

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No. B68 of 2016

BETWEEN:

RODNEY PETER PICKERING

10



Appellant

and

THE QUEEN

Respondent

20 **PART I INTERNET PUBLICATION**

1. The appellant certifies that this submission is in a form suitable for publication on the internet.

30

PART II ISSUE ON APPEAL

2. Whether s31(2) of the *Criminal Code (Qld)* denies an accused person the protection provided for by s31(1)(c) of the *Code* if the accused person's act causes grievous bodily harm to the person of another even though the offence the subject of the trial is not an offence of which grievous bodily harm to the person of another, or an intention to cause such harm, is an element.

Appellant's Submissions Filed on December 2016

Anderson Telford Lawyers
Suites 1 and 2
135 Sturt Street
TOWNSVILLE QLD. 4810

Telephone: (07) 4772 5870
Facsimile: (07) 4772 7749
Email: townsville@atelaw.com.au
Reference: Morgan Jane Place

PART III SECTION 78B OF THE JUDICIARY ACT 1903 (CTH)

3. The appellant considers that notice is not required to be given pursuant to s78B of the *Judiciary Act 1903 (Cth)*.

PART IV CITATION OF JUDGMENT APPEALED FROM

4. The judgment of the Court of Appeal has not been reported. The judgment has the
10 internet citation *R v Pickering* [2016] QCA 124.

PART V RELEVANT FACTS

5. The appellant was tried on a count for that on the nineteenth day of December 2012 at Croydon he murdered Ivan John Owens.

6. The deceased died due to an injury inflicted by the appellant when he stabbed the deceased once in the left upper part of the chest under the collarbone. The blade of the knife tracked through tissue, missed bones but severed a major artery and a major vein¹. Only moderate force was required to cause the stab wound having regard to the
20 sharpness of the knife used by the appellant².

7. On the evening of 19 December 2012 the appellant had attended at the hotel in Croydon where he drank with a number of people, including the deceased. The deceased was the appellant's best friend³. During the course of the evening the deceased argued with the appellant and eventually invited the appellant to go outside to fight⁴. No fight occurred

¹ Transcript p6 -10 lines 5 - 30

² Transcript p6 - 14 lines 6 - 22

³ Transcript p6 - 35 lines 20 - 24

⁴ Transcript p6 – 44 lines 30 - 41

outside the hotel despite the deceased having taken his shirt off and challenging the appellant to fight⁵. The appellant went home.

8. After he got home the appellant noticed that his son Jesse, aged 22, was not there so he decided to go back out to look for him. He took his fishing knife with him when he went out because he thought that he might see the deceased again⁶. His son sent him a text message which said “He just tried fighting me”⁷.
9. The appellant walked to the house occupied by Eugene Logan and Ms Lorina Douglas because he knew that they were hosting a gathering there. He entered their yard and at about the same time the deceased and a man called Stevenson entered the yard through another gate. The appellant stopped and stood near a vehicle⁸.
10. The deceased walked over to the appellant and Stevenson walked past the appellant⁹. When the appellant inquired if the deceased had seen his son the deceased replied “*Fuck you. Fuck Jesse. Fuck you, I'll knock the little cunt arse over head*”¹⁰. The appellant asked the deceased why it was that he wanted to fight with him and his son. The deceased swore, pointed his finger at the appellant’s face and, according to the appellant, was “*really going off*”¹¹.
11. The appellant told him to stay away but the deceased poked the appellant in the chest. The appellant pulled the knife out of his pants and again told him to stay away. The deceased said “*What, you think I'm frightened of that thing*”¹².

⁵ Transcript p6 – 45 lines 39 - 40

⁶ Transcript p6 – 46 lines 17 - 34

⁷ Transcript p6 – 47 line 1 and p1 – 7 lines 13 - 16

⁸ Transcript p6 – 48 lines 3 - 14

⁹ Transcript p6 - 48 lines 20 - 22

¹⁰ Transcript p6 – 48 lines 26 – 29

¹¹ Transcript p6 – 48 line 40 – p6 – 49 line 5

¹² Transcript p6 – 49 lines 12 - 14

12. Logan intervened and gave them each a can of liquor and Mr Wheeler tried to push the deceased away¹³. The deceased moved away and put his shirt on and continued to swear at the appellant. The appellant responded by saying “*Just remember Paul. Don’t want another good mate killing himself over a woman.*” The deceased came back towards him and said “*You don’t fucking know Paul ... You don’t even fucking know him. He’s my nephew.*”¹⁴ The appellant said he could not retreat as he was by then against the vehicle. He noticed Logan nodded his head and that Stevenson, who was at the rear of the vehicle, had a steel bar in his hand which was raised above Stevenson’s head¹⁵. Then the knife was in the deceased and he collapsed¹⁶.

10 13. The appellant’s evidence about his state of mind included the following:

- *I was trying to keep [the deceased] away from me*¹⁷.
- *I was shitting myself*¹⁸.
- *As he was coming towards you ... what were you thinking? --- Holy fuck.*

Why would you express it that way? --- He was so angry.

20 *What did you think was going to happen to you as he was coming across to you? --- There was only one thing that was going to happen to me. He was going to steamroll me*¹⁹.

14. During the course of the summing up the learned trial judge told the jury that there was also evidence in the prosecution case that raised as a not unrealistic proposition that the appellant had been about to be assaulted by the deceased²⁰.

¹³ Transcript p6 – 49 lines 20 - 47

¹⁴ Transcript p6 – 51 lines 25 - 33

¹⁵ Transcript p6 – 51 lines 33 – 37 and p6 – 53 line 14

¹⁶ Transcript p6 – 53 lines 34 - 38

¹⁷ Transcript p6 – 53 line 36

¹⁸ Transcript p6 – 54 line 14

¹⁹ Transcript p6 – 76 line 35 – p6 – 77 line 1

²⁰ Transcript 11 February 2015, p61 lines 30 – 34

15. On an indictment containing a count of the crime of murder an accused person may be convicted on that count of the crime of manslaughter if that crime is established by the evidence²¹.
16. Although the jury was instructed to consider whether the appellant was guilty of manslaughter in the event that they acquitted of murder²², the jury was not directed to consider whether the prosecution had negated the possibility that the appellant's act of stabbing was an act which was reasonably necessary to resist actual and unlawful violence threatened to him²³.
17. The jury acquitted the appellant of murder and found him guilty of manslaughter.
- 10 18. The appeal to the Court of Appeal proceeded on a ground that a miscarriage of justice occurred because s31(1)(c) was not left for the jury to consider in relation to the alternative of manslaughter. Fraser JA, with whom the other members of the Court agreed, accepted that the evidence fairly raised s31(1)(c)²⁴. Absent any other consideration intruding, the trial judge had been obliged to leave s31(1)(c) for the jury to consider²⁵, as Fraser JA recognised²⁶. As s31(1)(c) had not been left for the jury to consider, Fraser JA concluded that a miscarriage of justice occurred unless s31(2) of the *Code* excluded the applicability of s31(1)(c) to the case²⁷.

20

²¹ *Criminal Code* s576(1)

²² Transcript 11 February 2015, p2 line 40 – p3 line 5)

²³ *Criminal Code*, s31(1)(c)

²⁴ Reasons at [9].

²⁵ *Taiapa v The Queen* (2009) 240 CLR 95 at 98 [5]

²⁶ Reasons at [5]

²⁷ Reasons at [18]

PART VI ARGUMENT

19. Section 31, re-produced with the parts relevant to this appeal in italics, is as follows:

31 Justification and excuse—compulsion

- (1) *A person is not criminally responsible for an act or omission, if the person does or omits to do the act under any of the following circumstances, that is to say—*
- 10 (a) in execution of the law;
- (b) in obedience to the order of a competent authority which he or she is bound by law to obey, unless the order is manifestly unlawful;
- (c) *when the act is reasonably necessary in order to resist actual and unlawful violence threatened to the person, or to another person in the person's presence;*
- (d) when—
- 20 (i) the person does or omits to do the act in order to save himself or herself or another person, or his or her property or the property of another person, from serious harm or detriment threatened to be inflicted by some person in a position to carry out the threat; and
- (ii) the person doing the act or making the omission reasonably believes he or she or the other person is unable otherwise to escape the carrying out of the threat; and
- 30 (iii) doing the act or making the omission is reasonably proportionate to the harm or detriment threatened.
- (2) *However, this protection does not extend to an act or omission which would constitute the crime of murder, or an offence of which grievous bodily harm to the person of another, or an intention to cause such harm, is an element, nor to a person who has by entering into an unlawful association or conspiracy rendered himself or herself liable to have such threats made to the person.*
- 40 (3) Whether an order is or is not manifestly unlawful is a question of law.

20. Fraser JA held²⁸ that the words “*would constitute*” in s31(2) were not to be confined to the offence charged (or by extension, confined to any statutory alternative verdict the 50 *Code* left open). Fraser JA adopted a construction that, irrespective of the offence actually charged, if the act for which an accused person sought exculpation also

²⁸ Reasons at [45]

constituted any of the offences listed in s31(2) then he was to be denied the protection provided by s31(1)(c) in relation to the only offence he was in jeopardy of being convicted of. This construction is wrong.

21. The purpose of the first part of s31(2) is to deny to an accused person the benefit of any of the s31(1) excuses where the accused seeks exculpation from either the crime of murder or from an offence of which grievous bodily harm to another, or an intention to cause that harm, is an element.
22. A proper understanding of s31(2) is assisted by noticing some features of s31. The provision is contained in Chapter 5 of the *Code* which is headed “*Criminal Responsibility*”. The expression “*criminal responsibility*” is defined in s1 this way: “*criminal responsibility means liability to punishment as for an offence*”. Section 31(1) begins by stating that a person is not criminally responsible for an act or omission. The expression “*criminally responsible*” is defined in s1 as follows: “*criminally responsible means liable to punishment as for an offence*” The term “*offence*” is defined in s2: “*An act or omission which renders the person doing the act or making the omission liable to punishment is called an offence*”.
23. Section 31(1) provides an excuse from criminal responsibility for an act which would otherwise be an offence. In other words it excuses the actor from liability to punishment for an offence if the act charged was an act performed in the circumstances stated in s31(1)(c). Cognate provisions in Chapter 5 which provide excuses from criminal responsibility for acts have been held to refer to the act charged²⁹. The

²⁹ For s22(2) – *Walden v Hensler* (1987) 163 CLR 561 at 573 per Brennan J and at 603 per Toohey J; for s24 - *Larsen v GJ Coles & Co. Ltd* (1984) 13 A Crim R 109 at 111 per Connolly J; for s25 – *Stevens v The Queen* (2005) 227 CLR 319 at 324 [11] per Gleeson CJ and Heydon J

expression “*the act*” in paragraph (c) can only be a reference to the expression “*an act*” which appears at the start of s31(1).

24. Section 31(2) then imposes limitations on the availability or the ambit of the excuse from criminal responsibility created by s31(1)(c). This is achieved by the phrase “*However, this protection does not extend to an act ...*” The reference to “*an act*” there can only be a reference back to the act spoken of in the opening phrase to s31(1). Unlike some other provisions of the Code³⁰, s31(2) does not go on to speak of acts that cause particular outcomes or particular degrees of harm. Rather, s31(2) denies an accused person the benefit of the excuse from criminal responsibility he might otherwise be entitled to pursuant to s31(1)(c) if his act (the charged act) would constitute the crime of murder or an offence of which grievous bodily harm to the person of another, or an intention to cause such harm, is an element. In other words, if but for s31(1)(c) the charged act would otherwise constitute the crime of murder or the charged act would otherwise be an offence of which grievous bodily harm is an element then the accused is not excused by s31(1) from criminal responsibility for that charged act of murder or for that charged act of which grievous bodily harm is an element.

25. Section 31(1)(c) was not available to excuse the appellant from criminal responsibility for the charged act of murder for two reasons. First, but for s31(1)(c) (and absent any other exculpatory provision) the charged act would otherwise have constituted the crime of murder. Second, the crime of murder³¹ is also an offence where an intention to cause grievous bodily harm is an element. A person who kills intending to inflict grievous bodily harm is not to be excused from criminal responsibility for the killing merely because his act was also reasonably necessary in order to resist actual and unlawful

³⁰ For example ss270, 271(1), 274 - 279

³¹ *Criminal Code* s302(1)(a)

violence threatened to him. However, if the assault upon him was of such a nature as to cause a reasonable fear that he might be killed or might suffer grievous bodily harm then he would be justified in using deadly force³².

26. Section 31(1)(c) remained available though to excuse the appellant from criminal responsibility for manslaughter because manslaughter is an unlawful killing which does not amount to murder³³ and grievous bodily harm is not an element of manslaughter. The elements of manslaughter are simply the causing of death absent any authorisation, justification or excuse³⁴.
27. Section 31(2) denies the s31(1)(c) protection to an act which would otherwise constitute an offence of which either the causing of or the intentional causing of grievous bodily harm is “*an element*”. The definition of an offence determines its elements³⁵.
28. As the offence of manslaughter is not an offence of which grievous bodily harm is an element an accused person who unintentionally causes another’s death can be excused from criminal responsibility if the act (here the stabbing) was reasonably necessary in order to resist actual and unlawful violence threatened to the accused. A person being tried for manslaughter is not to be denied the benefit of the excuse from criminal responsibility provided by s31(1)(c) just because the recipient of his act suffered an injury that also constituted grievous bodily harm. Some exculpatory provisions contain such a restriction³⁶ but s31(2) is not one of them.

³² *Criminal Code* s271(2)

³³ *Criminal Code* ss300 and 303

³⁴ *Criminal Code* s291 and *Patel v The Queen* (2012) 247 CLR 531 at 568 [135]

³⁵ *Kaporonovski v The Queen* (1973) 133 CLR 209 at 217 and 223

³⁶ *Criminal Code* ss270, 271(1) and 274 - 279

29. The construction adopted by the Court of Appeal, if applied to a trial for manslaughter, would see the availability or otherwise of s31(1)(c) to excuse the accused from criminal responsibility for manslaughter determined according to a complicated inquiry not required by s31(2). It would involve considering whether death was preceded by an injury capable of constituting grievous bodily harm. If it did, and bearing in mind that there is no offence of doing grievous bodily harm, it would then be necessary to determine whether the act which caused grievous bodily harm also would have constituted an offence of unlawfully doing grievous bodily harm³⁷.
30. The correct understanding of s31(2) just involves a denial of the s31(1)(c) excuse to a person who is tried for an offence which involves, as an element, grievous bodily harm to the person of another. Section 31(1)(c) was left for consideration in manslaughter trials³⁸ where the injuries inflicted were capable of satisfying the *Code* definition of grievous bodily harm³⁹.
31. If s31(1)(c) is to be regarded as providing for an excuse from criminal liability in the nature of duress, like s31(1)(d)⁴⁰, the availability of it to excuse an unlawful killing would not be inconsistent with the common law. It allows duress as a defence to manslaughter⁴¹. Western Australia, Tasmania, New Zealand and Canada do not have a provision analogous to s31(1)(c). They all have provisions analogous to s31(1)(d) and to a lesser extent s31(2) which contemplate the availability of duress for manslaughter⁴².

³⁷ *Criminal Code* s320

³⁸ *R v Skondin* [2015] QCA 138 at [16]; *R v Hunt* [2009] QCA 397 at [41]

³⁹ *Criminal Code* s1

⁴⁰ *Taiapa* at 98[5]

⁴¹ *R v Evans & Gardiner (No.1)* [1976] VR 517 at 522

⁴² *Criminal Code (WA)* s32; *Criminal Code (Tas)* s20; *Crimes Act 1961 (NZ)* s24 and *Criminal Code (Canada)* RSC, 1985 C – 46 s17

However, s31(1)(c) is more properly characterised as akin to self-defence⁴³. The marginal note to the provision in the *Draft of a Code of Criminal Law prepared for the Government of Queensland (1897)*⁴⁴ shows that Sir Samuel Griffith regarded it this way. Section 31(1)(c) provides an excuse for the use of violence against another while the *Code* provisions more commonly associated with self-defence⁴⁵ provide justifications for the use of violence against another⁴⁶. The distinction between an excused killing and a justified killing now has no “practical significance”⁴⁷.

32. Section 31(2) also provides that the s31(1) excuses are denied to accused persons who have performed acts arising out of their voluntary entry into relationships either proscribed by law or involving agreements to carry out illegal activities. The language used to achieve this does not assist in determining the construction of that part of s31(2) that this appeal concerns.

PART VII APPLICABLE STATUTORY PROVISIONS

33. The applicable statutory provisions are attached.

PART VIII ORDERS SOUGHT

34. Set aside the order of the Court of Appeal made on 6 May 2016.

- 20 35. Appeal allowed.

36. The conviction be quashed.

37. A new trial be had.

⁴³ *Smith v Western Australia* (2010) 204 A Crim R 280 at 282 [8]

⁴⁴ Reasons at [22]

⁴⁵ ss271 - 273

⁴⁶ *R v Prow* [1990] 1 Qd R 64 at 68

⁴⁷ *Mamote – Kulang v The Queen* (1964) 111 CLR 62 at 78 per Windeyer J

PART IX **TIME ESTIMATE**

38. It is estimated that the appellant's argument will take approximately 1 hour.

DATED: 16th December 2016

10

m copley

M. J. Copley

C. Grant

COUNSEL FOR THE APPELLANT

20

Telephone: (07) 30127921
Facsimile: (07) 32297546
Email: copleyqc@qldbar.asn.au

Telephone: (07) 4781 0100
Facsimile: (07) 4721 1147
Email: cgrant@rjdouglas.com.au

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No. B68 of 2016

BETWEEN:

RODNEY PETER PICKERING

Appellant

and

10

THE QUEEN

Respondent

ANNEXURE TO PART VII

20 **Legislation**

Reproduced below are the legislative provisions relevant to this case and to the argument the appellant will advance. They are reproduced in the form in which they were at time the offence was committed. They have not been amended since with the exception of sections 302, 303, 317 and 320 of the *Criminal Code (Qld)* which were amended in minor ways immaterial to this appeal.

30 **Criminal Code (Qld)**

1 Definitions

In this Code—

criminal responsibility means liability to punishment as for an offence.

40 ***criminally responsible*** means liable to punishment as for an offence.

grievous bodily harm means—

- (a) the loss of a distinct part or an organ of the body; or

Anderson Telford Lawyers
Suites 1 and 2
135 Sturt Street
TOWNSVILLE QLD. 4810

Telephone: (07) 4772 5870
Facsimile: (07) 4772 7749
Email: townsville@atelaw.com.au
Reference: Morgan Jane Place

- (b) serious disfigurement; or
- (c) any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health;

whether or not treatment is or could have been available.

2 Definition of *offence*

10

An act or omission which renders the person doing the act or making the omission liable to punishment is called an *offence*.

22 Ignorance of the law—*bona fide claim of right*

(1)

(2) But a person is not criminally responsible, as for an offence relating to property, for an act done or omitted to be done by the person with respect to any property in the exercise of an honest claim of right and without intention to defraud.

(3)

(4)

24 Mistake of fact

30

(1) A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as the person believed to exist.

(2) The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

40

25 Extraordinary emergencies

Subject to the express provisions of this Code relating to acts done upon compulsion or provocation or in self-defence, a person is not criminally responsible for an act or omission done or made under such circumstances of sudden or extraordinary emergency that an ordinary person possessing ordinary power of self-control could not reasonably be expected to act otherwise.

50

31 Justification and excuse—compulsion

(1) A person is not criminally responsible for an act or omission, if the person does or omits to do the act under any of the following circumstances, that is to say—

- (a) in execution of the law;
- 10 (b) in obedience to the order of a competent authority which he or she is bound by law to obey, unless the order is manifestly unlawful;
- (c) when the act is reasonably necessary in order to resist actual and unlawful violence threatened to the person, or to another person in the person's presence;
- (d) when—
 - 20 (i) the person does or omits to do the act in order to save himself or herself or another person, or his or her property or the property of another person, from serious harm or detriment threatened to be inflicted by some person in a position to carry out the threat; and

- 30 (ii) the person doing the act or making the omission reasonably believes he or she or the other person is unable otherwise to escape the carrying out of the threat; and
- (iii) doing the act or making the omission is reasonably proportionate to the harm or detriment threatened.

- (2) However, this protection does not extend to an act or omission which would constitute the crime of murder, or an offence of which grievous bodily harm to the person of another, or an intention to cause such harm, is an element, nor to a person who has by entering into an unlawful association or conspiracy rendered himself or herself liable to have such threats made to the person.

- (3) Whether an order is or is not manifestly unlawful is a question of law.

36 Application of rules

(1) The provisions of this chapter apply to all persons charged with any criminal offence against the statute law of Queensland.

(2) Except for sections 22(3), 29 and 31, this chapter does not apply to regulatory offences.

268 Provocation

10

(1) The term ***provocation***, used with reference to an offence of which an assault is an element, means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under the person's immediate care, or to whom the person stands in a conjugal, parental, filial, or fraternal, relation, or in the relation of master or servant, to deprive the person of the power of self-control, and to induce the person to assault the person by whom the act or insult is done or offered.

20

(2) When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.

(3) ...

(4) ...

30

(5) ...

270 Prevention of repetition of insult

40

It is lawful for any person to use such force as is reasonably necessary to prevent the repetition of an act or insult of such a nature as to be provocation to the person for an assault, if the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.

271 Self-defence against unprovoked assault

50

(1) When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for the person to use such force to the assailant as is reasonably necessary to make effectual defence against the assault, if the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.

(2) If the nature of the assault is such as to cause reasonable apprehension of death or grievous bodily harm, and the person using force by way of defence believes, on reasonable grounds, that the person can not otherwise preserve the person defended from death or grievous bodily harm, it is lawful for the person to use any such force to the assailant as is necessary for defence, even though such force may cause death or grievous bodily harm.

10

272 Self-defence against provoked assault

(1) When a person has unlawfully assaulted another or has provoked an assault from another, and that other assaults the person with such violence as to cause reasonable apprehension of death or grievous bodily harm, and to induce the person to believe, on reasonable grounds, that it is necessary for the person's preservation from death or grievous bodily harm to use force in self-defence, the person is not criminally responsible for using any such force as is reasonably necessary for such preservation, although such force may cause death or grievous bodily harm.

(2) This protection does not extend to a case in which the person using force which causes death or grievous bodily harm first begun the assault with intent to kill or to do grievous bodily harm to some person; nor to a case in which the person using force which causes death or grievous bodily harm endeavoured to kill or to do grievous bodily harm to some person before the necessity of so preserving himself or herself arose; nor, in either case, unless, before such necessity arose, the person using such force declined further conflict, and quitted it or retreated from it as far as was practicable.

20

30

273 Aiding in self-defence

In any case in which it is lawful for any person to use force of any degree for the purpose of defending himself or herself against an assault, it is lawful for any other person acting in good faith in the first person's aid to use a like degree of force for the purpose of defending the first person.

40

274 Defence of moveable property against trespassers

It is lawful for any person who is in peaceable possession of any moveable property, and for any person lawfully assisting him or her or acting by his or her authority, to use such force as is reasonably necessary in order to resist the taking of such property by a trespasser, or in order to retake it from a

50

trespasser, provided that the person does not do grievous bodily harm to the trespasser.

275 Defence of moveable property with claim of right

When a person is in peaceable possession of any moveable property under a claim of right, it is lawful for the person, and for any person lawfully assisting him or her or acting by his or her authority, to use such force as is reasonably necessary in order to defend the person's possession of the property, even against a person who is entitled by law to possession of the property, provided that he or she does not do grievous bodily harm to such other person.

276 Defence of moveable property without claim of right

When a person who is entitled by law to the possession of moveable property attempts to take it from another person who is in possession of the property, but who neither claims right to it, nor acts by the authority of a person who claims right, and the person in possession resists him or her, it is lawful for the person so entitled to possession to use the force that is reasonably necessary in order to obtain possession of the property, provided that he or she does not do grievous bodily harm to the person in possession.

277 Defence of premises against trespassers—removal of disorderly persons

(1) It is lawful for a person who is in peaceable possession of any land, structure, vessel, or place, or who is entitled to the control or management of any land, structure, vessel, or place, and for any person lawfully assisting him or her or acting by his or her authority, to use such force as is reasonably necessary in order to prevent any person from wrongfully entering upon such land, structure, vessel, or place, or in order 40 to remove therefrom a person who wrongfully remains therein, provided that he or she does not do grievous bodily harm to such person.

(2) It is lawful for a person who is in peaceable possession of any land, structure, vessel, or place, or who is entitled to the control or management of any land, structure, vessel, or place, and for any person acting by his or her authority, to use the force that is reasonably necessary in order to remove therefrom any person who conducts himself or herself in a disorderly manner therein, provided that he or she does not do

the person grievous bodily harm.

(3) In this section—

place includes any part of an enclosure or structure, whether separated from the rest of the enclosure or structure by a partition, fence, rope, or any other means, or not.

10 **278 Defence of possession of real property or vessel with claim of right**

When a person is in peaceable possession of any land, structure, or vessel, with a claim of right, it is lawful for the person, and for any person lawfully assisting him or her or acting by his or her authority, to use such force as is reasonably necessary in order to defend the person's possession, even against a person who is entitled by law to the possession of the property, provided that he or she does not do

20 grievous bodily harm to such person.

279 Exercise of right of way or easement

When a person who is lawfully entitled to enter upon land for the exercise of a right of way or other easement or profit enters upon the land for the purpose of exercising such right of way, easement, or profit, after notice that right to use such way or easement or to take such profit is disputed by the

30 person in possession of the land, or having entered persists in entry after such notice, it is lawful for the person in possession, and for any person lawfully assisting him or her or acting by his or her authority, to use such force as is reasonably necessary for the purpose of making the person so entering desist from the entry, provided that he or she does not do the person entering grievous bodily harm.

291 Killing of a human being unlawful

40 It is unlawful to kill any person unless such killing is authorised or justified or excused by law.

293 Definition of *killing*

Except as hereinafter set forth, any person who causes the death of another, directly or indirectly, by any means whatever, is deemed to have killed that other person.

300 Unlawful homicide

Any person who unlawfully kills another is guilty of a crime, which is called murder or manslaughter, according to the circumstances of the case.

302 Definition of *murder*

10

(1) Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say—

- (a) if the offender intends to cause the death of the person killed or that of some other person or if the offender intends to do to the person killed or to some other person some grievous bodily harm;
- 20 (b) if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;
- (c) if the offender intends to do grievous bodily harm to some person for the purpose of facilitating the commission of a crime which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such crime;
- 30 (d) if death is caused by administering any stupefying or overpowering thing for either of the purposes mentioned in paragraph (c);
- (e) if death is caused by wilfully stopping the breath of any person for either of such purposes;
is guilty of ***murder***.

30

(2) Under subsection (1)(a) it is immaterial that the offender did not intend to hurt the particular person who is killed.

(3) Under subsection (1)(b) it is immaterial that the offender did not intend to hurt any person.

(4) Under subsection (1)(c) to (e) it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.

50

303 Definition of *manslaughter*

A person who unlawfully kills another under such circumstances as not to constitute murder is guilty of ***manslaughter***.

317 Acts intended to cause grievous bodily harm and other malicious acts

- 10 Any person who, with intent—
 - (a) to maim, disfigure or disable, any person; or
 - (b) to do some grievous bodily harm or transmit a serious disease to any person; or
 - (c) to resist or prevent the lawful arrest or detention of any person; or
 - 20 (d) to resist or prevent a public officer from acting in accordance with lawful authority—
 - either—
 - (e) in any way unlawfully wounds, does grievous bodily harm, or transmits a serious disease to, any person; or
 - (f) unlawfully strikes, or attempts in any way to strike, any person with any kind of projectile or anything else capable of achieving the intention; or
 - (g) unlawfully causes any explosive substance to explode; or
 - (h) sends or delivers any explosive substance or other dangerous or noxious thing to any person; or
 - (i) causes any such substance or thing to be taken or received by any person; or
 - 30 (j) puts any corrosive fluid or any destructive or explosive substance in any place; or
 - (k) unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person;
- is guilty of a crime, and is liable to imprisonment for life.

320 Grievous bodily harm

Any person who unlawfully does grievous bodily harm to another is guilty of a crime, and is liable to imprisonment for 14 years.

458 Unlawful acts

- 10 (1) An act which causes injury to the property of another, and which is done without the owner's consent, is unlawful unless it is authorised or justified or excused by law.
- (2) ...
- (3) ...
- (4) A person is not criminally responsible for an injury caused to property by the use of such force as is reasonably necessary
- 20 for the purpose of defending or protecting himself, herself, or any other person, or any property, from injury which the person believes, on reasonable grounds, to be imminent.

576 Indictment containing count of murder or manslaughter

- 30 (1) Upon an indictment against a person containing a count of the crime of murder, the person may be convicted on that count of the crime of manslaughter if that crime is established by the evidence but not on that count of any other offence than that with which the person is charged except as otherwise expressly provided.
- (2) Upon an indictment against a person containing a count of the crime of manslaughter the person can not on that count be convicted of any other offence except as otherwise expressly provided.

40 Criminal Code Act Compilation Act 1913 (WA)

32. Duress

- (1) A person is not criminally responsible for an act done, or an omission made, under duress under subsection (2).
- (2) A person does an act or makes an omission under duress if —
- (a) the person believes —

- (i) a threat has been made; and
- (ii) the threat will be carried out unless an offence is committed; and
- (iii) doing the act or making the omission is necessary to prevent the threat from being carried out;
- and
- (b) the act or omission is a reasonable response to the threat in the circumstances as the person believes them to be; and
- (c) there are reasonable grounds for those beliefs.
- (3) Subsections (1) and (2) do not apply if the threat is made by or on behalf of a person with whom the person under duress is voluntarily associating for the purpose of —
- 10 (a) doing an act or making an omission of the kind in fact done or made by the person under duress; or
- (b) prosecuting an unlawful purpose in which it is reasonably foreseeable such a threat would be made.
- [Section 32 inserted by No. 29 of 2008 s. 6.]

Criminal Code Act 1924 (Tas)

- 20 **20. When compulsion a defence**
- (1) Except as provided by section 64, compulsion by threats of immediate death or grievous bodily harm, from a person actually present at the commission of the offence, shall be an excuse for the commission, by a person subject to such threats, and who believes that such threats will be executed, and who is not a party to any association or conspiracy the being a party to which rendered him subject to compulsion, of any offence other than treason, murder, piracy, offences deemed to be piracy, attempting to murder, rape, forcible abduction, aggravated armed robbery, armed robbery, aggravated robbery, robbery, causing grievous bodily harm, and arson.
- 30 (2) A married woman shall be in the same position as regards compulsion by her husband as if she were unmarried.

Crimes Act 1961 (NZ)

- 24 Compulsion**
- 40 (1) Subject to the provisions of this section, a person who commits an offence under compulsion by threats of immediate death or grievous bodily harm from

- a person who is present when the offence is committed is protected from criminal responsibility if he or she believes that the threats will be carried out and if he or she is not a party to any association or conspiracy whereby he or she is subject to compulsion.
- (2) Nothing in subsection (1) shall apply where the offence committed is an offence specified in any of the following provisions of this Act, namely:
- (a) section 73 (Treason) or section 78 (Espionage):
 - (b) section 79 (Sabotage):
 - (c) section 92 (Piracy):
 - (d) section 93 (Piratical acts):
 - (e) section 167 and 168 (murder):
 - (f) section 173 (Attempt to murder):
 - (g) section 188 (Wounding with intent):
 - (h) subsection (1) of section 189 (injuring with intent to cause grievous bodily harm):
 - (i) section 208 (abduction):
 - (j) section 209 (Kidnapping):
 - (k) section 234 (Robbery):
 - (ka)[*Repealed*]
 - (l) section 235 (Aggravated robbery):
 - (m) section 267 (Arson).
- (3) Where a woman who is married or in a civil union commits an offence, the fact that her spouse or civil union partner was present at the commission of the offence does not of itself raise a presumption of compulsion.
- Compare: 1908 No 32 s 44
 Section 24(2): amended, on 1 February 1986, by section 7(1) of the Crimes Amendment Act (No 3) 1985 (1985 No 160).
 Section 24(2)(k): replaced, on 1 October 2003, by section 5 of the Crimes Amendment Act 2003 (2003 No 39).
 Section 24(2)(ka): repealed, on 1 October 2003, by section 5 of the Crimes Amendment Act 2003 (2003 No 39).
 Section 24(2)(l): replaced, on 1 October 2003, by section 5 of the Crimes Amendment Act 2003 (2003 No 39).
 Section 24(2)(m): inserted, on 1 October 2003, by section 5 of the Crimes Amendment Act 2003 (2003 No 39).
 Section 24(3): replaced, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).
 Section 24(3): amended, on 19 August 2013, by section 9 of the Marriage (Definition of Marriage) Amendment Act 2013 (2013 No 20).

Criminal Code (Canada)

Compulsion by threats

- 17** A person who commits an offence under compulsion by threats of immediate death or bodily harm from a person who is present when the offence is committed is excused for committing the offence if the person believes that the threats will be carried out and if the person is not a party to a conspiracy or association whereby the person is subject to compulsion, but this section does not apply where the offence that is committed is high treason or treason, murder, piracy, attempted murder, sexual assault, sexual assault with a

weapon, threats to a third party or causing bodily harm, aggravated sexual assault, forcible abduction, hostage taking, robbery, assault with a weapon or causing bodily harm, aggravated assault, unlawfully causing bodily harm, arson or an offence under sections 280 to 283 (abduction and detention of young persons).

R.S., 1985, c. C-46, s. 17; R.S., 1985, c. 27 (1st Supp.), s. 40.