may be set aside by the Court of Appeal.

It may be of interest to know that the practice of accused persons electing to be summarily tried for indictable offenses by Police Magistrates who are duly qualified and experienced members of the Bar is steadily growing. A great deal of time and expense is thus saved the Province. In Western Canada jurymen are summoned from sometimes as far away as a hundred miles or more, and the expense entailed by summoning jurymen, serving them with subpoenas and keeping them in the city during the sittings of the Criminal Court, is naturally very heavy. It is hardly necessary to mention that any person accused of an indictable offense which is not triable in a summary manner without the consent of the accused is entitled as of right to a trial by a Supreme Court Judge and Jury. The question of the expense entailed in summoning juries is never considered for one moment. But it will readily be recognized that a summary trial of an indictable offense before two Justices of the Peace or a Police Magistrate is far, far less expensive to the Crown. Sufficient jurymen are summoned to every sitting of the Supreme Court to try criminal cases to enable every accused person to elect for a trial by a Judge and Jury if he so wishes.

It may also be mentioned, *en passant*, that juries in Alberta consist of only six persons and not twelve as in England. In Criminal cases there must be an unanimous verdict of the six jurors, otherwise a disagreement is ruled and the accused must be tried again by a newly selected jury.

There are two Provincial Gaols in Alberta, and all prisoners awaiting trial are confined in one or the other, unless bail has been granted. One Gaol is situated at the Town of Fort Saskatchewan, about thirty miles east of the capital city of Edmonton. All female prisoners in the province are sent to this Gaol, and also all male prisoners whose crime is alleged to have taken place in the City of Red Deer or anywhere north of that city. South of that city, pris-

oners awaiting trial are confined in the Provincial Gaol in the City of Lethbridge, in the southeasterly part of the province, about one hundred and fifty miles southeast of Calgary. Calgary is two hundred miles south of Edmonton, so the reader may judge for himself the great distance to be considered "out West." All prisoners sentenced to Gaol terms of less than two years are confined in one or other of the Provincial Gaols, and all prisoners sentenced to terms of two years or over are confined in a Penitentiary, which is under the jurisdiction of the Federal Government.

If any person has been committed to Gaol under the warrant of any Justice of the Peace for trial on a charge upon which he can be tried by a Police Magistrate, such person may, with his own consent, elect to be tried summarily before a Police Magistrate, and may, if found guilty, be sentenced to the punishment provided for such offense. This is provided for by Section 774 of the Criminal Code.

In addition to the foregoing provisions for the summary trial of indictable offenses by Justices of the Peace or Police Magistrates, there is a special procedure provided under Part 18 of the Criminal Code allowing speedy trials of indictable offenses. Instead of being compelled to remain in custody until the next sittings of the Criminal Court in the Judicial District in which the crime is alleged to have been committed, every prisoner awaiting trial for an indictable offense triable in a summary manner is taken before one of the District Court Judges of either the Judicial District of Northern Alberta, if the accused is confined in Fort Saskatchewan Gaol, or the Judicial District of Southern Alberta, if the accused is confined in the Lethbridge Gaol. He is then given his choice of being forthwith tried by a Supreme Court Judge or a District Court Judge without the intervention of a jury, or to remain in custody, or under bail, as the Court decides, to await trial at the next Court of competent criminal jurisdiction.

The Supreme Court of Alberta generally sits about twice a year to conduct criminal business, except in the cities of Calgary and Edmonton, where sittings are more frequent, so that it is a matter of great importance to a prisoner to be able to elect for a speedy trial immediately after being committed for trial. In a country as sparsely populated and as large as Alberta, a great many prisoners are unable to appear before a Police Magistrate, because there is no Police Magistrate in the vicinity, and, consequently, are

unable to obtain a Summary Trial until the presiding Justice of the Peace has committed the prisoner for trial.

According to the strict reading of the provision of the Code, a prisoner is entitled to elect for a summary trial before a Police Magistrate instead of a Speedy Trial before a Supreme Court Judge or a District Court Judge, if he so chooses, but this has never been done as far as the writer is aware.

There is one peculiar point in connection with summary trials of indictable offenses that has come to the writer's notice. Section 774 of the Criminal Code provides, as we have seen, that any prisoner who has been committed to Gaol to await trial for an indictable offense triable in any summary manner may elect for a summary trial by a Police Magistrate, but the Code does not provide any procedure for the election. Part 18 of the Code makes it mandatory for the Warden of the Provincial Gaol in which a prisoner is awaiting trial for an indictable offense triable in a summary manner to notify the District Court Judge of the fact that the prisoner is so confined, within twenty-four hours of his confinement, and provide an opportunity for the accused to elect for a Speedy Trial, or a trial by a Judge and Jury. The accused must elect himself at least ten days previous to the next sittings of the Supreme Court sitting to dispose of criminal business to be holden at the center of the Judicial District in which the crime was committed.

Although the writer knows of no authority on the subject and has never known of the point arising in practice, he is of the opinion that upon being brought up for his election in accordance with the provisions of Part 18 of the Code, the accused may demand a summary trial before a Police Magistrate instead of a Speedy Trial before a Supreme Court Judge or a District Court Judge. His proper procedure seems to be to apply to the Warden of the Gaol, or to the Agent for the Attorney General, notifying him of his desire, and asking him to arrange for his election and trial by a Police Magistrate.

From the foregoing it will be seen that in Canada every opportunity is given an accused to elect for a Summary Trial or a Speedy Trial of every indictable offense except the most serious, instead of having to wait for months, as in some cases, for a trial by a Judge and Jury. The Court taking the Speedy Trial under Part 18 of the Criminal Code is a Court of Record, but the Magistrate's Court hearing the trial for an indictable offense in a summary manner is not a Court of Record.