

A Crown Prosecutor's View

or

You are under arrest for....

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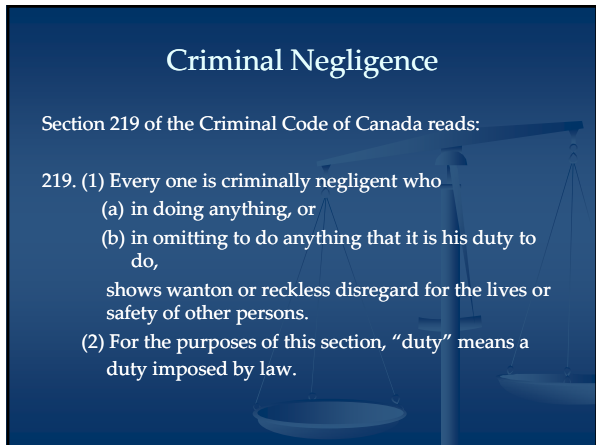
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Criminal Negligence

Section 219 of the Criminal Code of Canada reads:

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.

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

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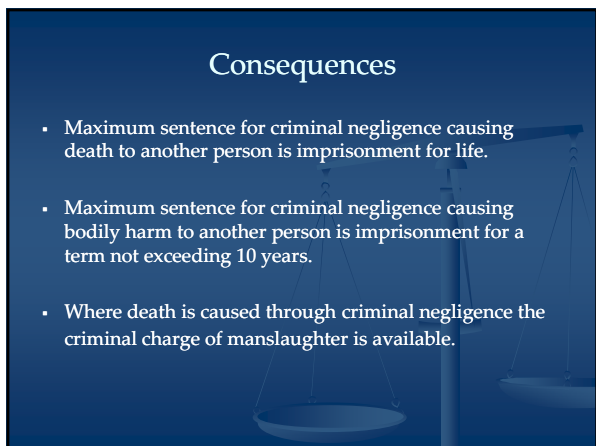
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Consequences

- Maximum sentence for criminal negligence causing death to another person is imprisonment for life.
- Maximum sentence for criminal negligence causing bodily harm to another person is imprisonment for a term not exceeding 10 years.
- Where death is caused through criminal negligence the criminal charge of manslaughter is available.

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### Application of Criminal Negligence Section

This section is available for a variety of factual situations:

- driving cases – most commonly where alcohol or drugs have been consumed, epilepsy cases
- skiing
- operator of horseback riding business
- allowing access to lethal substances
- failing to check the temperature of infant’s bath water
- failing to provide medical attention
- failing to stop a dangerous exorcism

Unique section of the Criminal Code as it allows for criminal liability where there is no intent to commit a criminal act.

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### Duty Owed by a Medical Practitioner

Section 216 of the Criminal Code

Everyone 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.

Section 217 of the Criminal Code

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.

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### Protection from Criminal Liability

Section 45 of the Criminal Code

Everyone is protected from criminal responsibility for performing a surgical operation on any person for the benefit of that person if

- (a) the operation is performed with reasonable care and skill; and
- (b) it is reasonable to perform the operation, having regard to the state of health of the person at the time the operation is performed and to all the circumstances of the case.

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### Wanton and Reckless Disregard for the Lives or Safety of Other Persons

- dividing line between criminal liability and civil liability
- act or omission that is alleged to be criminally negligent must demonstrate wanton and reckless disregard
- wanton – ungoverned, undisciplined
- reckless – heedless of consequences, headlong, irresponsible

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### Wanton and Reckless cont'd

- there must be a marked departure from the norm
- where people engage in an inherently hazardous activity a higher standard of care is expected, therefore a slight error may constitute a marked departure
- Parliament has set a very high threshold

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### Cases of Interest

#### Convictions

- R. v. Rogers
- R. v. Manjanatha
- R. v. Sullivan (?)

#### Acquittals

- R. v. Swanney
- R. v. Omstead
- R. v. Armour Pharmaceutical

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### R. v. Rogers

- medical doctor by training, struck from the rolls of his professional society
- treated a child suffering from a skin disorder by prescribing strict diet
- child died of malnutrition
- accused's own belief that diet was a beneficial treatment was irrelevant
- application of section 216 principle "reasonable knowledge"

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### R. v. Manjanatha

- routine operation for a broken leg
- accused anaesthetist, anaesthetized the patient
- without explanation left the operating room to make a personal telephone call
- anaesthetic equipment malfunctioned resulting in irreversible brain damage
- false statements that in sight of patient
- guilty plea - six month jail sentence

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### R. v. Sullivan

- two mid-wives involved in delivery of baby
- baby asphyxiated in the birth canal
- five hours of second stage labour, head had emerged, accused unsuccessfully attempted to stimulate further contractions
- at hospital intern delivered baby with basic delivery technique in two minutes
- ultimately case litigated on issue of whether the fetus was a person

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### R. v. Swanney

- accused doctor prescribes patient methadone
- patient dies as a result of what was alleged to be methadone related overdose
- other drugs found to be ingested by deceased
- acquitted in that Court not satisfied beyond a reasonable doubt that methadone a cause of death
- Court also not satisfied beyond a reasonable doubt that the prescription of the methadone and amount of prescription, given the circumstances, was a marked departure from what should be expected of a physician entitled to prescribe methadone

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### R. v. Omstead

- wrong drug, potassium chloride, administered by nurse at hospital resulting in death of patient
- nurse read label of drug container at least three times and yet believed she was administering the proper drug
- nurse obtained the drug from ward stock
- Court acquitted nurse, unable in the circumstances to find the nurse's actions fell below reasonable nursing standards
- not conduct that was a marked departure from the norm
- no moral blameworthiness

2004 deaths in Calgary led to no criminal charges

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### R. v. Armour Pharmaceutical Co.

- tainted blood case, HIV infected blood used to produce blood coagulant product used to treat haemophilia
- controversial decision to prosecute
- Trial Judge wanted to make a finding of innocence instead of simply acquitting
- failing to withdraw product not found to be a marked departure from the norm
- interesting discussion regarding what was known at the time

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## Summary

- Very few cases where medical practitioners charged for criminal negligence, let alone convicted.
- Cases demonstrate that simple mistakes will not justify criminal liability.
- No push to change legislation that I am aware of.

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