CANADIAN INSTITUTE FOR THE ADMINISTRATION OF JUSTICE
INSTITUT CANADIEN D'ADMINISTRATION DE LA JUSTICE

JUDICIAL SEMINAR ON CRIMINAL LAW

COLLOQUE JUDICIAIRE SUR LE DROIT CRIMINEL

AUTOMATISM IN A NUTSHELL

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I. INTRODUCTION

Automatism is a "defence" for which the courts of this country and elsewhere have retained a healthy scepticism. It may be raised as a complete defence to all charges, including those which involve strict liability, the predominant theory being that automatism negates not merely *mens rea* but *actus reus* as well.[1] When an accused raises automatism as a defence, therefore, he or she is, in effect, saying: "My body did it but *I* didn't do it." Frequently (but not always) asserting that mental impairment was responsible for his or her actions (or omissions), the accused nevertheless generally denies insanity and demands to be allowed to leave the courtroom a free man or woman at the end of the day.

Although I will not do justice to the complex topic of automatism in this brief outline, I propose to summarize its major aspects very generally and raise for your consideration some issues relating to possible law reform.

II. DEFINITION

A review of the English case law suggests that automatism may be one of two things: involuntary action;[2] or unconscious action.[3] In the landmark case of *Bratty* v. *A.-G. Northern Ireland*,[4] Lord Denning stated that automatism included "an act which is done by the muscles without any control by the mind such as a spasm, a reflex action or a convulsion; or an act done by a person who is not conscious of what he is doing such

as an act done whilst suffering from concussion or whilst sleep-walking." In Canada, however, the accepted definition appears to be that stated by Lacourcière J. (as he then was) of the Ontario High Court of Justice in R. v. K.[5] According to His Lordship: "Automatism is a term used to describe unconscious, involuntary behaviour, the state of a person who, though capable of action, is not conscious of what he is doing. It means an unconscious, involuntary act, where the mind does not go with what is being done." This definition was adopted by the majority of the Supreme Court of Canada in Rabey v. The Queen.[6]

It is submitted that the exclusion of conscious but uncontrollable reflex movements from the legal definition of automatism brings that definition close to the medical concept of automatism. According to Canadian psychiatrist R.J. McCaldon, the term "automatism" is medically confined to "complex activity of the voluntary musculature occurring in a person who is in a state of defective consciousness."[7] As McCaldon has pointed out, "This definition excludes complex movements under autonomic control, for example, intestinal peristalsis, and simple movements of the limbs such as those made during sleep or anesthesia."[8] By speaking of "unconsciousness", however, the legal definition seems to assume that consciousness is an "either/or" proposition: a person is either conscious or unconscious. (As the Criminal Reports practice note to R. v. King[9] states: "There are (1) conscious acts; and (2) unconscious acts.") This aspect of the definition appears to be at odds with the medical definition. As McCaldon has pointed out, psychiatry tends to speak of

several different levels of consciousness, i.e.: full awareness; clouded consciousness; delirium; stupor; and coma.[10] Although it is coma which most clearly amounts to a state of "no consciousness", McCaldon has suggested that it is in the states of clouded consciousness, delirium or stupor that automatisms occur. The case law indicates that states of "diminished consciousness" may now suffice.[11]

III. AUTOMATISM AND AMNESIA

Is it sufficient proof that someone did not know what he or she was doing (i.e., that he or she was unconscious and was acting as an automaton) if he or she cannot remember it afterwards? I would submit that the answer to this question is no. As Lord Denning stated in the case of Bratty v. A.-G. Northern Ireland:[12] "Loss of memory afterwards is never a defence in itself, so long as [the accused] was conscious at the time." Similarly, in R. v. Schonberger,[13] Culliton J.A. (as he then was) of the Saskatchewan Court of Appeal remarked that "amnesia itself would not be a defence to the charge of murder," and that "It is only evidence of a state of mind that might be a defence to the charge."

Although it is usually present after an automatic episode, amnesia does not appear to constitute proof of automatism from a medical/psychiatric standpoint either. In true cases of automatism, however, memory is generally irretrievable.[14] Elsewhere, I have explained this fact as follows:

> This fact can be explained by reference to the well-recognized theory in psychiatry that memory involves three consecutive processes: registration, retention and recall. Suffice it to say that registration is something analogous to the formation of an image on a

photographic plate. Basically it is the simple result of one's paying attention. Psychiatrists have found that mental disorder may impair attentiveness. Retention means exactly what it says: the permanent fixing of a memory in the mind once it has registered. Lastly, recall is the ability to "remember" a memory which has been registered, retained and, in effect, filed away. Psychogenic automatism (i.e., automatism resulting from inorganic causes) and so-called "normal" automatism (e.g., somnambulism) are said to impair registration, thus making recall impossible. This seems logical since, by definition, an automaton is unconscious and registration depends on attentiveness. Organic automatism (i.e., caused by cerebral trauma, drugs, alcohol, temporal lobe epilepsy, etc.) will perhaps impair retention as well as registration. Grossly defective recall, on the other hand, may simply be feigned amnesia or may be symptomatic of a genuine hysterical amnesia. Hysterical amnesic which represents a failure of recall alone is not indicative of automatism, being merely an exaggeration of the natural human tendency to repress unpleasant memories. Furthermore, the fact that this form of amnesia is potentially recoverable — either through hypnosis, the use of abreactive drugs, or quite often spontaneously — is proof of prior registration and retention. In short, the presence of this form of amnesia points to conscious behaviour rather than to automatism. Some writers have gone so far as to argue that repression is indicative of guilt and that amnesia due to failure of recall should weigh against the accused rather than in his favour.

IV. WHEN IS AUTOMATISM NOT A DEFENCE?

As mentioned earlier, automatism is generally a complete defence to all criminal charges, including those related to strict liability offences. There are, however, two instances in which automatism will not in itself be a defence. They are: (1) when it is caused by the voluntary consumption of alcohol and/or drugs; and (2) when it is caused by "disease of the mind". A possible third instance arises when the automatism has been caused through the fault of the accused.

A. Voluntary Consumption of Alcohol and/or Drugs

In the well-known Bratty case, Lord Denning stated the basic rule regarding alcoholic automatism as follows: "When the only cause that is assigned for an involuntary act is drunkenness, then it is only necessary to leave drunkenness to the jury, with the consequential directions, and not to leave automatism at all."[16] This rule has been adopted in Canada. In R. v. Hartridge,[17] Culliton C.J.S. stated: "[W]here the possibility of an unconscious act depends on, and only on, drunkenness, then, depending upon the evidence the defence is either insanity or drunkenness, and not automatism." In other words, if voluntary intoxication results in non-insane automatism, the only defence is drunkenness. But if voluntary intoxication results in insane automatism, the defence is insanity.[18]

The law as to drug-induced automatism has developed along the same lines as that regarding alcoholic automatism.[19] A distinction must be made, however, between the voluntary ingestion of alcohol or drugs for the purpose of intoxication, and the voluntary ingestion of drugs for medical purposes. While the effects of alcohol or "recreational" drugs are generally foreseeable, the effect of drugs taken for medical purposes may not always be. Although it has been held, for example, that a condition of impairment carried with it a rebuttable presumption that such condition was induced voluntarily,[20] this presumption may more easily be displaced in the case of medicinal drugs[21] (although not, perhaps, where such drugs have been taken in combination with alcohol[22]).

Although the mere fact that alcohol or drugs have combined with other factors to produce a state of automatism will not necessarily limit the defence to either intoxication or insanity,[23] once drugs or alcohol

enter the picture, the defence of non-insane automatism may be more difficult to raise.[24]

B. Disease of the Mind

Where automatism has been caused by disease of the mind, it is clear that the defence of insanity alone will be open to the accused. What is not entirely clear, however, is what conditions constitute diseases of the mind. The question of what constitutes disease of the mind is a question of law.[25] Various disorders (e.g.: epilepsy;[26] cerebral arteriosclerosis[27]) have been held at one time or another to be diseases of the mind for the purpose of the insane/non-insane automatism distinction. In Rabey v. The Queen,[28] a majority of the Supreme Court of Canada adopted Martin J.A.'s definition. As His Lordship had stated when the Rabey case was before the Ontario Court of Appeal:

> In general, the distinction to be drawn is between a malfunctioning of the mind arising from some cause that is primarily internal to the accused, having its source in his psychological or emotional make-up, or in some organic pathology, as opposed to a malfunctioning of the mind which is the transient effect produced by some specific external factor such as, for example, concussion. Any malfunctioning of the mind, or mental disorder having its source primarily in some subjective condition or weakness internal to the accused (whether fully understood or not), may be a "disease of the mind" if it prevents the accused from knowing what he is doing, but transient disturbances of consciousness due to certain specific external factors do not fall within the concept of disease of the mind.... Particular transient mental disturbances may not, however, be capable of being properly categorized in relation to whether they constitute "disease of the mind", on the basis of a generalized statement, and must be decided on a case by case basis.

C. Fault

It is not entirely clear from the case law in what circumstances the fact that the accused has brought on a state of automatism through his or her own fault (e.g., negligence or recklessness) will deprive him or her of the availability of the defence. Certainly where the accused's fault has taken the form of voluntary intoxication, as discussed above, he or she will be limited to the defence of intoxication. But what if the fault has taken another form?

In R. v. Quick and Paddison,[30] Lawton L.J. stated flatly: "A self-induced incapacity will not excuse, ... nor will one which could have been reasonably foreseen as a result of either doing, or omitting to do something, as for example, taking alcohol against medical advice after using certain prescribed drugs, or failing to have regular meals whilst taking insulin." In Rabey, however, Martin J.A. stated the fault exception rather more narrowly. In His Lordship's view: "automatism not resulting from disease of the mind leads to an absolute acquittal, unless induced by voluntary intoxication due to the consumption of alcohol or drugs, or unless foreseeability or foresight with respect to its occurrence supplies the necessary element of fault, or mens rea, where negligence or recklessness constitutes a basis of liability ...."[31]

V. POSSIBLE CAUSES OF NON-INSANE AUTOMATISM

As indicated by the case law, there are (subject to the limitations discussed above) a number of possible bases for the defence of non-insane automatism. Perhaps the most widely-accepted one is head injury, usually concussion.[32] Other less common ones include: hypoglycemia;[33]

sleep (i.e., "somnambulism");[34] sudden illness;[35] involuntary intoxication;[36] and (possibly) hypnosis.[37] Undoubtedly the most controversial basis for non-insane automatism in recent years has been psychological stress or "psychological blow."[38] In Rabey, the Supreme Court of Canada adopted Martin J.A.'s test for determining whether a dissociative state produced by a psychological blow is a "disease of the mind," or whether it may give rise to the defence of non-insane automatism. As His Lordship has said:

> In my view, the ordinary stresses and disappointments of life which are the common lot of mankind do not constitute an external cause constituting an explanation for a malfunctioning of the mind which takes it out of the category of a "disease of the mind". To hold otherwise would deprive the concept of an external factor of any real meaning. In my view, the emotional stress suffered by the respondent as a result of his disappointment with respect to Miss X cannot be said to be an external factor producing the automatism within the authorities, and the dissociative state must be considered as having its source primarily in the respondent's psychological or emotional make-up. I conclude, therefore, that, in the circumstances of this case, the dissociative state in which the respondent was said to be, constituted a "disease of the mind". I leave aside until it becomes necessary to decide them, cases where a dissociative state has resulted from emotional shock without physical injury, resulting from such causes, for example, as being involved in a serious accident although no physical injury has resulted; being the victim of a murderous attack with an uplifted knife, notwithstanding the victim has managed to escape physical injury; seeing a loved one murdered or seriously assaulted, and the like situations. Such extraordinary external events might reasonably be presumed to affect the average normal person without reference to the subjective make-up of the person exposed to such experience.[39]

VI. EVIDENCE

In order for the defence of non-insane automatism to be considered by the trier of fact, it has been held that a "proper foundation" must

first be laid.[40] In practice, this has usually meant the calling of expert evidence.[41] Non-insane automatism need not be established on a balance of probabilities basis, however; all that is required is the raising of a reasonable doubt.[42]

VII. THE FUTURE OF AUTOMATISM

Hopefully, the above outline will suffice as a basis for some discussion of the direction the law should be going on the subject of automatism.

In Working Paper 29 (Criminal Law, The General Part: Liability and Defences[43]), the Law Reform Commission of Canada has tentatively proposed the following draft legislation with respect to automatism:

> 7.(1) Every one is excused from criminal liability for unconscious conduct due to temporary and unforeseeable disturbance of the mind resulting from external factors sufficient to affect an ordinary person similarly.
> (2) This section does not apply to conduct due to mental disorder, intoxication or provocation.

This draft is a statement on several key issues relating to automatism and criminal responsibility, namely:

1. Whether the definition should cover unconscious conduct as well as reflex movements, spasms, convulsions, etc. (The Commission has taken the view that only unconscious conduct should be covered. Twitches and spasms, it has been argued, need not be labelled "automatism" in order to be excluded from criminal liability as "non-acts".[44])
2. Whether, when automatism has resulted from fault on the part of

the accused, this fact should in all cases preclude the availability of the defence or should only preclude its availability where negligence or recklessness constitutes a basis for liability. (The Commission has opted for the former approach by requiring that the disturbance of mind be unforeseeable.)

3. Whether automatism should require an "external" cause in order to be a separate defence. (The Commission has answered this question in the affirmative. It has acknowledged that in cases where "acute emotional stress, fugues, fits and so on are caused by a combination of an external situation (e.g. a love disappointment) and a psychological weakness peculiar to the accused"[45] the external factor test may be difficult to apply.)

4. Whether it should be necessary that the causative external factor(s) would have affected an ordinary person similarly. (In his dissenting judgment in Rabey, Dickson J. (with whom Estey and McIntyre JJ. concurred) took issue with the objective standard as follows:

> I cannot accept the notion that an extraordinary external event, i.e., an intense emotional shock, can cause a state of dissociation or automatism if and only if all normal persons subjected to that sort of shock would react in that way. If I understood the quoted passage correctly, an objective standard is contemplated for one of the possible causes of automatism, namely, psychological blow, leaving intact the subjective standard for other causes of automatism, such as physical blow or reaction to drugs.
>
> As in all other aspects of the criminal law (except negligence offences) the inquiry is directed to the accused's actual state of mind. It is his subjective mental condition with which the law is concerned. If he has a brittle skull and sustains a concussion which causes him to run amok, he has a valid defence of

> automatism. If he has an irregular metabolism which induced an unanticipated and violent reaction to a drug, he will not be responsible for his acts. If he is driven into shock and unconsciousness by an emotional blow, and was susceptible to that reaction but had no disease, there is no reason in principle why a plea of automatism should not be available. The fact that other people would not have reacted as he did should not obscure the reality that the external psychological blow did cause a loss of consciousness. A person's subjective reaction, in the absence of any other medical or factual evidence supportive of insanity, should not put him into the category of persons legally insane. Nor am I prepared to accept the proposition, which seems implicit in the passage quoted, that whether an automatic state is an insane reaction or a sane reaction may depend upon the intensity of the shock.[46]

Supporting the reasoning of Martin J.A. (which was adopted by the majority of the Supreme Court of Canada), however, the Law Reform Commission has argued that "normal individuals must be required to live up to the general standards of the criminal law, while abnormal individuals should be dealt with in the context of mental disorder."[47])

5. Whether intoxication, insanity or provocation should give rise to the defence of automatism. (In the view of the Commission, they should not.)

I will not go into other procedural or evidentiary points at this stage, except to raise two small points that interest me:

1. Should similar fact evidence be admissible to rebut a defence of automatism?
2. If the Crown raises insanity to rebut automatism and is only required to prove the accused's insanity on a balance of probabilities basis, doesn't this deprive the accused of the right

to be acquitted if he or she raises a reasonable doubt? Doesn't it place on the accused the burden of proving, on a balance of probabilities, that his or her automatism is the non-insane variety?

ENDNOTES

1. See Williams, Textbook of Criminal Law (London: Stevens, 1978) at p. 609.

2. See, e.g.: Watmore v. Jenkins, [1962] 2 All E.R. 868 (Q.B.) at p. 874; R. v. Sibbles, [1959] Crim. L.R. 660, at p. 661.

3. See, e.g.: R. v. Tolson (1889), 23 Q.B.D. 168 at p. 187; R. v. Charlson, [1955] 1 All E.R. 859 (C.C.A.) at p. 864; Hill v. Baxter, [1958] 1 All E.R. 193 (Q.B.) at p. 195.

4. [1961] 3 W.L.R. 965 (H.L.) at p. 978.

5. (1971), 3 C.C.C. (2d) 84 (Ont. H.C.) at p. 84.

6. (1980), 15 C.R. 225 (S.C.C.) per Ritchie J. (Martland, Pigeon and Beetz JJ. concurring).

7. McCaldon, "Automatism," (1964) 91 Can. Med. Assoc. J. 914 (emphasis added).

8. Ibid.

9. (1962), 38 C.R. 52 (S.C.C.).

10. Supra note 6 at p. 914. See also Blair, "The Medicolegal Aspects of Automatism," (1977), 17 Med., Sci. and Law 167, where six, rather than five states of consciousness are discussed.

11. See R. v. K., supra note 5.

12. Supra note 4.

13. (1960), 126 C.C.C. 113 (Sask. C.A.) at p. 123. See also: R. v. Matchett, [1980] 2 W.W.R. 122 (Sask. Dist. Ct.); R. v. Linklater (1980), 5 W.C.B. 285 (Y.T.C.A.); R. v. Harley (1981), 6 W.C.B. 260 (Man. Prov. Ct.); R. v. Stanbra (1982), 7 W.C.B. 367 (Ont. Prov. Ct.); R. v. Bartlett (1983), 9 W.C.B. 479 (Ont. H.C.).

14. McCaldon, supra note 7 at p. 914; Whitlock, Criminal Responsibility and Mental Illness (London: Butterworths, 1963) at p. 119; Wily and Stallworthy, Mental Abnormality and the Law (Christchurch: Peryer, 1962) at p. 398. See R. v. Crook (1979), 1 S.R. 278 (C.A.).

15. Schiffer, Mental Disorder and the Criminal Trial Process (Toronto: Butterworths, 1978), at pp. 88-9.

16. Supra note 4 at p. 982.

17. (1966), 57 D.L.R. (2d) 332 (Sask. C.A.). See also: *R.* v. *Szymusiak*, [1972] 3 O.R. 602; *R.* v. *Johnson* (1976), 22 N.B.R. (2d) 450 (Co. Ct.); *R.* v. *Harrinanan* (1977), 40 C.R.N.S. 231 (Alta. S.C.T.D.).

18. See *A.-G. Northern Ireland* v. *Gallagher*, [1961] 3 W.L.R. 619, *per* Lord Denning at p. 640: "If a man by drinking brings on a distinct disease of the mind such as delirium tremens, so that he is temporarily insane within the M'Naghten Rules, that is to say, he does not at the time know what he is doing or that it is wrong, then he has a defence on the ground of insanity: see *Reg*. v. *Davis* and *Beard's* case. ... "

19. See: *R.* v. *MacIsaac* (1968), 11 Crim. L.Q. 234 (Ont. Dist. Ct.); *R.* v. *Lipman*, [1969] 3 All E.R. 410 (C.A.); *R.* v. *Mack* (1975), 29 C.R.N.S. 270 (Alta. C.A.).

20. *R.* v. *King*, *supra* note 9.

21. *Ibid.* See also *R.* v. *Quick and Paddison*, [1973] 3 All E.R. 347 (C.C.A.). But see: *Armstrong* v. *Clarke*, [1957] 2 Q.B. 391; *R.* v. *Sproule* (1975), 30 C.R.N.S. 56 (Ont. C.A.), *per* Kelly J.A. (*obiter*) at p. 64.

22. See: *R.* v. *Pitre* (1971), 3 C.C.C. (2d) 380 (B.C.C.A.); *R.* v. *Saxon*, [1975] 4 W.W.R. 346 (Alta. C.A.); *R.* v. *King* (1982), 67 C.C.C. (2d) 549 (Ont. C.A.). But see: *R.* v. *Burns* (1974), 58 Cr. App. R. 364; *R.* v. *Bray* (1975), 24 C.C.C. (2d) 366 (Ont. Co. Ct.).

23. See: *R.* v. *Cullum* (1973), 14 C.C.C. (2d) 294 (Ont. Co. Ct.); *R.* v. *Walbourne* (1977), 18 N. & P.E.I.R. 95 (Nfld. Dist. Ct.); *R.* v. *Stanbra*, *supra* note 13.

24. See: *R.* v. *Sibbles*, *supra* note 2; *R.* v. *Hedberg* (1978), 3 W.C.B. 11 (Alta. S.C.); *R.* v. *Joamie* (1977), 35 C.C.C. (2d) 108 (N.W.T.S.C.).

25. *R.* v. *Kemp*, [1957] 1 Q.B. 399; *Bratty* v. *A.-G. Northern Ireland*, *supra* note 4; *Rabey* v. *The Queen*, *supra* note 6.

26. See: *Bratty* v. *A.-G. Northern Ireland*, *supra* note 4; *R.* v. *Ditto* (1962), 132 C.C.C. 198 (Alta. C.A.); *R.* v. *O'Brien* (1965), 56 D.L.R. (2d) 65 (N.B.C.A.); *R.* v. *Gillis* (1973), 13 C.C.C. (2d) 362 (B.C. Co. Ct.).

27. See: *R.* v. *Kemp*, *supra* note 25; *R.* v. *Holmes*, [1960] W.A.R. 122.

28. *Supra* note 6.

29. (1977), 17 O.R. (2d) 1 (C.A.).

30. *Supra* note 21 at p. 356.

31. *Supra* note 29 at p. 12. (Emphasis added.)

32. See: R. v. Minor (1955), 112 C.C.C. 29; R. v. Wakefield (1957), 75 W.N. (N.S.W.) 66; R. v. Carter, [1959] V.R. 105 (S.C.); Cooper v. McKenna, [1960] Qd. R. 406 (F.C.); Bleta v. The Queen, [1964] S.C.R. 561; R. v. Baker, [1970] 1 C.C.C. 203 (N.S. Co. Ct.); R. v. Bouchard (1973), 24 C.R.N.S. 31 (N.S. Co. Ct.); R. v. Walbourne, supra note 23; R. v. Bartlett, supra note 13.

33. See: R. v. Horton, Manchester Guardian, 20 July 1951; R. v. R. (1965), 33 Medico-legal J. 72; R. v. Quick and Paddison, supra note 21.

34. See H.M. Advocate v. Fraser (1878), 4 Couper 70; Fain v. Commonwealth (1879), 78 Ky. 183; R. v. Tolson, supra note 3; R. v. Cogdon, Daily Telegraph, 20 Dec. 1950; R. v. Gnypiuk, London Times, 20 Dec. 1960; R. v. Paltridge, Daily Telegraph, 18 Feb. 1961; R. v. Ward (1978), 2 W.C.B. 129 (Ont. Prov. Ct.).

35. See: Police v. Beaumont, [1958] Crim. L.R. 620; R. v. Cullum, supra note 23 (obiter). But see Sportun v. Murphy and Smith, [1955] 2 D.L.R. 248 (Ont. C.A.).

36. R. v. King, supra note 9; H.M. Advocate v. Ritchie, [1926] S.C. (J.) 45 (Scot.).

37. See: R. v. Quick and Paddison, supra note 21 (obiter); ALI Model Penal Code, s. 2.01, para. 2(a). But see Williams, Criminal Law: The General Part (London: Stevens, 1961).

38. See generally: Campbell, "Psychological Blow Automatism: A Narrow Defence," (1980-81), 23 C.L.Q. 342; Mackay, "Non-Organic Automatism — Some Recent Developments," [1980] Crim. L.R. 350; Schiffer, supra note 15, at pp. 101-7. See the cases of: R. v. K., supra note 5; R. v. Cullum, supra note 23; R. v. Turbucz (1979), 4 W.C.B. 19 (Ont. Co. Ct.). But see: Parnerkar v. The Queen (1973), 10 C.C.C. (2d) 253 (S.C.C.); R. v. James (1974), 30 C.R.N.S. 65; Rabey v. The Queen, supra note 6; Revelle v. The Queen (1981), 21 C.R. (3d) 161, (B.C.C.A.); R. v. Rafuse (1980), 53 C.C.C. (2d) 161 (B.C.C.A.); R. v. MacLeod (1980), 52 C.C.C. (2d) 193 (B.C.C.A.); Fournier v. The Queen (1983), 30 C.R. (3d) 34 (Que. C.A.).

39. Supra note 6 at p. 22.

40. R. v. Cottle, [1958] N.Z.L.R. 999. See also: R. v. Cusak (1971), 3 C.C.C. 527 (P.E.I.C.A.).

41. See: Hill v. Baxter, supra note 3; People (A.-G.) v. Manning (1953), 89 I.L.T. 155; R. v. Varbeff (1977), 24 N.S.R. (2d) 279 (C.A.). R. v. Myers (1979), 31 N.S.R. (2d) 444 (C.A.); R. v. Matchett, supra note 13; R. v. Martin (1978), 3 W.C.B. ((N.S. Co. Ct.); R. v. Murdoch (1980), 4 W.C.B. 366; R. v. Bartlett, supra note 13.

42. See: _R._ v. _O'Brien_, _supra_ note 26; _R._ v. _Baker_, _supra_ note 32.

43. (Ottawa: Minister of Supply and Services Canada, 1982).

44. _Ibid._, at p. 67.

45. _Ibid._, at p. 69.

46. _Supra_ note 6 at pp. 257-8.

47. _Supra_ note 43 at p. 69.