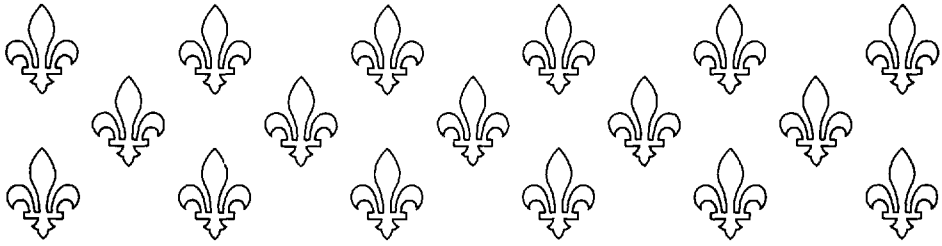

NATIONAL ASSEMBLY

FIRST SESSION THIRTY-THIRD LEGISLATURE

Draft Bill

Code of Penal Procedure

Introduced by
Mr Herbert Marx
Minister of Justice

Québec Official Publisher
1986

EXPLANATORY NOTES

This draft bill proposes a general reform of the procedure applicable to the punishment of offences under the Acts and regulations of Québec.

For that purpose, it contains rules on arrest, search, institution and trial of proceedings, judgments, execution, correction and revocation of judgments, and appeal.

Draft Bill

Code of Penal Procedure

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

DIVISION I

SCOPE

1. This Code applies to all proceedings in view of imposing a penalty for an offence under a general law, a special Act or a regulation.

This Code does not apply to proceedings for disciplinary action brought before a disciplinary body.

DIVISION II

INTERPRETATION

2. The rules of procedure in this Code must be interpreted as intended to facilitate proceedings rather than to delay them or end them prematurely.

3. In this Code, unless the context indicates otherwise, "Act" means any general law, special Act or regulation.

4. The provisions of this Code relating to persons under eighteen years of age also apply to persons eighteen years of age or over in respect of offences committed by them between the ages of fourteen and eighteen.

DIVISION III

GENERAL RULES OF PROCEDURE

5. The following are non-juridical days:

(1) Sundays;

(2) the first and second of January;

(3) Good Friday;

(4) Easter Monday;

(5) the third Monday of May;

(6) the twenty-fourth of June;

(7) the first of July, or the second of July when the first is a Sunday;

(8) the first Monday of September;

(9) the second Monday of October;

(10) the twenty-fifth and twenty-six of December;

(11) any other day fixed by proclamation of the Government as a public holiday or as a day of thanksgiving.

6. In computing any period of time,

(1) the day which marks the start of the period is not counted, but the terminal day is counted;

(2) non-juridical days are counted, but when the last day is a non-juridical day, the period is extended to the next following juridical day;

(3) Saturday is considered a non-juridical day.

7. Any service prescribed by this Code or by the rules of practice thereunder must be made in accordance with the provisions of Division III of Chapter V relating to the service of a statement of offence, adapted as required.

8. Unless otherwise provided, any application to a judge under this Code or the rules of practice is made orally and requires no prior notice of presentation.

Where an oral application requires prior notice of presentation, the notice must briefly and precisely state the nature of the application and the grounds on which it is based and indicate the date and place of presentation of the application.

9. A written application must briefly and precisely state the facts and the grounds on which it is based and the conclusions sought.

The application must be accompanied with an affidavit attesting the truth of the facts stated and, unless otherwise provided, with a notice of presentation indicating the date and place of presentation of the application.

10. The written application, affidavit and notice of presentation must be served on the other party not less than five clear days before the date of presentation of the application and must be filed in the office of the competent court of the place where the application is to be presented within the time fixed by the rules of practice.

11. An application is contested orally, unless the judge allows a contestation in writing.

12. A person under eighteen years of age whose detention is ordered by a judge must be kept in custody in a reception centre.

13. Where this Code requires service on the parents of a person under eighteen years of age, it must be made on his father and mother or, as the case may be, any other person having parental authority. The same rule applies where they must be given notice.

14. The procedure relating to contempt of court prescribed by the Code of Civil Procedure (R.S.Q., chapter C-25), adapted as required, applies to contempt committed during penal proceedings.

DIVISION IV

PROCURING ATTENDANCE OF WITNESSES

§ 1.—*General rules*

15. The party who wishes to produce a witness must summon him by means of a subpoena, which may be signed by a judge or a clerk

of the competent court in the judicial district where the witness is to be heard or by the attorney of the party who wishes to produce the witness.

16. A subpoena consists in an order, given on behalf of the competent judicial authority in the judicial district where the witness is to be heard, requiring the person designated therein to attend at the time and place indicated therein to testify and, where such is the case, requiring him to bring with him anything mentioned therein that is relevant to the issue and in his possession or under his control.

A subpoena addressed to a person in detention also entails an order requiring the director of the reception centre, or the warden of the house of detention or penitentiary where the person is detained to bring him to the place and at the time indicated, so that he may testify.

17. A party who wishes to produce a person in detention, a minister or deputy minister of the Government or a judge or a member of a tribunal as a witness must obtain authorization to summon the witness from a judge of the judicial district where the witness is to be heard.

The judge may grant the authorization only if he is satisfied, by the party applying therefor, that the testimony of the witness is necessary to allow the prosecutor to prove the commission of an offence, to afford the defendant the benefit of a full and complete defence or to allow the judge to rule on a question submitted to him during the proceedings in which the testimony of the witness is required. The authorization shall be written on the subpoena.

18. A subpoena shall be served by a bailiff or a peace officer not less than five clear days before the witness is to be heard.

A subpoena addressed to a minister or deputy minister of the Government or a judge or a member of a tribunal must be served not less than ten clear days before he is to be heard as a witness.

19. In cases of urgency, the time for service of a subpoena may, upon application, be extended, by special order written on the subpoena and made by a judge or a clerk having authority to sign the subpoena, to not less than twelve hours before the witness is to be heard.

The special order contemplated in the first paragraph must be given by a judge where the subpoena is addressed to a minister or deputy minister of the Government or a judge or a member of a tribunal.

20. A person served with a subpoena is required to attend at the time and place indicated therein and to remain in attendance until the judge before whom he is called to testify releases him from that obligation.

21. The judge before whom a person is called to testify may issue a warrant of arrest where he is satisfied that the witness can give useful evidence and has failed to appear before him or to remain in attendance at the time and place indicated

(1) in the subpoena served on him;

(2) upon adjournment of a hearing which he attended; or

(3) in the order for release made under section 34.

22. A warrant of arrest may also be issued by the judge before whom a witness has given evidence if the witness leaves the place where the hearing is held without having been released by the judge from the obligation of remaining in attendance and the judge is satisfied that he may yet give useful evidence.

23. A judge of the judicial district where a person is to be heard as a witness may issue a warrant of arrest where he is satisfied, by the party wishing to produce him as a witness, that such party has reasonable grounds to believe that the witness can give useful evidence and is evading service of a subpoena or will not obey the order to attend to testify even if he is duly summoned.

24. A warrant of arrest, which must state the reason for which it is issued, consists in an order requiring any peace officer or bailiff to arrest the person designated therein and bring him before a judge so that he may ensure the attendance of the witness at the hearing where his testimony is required.

25. A warrant of arrest must be signed by the judge who issues it and is executory at any time anywhere in Québec.

26. Any person who arrests a person under a warrant of arrest shall

(1) state his name and capacity;

(2) inform the person of the grounds for his arrest;

(3) allow the person to examine the warrant, or if it is not in his possession, allow him to examine it as soon as practicable.

27. To execute a warrant of arrest, a person may enter any premises where he has reasonable grounds to believe the person he has been ordered to arrest is to be found, so as to arrest him.

Before entering the premises, he shall notify a person on the premises of his presence and of the grounds for and purpose of his presence.

Such notice is not required, however, where the person executing the warrant has reasonable grounds to believe that it would allow the person whom he seeks to arrest to evade justice.

28. A person who makes an arrest under a warrant of arrest may use only as much force as is necessary.

29. A bailiff who makes an arrest under a warrant of arrest shall, as soon as practicable, commit the arrested person to the custody of a peace officer so that the officer may bring him before a judge.

30. A person under eighteen years of age who is arrested must be committed to the custody of the competent director of youth protection of the place where the arrest was made.

31. The director of youth protection to whose custody a person is committed shall have the person kept in custody in a reception centre until he is brought before a judge.

Moreover, the director shall, without delay and by any reasonable means in the circumstances, notify the parents of the person committed to his custody of their child's arrest, of the grounds for his arrest, of the place where he is being kept and of the appointed time and place of his appearance before a judge.

32. Every person arrested under a warrant of arrest must be brought, as soon as practicable and in no case more than twenty-four hours after his arrest, before the judge before whom he is to testify or, if he is not sitting, before a judge of the same court in the judicial district where the arrest was made.

If no judge is available within the prescribed time, the person must be brought as soon as practicable before the nearest available judge.

33. Except in the case of the witness contemplated in section 23, a person who appears before a judge as the result of the execution of a warrant of arrest may be condemned, pursuant to the procedure relating to contempt of court, to pay in whole or in part the costs

caused by his failure to attend or to remain in attendance at the appointed place to testify.

The amount of the costs is prescribed by regulation and the judge shall allow not less than thirty days for payment thereof.

Where the defendant is a person under eighteen years of age, he shall not be condemned to costs in excess of $100.

34. The judge before whom the arrested person is brought may order his release on such conditions as he may determine if he is satisfied that he will attend at the appointed time and place and remain in attendance to testify.

The judge may order, as a condition for release, that the person furnish security in the amount he determines.

The judge shall not order a person under eighteen years of age to furnish security in excess of $100.

35. The judge may order that the arrested person be detained in custody until he testifies if he is satisfied that such detention is necessary to ensure his attendance at the hearing where his testimony is required.

36. The order for continued detention or for release may be reviewed by a judge of the Superior Court of the district where the order was made.

Notice of presentation of at least one clear day must be served on the opposite party.

The judge may confirm or quash the order for continued detention or the order for release. If he confirms the order for release, he may confirm or modify the conditions on which the person is released, particularly as to the requirement to furnish security or the amount thereof. Where the witness is released and fails to appear at the hearing of the application for review, the judge may also issue a warrant of arrest.

37. A person whose detention is continued until he testifies must be called to testify within eight days after his arrest or, if the order for his continued detention is confirmed by a judge of the Superior Court, within eight days after such confirmation.

38. A judge who orders that a person be detained in custody until he testifies shall also order the director of the reception centre or the

warden of the house of detention or penitentiary where the person is detained to release him, on such conditions as the judge has determined, if he is not called to testify within the prescribed time and is not in detention for any other reason.

§ 2.—*Commission for the examination of witnesses*

39. Any party wishing to examine a witness who is unable to attend at the appointed place and time to testify because of his state of health or the fact that he is outside Québec may request by application that the deposition of the witness, if essential to the determination of the case, be received by a commissioner.

40. An application under section 39 must be presented, before the trial, to a judge of the judicial district where the proceedings were instituted or, during the trial, to the presiding judge.

41. The judge who appoints a commissioner shall set out, in the order, such provisions as are necessary to enable the parties to be present or to be represented when the deposition is received.

42. Unless inconsistent with this subdivision or with the rules of practice made under this Code, the rules of procedure provided in articles 426 to 437 of the Code of Civil Procedure as to the appointment of commissioners, the recording of depositions, the attestation and the return of depositions, adapted as required, apply to a commission for the examination of witnesses ordered pursuant to this Code.

43. A deposition received by a commissioner is admissible in evidence where it is established, either by oral evidence or by affidavit,

(1) that the witness was unable to attend to testify on the date set for the hearing because of illness or the fact that he was outside Québec;

(2) that the deposition of the witness was received in accordance with this chapter and signed by the commissioner;

(3) that the provisions set out in the order to enable the parties to be present or to be represented were complied with;

(4) that the opposite party was given reasonable notice of the time when the deposition was to be received;

(5) that the opposite party was given the opportunity to cross-examine the witness.

44. Any witness whose deposition was received by a commissioner may be examined anew if he is no longer unable to attend to testify at the hearing.

DIVISION V

PLEAS AND GENERAL RULES OF EVIDENCE

45. The pleas and recognized justifications and excuses in criminal matters apply in penal matters, unless they are inconsistent with this Code or any other Act.

46. It is incumbent upon the defendant to establish that he has the benefit of an exception, exemption, excuse or justification provided by an Act or recognized in criminal matters.

47. The prosecutor is not required to allege in the statement of offence that the defendant does not have the benefit of an exception, exemption, excuse or justification.

Similarly, the prosecutor is not required to prove, except by way of reply, that the defendant does not have the benefit of an exception, exemption, excuse or justification.

48. The rules of evidence in criminal matters, adapted as required, apply to penal matters, subject to the rules provided in this Code, in the Act creating the offence and in article 308 of the Code of Civil Procedure.

49. The statement of offence has the same value and effect as evidence given under oath by the person having drawn up the statement, if he personally ascertained the facts stated therein.

The same applies to any offence report, in the form prescribed by order of the Minister of Justice, that may be attached to the statement of offence and produced as evidence by the prosecutor.

A copy of a statement or report, if certified by the person having drawn up the statement or report, is proof of its contents.

50. Where the prosecutor has produced a statement of offence or an offence report as evidence in lieu of evidence given by a person, the defendant may require that the prosecutor summon the person as a witness.

The defendant may be condemned to pay the costs prescribed by regulation if he is convicted of the offence and the judge is satisfied that the statement of offence or the offence report would have afforded sufficient evidence of what was alleged therein.

51. Any document given in evidence by the prosecutor which, to all appearances, was written or signed by the defendant constitutes, in the absence of any evidence to the contrary, proof that it was written or signed by him.

52. The judge before whom a document is given in evidence may admit any evidence he considers reliable and relevant to the case in order to determine whether the defendant is the person contemplated in the document.

53. Where a person responsible for the enforcement of an Act is empowered thereby to issue a document, a copy of the document certified by him has the same probative value as the original document.

54. It is incumbent upon the defendant to prove that he is the holder of a certificate, licence, permit or any other authorization where it is alleged that he has failed to fulfil the obligation imposed by law to hold such authorization in order to carry on an activity.

Proof that such authorization was granted and of its content may be established by producing, before the judge, the certificate, licence, permit or authorization, or by means of an attestation signed by the person having the authority to grant such authorization.

Proof that such authorization was not granted may be established by means of an attestation signed by the person having the authority to grant such authorization.

55. An advertisement given in evidence constitutes, in the absence of any evidence to the contrary, proof that it was made under the authority and with the consent of the person whose goods or services are advertised.

56. The prosecutor is not required to prove that the defendant is the owner or tenant of an immovable relating to the offence, unless the defendant so requires and notifies the prosecutor accordingly not less than ten days before the appointed date for the presentation of such proof.

57. Where a government department or a public body is responsible for recording information in a register, any certificate containing extracts therefrom and signed by the person having custody of the register constitutes, in the absence of any evidence to the contrary, proof of the information contained in the certificate.

58. Proof of the acquittal or conviction of the defendant, of the dismissal of a count or statement of offence, of the judicial stay or of the suspension of proceedings may be established by means of a certificate attesting such fact, signed by the judge who rendered the judgment or decision or by the clerk who entered it in the minutes or by means of a copy of the minutes of the judgment or decision, certified by a clerk.

Proof of a stay of proceedings ordered by the Attorney General may be established by means of a certificate attesting such fact, signed by the clerk who entered the order in the minutes or by means of a copy of the minutes, certified by a clerk.

The certificate or the copy of the minutes attesting the dismissal of a count or statement of offence, the judicial stay or the suspension of proceedings must set out the grounds therefor.

59. A judge may, if the ends of justice so require, admit evidence, on such conditions as he may determine, despite the fact that a formality has not been fulfilled, or order the adjournment of the hearing to allow the formality to be fulfilled.

60. The Attorney General's prosecutor is deemed to be a person authorized to act in his name and is not required to prove such authorization.

Any other person authorized by the Attorney General to act in his name and any person authorized to act on behalf of a legal person, an association, a public body or a government department is not required to prove such authorization, unless the judge before whom the authorization is contested by the defendant is of opinion that proof thereof must be established.

61. The prosecutor is not required to prove the quality or the signature of the persons listed below, unless the judge before whom the defendant contests the absence of proof is of opinion that such proof must be established:

(1) the person who institutes proceedings in the name of the prosecutor and whose name appears on the statement of offence or offence report;

(2) the person who certifies a copy of the statement of offence or offence report;

(3) the person entrusted with the enforcement of an Act who certifies a copy of a document he is authorized by that Act to issue;

(4) the person who signs an attestation as to the issue, content or non-issue of a certificate, licence, permit or any other authorization for the carrying on of an activity;

(5) the person having custody of a register who signs a certificate containing information recorded in the register;

(6) the clerk or judge who signs a certificate attesting the acquittal or conviction of a defendant, the dismissal of a count or statement of offence, or the stay or suspension of proceedings;

(7) the clerk who certifies a copy of the minutes of a judgment or judicial decision.

DIVISION VI

PRESCRIPTION

62. Penal proceedings are prescribed by one year, unless a shorter prescription is established by another Act.

63. Prescription begins to run from the date of commission of the offence.

Notwithstanding the foregoing, another Act may provide that prescription begins to run from the date of knowledge of the commission of the offence or from the date of occurrence of an event determined therein.

64. Prescription is interrupted either upon the service of the statement of offence, upon the granting of authorization to serve a statement of offence under section 193, or upon the affixing by a judge of an attestation of interruption of prescription to a statement of offence, at the request of the prosecutor, if the judge is satisfied that the statement contains the information required by this Code and that the prosecutor has attempted unsuccessfully to serve the statement of offence on the defendant.

Notwithstanding the foregoing, prescription is not interrupted where the proceedings were instituted by a prosecutor lacking the necessary authorization to prosecute or by a person not authorized to institute proceedings on behalf of a properly authorized person.

CHAPTER II

JURISDICTION OF THE COURTS

DIVISION I

JURISDICTION OVER OFFENCES

65. Subject to Chapters XII, XIII and XIV the duties and powers assigned to a judge by this Code may be performed or exercised by a judge of the Court of the Sessions of the Peace, of the Provincial Court or of a municipal court, by a justice of the peace or by the Youth Court or the Labour Court, according to their respective jurisdictions in penal matters assigned to them pursuant to the Courts of Justice Act (R.S.Q., chapter T-16) or to their special Acts.

DIVISION II

JURISDICTION OVER PERSONS

66. No judge has jurisdiction over a person who may have committed an offence when under fourteen years of age.

67. A judge before whom a person appears notwithstanding a procedural irregularity may try the case and render a judgment on the action against that person if he has jurisdiction otherwise over the alleged offence.

DIVISION III

TERRITORIAL JURISDICTION

68. A proceeding shall be instituted, at the prosecutor's option, in the judicial district in which the offence was committed, in that of the defendant's principal residence, head office or business office or in that in which the defendant is in detention. A proceeding may also be instituted in any other judicial district if the defendant agrees thereto.

69. The case shall be tried and the judgment rendered by a judge of the judicial district where the proceeding was instituted.

Notwithstanding the first paragraph, where the defendant fails to plead or pleads guilty without mentioning his intention to make representations as to a greater punishment sought against him, the case may be tried and the judgment rendered in the judicial district of the place mentioned in the statement of offence for the transmission of the defendant's plea by a judge of that district.

70. A judge may order a change of district where a party applies therefor in accordance with section 224 or 225.

71. An offence committed either within the distance of two kilometres from the boundary of two or more judicial districts or upon any water between two or more judicial districts or an offence begun within one judicial district and completed within another is deemed to have been committed in any of the districts.

72. An offence committed in a vehicle in the course of a journey is deemed to have been committed in any of the judicial districts covered by the vehicle in the course of the journey.

CHAPTER III

ARREST

DIVISION I

POWER TO ARREST

73. A peace officer or person responsible for the enforcement of an Act who has reasonable grounds to believe that a person has committed an offence may require that such a person give him his name and address, if they are unknown to him, so that he may draw up a statement of offence.

74. A peace officer or person responsible for the enforcement of an Act who has reasonable grounds to believe that the name and address given to him by a person are inaccurate may require further information from that person confirming the accuracy of the name and address he has given.

75. A person may refuse to give his name and address or the information confirming the accuracy of the name and address he has given as long as he is not reasonably informed of the offence for which the information is required.

76. A peace officer or person responsible for the enforcement of an Act may arrest, without a warrant, a person informed of the alleged offence who, despite his request, fails or refuses to give his name and address or to furnish further information confirming the accuracy of the name and address he has given.

77. The person so arrested shall be released from custody by the person who detains him as soon as he gives him his name and address or as soon as the accuracy of the name and address he has given is confirmed.

78. A peace officer or person responsible for the enforcement of an Act may arrest a person without a warrant if he ascertains that the person is committing an offence and if the arrest is the only reasonable means at his disposal to put an end to the commission of the offence.

79. A person whose arrest was necessary to put an end to the commission of an offence shall be released from custody by the person who detains him as soon as the latter has reasonable grounds to believe that the detention is no longer necessary to preclude, for the time being, the commission of an offence.

80. A peace officer or person responsible for the enforcement of an Act may require security from a defendant over eighteen years of age on whom a statement of offence is served if he has reasonable grounds to believe that the defendant will elude justice.

81. The amount required for the security is payable in cash and equal to either the amount of the minimum fine prescribed for the offence described in the statement of offence plus the costs determined by regulation or to $50 plus the costs determined by regulation if no minimum fine is prescribed as a penalty for that offence.

82. Security in an amount greater than that contemplated in section 81 may be required by a judge of the judicial district where the proceeding was instituted, upon an application by a peace officer or person responsible for the enforcement of an Act.

The judge may require such security if he is satisfied, on the strength of a sworn statement by the person who has made the application, that the defendant will elude justice if no security in such an amount is imposed on him and that the amount contemplated in section 81 is insufficient to guarantee the payment of the fine which, owing to the circumstances of the offence, might be imposed on the defendant if found guilty.

The amount is payable in cash or in any other manner determined by the judge.

83. A peace officer or person responsible for the enforcement of an Act who has required security may, without a warrant, arrest a defendant who fails to pay or refuses to pay security when he is required to do so.

84. A defendant who has been arrested shall be released from custody by the person detaining him as soon as he pays the required amount of security.

85. A peace officer or person responsible for the enforcement of an Act who receives an amount of security shall remit to the defendant a receipt attesting the payment of the security.

86. A defendant who has paid the amount of security required under section 81 may apply to a judge of the judicial district in which the proceeding was instituted to review the exigibility of the security or to change the amount required to make it correspond with the amount exigible thereunder.

Notice of presentation of not less than one clear day must be served on the prosecutor.

87. The judge hearing the application may confirm or quash the exigibility of the security and, where such is the case, confirm the amount of the security or change it to make it correspond with the amount exigible.

88. A defendant who has paid the amount of security determined under section 82 may apply to a judge of the Superior Court of the district where the amount of security was determined to review the exigibility of the security, the amount of security or the mode of payment thereof.

Notice of presentation of not less than one clear day must be served on the prosecutor.

89. The judge of the Superior Court hearing the application may confirm or quash the exigibility of the security and, where such is the case, confirm or change the amount of security or mode of payment thereof.

90. No peace officer or person responsible for the enforcement of an Act may, for the purposes of section 73, 74 or 80, enter any premises that are not accessible to the public.

91. No peace officer or person responsible for the enforcement of an Act may enter premises that are not accessible to the public in order to put an end to the commission of an offence unless he has reasonable grounds to believe that there is a person in such premises who is committing an offence likely to imperil the life or health of persons or the safety of persons or property.

Before entering the premises, the peace officer or person responsible for the enforcement of an Act shall, if possible, depending on whether the persons or property therein need to be protected, notify the person on the premises of his presence and of the grounds for and purpose of his presence.

92. A peace officer or person responsible for the enforcement of an Act who has reasonable grounds to believe that the person he is arresting is trying to evade arrest may pursue the person and enter any premises where he believes, on reasonable grounds, that the person is taking refuge to elude justice.

Before entering the premises, the peace officer or person responsible for the enforcement of an Act shall notify the person on the premises of his presence and of the grounds for and purpose of his presence.

Such notice is not required, however, where the peace officer or person responsible for the enforcement of an Act has reasonable grounds to believe that it might allow the person he seeks to arrest to elude justice.

93. A peace officer or person responsible for the enforcement of an Act may use only as much force as is necessary to enter premises.

DIVISION II

OBLIGATIONS RELATING TO AN ARREST

94. A person who makes an arrest shall inform the person he is arresting of his name and capacity and inform him of the offence and of the grounds for his arrest.

95. A person who makes an arrest may use only as much force as is necessary.

96. A person responsible for the enforcement of an Act who makes an arrest shall, as soon as possible, commit to the custody of a peace officer the person arrested if he is not authorized to release him under section 77, 79 or 84. The peace officer shall have custody of the person arrested until that person may be released under one of those sections or is brought before a judge.

97. A person under eighteen years of age who is arrested and who cannot be released shall be committed to the custody of the director of youth protection having competence in the place where the arrest was made.

98. The director of youth protection to whom custody of a person is committed shall see that the person so arrested is placed in a reception centre until he is released under section 77 or 79 or brought before a judge.

The director of youth protection shall, without delay and by any reasonable means in the circumstances, notify the parents of the person committed to his custody of the person's arrest, of the grounds for the arrest, of the offence alleged to have been committed, of the reason for his non-release, of the place where he is being kept and of the time and place at which he is to appear before a judge.

99. Every person arrested who has not been released from custody must be brought before a judge of the judicial district in which he was arrested or in which the proceeding was instituted as soon as possible or within 24 hours after his arrest.

If no judge is available within that time, the person must be brought as soon as possible before the nearest available judge.

100. The judge before whom a person arrested under section 76 appears may order that person to give his name and address or any information confirming the accuracy of the name and address he has given.

If the person complies with the order given to him, the judge may release him from custody on the conditions he determines, and he shall thereupon allow a statement of offence to be served immediately on the person. If the person fails to comply with the order, the judge may find him guilty of contempt of court.

101. The judge shall give every person appearing before him and on whom a statement of offence is served the opportunity to plead guilty or not guilty of the offence described in the statement. The person

may, however, avail himself of the time specified in the statement to enter his plea.

If the person pleads guilty, the judge shall find him guilty of the offence and impose on him a penalty according to law. If the person pleads not guilty or decides to enter his plea within the time allotted by the statement of offence, the judge may release him from custody on the conditions he determines.

102. A judge who releases a person arrested may order, as a condition for release, that the person keep the peace or furnish security in the amount prescribed in section 81 or, where such is the case, in an amount determined in accordance with section 82; in addition, the judge shall fix the date of trial of a person who pleads not guilty.

The judge shall not order a person under eighteen years of age to furnish security in excess of $100.

103. A judge may also order that detention of an arrested person be continued until the trial if he is satisfied by the prosecutor that otherwise the person will not keep the peace or will elude justice.

104. The order for continued detention or for release may be reviewed by a judge of the Superior Court of the district where the order was made.

Notice of presentation of not less than one clear day must be served on the opposite party.

The judge may confirm or quash the order for continued detention or for release and, in that last case, he may confirm or change the conditions for the release, in particular as to the exigibility or the amount of security. Where the defendant is released and fails to appear at the hearing of the application for review, the judge may also issue a warrant of arrest.

105. The trial of proceedings shall begin within eight days after the arrest or, if the decision to keep the person detained has been confirmed by a judge of the Superior Court, within eight days after such confirmation.

Notwithstanding the first paragraph, if the person presents a preliminary motion which delays the trial, the trial shall begin within eight days after a decision is rendered on the motion.

106. The judge who orders that a person be detained in custody shall also order the director of the reception centre or the warden of the house of detention where the person is detained to release him, on the conditions determined by the judge, if the trial of the proceeding has not begun within the time prescribed and if he is not detained for any other reason.

CHAPTER IV

SEARCH

DIVISION I

GENERAL PROVISIONS

107. For the purposes of this chapter, the powers conferred on a judge who issues a search warrant may be exercised, in his absence, by a judge having the same jurisdiction.

108. A search covers the search for and seizure of any corporeal or incorporeal, animate or inanimate thing, including any medium of information

(1) which may be used as evidence of the commission of an offence;

(2) in respect of which an offence was committed;

(3) which is intended to be used for the purpose of committing an offence;

(4) which was obtained by means of the commission of an offence;

(5) the possession of which constitutes an offence.

109. A search may be made with or without a warrant, in accordance with this Code.

110. Every person who makes a search shall, upon request,

(1) make known his name and capacity;

(2) specify the offence in respect of which the search is made;

(3) indicate anything he is authorized to search for and to seize under the search warrant issued to him;

(4) permit any person present when he is making the search to examine the warrant;

(5) indicate, if making the search without a warrant, which of the things referred to in section 108 he is searching for with a view to seizing them.

111. Every person who makes a search may

(1) search any person present when making the search if he has reasonable grounds to believe the person has on his person a thing for which he is authorized to search;

(2) seize, in addition to what he is authorized to search for, any thing referred to in section 108 and that is easily visible;

(3) use only such force as necessary.

112. Every person who seizes a thing during a search shall draw up the minutes of seizure.

113. The minutes of seizure shall particularly specify

(1) where and when the search was made;

(2) under what warrant or, in the absence of a warrant, for what reasons the seizure was conducted;

(3) the description of the thing seized;

(4) the name of the persons from whom the thing was seized;

(5) any information enabling the lawful owner or possessor of the seized thing to be found;

(6) the name and capacity of the seizor.

114. The seizor shall remit a duplicate of the minutes of seizure to the person from whom the thing was seized or, if the premises are unoccupied, the duplicate shall be filed at the office of the Court of the Sessions of the Peace in the judicial district where the thing was seized or, if there is no such office in that district, at the office of the Provincial Court in that district.

In addition, if the premises are unoccupied, the person making the search shall post in a conspicuous place for the person in charge of the searched premises, a notice indicating a search was made there. If a seizure was conducted, the notice must also indicate where the duplicate of the minutes of seizure is filed.

115. Every peace officer or person responsible for the enforcement of an Act may make an application supported by his affidavit in order to cause a search warrant to be issued, if he has reasonable grounds to believe that an offence has been committed and that a thing referred to in section 108 is located in the place where he intends to make the search.

The statement may omit a person's name or a fact if it is likely to disclose a confidential source.

116. A search warrant may be issued at any time by a judge of the judicial district where the search is to be made or of the district where the offence on which the application for the warrant was based was reportedly committed.

117. A judge may issue a search warrant, on the conditions he determines, if he is satisfied on the basis of the affidavit made to him that the grounds of the person making the statement are reasonably founded.

118. The search warrant issued authorizes the person generally or specially designated therein, to enter the place or the building indicated in the warrant or to open or cause to be opened the receptacle indicated therein and to search for and seize the thing referred to in section 108 which is described in the warrant; it also orders the person who makes the search to make a report thereof to the judge who issued the warrant.

119. The search warrant shall be signed by the judge who issues it and is executory throughout Québec.

120. No search authorized under a warrant may be made before seven o'clock a.m. or after eight o'clock p.m., or on a non-juridical day, without the written authorization of the judge who issued the warrant.

121. A search warrant which has not been executed within fifteen days of the date on which it was issued is null.

The non-execution of the warrant shall be stated on the warrant and it shall be returned to the judge by whom it was issued within fifteen days of the expiry of the period for executing the warrant.

122. Every search warrant which has been executed shall be returned by the person by whom it was executed to the judge who issued

it, within fifteen days of the expiry of the period for executing it unless the judge extends the period within which it shall be returned.

A report of the execution and, where a thing has been seized, a duplicate of the minutes of seizure shall be attached to the warrant.

123. No peace officer or person responsible for the enforcement of an Act may, without a warrant, exercise the powers conferred on him under this division, unless he meets the required conditions for the issue of a search warrant and unless, owing to exigent circumstances, the delay necessary to obtain the warrant may result in danger, in particular, to human health or to the safety of persons or property or in the disappearance, destruction or loss of evidence.

124. Every person who makes a search without a warrant shall give a report thereof, as soon as practicable, to a judge of the Court of the Sessions of the Peace or, failing that, of the Provincial Court of the judicial district in which the search was made. The report replaces the search warrant and the statement on which it is based for the purposes of Division III and for the purposes of any review by the courts.

Where a thing has been seized, the seizor shall also remit to the judge a duplicate of the minutes of seizure either at the time he gives a report of the search or within fifteen days of the seizure, unless the judge gives an extension of time.

DIVISION II

SEARCH IN RESPECT OF CERTAIN CONFIDENTIAL INFORMATION

125. Every person who makes a search in a place where a person bound by law to professional secrecy, a priest or another minister of religion keeps information he is bound to keep confidential, shall give that person, priest or minister a reasonable opportunity to oppose the search for the information and the seizure of the medium carrying the information.

126. If the seizure is opposed, the person who makes the search shall seize what is opposed to being seized without examining or reproducing it and place it in a sufficiently sealed and marked package and deliver the package to the clerk of the Court of the Sessions of the Peace of the judicial district in which the search was made or, if there is no such office in that district, to the clerk of the Provincial Court of that district.

127. Every person who makes such an opposition may apply to a judge of the court where the package was delivered, for authorization to examine or reproduce the package's contents.

128. The examination or reproduction of the package's contents shall be carried out in the presence of the judge who grants the authorization or, on his order, in the presence of the clerk of the court.

The judge shall take any measures or give the clerk any directives necessary to ensure that only authorized persons examine or reproduce the package's contents and that the package is resealed.

129. Every person bound to ensure the confidentiality of information as well as every person entitled to the confidentiality of that information may apply to a judge of the court to which the package was delivered to have the package's contents classified as confidential or nonconfidential and if they are declared confidential to have what was declared confidential returned.

At least one clear day's notice of the presentation of the application shall be served within fifteen days of the return of the package to the clerk, on the seizor or prosecutor as well as on any other person entitled to make such application.

130. Such application shall be heard *in camera* by the judge in chambers.

131. The judge who hears the application and the representations of the parties present may also hear other witnesses. He may, in addition, examine or request the attorneys of the parties to examine the package's contents in his presence if he considers such examination necessary to determine whether or not the contents are confidential. He shall, however, take any measures required to ensure the confidentiality of the package's contents at all times.

132. The judge who declares the package's contents confidential shall order the clerk to hand over its contents to the person responsible for ensuring the confidentiality thereof.

133. If the judge does not declare the package's contents confidential, he shall direct the clerk to hand over the contents to the seizor or the prosecutor depending on whether proceedings have or have not been instituted.

134. If the judge declares only one of the package's items to be confidential, he shall order the confidential item to be removed from the package and handed over to the person responsible for ensuring its confidentiality; he shall thereupon order the items not declared confidential to be returned to the seizor or to the prosecutor depending on whether or not proceedings have been instituted.

135. The decision on the confidentiality or nonconfidentiality of the package's contents is executory only after the expiry of thirty days, unless the parties renounce that time.

136. Where no notice of presentation of an application referred to in section 129 is served within the prescribed time, the judge shall order the package's contents to be returned to the seizor or to the prosecutor, depending on whether or not proceedings have been instituted.

137. Where all or part of a package's contents have been declared confidential, the attornies of the seizor and prosecutor who have knowledge of the confidential contents shall not disclose the package's confidential contents or participate in proceedings in which the confidential contents of the examined package may be used as evidence.

DIVISION III

ACCESS TO WARRANTS, STATEMENTS AND MINUTES OF SEIZURE

138. Where a seizure has been conducted, any person may, after the search, examine the search warrant, the statement on which it is based or the minutes of seizure.

139. Where no seizure has been conducted, the person who made a search or the prosecutor as well as the defendant or the person in charge of the place, building or receptacle where a search has been made may, after the search, examine the search warrant and the statement on which it is based.

Where no seizure has been conducted, any other person who has an interest in the search warrant or the statement on which it is based, particularly if he has reasonable grounds to believe his name is mentioned therein, may also, after a search is carried out, examine the warrant or statement but only with leave, upon an application, of the judge who issued the warrant.

Notice of presentation of at least one clear day shall be served on the person who carried out the search and, where applicable, on the prosecutor.

140. The judge may grant, on the conditions he determines, the application for examination, if the applicant satisfies him that his grounds in support of the application are reasonably justified and that it is in the interest of justice to permit the examination applied for.

The decision to allow examination as requested is not executory until ten days after it is rendered, unless the person who carried out the seizure and, where applicable, the prosecutor, waive the delay.

141. The decision to grant or refuse the application for examination may be reviewed by a judge of the Superior Court of the judicial district in which the decision was rendered.

Every person applying for such review shall serve notice of presentation of at least one clear day on the parties in first instance.

142. Notwithstanding sections 138 to 141, every person having an interest in a search warrant, in the statement on which it is based or in the minutes of seizure, may apply to have access to such warrant, statement or minutes prohibited.

Where the application is made by a person other than the person who carried out the search or the prosecutor, notice of presentation of at least one clear day must be served on the latter persons.

143. Where the application is made by the person who carries out the search or the prosecutor, it shall be presented to the judge who issues the warrant or, in the absence of a warrant, to the judge to whom a report of the search is given or, if he is absent, to a judge having the same jurisdiction.

Where the application is made by a person other than the person who carries out the search or the prosecutor, it shall be presented to the judge who issued the warrant or, if none was issued, to a judge of the Court of the Sessions of the Peace in the judicial district in which the search was carried out, or, if that court has no office in that district, to a judge of the Provincial Court in the same district. Where the minutes are filed in the court office in accordance with section 114, the application for examination may also be presented to a judge of the court to which the office in which the minutes are filed belongs.

144. If the judge is satisfied by the person making the application that the ends of justice require that access to the search warrant, the statement on which it is based or the minutes of seizure be prohibited, he may

(1) determine the conditions that must exist for the examination of the search warrant, the statement on which it is based or the minutes of seizure;

(2) temporarily prohibit access to the warrant, statement or minutes or a part of them;

(3) permanently prohibit access to the information that may result in danger to human life or safety which is contained in the warrant, declaration or minutes.

145. The decision on an application to prohibit access or a decision rendered pursuant to the second paragraph of section 138 may be reviewed by a judge of the Superior Court of the judicial district in which it was rendered.

Every person who applies for such review shall serve notice of presentation of at least one clear day on the parties in first instance.

DIVISION IV

CUSTODY AND DETENTION OF THINGS SEIZED

146. The seizor has custody of the thing seized by him until he returns it in accordance with Division V or until it is submitted as evidence at proceedings.

147. The seizor may detain the thing seized by him or see to it that it is detained in such a manner as to ensure its preservation.

148. The seizor may apply to a judge having jurisdiction under the first paragraph of section 143 for authorization to sell the thing in his custody if it is perishable and may be sold lawfully.

149. One clear day's notice of presentation of the application shall be served on the person from whom the thing was seized or, if known, on the lawful possessor or owner of the thing seized. However, the judge to whom application for authorization is made may exempt the seizor from service if the resulting delay carries the risk of considerable deterioration or loss of the thing seized.

150. The judge may authorize the sale if the seizor satisfies him that the thing may be sold and is in danger.

151. The sale shall be made by the person or body authorized by the judge, on the conditions he determines and at the highest price obtainable under the circumstances.

152. The proceeds of sale shall be deposited with the Ministère des Finances in accordance with the Deposit Act (R.S.Q., chapter D-5).

153. The seizor may apply to a judge having jurisdiction under the first paragraph of section 143 for authorization to confiscate and destroy a thing seized which presents a grave danger, particularly to human health or safety or the safety of property.

One clear day's notice of presentation of the application shall be served on the person from whom the thing is seized or, if known, on the lawful possessor or owner of the thing seized.

154. The judge may authorize confiscation and destruction of the thing seized if the seizor proves to his satisfaction the seriousness of the danger he alleges.

155. The seizor may, without authorization from a judge, confiscate and destroy a thing seized presenting a grave and immediate danger, particularly to human health or safety or the safety of property.

The seizor shall, as soon as practicable, make a report of the confiscation and destruction to a judge having jurisdiction under the first paragraph of section 143 and give notice thereof to the person from whom the thing was seized or, if known, to the lawful possessor or owner of the thing seized.

156. No thing seized nor, where such is the case, the proceeds of sale thereof may be detained more than ninety days from the date of seizure unless proceedings are instituted or an order for further detention is made.

157. Upon the application of the seizor, a judge having jurisdiction in accordance with the first paragraph of section 143 may further detain the thing seized for an additional period not exceeding ninety days.

The application may be renewed before the expiry of the prescribed time and the judge may make an order for further detention for a period not exceeding ninety days.

Notice of presentation of the application for further detention shall be served on the person from whom the thing was seized and, if known, on the owner or lawful possessor of the thing seized.

158. Where two applications for further detention have been granted, the seizor may obtain another order for further detention only upon application to a judge of the Superior Court of the judicial district in which the orders for further detention have been made and upon satisfying him that the complexity of the investigation requires detention of the thing seized for a longer period. The judge may thereupon make an order for further detention of the thing seized on the conditions and for the period he determines.

Notice of presentation shall be served on the person from whom the thing was seized and, if known, on the owner or lawful possessor of the thing seized.

DIVISION V

EXAMINATION AND RETURN OF THINGS SEIZED

159. Every person having an interest in the thing seized may apply to a judge having jurisdiction under the second paragraph of section 143 for leave to examine the thing and, where applicable, obtain a copy or photograph thereof.

The judge may grant the application after payment of the examination fee prescribed by regulation.

One clear day's notice of presentation of the application shall be served on the seizor or the prosecutor, depending on whether it is presented before or after the thing seized has been submitted as evidence.

160. The thing seized or, where such is the case, the proceeds of sale thereof shall be returned to the person from whom it was seized once the seizor is satisfied that detention of the thing or of the proceeds is no longer necessary for the purposes of an investigation or an action or not later than the end of the period of detention provided for in Division IV.

161. The seizor shall demand a receipt for the return of the thing seized or the proceeds of sale thereof and shall report the return to a judge having jurisdiction under the first paragraph of section 143.

162. The seizor shall apply to a judge having jurisdiction under the first paragraph of section 143 to decide to whom to return the thing seized or the proceeds of sale thereof, where a dispute relating to the possession of the thing or such proceeds prevents the return thereof or where neither the owner nor the lawful possessor is known.

At least one clear day's notice of presentation of the application shall be served on the persons claiming possession.

163. The judge may thereupon order the thing seized or the proceeds of sale thereof to be returned to the owner or, if the owner is unknown, to the lawful possessor or, otherwise, to the public curator.

164. The owner of the thing seized or the person entitled to possess it may at any time apply to a judge having jurisdiction under the second paragraph of section 143 for the return to him of the thing seized or the proceeds of sale thereof.

The judge may grant the application if the applicant satisfies him that he is the owner of or the person entitled to the thing or the proceeds of sale thereof and that the return thereof will not hinder the course of justice, considering the orders regarding the thing.

Notice of presentation of the application shall be served on the seizor or the prosecutor, depending on whether the application is presented before or after proceedings have been instituted.

165. The order for the return of a thing seized or the proceeds of sale thereof is executory only after the expiry of thirty days unless the parties waive the delay.

CHAPTER V

INSTITUTION OF PROCEEDINGS

DIVISION I

RIGHT OF PURSUIT

166. Penal proceedings may be instituted by

(1) the Attorney General, notwithstanding any enactment inconsistent herewith;

(2) a prosecutor designated under any Act other than this Code to the extent determined by the said Act;

(3) a person having an interest in the proceedings.

167. The Attorney General may intervene at any stage of proceedings to take over conduct of the proceedings.

The intervention takes place when the representative of the Attorney General so notifies the clerk in charge of the record of the proceedings intervened in.

The clerk shall immediately notify the defendant and the original prosecutor of the intervention.

168. The Attorney General may order that proceedings be stayed before judgment is rendered in first instance.

The stay of proceedings takes place when the representative of the Attorney General so notifies the clerk in charge of the record of the proceedings to be stayed.

The clerk shall immediately notify the parties of the stay of the proceedings.

169. The Attorney General may allow the continuance of proceedings within six months of stay of the proceedings.

The continuance takes place when the representative of the Attorney General so notifies the clerk in charge of the record of the stayed proceedings.

The clerk shall immediately notify the parties of the continuance of the proceedings.

170. No defendant may be prosecuted a second time for an offence for which proceedings have been stayed and have not been continued within the prescribed time.

171. A municipality may, by agreement with the Attorney General, approved by the Government, waive in favour of the Attorney General, the institution of proceedings in its territory for offences against any Act, relating to traffic and parking, and agree upon the sharing of fines and costs imposed and of any property forfeited as a result of proceedings for such offences.

The agreement shall take effect from its publication in the *Gazette officielle du Québec*. The Minister of Finance may thereupon deduct from the consolidated revenue fund the share of the municipality under the agreement and remit it to the municipality, so far as the share has been paid into the fund.

DIVISION II

STATEMENT OF OFFENCE

§ 1.—*General provisions*

172. All penal proceedings shall be instituted by means of a statement of offence. A duplicate of the statement shall be filed in the office of the court having jurisdiction in the judicial district where the proceedings are instituted or be available there through a data system.

173. The form of the statement of offence shall be prescribed by order of the Minister of Justice.

174. The statement of offence shall contain the following particulars:

(1) the name and address of the prosecutor and of the defendant;

(2) the judicial district in which the proceedings are instituted;

(3) the date of service of the statement and, as the case may be, any other date which interrupts prescription;

(4) the description of the offence;

(5) the order given by the judicial authority to the defendant to record a plea of not guilty or of guilty on the statement;

(6) an indication of the defendant's right to make a preliminary motion;

(7) the minimum penalty to which the defendant is liable for the alleged offence, subject to subdivision 3;

(8) the minimum amount of costs prescribed by regulation payable by the defendant if he pleads guilty, and the amount of the fine claimed;

(9) an indication of where to send the plea and, as the case may be, the amount of the fine and costs, and the time limit for doing so.

175. The statement of offence shall also include a notice of claim indicating

(1) the minimum penalty referred to in paragraph 7 of section 174 or any greater penalty that the prosecutor may claim under subdivision

(2) a summary statement of the reasons justifying the claim for a greater penalty;

(3) the defendant's right to make representations as regards the greater penalty claimed;

(4) the total amount of the fine and costs prescribed by regulation payable by the defendant if he pleads guilty, and the amount claimed.

The notice of claim shall not be brought to the judge's attention until he has declared the defendant guilty or not guilty.

176. The statement of offence shall indicate, as the case may be, the name and capacity of the person authorized to institute proceedings on behalf of the prosecutor and who actually does so.

The authorized person is not required to have personally witnessed the offence, but he must have reasonable grounds to believe that the offence was committed by the defendant.

177. The statement of offence is deemed to have been made under oath.

§ 2.—*Description of the offence*

178. The terms used to describe the offence recorded in the statement of offence may be identical to those of the legislative provision creating the offence or similar to them.

The description may be completed by a reference to the legislative provision creating the offence described.

Where the description is not in accordance with the reference, the description determines the nature of the offence.

179. The statement of offence may include several offences, each described in a separate count.

180. A count is not presumed to include more than one offence by the sole fact that it lists different means of committing an offence or different things that were the subject of an offence, or both.

181. Where, under an Act, an offence which has continued for more than one day shall be counted as a number of offences equal to the number of days or parts of a day during which the offence has continued, the offences may nevertheless be described in a single count.

182. Each count shall be sufficiently detailed as to reasonably inform the defendant of the alleged offence and of the circumstances in which he is alleged to have committed it in order to allow a full and complete defence.

183. A count is not invalidated by the sole fact that certain details are absent, such as the name of the person injured, the name of the owner of the property or the means by which the offence was committed, or that it does not precisely designate a person, place or thing.

§ 3.—*Indication of penalties*

184. Where the penalty imposed under an Act for an offence grants discretion to impose a fine or imprisonment, the fine shall be considered the minimum penalty.

Where the penalty is a fixed fine, the fine is considered the minimum penalty.

Where the prescribed penalty is a fine for which no minimum amount is fixed, the amount of $50 must be entered on the statement of offence.

185. Where no penalty is provided for in the Act creating an offence, the defendant is liable to a fine of $50 to $2 000.

186. Where the defendant is a legal person and the penalty prescribed for an offence includes compulsory imprisonment, a fine of $500 to $10 000 is substituted for imprisonment.

187. Where the defendant is a person between fourteen and eighteen years of age, the amount of a fine entered on the statement of offence must not exceed $100, notwithstanding any provision to the contrary.

188. A prosecutor may claim a greater punishment than the minimum penalty by reason of special circumstances relating to the offence or the defendant.

189. The prosecutor may also claim a greater punishment in the case of a subsequent offence where the latter offence takes place within two years of the previous conviction of the defendant for an offence under the same provision as that referred to in the statement of offence or within a shorter period from the conviction where such a period is provided for in the Act creating the offence.

DIVISION III

SERVICE OF STATEMENT OF OFFENCE

190. Every penal proceeding commences with service of a statement of offence.

191. Service of a statement of offence does not require prior authorization of a judge unless the prosecutor is the person referred to in paragraph 3 of section 166.

An application for authorization shall be presented to a judge of the judicial district in which the prosecutor intends to institute proceedings.

192. The judge who receives the application for authorization shall hear the allegations of the prosecutor as to the commission of an offence. He may also demand to hear the depositions of witnesses to the alleged offence and, for that purpose, compel them to appear and testify.

193. The judge may authorize service of the statement of offence if he has reasonable grounds to believe that the person accused has committed the alleged offence and if he is satisfied that the prosecutor has an interest in the proceedings.

The judge shall record the authorization on the statement, with an indication of where the defendant must send his plea and, as the case may be, the total amount of the fine and costs claimed.

A duplicate of the statement shall be sent to the Attorney General to enable him to intervene in the proceedings or stay them, as the case may be.

194. A statement of offence may be served, upon the commission of an offence, by the delivery of a duplicate of the statement to the defendant by the prosecutor or the person authorized to institute proceedings on his behalf.

Where the defendant is a legal person, the duplicate shall be delivered to one of its senior officers, employees or agents.

195. A statement of offence may be served after the commission of the offence, by a peace officer or a bailiff by the delivery of a duplicate of the statement to the defendant or to any reasonable person living at his residence or in charge of his business office.

Where the defendant is a legal person, the duplicate shall be delivered to one of its senior officers or agents or to any person in charge of its head office or one of its business offices or the office of one of its agents.

196. After the commission of the offence, a statement of offence may also be served by sending a duplicate of the statement of offence by registered or certified mail to the address of the residence or business office of the defendant or, in the case of a legal person, to the address of its head office or of one of its business offices or the office of one of its agents.

197. Personal service of a statement of offence may be made on a defendant having no residence, head office, business office or agent with a business office in Québec, in accordance with sections 194 and 195 if the defendant is in the territory of Québec.

Where the defendant is outside the territory of Québec, a statement of offence shall be served in accordance with section 196 or, where an agreement has been entered into by the Gouvernement du Québec with the government of another province or country with a view to the punishment of offences committed in Québec by persons under the jurisdiction of the government of that other province or country, in accordance with the agreement.

198. A statement of offence shall be served on any person held in detention in a reception centre, detention centre or penitentiary by the delivery of a duplicate of the statement to that person by a bailiff or peace officer.

199. Upon an application by the prosecutor or person serving a statement, a judge of the district in which the prosecutor institutes the proceedings may authorize a different mode of service where circumstances require it.

200. A person serving a statement of offence shall attest to the service thereof.

The person shall indicate, on the statement, his name, the name of the person to whom he has delivered it, and the place, date and time of service.

201. Where service is effected by mail, the notice of receipt or, as the case may be, the notice of delivery of the statement of offence shall serve as an attestation of service.

Service is deemed to have been effected on the date on which the notice of receipt or delivery is signed by the defendant or the person referred to in section 195 to whom the statement may be delivered for the intention of the defendant.

202. Where the defendant refuses to receive the statement of offence, the person serving it shall record the refusal on the statement, with the place, date and time of refusal.

The statement is thereupon deemed to have been served at the time of refusal.

203. Every attestation of service is deemed to have been made under oath.

204. Where a statement of offence is served on a person between fourteen and eighteen years of age, a duplicate of the statement shall also be served on the person's parents, if they are known, except where the statement refers to a parking violation.

205. An irregularity in the service of a statement of offence does not invalidate service if a judge is satisfied, at any stage of proceedings, that the defendant has acquainted himself with the statement.

Notwithstanding the foregoing, the judge may, if the ends of justice so require, make any order in respect of the irregular service to allow a full and complete defence.

CHAPTER VI

PROCEDURE PRIOR TO THE TRIAL

DIVISION I

TRANSMISSION OF PLEA

206. The defendant shall transmit a plea of guilty or not guilty within thirty days after service of the statement of offence, to the place indicated therein.

207. A defendant from whom the minimum amount of the fine and costs is claimed and who enters a plea of guilty shall, on pain of having to pay an additional amount of costs prescribed by regulation, transmit the amount of the fine and costs with his plea.

208. A defendant on whom a greater penalty is imposed and who enters a plea of guilty shall, on pain of having to pay an additional amount of costs prescribed by regulation, transmit with his plea either the amount of the fine and costs claimed or a statement of his intention to make representations as to the greater penalty imposed on him.

In the latter case, the defendant may propose a date for the hearing of his representations.

209. A defendant who transmits the amount of the fine and costs claimed without entering a plea is deemed to have pleaded guilty.

210. A defendant who neither enters a plea nor transmits the amount claimed is deemed to have pleaded not guilty.

211. A defendant who enters a plea of not guilty may propose a date for the trial.

212. It is incumbent upon the defendant to establish that he has, within the allotted time, entered a plea and, where such is the case, transmitted the amount claimed or a statement of his intention to make representations as to the greater penalty imposed on him, where such facts are contested.

DIVISION II

CONVENING OF PARTIES

213. Where the defendant has entered a plea of not guilty or a plea of guilty with a statement of his intention to make representations as to the greater penalty imposed on him, the clerk of the competent court in the judicial district in which the proceedings were instituted shall advise the defendant and the prosecutor of the place, date and time set for the trial or for the hearing of representations as to the penalty.

In setting the date, the clerk shall take account of the dates proposed by the parties.

214. Where the defendant has entered a plea of guilty with no statement of intention to make representations as to the greater penalty that may have been imposed on him or where he is deemed to have entered a plea of guilty, the clerk of the competent court in the judicial district in which the plea was entered or is deemed to have been entered

shall advise the prosecutor of the place, date and time a judge is to rule upon acceptance or refusal of the plea.

In setting the date, the clerk shall take account of the date proposed, where such is the case, by the prosecutor.

215. Where the defendant neither enters a plea nor transmits the amount of the fine and costs claimed, the clerk of the competent court in the judicial district in which the plea should have been entered or the amount should have been transmitted shall advise the prosecutor of the place, date and time set for trial proceedings by default.

In setting the date, the clerk shall take account of the date proposed, where such is the case, by the prosecutor.

DIVISION III

PRELIMINARY MOTIONS

216. The fact that a defendant has entered a plea of not guilty does not prevent him from presenting a preliminary motion.

217. A preliminary motion must be presented, before the date set for the trial, to a judge of the judicial district in which the proceedings were instituted or, during the trial, to the presiding judge.

However, any motion contemplated in paragraph 9 or 10 of section 222 must be presented no later than the outset of the trial.

218. A notice of presentation of a preliminary motion must be served on the opposite party unless expressly waived by the latter before a competent judge in the presence of both parties. The notice of presentation must be filed in the office of the competent court of the judicial district in which the proceedings were instituted.

Notwithstanding the foregoing, where the motion is presented by the defendant, the transmission, to the place indicated in the statement of offence, of the notice of presentation with the plea has the same value and effect as the service and filing of the notice of presentation.

219. The judge to whom a preliminary motion is presented may, if necessary, set a new date for the trial.

220. The judge may grant or dismiss a preliminary motion with or without the costs prescribed by regulation or, as the case may be, order that the costs are to follow the judgment on the case.

221. A party who presents a preliminary motion after being advised of the date set for the trial may be condemned to pay the costs prescribed by regulation even if the motion is granted, where the judge is satisfied that the motion could have been presented earlier.

In addition, the party may be condemned to pay the travelling expenses, prescribed by regulation, needlessly incurred by witnesses.

222. A preliminary motion may be presented

(1) to have the record of the case transferred;

(2) to have the case moved to another judicial district;

(3) to obtain a joint trial with another defendant or a separate trial for each defendant;

(4) to have the counts entered on the statement of offence tried jointly or separately;

(5) to obtain further details as to the charge;

(6) to have the count amended;

(7) to have the statement of offence amended;

(8) to obtain the acquittal of the defendant on a preliminary defence;

(9) to obtain the dismissal of the proceedings on a preliminary exception;

(10) to obtain a judicial stay of proceedings.

223. On the motion of a party, the judge may order that the record of the case be transferred to another judge having jurisdiction to try the case.

224. On the motion of a party, the judge may order, if the ends of justice so require, that the trial be held in another judicial district. The clerk shall thereupon transmit the record to the office of the court of the district designated in the order.

A notice of presentation of the motion must be served on the opposite party.

225. The defendant may present a motion to a judge of equivalent jurisdiction in the judicial district in which the defendant has his principal residence to have the trial held in that judicial district.

A notice of presentation of the motion must be served on the prosecutor and on the clerk of the competent court in the judicial district where the proceedings were instituted.

The judge may make such order if he is satisfied that the change requested by the motion will facilitate the administration of justice, in view of the distance to be travelled by the witnesses likely to be summoned by the prosecutor and by the defendant.

The order must be served on the clerk of the competent court in the judicial district in which the proceedings were instituted. The clerk shall then transmit the record to the office of the court of the district designated in the order.

226. On the motion of a party, the judge may order, if the ends of justice so require, that a separate trial be held for each of the defendants jointly accused of having committed the same offence or that a joint trial be held for defendants separately accused of having committed the same offence.

Notice of presentation of the motion must be served on all parties.

227. On the motion of a party, the judge may order, if the ends of justice so require, that a separate trial be held on each count in the statement of offence or that one trial be held on all counts in a statement of offence.

228. On the motion of the defendant, the judge may order that the prosecutor furnish further details as to the offence alleged to have been committed by the defendant and as to the circumstances of the alleged offence, if the judge is satisfied that such details are needed for a full and complete defence.

229. On the motion of the prosecutor, the judge shall allow him, on such conditions as the judge may determine, to amend a count so as to add a detail or correct an irregularity, and in particular to state expressly an essential element of the offence.

In no case may the judge allow one defendant to be substituted for another or one offence to be substituted for another.

230. On the motion of a party, the judge may amend a statement of offence, in particular to correct an irregularity, and must amend a statement of offence to indicate the minimum penalty for the offence described in a count if the penalty is not indicated or is erroneously indicated in the statement of offence.

231. No defendant who, following a preliminary motion, pleads guilty immediately after obtaining further details or immediately after the count or the statement of offence is amended, may be required to pay a greater amount of costs than he would have been required to pay if he had entered such a plea within the time indicated in the statement of offence.

232. The defendant may present a defence of *res judicata* as a preliminary defence, where in a former proceeding between the same parties, a question of fact that is material in the present proceeding was decided definitively in favour of the defendant by a judge of competent jurisdiction.

233. The defendant may, as a preliminary defence, present the fact that the present proceeding is based on facts or an event having already led to his conviction for an offence against another provision of the same Act or a provision of another Act.

However, the judge shall not accept such a defence if he is satisfied that the legislator created separate offences even if they result from the same facts or event.

234. The judge may render his decision on a preliminary defence before the trial or after trying the case.

If the judge accepts the defence, he must acquit the defendant.

235. Preliminary exceptions as to the charge may be raised on the grounds that

(1) the defendant has already been acquitted or convicted of the alleged offence;

(2) the offence is prescribed;

(3) the defendant has immunity from prosecution;

(4) the person mentioned in the statement of offence as being authorized to institute proceedings in the name of the prosecutor was not so authorized by him;

(5) the prosecutor did not have the authority to institute the proceeding;

(6) the judge does not have jurisdiction over the offence;

(7) a count, not covered by the exception provided in section 181, pertains to more than one offence;

(8) the count pertains to no offence created by a law in force at the time the facts described in the count occurred;

(9) the law that created the offence is either inapplicable constitutionally, invalid or inoperative or of no force or effect, including in respect of the Canadian Charter of Rights and Freedoms (Part I of Schedule B to the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom) or in respect of the Charter of human rights and freedoms (R.S.Q., chapter C-12).

236. Any judge who maintains an exception shall dismiss the count that is the subject of the exception.

237. Dismissal of a count on grounds described in paragraph 4 or 5 of section 235 does not prevent a prosecutor having the authority to take proceedings from instituting new proceedings for the same offence, provided it is not prescribed.

238. In the case described in paragraph 7 of section 235, the judge may, instead of dismissing the count, direct the prosecutor to choose to proceed on one of the offences described in the defective count and to renounce prosecution of the other offences described therein.

No defendant who, immediately after the prosecutor chooses an offence pursuant to the first paragraph, pleads guilty to the count may be required to pay a greater amount of costs than he would have been required to pay if he had entered such a plea within the time indicated in the statement of offence.

239. In the case described in paragraph 9 of section 235, the judge shall not dismiss the count unless the notice provided for in article 95 of the Code of Civil Procedure is served in accordance with the said article.

The judge may, if the ends of justice so require, try the case subject to his decision as to the exception and render such decision after the trial.

240. On the motion of the defendant, a judge of the judicial district where the proceeding was instituted may direct that the proceeding be stayed if he is satisfied that such proceeding is an abuse of penal proceedings by reason of the fact that the defendant has previously been in jeopardy of conviction for the offence in respect of which he is applying for a stay of proceedings.

CHAPTER VII

TRIAL

241. The trial in penal proceedings shall be held in open court unless the presiding judge orders that the sitting be held *in camera* in the interest of good morals and public order.

242. The judge trying the case shall have the necessary authority and powers to maintain order in the court room, including the power to find a person guilty of contempt of court.

243. Any penal proceeding which, according to existing legislation, may be tried by two justices of the peace may henceforth be tried by one justice of the peace.

244. The judge trying the case need not be the judge who rendered a decision before the trial.

245. The judge trying the case shall render judgment thereon.

Should the judge be unable to impose a punishment or to make an order according to law by reason of illness or for any other serious reason at the time of rendering judgment, another judge having the same jurisdiction may continue the case.

246. Should a judge be unable to terminate a case by reason of illness or for any other serious reason, another judge having the same jurisdiction shall resume the trial.

247. The judge may accept or refuse a plea of guilty by a defendant who entered or is deemed to have entered such a plea.

The judge may also accept or refuse a plea of guilty entered before him by a defendant before the judgment is rendered.

248. If the judge accepts the plea of guilty, he shall try the case and render judgment.

249. After having heard the defendant or examined his plea of guilty, the judge may refuse the plea if he ascertains that the offence is not under his jurisdiction or is prescribed or if he has any doubt as to the nature of the plea entered by the defendant.

250. Where the prosecutor has been duly convened but is absent at the trial, the judge may, on proof that he was convened, either accept the plea of guilty entered or deemed to have been entered by the defendant or defer his decision on the plea.

251. Where the plea has been entered or is deemed to have been entered, the judge refusing the plea may either dismiss the count specified in the statement of offence if he ascertains that the offence is not under his jurisdiction or is prescribed or enter a plea of not guilty on the statement of offence. A notice of dismissal or, where such is the case, a notice of convening specifying the place, date and time of the trial must be given to the parties by the clerk.

Where a plea of guilty is submitted during the trial, the judge refusing the plea may adjourn or continue the trial.

252. Where the defendant is deemed to have entered a plea of not guilty, the case is tried and the judgment is rendered in his absence.

Where the prosecutor fails to attend the trial although he was duly convened, the judge may, on proof that he was convened, either try the case in the absence of the parties if the evidence is in the record or adjourn the trial.

253. Where the defendant fails to attend the trial although he was duly convened, but where the prosecutor is present, the judge may, on proof that he was convened, either adjourn the trial or allow, on the application of the prosecutor, the case to be tried and judgment to be rendered in the absence of the defendant.

254. Where the prosecutor fails to attend the trial although he was duly convened, but where the defendant is present, the judge may, on proof that he was convened, either adjourn the trial if oral or documentary evidence is available or, in the opposite case, acquit the defendant.

255. Where both the defendant and the prosecutor fail to attend the trial although they were duly convened, the judge may, on proof that they were convened, either try the case in the absence of the parties if the evidence is in the record and render judgment by default, or adjourn the trial.

256. Where the parties are present at the trial, the judge shall try the case.

257. The judge may, of his own initiative or on the application of a party, adjourn the trial; he may then condemn the party who applied for the adjournment to pay the costs fixed by regulation.

258. Where a defendant is under eighteen years of age and a duplicate of the statement of offence has not been served on his parents or where the notice provided for in section 98 has not been given, the judge may either try the case and render judgment or order that the statement be served on them or that the notice be given to them and, consequently, adjourn the trial.

259. Where the defendant is in detention, the adjournment of his trial shall not exceed eight days unless he agrees thereto.

260. A judge who adjourns a trial may, on the application and with the approval of the parties, continue the case on a date prior to that fixed at the time of the adjournment if he is satisfied that the holding of the trial on another date will facilitate the administration of justice.

261. In the course of a trial, the prosecutor shall have, within the limits prescribed by law, complete freedom in the conduct of the proceeding and the defendant shall have a right to a full and complete defence.

262. The prosecutor shall first present his evidence of the commission of the alleged offence; the defendant may then, if he elects to do so, produce his defence and, finally, the prosecutor, if he considers it expedient, may adduce evidence in rebuttal.

263. The judge trying the case shall hear the witnesses summoned by the prosecutor or the defendant.

The judge may order a person present at the trial to testify if he is satisfied that the person's testimony may be expedient in the case. The person shall not refuse to testify on the ground that he has not been duly summoned.

264. The examination or cross-examination of a witness may be conducted by the prosecutor or defendant himself or by their respective advocates.

265. Testimony shall be taken in the manner determined by order of the Minister of Justice.

It shall be transcribed in whole or in part on the application of the prosecutor or the defendant. The costs of transcription shall be assumed by the person who applies therefor.

The transcription of testimony need not be signed by the witness who testified but by the judge who heard the testimony and by the person having transcribed it who, by a sworn statement or solemn affirmation, certifies the accuracy of the transcription.

266. From the time a thing is produced as evidence, the clerk shall have custody thereof.

The provisions relating to the keeping of the thing seized contained in Division IV of Chapter IV apply, adapted as required, to the custody of every thing produced as evidence.

267. The judge may, during the trial, order the return of a thing produced as evidence if the parties agree thereto and if he is satisfied that the keeping of the thing is no longer necessary for the trial and that there is no legal proceeding in connection with the possession of the thing.

268. The judge trying the case may, of his own initiative, make the amendment provided for in section 230 relating to the minimum fine.

He may also, of his own initiative, raise a preliminary exception based on the fact that the offence is not under his jurisdiction or is prescribed.

269. The judge trying the case shall be bound by any decision on a preliminary motion taken before the trial by another judge in connection with the case.

270. The judge trying the case may reserve his decision on the questions of law raised during the trial and render his decision after hearing the evidence relating to the facts of the case.

271. The prosecutor may apply to the judge trying the case to amend a count to make it correspond with the evidence submitted.

The judge shall make the amendment if the count and the evidence submitted are different. The judge shall not, however, allow a substitution of defendants or of offences.

272. The judge may, after a party has declared his evidence closed but before the pleading, allow that party to submit evidence of a new

fact or of a fact that he inadvertently omitted to prove, if he is satisfied that the ends of justice require such evidence.

273. After the prosecutor has declared his evidence closed, the defendant may apply for an acquittal based on total absence of evidence of an essential element of the offence.

274. Where the defendant's behavior during the trial, the testimony or, if the parties consent, the report of a duly qualified physician gives the judge reasonable grounds to believe that the defendant is unfit to stand trial on account of his mental state, the judge shall, at any time before rendering judgment, adjourn the trial until he renders a decision on the defendant's fitness to stand trial.

275. Before deciding on the defendant's fitness to stand trial, the judge may order that the defendant be submitted to a psychiatric clinical examination in accordance with the Mental Patients Protection Act (R.S.Q., chapter P-41).

276. After hearing the evidence and representations of the parties on the defendant's fitness to stand trial, the judge may suspend the proceedings for a period of one year, if he is satisfied that the defendant is unfit to stand trial.

277. On the application of a party, the judge may, in the course of the year of the suspension, render another decision on the defendant's fitness to stand trial and, for that purpose, exercise the power contemplated in section 275.

Notice of presentation of such an application must be served on the opposite party.

278. Where the judge is satisfied, after hearing the evidence and representations of the parties, that the defendant is fit to stand trial, he shall fix a date for the continuance of the trial; in the opposite case, the suspension continues.

279. The trial of the case shall not be continued where more than one year has elapsed from the date of suspension of the proceedings.

The defendant shall not be prosecuted a second time for the offence for which the trial has been suspended and has not been continued or for an offence resulting from the same facts or event.

CHAPTER VIII

SENTENCING

280. The judge who renders judgment after a trial may acquit the defendant, find him guilty of an offence or, if he grants a preliminary exception described in paragraph 9 of section 235 on which he has reserved judgment, dismiss the proceedings.

He may also, in his judgment, make any order provided for by law.

281. A judgment rendered orally is deemed rendered on the date it is pronounced. However, any judgment rendered or substantiated in writing is deemed rendered on the date of the filing of the writing in the court record.

282. Where a sentence is imposed on a later date than that on which judgment is rendered, the judgment is deemed rendered on the date of the sentence. However, if the sentence is imposed or substantiated in writing, the judgment is deemed rendered on the date the writing is filed in the record of the court.

283. A judgment may be recorded by the clerk in minutes taken in the form prescribed by order of the Minister of Justice.

284. Once rendered, a judgment is final and cannot be upheld, quashed or amended except in accordance with this Code.

285. Where a judge acquits a defendant of an offence, he may nevertheless find him guilty of a lesser offence established by the evidence and included in the offence of which the defendant was acquitted.

286. Where a statement of offence includes several counts resulting from the same facts or the same event, the judge may render judgment on each count; he shall commence with the count describing the most serious offence and continue in decreasing order to the count describing the least serious offence.

However, if the judge finds the defendant guilty of an offence, he shall suspend judgment of the other counts alleged in the statement of offence on which judgment has not been rendered.

287. A judge, before imposing sentence, sentencing to costs or making an order, shall give each party present an opportunity to be heard on the matter.

288. Where a judge finds a defendant guilty of an offence, he shall sentence him to a penalty within the limits prescribed by law.

Notwithstanding the first paragraph, the judge shall not impose a different fine from that demanded by the prosecutor where the defendant has paid it.

289. In fixing sentence, the judge shall take into account any period of detention served by the defendant for the offence of which he is found guilty.

290. The judge shall not impose imprisonment except as authorized by this Code or for contempt of court, even if the term of imprisonment prescribed in an Act is compulsory. He shall in that case substitute for that penalty a fine equivalent to the term he would have imposed; the fine is computed in accordance with the schedule.

This section applies notwithstanding any inconsistent provision of any Act, unless it expressly states that it applies notwithstanding this section.

291. Except as in section 296, where a judge imposes imprisonment, he shall give the reasons therefor in writing.

292. A term of imprisonment is executory upon sentence.

Notwithstanding the first paragraph, the period of detention begins to run only from the time the defendant is imprisoned under a warrant of committal.

293. A term of detention is interrupted for the time that the defendant is released according to law or is unlawfully at large. It begins to run again upon his reimprisonment to finish serving the sentence imposed on him.

294. Where the defendant is already in detention, the judge, in imposing a new term of imprisonment, may order that the terms be served consecutively, except where the term being served was imposed for default of payment of a sum due.

Where the judge imposes a sentence of imprisonment for less than ninety days, he may order that it be served intermittently at the times

and on the conditions he specifies in his judgment and in the warrant of committal.

295. Where a judge sentences a defendant to a fine or costs, he may not, in his judgment, make any order for the recovery thereof, except as in section 296.

296. Where a judgment imposes a fine on the defendant or sentences him to costs, it is not executory before at least thirty days unless the defendant waives the delay or unless the judge, if satisfied that the defendant will abscond, directs that, failing immediate payment, the defendant be imprisoned for the period he determines under sections 333 to 337.

297. A judge may sentence a defendant to costs fixed by regulation where he

(1) finds him guilty and imposes a fine on him;

(2) denies in his judgment a preliminary exception described in paragraph 9 of section 235 that was presented before him and on which he reserved judgment;

(3) confirms a decision to the effect that any costs related to a preliminary motion follow the judgment on the main action.

298. A judge may sentence the prosecutor to pay the costs fixed by regulation where he

(1) grants in his judgment a preliminary exception described in paragraph 9 of section 235, that was presented before him and on which he reserved judgment;

(2) confirms a decision to the effect that any costs related to a preliminary motion follow the judgment on the main action.

299. Where a judgment sentences the prosecutor to pay costs, it is not executory before at least thirty days, unless the prosecutor waives the delay.

300. On passing judgment, the judge shall make an order for the disposition of anything produced as evidence.

Except as otherwise provided in any Act, the judge may, in particular, order that

(1) a thing in unlawful possession be forfeited and that it be destroyed or delivered to the public curator;

(2) a thing unclaimed be delivered to the public curator;

(3) a thing seized or, where such is the case, the proceeds of sale thereof be delivered pursuant to the provisions of Division V of Chapter IV, adapted as required;

(4) a thing the production of which is required in another case be detained by the clerk or delivered to the person who in such case is responsible for ensuring the safekeeping thereof.

301. An order for the disposition of a thing produced as evidence is executory only on the expiry of thirty days, unless the parties waive the delay.

CHAPTER IX

EXECUTION OF JUDGMENTS

302. All sums owed by a prosecutor, defendant or witness under an order given by a judge in accordance with this Code shall be recovered in accordance with this chapter.

All sums owed by a witness shall be recovered in the same manner as the sums owed by a defendant.

303. The costs of execution shall be determined by regulation and be payable by the party against whom the judgment or decision has been rendered.

Costs of execution shall not be imposed on the defendant in respect of imprisonment except in the case of imprisonment for default of payment of sums due.

304. The Minister of Justice shall appoint persons to act as collectors.

305. Unless otherwise provided, all sums due and all forfeited things shall belong to the Crown and be deposited in the consolidated revenue fund.

306. Where a sum is owing by the Crown, the Minister of Finance shall pay it after receiving a certified copy of the order of payment.

He shall deduct the sum necessary for the payment from the consolidated revenue fund or from the budget allocated to that purpose.

307. An order enjoining the prosecutor to pay costs shall be executory upon an application of the party entitled thereto and according to the provisions of the Code of Civil Procedure relating to the execution of judgments of the Superior Court or Provincial Court, according to the amount payable.

308. Any sum owed by a defendant shall be deducted from the security paid by him where it has not been forfeited. Where the amount of the security exceeds the sum due, the balance shall be returned to the defendant.

309. Any security paid by the defendant shall be reimbursed to him, if he is acquitted of the offence, if the proceedings are dismissed or judicially stayed, if the proceedings are stayed by the Attorney General and not continued within the prescribed time, or if the hearing, having been suspended, is not resumed within the prescribed time.

310. Where an order to pay an amount of money becomes executory, the judge having made the order or a judge of the same jurisdiction may, on the motion of the collector and if circumstances so warrant, order a department, body or person to provide the collector with available information as to the residence and place of employment of the defendant in default and, if need be, allow a person designated by the judge to be examined for that purpose before him or any other judge of the same jurisdiction.

This section applies notwithstanding any inconsistent provision of any Act, unless it expressly states that it is applicable notwithstanding this section. This section does not apply to a person who has received the information in the performance of his duties and who is bound to the defendant by professional secrecy.

311. Unless payment has been made, the collector shall without delay send a notice of judgment to the defendant with a demand for payment of the sum due within the time indicated.

312. At the request of the defendant, the collector may grant him an extension of time for payment of the sums due if an examination of the defendant's financial situation leads the collector to believe that the defendant can afford to pay them but that an extension of time is justified in the circumstances.

313. The collector and the defendant may enter into an agreement in writing whereby the sums due will be paid by instalments at the time and on the terms and conditions they determine.

314. The collector may make a seizure where the time for payment of the sums due has expired or where the defendant fails to comply with the agreement entered into with the collector.

315. The seizure shall be made according to the rules relating to the civil execution of judgments, except those contained in Book VIII of the Code of Civil Procedure, and except the following rules:

(1) the collector of the place where the order to pay has been given shall be responsible for the collection of the sums due and act as seizing creditor;

(2) notwithstanding the first paragraph of article 589 and the first paragraph of article 662 of the Code of Civil Procedure, the seizing officer may not demand advances to meet the costs of custody or the disbursements rendered necessary by the execution of the writ;

(3) the service of a writ of seizure by garnishment may be made by registered or certified mail.

316. Writs of seizure emanate from the Superior Court or the Provincial Court, according to the amount involved, and each court has competence to decide any matter relating to the seizure.

Where an order for payment is made by a municipal court, the writ of seizure emanates from that court, which has competence to decide any matter relating to the seizure.

317. Before making a seizure of property, the collector shall obtain the authorization of the judge who gave the order for payment or a judge having the same jurisdiction.

The judge whose authorization is applied for may

(1) authorize the collector to proceed with the seizure immediately, or

(2) in exceptional circumstances and where he considers it in the interests of justice, authorize the collector to proceed with the seizure but only if the defendant refuses or fails to carry out compensatory work.

318. Where a collector has reasonable grounds to believe that seizure does not or will not permit the recovery of the sums owing by

the defendant, he may offer the defendant the option of paying the sums he owes by means of compensatory work, depending on the availability of compensatory work programs.

319. The collector or the person or body he designates shall determine the nature of the compensatory work that the defendant may agree to carry out.

Where the defendant is under eighteen years of age, the collector shall entrust the director of youth protection having jurisdiction in the place of the defendant's residence with determining the nature of the compensatory work and supervising it.

320. A defendant who agrees to carry out compensatory work may, if he performs the work, pay by such work all the sums due at the time of the agreement.

The agreement shall be in writing.

321. The amounts of the sums due shall be added up to determine the duration of the compensatory work in accordance with the schedule.

Where the total number of compensatory work units to be carried out for a portion referred to in the schedule contains a fraction it shall be rounded off to the nearest whole number; where the fraction is 1/2, the number shall be rounded off to the next lower whole number.

322. In no case may the defendant agree to carry out more than 500 compensatory work units of a duration of three hours' work each.

The carrying out of compensatory work corresponding to the maximum provided for in the first paragraph enables the defendant to pay all the sums due at the time of the agreement, whatever their amounts.

323. The compensatory work must be completed within twelve months of the agreement, unless the sums due exceed $10 000, in which case it must be completed within two years of the agreement.

324. Upon completion of the work, the collector shall send a report of the carrying out of the work to the judge who gave the order to pay or a judge of the same jurisdiction.

On the signing of the report by the judge, the defendant is released from payment of the sums due.

325. The Labour Code (R.S.Q., chapter C-27), the Act respecting collective agreement decrees (R.S.Q., chapter D-2), the Public Service Act (R.S.Q., chapter F-3.1.1), the Act respecting manpower vocational training and qualification (R.S.Q., chapter F-5), the Act respecting labour standards (R.S.Q., chapter N-1.1), Chapter IV of the Building Act (1985, chapter 34), the Master Electricians Act (R.S.Q., chapter M-3), the Master Pipe-Mechanics Act (R.S.Q., chapter M-4) and the Act respecting labour relations in the construction industry (R.S.Q., chapter R-20) do not apply when compensatory work is carried out under this chapter.

326. Notwithstanding section 6 of the Act respecting occupational health and safety (R.S.Q., chapter S-2.1), only sections 12 to 48 and paragraph 11 of section 51 of the said Act apply to a person who carries out compensatory work.

For the carrying out of the said Act,

(1) the Government is deemed to be the employer of that person;

(2) the contribution of the employer is established according to the standards applied under the said Act by the Commission de la santé et de la sécurité du travail.

327. Where a defendant agrees to carry out compensatory work, he may, before beginning it, pay all the sums due to the collector with whom he has made the agreement.

328. Where a defendant agrees to carry out compensatory work, he may, while carrying it out, pay the balance of the sums due to the collector with whom he has made the agreement.

The amount of the sums due at the time of the agreement shall be reduced proportionately to the ratio between the number of compensatory work units already carried out or paid and the number of units to be carried out at the time of the agreement.

329. Where a defendant agrees to carry out compensatory work, he may, before or while carrying it out, pay part of the sums due to the collector with whom he has made the agreement.

The payment reduces the number of compensatory work units to be carried out at the time of the agreement proportionately to the ratio between the amount paid and the amount of the sums due at the time of the agreement.

330. Even if the defendant ceases to carry out compensatory work before its completion, the amount of the sums due at the time of the agreement is reduced proportionately to the ratio between the number of units already carried out or paid and the number of units to be carried out at the time of the agreement.

331. Where it has been impossible to offer compensatory work or where the defendant refuses or fails to carry out such work, and if the sums due have not been paid, the collector may apply to the judge who gave the order to pay or any judge of the same jurisdiction in order that imprisonment be prescribed and a warrant ordering the defendant's imprisonment be issued.

Notice of presentation of the application shall be served on the defendant. The judge may, however, hear the application if it has been impossible to serve the notice on the defendant despite reasonable efforts to do so and the collector proves that the defendant cannot be found or is eluding justice.

The collector shall, if the defendant is a person under eighteen years of age, serve notice on the person's parents of his intention to present an application in accordance with this section. If the parents have not been notified, the judge may take proceedings against the defendant or adjourn the hearing of the application on the conditions he determines, and order that notice be served on the parents.

332. The judge may order imprisonment and issue a warrant of committal where he is satisfied that the measures provided for in this chapter to recover the sums due do not permit, in this particular case, full recovery of the sums due.

Imprisonment shall be justified in writing.

333. The term of imprisonment shall be determined for each offence, in accordance with the schedule. Three additional days of imprisonment shall be ordered for each offence.

Where the total number of days of imprisonment to be served for a portion referred to in the schedule contains a fraction, it shall be rounded off to the nearest whole number; where the fraction is 1/2, the number shall be rounded off to the next lower whole number.

In no case may the total term of imprisonment for the same offence exceed two years less one day.

334. Each sentence of imprisonment for failure to pay a sum due must be served without interruption.

335. Where a defendant is sentenced both to imprisonment and to the payment of a sum of money, imprisonment for failure to pay the sum of money begins to run at the expiry of the term of imprisonment imposed as punishment for the offence.

336. Where the defendant is already in detention, the judge, in imposing imprisonment for default of payment of sums due, may order that the terms be served consecutively, and shall so order where the term being served was imposed for default of payment of a sum due.

337. Sentences of imprisonment for default of payment of a sum due, where there is more than one, must be served consecutively.

338. Every warrant of committal shall indicate the term of imprisonment.

339. A warrant may be issued and executed on a non-juridical day. It may be executed anywhere in Québec by a justice of the peace or a bailiff.

340. Where a warrant of committal is not executed within five years of its issue, it is null. It may, however, be renewed before the expiry of that period by the judge who issued it or by a judge of the same jurisdiction.

341. A warrant of committal issued against a defendant while he is already in detention must be given without delay to the director of the establishment where the defendant is detained.

If the defendant is a person under eighteen years of age, the warrant must be remitted to the director of youth protection having competence at the place of detention without delay.

342. The person who, under a warrant of committal arrests a defendant, must convey him to the warden of the house of detention indicated therein or, if the defendant consents thereto, to the director of the place where the arrest took place.

If the person arrested is under eighteen years of age, he must be handed over to the director of youth protection having competence at the place where the arrest took place.

The warrant of committal shall be delivered as soon as possible to the director or warden who received the defendant. The director or warden shall issue an attestation of the condition of the defendant when he receives him.

343. The person making an arrest pursuant to a warrant of committal is not required to be in possession of the warrant.

Notwithstanding the foregoing, he must, as soon as practicable, inform the person under arrest of the content of the warrant and if the arrest is for default of payment of sums of money that are due, he must inform him of the amount due.

344. The defendant may pay the sum due to the person entrusted with the execution of a writ of seizure or a warrant of committal. Such person must give a receipt to the defendant as evidence of payment of the sum due and remit the amount to the collector.

Payment in full of the sums due suspends execution of the warrant.

345. The defendant may before beginning his term of imprisonment make full payment of the sums due, to the director of the establishment where he has been taken.

346. A defendant who is in detention may, during his term of imprisonment, pay to the director of the establishment where he is detained the balance of the sums due.

The amount of the sums due at the time of imprisonment is then reduced proportionately to the ratio between the number of days of imprisonment already served or paid and the number of days of imprisonment to be served or paid.

347. The defendant may at the time of or during imprisonment pay part of the amount due to the director of the establishment where he is detained.

Payment under the first paragraph reduces the number of days of imprisonment to be served at the time of imprisonment proportionately to the ratio between the amount paid and the amount of the sums due at the time of imprisonment.

348. The director or warden of the establishment who receives an amount due must give a receipt to the defendant as evidence of payment of that sum and remit that amount to the collector.

In addition, the director or warden must release the defendant if he has made payment in full of the sums due, unless his detention is required on another ground.

349. Where more than one penalty in the form of a fine has been imposed on the defendant and he makes payment of a sum owed by him, performs compensatory work or serves a term of imprisonment for default of payment, the sum, work or term of imprisonment is applied first to payment of the costs related to the lesser fine imposed on the defendant, and then to that fine.

350. Where a defendant has not paid the sum due at the expiry of the time indicated under section 311 or granted under section 312 or 313, or where, at the expiry of such time, although he had agreed to do compensatory work, the defendant has failed to honour his agreement, the collector shall notify the Régie de l'assurance automobile du Québec of that fact, in the case of an offence under the Highway Safety Code (1986, chapter *insert here the chapter number of Bill 127*) or a traffic by-law passed by a municipality other than a parking infraction.

The fact that the collector gives the notice does not prevent him from resorting to other measures of recovery provided for in this chapter.

351. The collector, if he has given a notice under section 350, shall notify the Régie de l'assurance automobile du Québec without delay if the sum due has been acquitted as a result of a payment or seizure or if the defendant has been released from payment under the second paragraph of section 324 or has served the term of imprisonment ordered for default of payment.

352. The collector shall remit, on the conditions prescribed by regulation, part of the costs recovered under this chapter, to the prosecuting party contemplated in paragraph 3 of section 166 who disbursed sums of money to institute proceedings.

CHAPTER X

CORRECTION OF JUDGMENT

353. Every judgment or decision rendered under this Code by a judge may be corrected.

354. The correction may be made in the following reasons in particular:

(1) to correct an error in writing or calculation or any other clerical error;

(2) to conform the penalty imposed or the content of an order to the law;

(3) to provide a measure that the judge was required to take but inadvertently omitted to take.

355. The correction may be made by the judge who rendered the judgment or decision, of his own motion, so long as execution has not been commenced.

356. If there is no appeal, a party may apply for a correction at any time to the judge who rendered the judgment or decision or, if he is not available, a judge of the same jurisdiction.

Notice of presentation of the application shall be served on the opposite party, except on a defendant found guilty by default.

357. An application for correction does not stay execution unless the judge so orders upon an application.

Notice of presentation of the application shall be served on the opposite party.

In case of urgency, the judge may order stay of execution even if the notice of presentation of the application therefor has not been served on the opposite party.

358. The time for appeal from a corrected judgment or decision begins to run from the date of correction.

359. A judge who dismissed an application for correction may do so with or without costs, the amount of which shall be determined by regulation.

360. A judgment or decision rendered by a judge of the Superior Court may be corrected for the same reasons and on the same conditions. The same rule applies to a judgment or decision rendered by the Court of Appeal, except that the correction is made by a judge of that Court.

CHAPTER XI

REVOCATION OF JUDGMENT

DIVISION I

REVOCATION UPON APPLICATION OF THE DEFENDANT

361. Where a defendant found guilty by default was, for a serious reason, prevented from submitting his defence, he may apply for revocation of the judgment to the judge who rendered it or, if he is not available, to a judge of the same jurisdiction.

362. The application for revocation shall be in writing.

The application may be made orally if the defendant appears before the judge after he has rendered judgment, provided he is still sitting and the prosecutor is present.

363. The written application must indicate the grounds for revocation and the grounds of defence which the defendant intends to invoke. The application must also attest to the seriousness of the grounds.

Notice of presentation of the application shall be served on the prosecutor.

364. The written application must be filed within fifteen days after the defendant acquired knowledge of the judgment finding him guilty.

Notwithstanding the foregoing, the judge, upon receipt of a written application, may relieve the defendant of the consequences of his delay if he proves that he was unable to make an application for revocation within the prescribed time.

Notice of presentation of the application must be served on the prosecutor.

365. The judge may grant the application for revocation if he is satisfied that the alleged grounds for revocation and the grounds of defence invoked are serious.

The parties are then placed in the position they were in before the trial and the judge may thereupon recommence the trial or adjourn the new trial to a later date.

366. Where the judge grants or dismisses an application for revocation, he may do so with or without costs, the amount of which shall be determined by regulation, or order that they follow the judgment on the main action.

367. Application for revocation does not stay execution unless the judge so orders upon an application.

Notice of presentation of the application shall be served on the prosecutor unless he is present when it is made.

In cases of urgency, the judge may order stay of execution even if notice of presentation of the application therefor has not been served on the prosecutor.

368. The person responsible for execution of a revoked judgment is bound to stay execution and to immediately return the order of execution to the office of the court upon being served a duplicate of the decision granting the application for revocation or for stay of execution.

DIVISION II

REVOCATION UPON APPLICATION OF THE PROSECUTOR

369. Where a prosecutor discovers that, as a result of an administrative error, a defendant has been found guilty, he shall immediately make an application for revocation of the judgment to the judge who rendered it or, if he is not available, to a judge of the same jurisdiction.

370. The application for revocation shall be made orally.

Notwithstanding the first paragraph, the judge may order that a notice of presentation be served on the defendant and adjourn the hearing of the application to the date he indicates on the notice.

371. The judge may grant the application for revocation if he is satisfied that, were it not for the alleged error, the defendant would not have been found guilty.

The parties are then placed in the position they were in before the trial and the judge may thereupon recommence the trial or adjourn the new trial to a later date.

372. The application for revocation effects stay of execution of the judgment.

The person responsible for execution of the judgment is bound to stay execution and to immediately return the order of execution to the office of the court upon being informed of the presentation of the application for revocation.

CHAPTER XII

EXTRAORDINARY REMEDIES, HABEAS CORPUS PROCEEDINGS AND INJUNCTION

373. Articles 834 to 858 and 861 of the Code of Civil Procedure apply to judgments and decisions rendered under this Code.

Notwithstanding the foregoing, no remedy provided in the said articles may be invoked where an appeal from a judgment or decision lies or did lie of right or with leave.

Where a judge grants or dismisses an application for an extraordinary remedy or habeas corpus proceedings, he may do so with or without costs, the amount of which shall be determined by regulation.

374. The Attorney General, after instituting penal proceedings against a defendant who repeatedly commits offences under an Act, may apply to the Superior Court for an interlocutory writ of injunction ordering the defendant to cease committing such offences until judgment is rendered on the penal proceedings.

After judgment is rendered, the Superior Court shall render its final decision on the application for injunction.

CHAPTER XIII

APPEAL TO SUPERIOR COURT

DIVISION I

GENERAL PROVISIONS

375. In this chapter, unless the context indicates otherwise, "judgment rendered in first instance" means

(1) a judgment of acquittal or conviction of a defendant and the sentence imposed or any order made at the time of the judgment;

(2) a decision which orders the dismissal of a count;

(3) a judicial stay of the proceedings;

(4) a decision to grant or dismiss an application for revocation of judgment;

(5) a judgment finding the defendant unfit to stand trial on account of his mental state;

(6) an order to return a thing seized.

376. An appeal may be brought only in respect of the sentence imposed or the order made at the time of the judgment of conviction or acquittal of the defendant, as the case may be, in first instance.

Notwithstanding the first paragraph, where an appellant contests both the sentence imposed or an order made at the time of the judgment, as the case may be, and the conviction or acquittal, he shall do so in the same appeal.

377. The defendant, the prosecutor or, even if he was not a party to the proceedings, the Attorney General may appeal from a judgment rendered in first instance.

378. No person waives his right of appeal by the sole fact that he pays the fine imposed or complies in any way with the judgment rendered in first instance.

DIVISION II

INSTITUTION OF APPEAL

379. An appeal shall be brought before the Superior Court of the judicial district in which the judgment was rendered in first instance.

380. An appeal must be brought within thirty days of the judgment rendered in first instance.

Upon the written application of the appellant, the appeal may be brought within any other time fixed by a judge of the Superior Court of the district in which the appeal is brought, before or after the expiry of the thirty days.

Notice of presentation of the application shall be served on the respondent.

381. An appeal is brought by filing a notice of appeal in the office of the Superior Court.

The notice shall indicate, in particular, the grounds for the appeal and the conclusions sought, and shall be drafted concisely and precisely in accordance with the rules of practice. Proof of its service on the respondent must be attached thereto.

382. Upon receipt of the notice of appeal, the clerk of the Superior Court shall transmit a duplicate to the office of the court of first instance and another duplicate to the judge of first instance who rendered the judgment.

The clerk of the court of first instance shall subsequently transmit the record to the office of the Superior Court without delay, in accordance with the rules of practice.

383. The respondent shall, within ten days of service of the notice of appeal, file in the office of the Superior Court a written appearance and proof of its service on the appellant.

Notwithstanding the first paragraph, a judge may, upon application, authorize the respondent to file a written appearance after the expiration of the time prescribed in the first paragraph.

Notice of at least one clear day of presentation of the application shall be served on the appellant.

384. The clerk must enter an appeal on the court roll when it is ready for hearing.

385. The filing of a notice of appeal shall stay the execution of the judgment rendered in first instance, except a judgment under which the defendant is imprisoned.

386. A defendant who appeals from a judgment under which he is imprisoned may apply to be released to a judge of the Superior Court of the district in which the appeal is brought.

Notice of at least one clear day of presentation of the application must be served on the prosecutor.

387. The judge may release the defendant, on the conditions he determines, particularly that the defendant keep the peace or furnish security.

The judge may also order that the defendant be kept in detention if he is satisfied that, otherwise, the defendant will not keep the peace or will abscond. He shall thereupon make any order to expedite the hearing of the appeal.

388. Where the judge considers that the appeal is improper or dilatory, or for any other special reason, he may, upon written application, dismiss the appeal or order that it be heard on condition that the appellant pay security in the amount and on the terms and conditions of payment determined by the judge, to guarantee execution of the judgment on the appeal.

Notice of presentation of the application must be served on the appellant.

This section does not apply where the appellant is the Attorney General.

389. The appellant may withdraw the appeal by filing a notice of withdrawal with proof of its service on the respondent.

The documents transmitted to the Superior Court by the clerk of the court of first instance and a copy of the notice of withdrawal shall be returned to the office of the court where the judgment was rendered in first instance.

The appellant may then be sentenced to costs fixed by regulation.

DIVISION III

HEARING OF APPEAL AND JUDGMENT

390. The hearing of an appeal shall be based on the record made up in accordance with the rules of practice.

However, by way of exception and on the application of the appellant, the appeal may be heard by a new trial where the judge considers that a new trial is expedient, taking into account the state of the record and the interests of justice.

Notice of presentation of such an application must be served on the respondent.

391. An appeal heard by a new trial shall be held in accordance with the provisions of this Code relating to the trial and to the judgment rendered in first instance and with the rules of practice adopted by the Superior Court under this Code.

The judge hearing the appeal may, with the consent of the parties and if he is satisfied that no prejudice will be suffered by them, allow any testimony given in first instance, in writing or on magnetic tape, to be produced as evidence.

392. An appeal heard on the record shall be presented orally by the parties. The parties may also present their arguments in writing within the time allotted and in the form prescribed in the rules of practice.

393. The judge hearing an appeal on the record may require the judge who rendered judgment in first instance to provide him, within the time he determines, with a report on the case appealed from or on specific questions with respect to the case.

The judge may also receive any new evidence and order the production of a thing connected with the case or of any compellable witness who may thereafter be examined or cross-examined, as the case may be, by the parties.

394. The judge hearing an appeal on the record may exercise all the powers granted by this Code to the judge who rendered judgment in first instance and make any order in the interests of justice.

395. The judge shall grant an appeal on the record if he is satisfied by the appellant that the judgment rendered in first instance is unreasonable, considering the evidence, that an error in law has been made or that justice has not been rendered.

Notwithstanding the foregoing, where the prosecutor appeals from a judgment of acquittal and where there has been an error in law, the judge may dismiss the appeal unless the prosecutor proves that, but for that error, the judgment would inevitably have been different.

Where the defendant appeals from a judgment of conviction or a judgment concluding that the defendant is unfit to stand trial on account of his mental state and where there has been an error in law, the judge may dismiss the appeal if the prosecutor proves that, notwithstanding that error, the judgment would have been the same.

396. The judge may, if he grants the appeal on the record, quash, in whole or in part, the judgment rendered in first instance and

(1) render the judgment that should have been rendered in first instance;

(2) order the holding of a new trial before a judge other than the one who rendered judgment in first instance.

397. Where the judge orders the holding of a new trial, he may, upon application, release the defendant who has been imprisoned under a judgment rendered in first instance and, in particular, order, as a condition for release, that the defendant keep the peace or furnish security.

The judge may also order that the defendant be kept in detention if he is satisfied that, otherwise, the defendant will not keep the peace or will elude justice. He shall, thereupon, make any order to expedite the holding of the new trial in first instance.

398. The judge may, if he dismisses the appeal on the record, sentence the appellant to the costs fixed by regulation for the trial in first instance and the appeal.

DIVISION IV

EXECUTION OF JUDGMENT

399. Every judgment rendered in appeal shall be executed in accordance with the provisions of Chapter IX.

400. A duplicate of the judgment rendered in appeal and the documents transmitted to the Superior Court by the clerk of the court of first instance shall be returned to the office of the court where the judgment was rendered in first instance.

401. The sums due by a party after the appeal shall be paid out of the security where the party paid security in first instance or in appeal and where the security is not forfeited. Where the amount of security is greater than the sum due, the remainder of the sum shall be remitted to the person who paid the security.

Where a party owes no money after the appeal, the amount of the security shall be remitted to the person who paid it.

CHAPTER XIV

APPEAL TO COURT OF APPEAL

DIVISION I

GENERAL PROVISIONS

402. The appellant and respondent in Superior Court and the Attorney General, even if he was not a party to the proceedings, may appeal to the Court of Appeal.

403. With the leave of a judge of the Court of Appeal, the appellant may, if he has sufficient interest, appeal on a question of law alone, from a judgment

(1) rendered in appeal by a judge of the Superior Court;

(2) granting or dismissing habeas corpus or extraordinary remedy proceedings.

404. An interlocutory judgment rendered in first instance or in Superior Court which rules on an objection to the evidence based on article 308 of the Code of Civil Procedure or section 9 of the Charter of human rights and freedoms or which rules on the confidentiality or nonconfidentiality of a thing seized may also be appealed from immediately.

Such appeal takes place with leave of a judge of the Court of Appeal, where the objection to the evidence has been granted or where the confidentiality of the thing seized has been declared. The judge who grants such leave shall then order the continuation or stay of proceedings in first instance or in Superior Court, as the case may be.

The appeal takes place of right where the objection to the evidence has been denied or where the nonconfidentiality of the thing seized has been declared. The appeal does not stay proceedings but the judge of first instance or of the Superior Court, as the case may be, cannot hear the evidence in respect of which the objection was made or permit access to the thing seized which was declared nonconfidential or render judgment on the proceedings until the interlocutory judgment has been decided.

The appeal is heard by preference, unless the chief justice decides otherwise.

405. No person waives his right to appeal by the sole fact that he pays the fine imposed or complies in any way with the judgment from which he is appealing.

DIVISION II

INSTITUTION OF APPEAL

406. An appeal may be brought before the Court of Appeal sitting at Montréal or at Québec according to the place where appeal from judgments in civil matters lies.

407. The court is composed of three judges; however, the chief justice may increase that number if he sees fit.

408. A judge may refer to the court any application addressed to him under this chapter.

409. Application for leave to appeal must be presented in writing within thirty days from the appealed judgment. It shall indicate, in particular, the grounds for the appeal and the conclusions sought and shall be drafted concisely and precisely in accordance with the rules of practice. Copy of the appealed judgment shall be attached to the application.

Upon the written application of the appellant, the application for leave to appeal may be presented within any other time fixed by a judge of the Court of Appeal, before or after the expiration of the time prescribed in the first paragraph.

Notice of presentation of the applications must be served on the respondent.

410. Service of the application for leave to appeal from a judgment stays the execution of the judgment, except a judgment under which the defendant is imprisoned.

411. A defendant who has served an application for leave to appeal from the judgment under which he is imprisoned may apply to a judge to be released for the duration of the appeal.

Notice of at least one clear day of presentation of the application must be served on the prosecutor.

412. The judge may release the defendant, on the conditions he determines, particularly that the defendant keep the peace or furnish security.

The judge may also order the defendant to be kept in detention if he is satisfied that, otherwise, the defendant would not keep the peace or would elude justice. He shall thereupon make any order that may expedite the hearing of the appeal.

413. Where a judge grants leave to appeal, he may order that it be heard on condition that the appellant pay security, in the amount and on the terms and conditions determined by the judge, to guarantee execution of the judgment on the appeal.

This section does not apply where the appellant is the Attorney General.

414. The judge who refuses leave to appeal may sentence the appellant to costs fixed by regulation.

415. The appeal is brought when the clerk of the Court of Appeal files the judgment granting leave to appeal in the office of the court.

416. The clerk of the Court of Appeal shall transmit a copy of the judgment granting leave to appeal to the parties unless they were present when the leave was granted.

417. On the granting of the application for leave to appeal, the clerk of the Court of Appeal shall transmit a duplicate of the application and the judgment granting the leave to the office of the court where the judgment appealed from was rendered, and to the judge who rendered it.

The clerk of the court where the judgment appealed from was rendered shall next transmit the record to the office of the Court of Appeal without delay, in accordance with the rules of practice.

418. The respondent shall, within ten days following the day on which he has knowledge of the judgment granting leave to appeal, file in the office of the Court of Appeal a written appearance and proof of its service on the appellant.

Notwithstanding the first paragraph, a judge may, upon application, authorize the respondent to file a written appearance after the expiration of the time prescribed in the first paragraph.

Notice of at least one clear day of presentation of the application must be served on the appellant.

419. Within sixty days of the judgment granting leave to appeal, the appellant shall file a factum together with proof of its service on the respondent in the office of the court.

420. Within thirty days of the filing of the factum of the appellant, the respondent shall file a factum and proof of its service on the appellant in the office of the court.

421. The parties shall set out in their factums, in accordance with the rules of practice, the grounds for the contestation in appeal, their arguments and the conclusions sought.

422. Upon application, a judge may dismiss the appeal of an appellant who does not file a factum within the prescribed time or bar a respondent from pleading where he does not file a factum within the prescribed time.

Notice of presentation of the application shall be served on the other party before the date of its presentation.

Where a judge bars the respondent from pleading, the appellant may request the clerk to enter the case on the court roll.

423. The clerk of the Court of Appeal shall enter an appeal on the court roll when it is ready for hearing.

424. Where the appeal is not ready to be entered on the court roll within one year from the date on which it was brought, the clerk shall notify the parties, at least sixty days in advance, that the appeal has been entered on a special roll, and indicate the date of the hearing of the appeal.

425. Where the appeal is not ready for hearing on the date specified by the clerk, a judge of the Court of Appeal may declare it abandoned if he has given the parties an opportunity to be heard and if the party in default has not furnished valid grounds. The judge may thereupon make any order he sees fit.

426. The appellant may withdraw the appeal by filing a notice of withdrawal with proof of its service on the respondent.

The documents transmitted to the Court of Appeal by the clerk of the court where the appealed judgment was rendered and copy of

the notice of withdrawal shall be returned to the office of the court where the appealed judgment was rendered.

The appellant may thereupon be sentenced to costs fixed by regulation.

DIVISION III

HEARING OF THE APPEAL, JUDGMENT AND EXECUTION OF JUDGMENT

427. On joint application of the parties, a judge of the Court of Appeal may, if he sees fit, exempt the parties from filing their factums and authorize them to present the appeal orally.

428. The court which hears the appeal may apply to the judge who pronounced the appealed judgment to furnish, within the time it fixes, a report of the appealed case or of particular questions pertaining thereto.

The court may also receive new evidence and order the production of anything related to the proceedings as well as the production of a compellable witness who may be examined or cross-examined, as the case may be, by the parties.

429. The court which hears the appeal may exercise all the powers this Code confers on a judge whose judgment is appealed from and make any order required in the interests of justice.

430. Sections 395 to 401 apply, adapted as required, to the judgment on the appeal and the execution of the judgment.

Notwithstanding the first paragraph, the court may return the record to the court of first instance or the Superior Court for sentence.

431. An application for release for the duration of the appeal to the Supreme Court of Canada shall be addressed to a judge of the Court of Appeal and sections 410 to 412, adapted as required, apply to the application.

CHAPTER XV

REGULATIONS

432. The Government may, by regulation,

(1) determine the court fees payable under this Code;

(2) determine the costs a party may be condemned to pay in first instance or in appeal;

(3) determine the fee payable for the issue of a duplicate or copy of a document;

(4) determine the obligations of a person who receives security while waiting for it to be dealt with pursuant to this Code;

(5) determine, for the purposes of the security contemplated in section 81, the amount of costs added to the amount of the minimum fine;

(6) determine the indemnities payable to witnesses;

(7) determine the amount of costs a defaulting witness may be condemned to pay;

(8) determine the costs of execution of the judgment a party may be condemned to pay;

(9) determine the conditions on which part of the costs recovered may be remitted to the prosecutor under section 352;

(10) determine the costs that may be imposed upon dismissal of an application for correction of a judgment or upon the granting or dismissal of an application for revocation of a judgment;

(11) determine the costs for an application for an extraordinary remedy, habeas corpus proceedings or an injunction;

(12) determine the tariff of fees of any person entrusted with the administration of this Code in respect of judicial proceedings.

433. The judges of the Court of Appeal, the Superior Court, the Provincial Court, the Court of the Sessions of the Peace, the Youth Court or the Labour Court may make, for the exercise of their respective jurisdictions, the rules of practice judged necessary for the proper carrying out of this Code.

The rules of practice must be made by a majority of the judges, either at a meeting convened for the purpose by the chief justice or by way of a consultation held at the request of the chief justice by certified or registered mail.

The rules of practice are subject to government approval and come into force fifteen days after the date of publication in the *Gazette officielle du Québec*.

CHAPTER XVI

FINAL PROVISIONS

434. The Minister of Justice is responsible for the administration of this Act.

435. This Act will come into force on the date fixed by the Government.

SCHEDULE

DETERMINATION OF THE EQUIVALENCE BETWEEN THE AMOUNT OF THE SUMS DUE, THE TERM OF IMPRISONMENT AND THE PERIOD OF THE COMPENSATORY WORK

(*Sections 290, 321 and 333*)

For the portion of the sums due between:	One day of imprisonment is equivalent to:	One compensatory work unit is equivalent to:
$1 and $5 000:	$ 25	$ 30
$5 001 and $10 000:	$ 50	$ 60
$10 001 and $15 000:	$ 75	$ 90
$15 001 and $20 000:	$100	$120
$20 001 and $25 000:	$125	$150
$25 001 and $30 000:	$150	$180
$30 001 and $35 000:	$175	$210
$35 001 and $40 000:	$200	$240
$40 001 and $45 000:	$225	$270
$45 001 and $50 000:	$250	$300
$50 0001 and over:	$400	$480

TABLE OF CONTENTS